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November 2, 1998

VIA HAND DELIVERY
Magalie Salas, Esquire
Secretary
Federal Communications Commission
1919 M Street, N.W. - Room 222
Washington, D.C. 20554

Re: Redesignation of the 17.7-19.7 GHz frequency band . . . . . .
IB Docket No. 98-172
RM-9005, RM-9818

Dear Ms. Salas:

On behalf of the Fixed Point-to-Point Communications Section, Wireless Communications Division of the Telecommunications Industry Association, we are submitting for filing an original and nine (9) copies of its Petition for Interim Relief in the above-referenced proceeding.

Please communicate with us if you need further information.

Very truly yours,

FLETCHER, HEALD & HILDRETH, PLC

George Petrutsas
Of Counsel

GP:cej
Enclosures
cc: All Commissioners (w/enc.)(VIA HAND DELIVERY)
Chief, International Bureau (w/enc.)(VIA HAND DELIVERY)
Chief, WTB (w/enc.)(VIA HAND DELIVERY)
Chief Engineer (w/enc.)(VIA HAND DELIVERY)
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International Bureau

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BEFORE THE

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Redesignation of the 17.7-19.7 GHz Frequency	)	
Band, Blanket Licensing of Satellite	)	IB Docket No. 98-172
Earth Stations in the 17.7-20.2 GHz and	)	RM-9005
27.5-30.0 GHz Frequency Bands,	)	RM-9818
and the Allocation of Additional Spectrum	)	
in the 17.3-17.8 GHz and 24.75-25.25 GHz	)	
Frequency Bands for Broadcast	)	
Satellite-Service Use	)	

To: The Commission

PETITION FOR INTERIM RELIEF

Pursuant to Section 1.41 of the Commission's Rules, the Fixed Point-to-Point Communications Section, Wireless Communications Division of the Telecommunications Industry Association[1] ("The Fixed Section") hereby petitions the Commission for interim relief in the above captioned proceeding. Specifically, the Fixed Section requests the Commission to withdraw its announcement in Paragraph 40 of its

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[1]The Telecommunications Industry Association is the principal industry association representing telecommunications equipment manufacturers, including manufacturers of terrestrial fixed point-to-point microwave radio service equipment. Fixed Section members serve, among others, companies – including telephone carriers, emerging communications carriers, PCS carriers, cellular carriers, public safety operations, utilities, railroads, and governments – which are licensed by the Commission to use private and common carrier bands for provision of important and essential telecommunications services. This petition reflects only the views of the Fixed Point-to-Point Section and does not necessarily reflect the views of any other member of the Association.

Notice of Proposed Rulemaking in the proceeding ("Notice")[2] that certain terrestrial fixed systems for which applications are filed after the release of the Notice (September 18, 1998) for frequencies on certain of the 18 GHz bands would be given "secondary" status.[3]

That announcement has had an immediate and significantly negative effect on the terrestrial fixed community, including microwave equipment manufacturers, users as well as communication service providers. The Fixed Section requests the Commission to revise Paragraph 40 of its NPRM so as to provide that terrestrial fixed systems applied for after September 18, 1998, would also be given co-primary status and would be subject to whatever "grandfather" rules the Commission adopts in this proceeding.

The statement in Para. 40 constitutes a "freeze"

The Commission's announcement concerning the status of terrestrial systems to be authorized on the basis of applications filed after the release of the NPRM in the

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[2]*In the Matter of Redesignation of the 17.7-19.7 GHz Frequency Band*, Notice of Proposed Rulemaking, FCC 98-235 (released September 18, 1998)("NPRM"); 63 Fed Reg. 54100, October 8, 1998.

[3]The Commission's statement reads as follows:

> "For those terrestrial facilities applied for after the release of the NPRM, we reiterate that such terrestrial facilities will be required to accept interference from satellite operations and if a terrestrial facility interferes with a satellite earth station, and the terrestrial licensee can not cure it, the terrestrial licensee would be required to discontinue the operation of the interfering facility."

Notice, Para. 40.

proceeding constitutes a "freeze" in that it is effectively precluding the filing of applications for terrestrial fixed systems in the affected bands.

Terrestrial microwave systems are designed and are authorized for interference-free operations. See, e.g., Section 101.103(a) of the Commission's Rules, 47 CFR 101.103 (1997). The nature of the services such systems render requires interference-free operations. Therefore, operators or users of terrestrial microwave systems will simply not apply for systems to be authorized on a secondary basis since they are faced with the very real prospect that the grants they may obtain would be of no real value. Thus, the Commission's proposal constitutes a de facto freeze, and under the circumstances, immediate interim relief is the only effective remedy. A decision on the matter at the end of the proceeding, even if favorable to the terrestrial fixed interests, would not undo the harm.

In this proceeding, the Commission has proposed to significantly redesignate the 2000 MHz of spectrum currently associated with the 18 GHz band. As part of that proposal, terrestrial-fixed service providers would see a reduction from the full 2000 MHz of spectrum available for their operations to a 600 MHz of spectrum for primary use, 650 MHz of spectrum for co-primary use with other types of operations, and 750 MHz of spectrum would be relegated to a secondary status. In conjunction with this proposed redesignation of the 18 GHz bands, the Commission has emphasized that September 18, 1998 – the date of the NPRM's release – would be a "cut-off" date for applications to be licensed under the current allocation plan. The proposed allocation and the accompanying emphasis that such allocation is to be enforced retroactively

serve to impose effectively a "freeze" on further development of the affected terrestrial-fixed service 18 GHz operations.

