

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

RECEIVED

NOV - 9 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re)
)
Redesignation of the 17.7-19.7 GHz Frequency)
Band, Blanket Licensing of Satellite Earth)
Stations in the 17.7-20.2 GHz and 27.5-30.0)
GHz Frequency Bands, 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)

IB Docket No. 98-172
RM-9005
RM-9118

To: The Commission

**OPPOSITION OF KASTAR SATELLITE COMMUNICATIONS CORP.,
KASTARCOM. WORLD SATELLITE, LLC AND @CONTACT, LLC**

KaStar Satellite Communications Corp. ("KaStar"), KaStarcom. World Satellite, LLC ("KaStarcom") and @Contact, LLC ("@Contact")¹ hereby oppose the Petition for Interim Relief ("Petition") filed on November 2, 1998 by the Fixed Point-to-Point Communications Section, Wireless Communications Division of the Telecommunications Industry Association ("TIA").² For the reasons discussed herein, the Commission should dismiss or deny TIA's Petition.

¹ KaStar is authorized to construct, launch and operate two Geostationery Orbit Fixed Satellite Service ("GSO FSS") satellites in the Ka-band. See *KaStar Satellite Communications Corp.*, 13 FCC Rcd 1366 (Int. Bur. 1997). KaStarcom has pending an application to construct, launch and operate two GSO FSS satellites in the Ka-band and @Contact has pending an application to launch a Non-Geostationery Orbit Fixed Satellite Service ("NGSO FSS") in the Ka-band. As a satellite licensee and applicant, they have standing to oppose TIA's Petition.

² Section 1.45(d) provides for the filing of oppositions to petitions seeking interim relief within seven days of the petition, *i.e.*, by November 9, 1998. Thus, this Opposition is timely filed. On November 5, 1998, the Independent Cable & Telecommunications Association ("ICTA") filed an "Emergency Request for Immediate Relief." KaStar, KaStarcom and @Contact intend to file an opposition to this request by November 12, 1998.

No. of Copies rec'd
List A B C D E

0 + 5

Introduction

1. In 1996, the Commission allocated 2000 MHz of spectrum in the 17.7-19.7 GHz band (the "18 GHz band") for Fixed Satellite Service ("FSS") and Fixed Service ("FS") on a co-primary basis and required these systems to share that band.³ However, since that allocation, it has become readily apparent that sharing between FSS and FS systems would be difficult, if not impossible.

2. On September 18, 1998, the Commission released a *Notice of Proposed Rule Making* to redesignate the 18 GHz band.⁴ The *NPRM* proposes to segment the 18 GHz band by providing FS systems 600 MHz of spectrum on a primary basis and an additional 650 MHz on a co-primary basis for a total of 1250 MHz. The *NPRM* proposes to provide FSS systems with only 750 MHz of spectrum on a primary basis.

3. As an interim measure, the *NPRM* proposes to balance the present needs of existing FS systems and the future needs of FSS systems by affording "secondary status" to applications filed for the 18.3-18.55 and 18.8-19.3 GHz portions of the 18 GHz band filed after September 18, 1998, the *NPRM* release date.⁵ FS applicants may continue to file applications for those frequencies after that date, but would not be entitled to interference protection *vis a vis* FSS systems. Because the *NPRM* proposes to designate only 750 MHz to FSS on a primary basis, 1250 MHz in the 18 GHz band is not subject to secondary status. Further, all authorizations and

³ See *Rulemaking to Amend Parts 1, 2, 21, and 25 of the Commission's Rules to Redesignate the 27.5-29.5 GHz Frequency Band, to Reallocate the 29.5-30.0 GHz Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services*, 11 FCC Rcd 19005 (1996) ("28 GHz First Report and Order").

⁴ See *Redesignation of the 17.7-19.7 GHz Frequency Band, Blanket Licensing of Satellite Earth Stations in the 17.7-20.2 GHz and 27.5-30.0 GHz Frequency Bands, 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*, FCC 98-235 (released September 18, 1998) (the "*NPRM*").

⁵ *Id.* at ¶40.

applications pending on September 18, 1998 are "grandfathered," meaning that they would be accorded primary or co-primary status (as the case may be) regardless of their frequencies or the outcome of the proceeding.

4. On November 2, 1998, TIA filed its Petition requesting that the Commission continue to authorize FS stations on a primary or co-primary basis, subject to final rules adopted in the rule making proceeding, regardless of whether the applications are filed for frequency bands tentatively designated as secondary. TIA claims that its members have suffered economic hardship as a result of the *NPRM*'s announcement to grandfather those frequency bands where FS systems would have secondary status.

I. THE *NPRM* DID NOT FREEZE APPLICATIONS FOR FIXED SERVICE

5. The Commission should deny TIA's Petition because the *NPRM* did not impose a "freeze" on FS applications, as TIA would have the Commission believe. To the contrary, the Commission did not prohibit FS applicants from continuing to file applications in the 18 GHz band, but rather refused to extend grandfather protection to applications for certain portions of the 18 GHz band filed *after* the *NPRM* release date. FS applicants may continue to file applications for any portion of the 18 GHz band. Regulatory limitations on future operation in the 18 GHz band is not the equivalent of a filing freeze.⁶

⁶ In its Petition, TIA asks that FS applications continue to be authorized on a primary or co-primary basis, subject to the Commission's final rules. How this relief helps the FS is beyond comprehension. The Commission could order displacement of such stations, creating a greater level of disruption and chaos than