The de facto freeze has not been justified in the NPRM. Its public interest benefits are not apparent. The detriments, however, are clear and are substantial. The 18 GHz band is used extensively for a wide range of purposes. The bands 18.55-18.80 and 18.92-19.16, for example, accommodate several thousands of relatively narrowband (5 MHz or less) systems. Those systems provide, among other services, backbone and infrastructure links for numerous communication systems for such purposes as cell site or hub connections and back-haul services. Terrestrial systems also distribute video programming to thousands of subscribers. The "freeze" will indeed freeze the development of 18 GHz microwave fixed service, particularly in the segments of the 18 GHz band used for narrowband point-to-point and for video distribution, until such time as the Commission's final decision in the proceeding is issued.[4] Operators and users will not risk capital investment in such systems under the current rules, knowing that they will be reduced to secondary status with the real possibility of having to purchase equipment again to comply with the new Commission rules. Moreover, the freeze will interfere with ongoing plans to expand or modify existing systems, will interfere with contracts for the manufacture and delivery of equipment and will even prevent operators from using equipment on hand. The result will be stranded investments and delayed service to the public. This presents a real hardship to the 18

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[4]Since the proposals in the proceeding are far reaching and controversial, adoption of a final decision could be delayed for a substantial period of time.

GHz user community, as well as to the manufacturers of microwave equipment, and it is contrary to the Commission's policy for fostering public safety and competition.

While authorizations with "primary" status would continue to be available in other segments of the 18 GHz band, those segments are currently channelized for relatively wideband operations, such as for 10, 20, 40 MHz channels. Licensing narrowband systems on wideband channels would be spectrally inefficient and would interfere with the re-channelization of those segments of the band, as it is contemplated in this proceeding. The density of 18 GHz terrestrial links is quite high in certain urban areas, to the extent that satellite operators may find it necessary to relocate fixed links in order to deploy ubiquitous terminals. This change should be effective for all systems following re-channelization of the wide band point-to-point bands.

In sum, the Commission should lift the "freeze" and permit continued licensing of all terrestrial fixed systems in the 18 GHz on a primary basis until after the Commission renders a decision on its band segmentation proposals and the re-channelization of whatever segments of the band remains available to the terrestrial fixed service.

Precedent for lifting a "freeze" has been established

The Commission has previously recognized that commercial difficulty or impracticability can arise from freezes and has taken steps to provide relief.[5] In the 929

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[5]See, for example, *In the Matter of Amendment of the Commission's Rules to provide Channel Exclusivity to Qualified Private Paging Systems at 929-930 MHz*, Report and Order, 8 FCC Rcd 8318 (1993), aff'd PSWF Corp. v. FCC, 108 F.3rd 354, (D.C. Cir. 1997).

MHz proceeding, the Commission imposed a freeze on all 900 MHz applications concurrent with, and effective immediately upon the release of the NPRM in that proceeding.[6] Shortly thereafter, the Commission reconsidered that action and provided relief to paging carriers by lifting the freeze.[7] The Commission cited the impaired ability of operators subject to the freeze to "develop or expand their systems based on plans formulated prior to the adoption of the Notice" and freeze.[8] Further, the Commission noted that such freeze could strand investment and delay provision of service to customers. However, the Commission cautioned operators that they would be required to continue to comply with currently effective rules, that the lifting of the freeze was merely a temporary action and was not an indication of the decision which the Commission would eventually reach on the merits of its proposals.[9]

The concerns which the Commission addressed in the cited proceeding are analogous to those involved in the current proceeding. For example, the Commission's concerns regarding operators' impaired ability to "develop or expand their systems based on plans formulated prior to the adoption of the Notice" and stranded investment

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[6] *In the Matter of Amendment of the Commission's Rules to provide Channel Exclusivity to Qualified Private Paging Systems at 929-930 MHz*, Notice of Proposed Rulemaking, 8 FCC Rcd 2227, 2233 (1993).

[7] *In the Matter of Amendment of the Commission's Rules to provide Channel Exclusivity to Qualified Private Paging Systems at 929-930 MHz*, Order, 8 FCC Rcd 2460 (1993).

[8] 8 FCC Rcd 2460.

[9] *Ibid.*

and delayed provision of service to customers,[10] among others, exist in the current proceeding. Therefore, lifting of the de facto freeze here would be consistent with the Commission's decision in the 929 MHz proceeding.

CONCLUSION

For the foregoing reasons, the Fixed Section respectfully urges the Commission to grant its petition and announce that terrestrial systems for frequencies in the 18 GHz band, for which applications are filed after September 18, 1998, will continue to be authorized on a co-primary basis and would be subject to the Commission's final decisions in the above-referenced proceeding.

Respectfully submitted,

FIXED POINT-TO-POINT COMMUNICATIONS SECTION, WIRELESS COMMUNICATIONS DIVISION OF THE TELECOMMUNICATIONS INDUSTRY ASSOCIATION

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Date: November 2, 1998

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[10] *Ibid.*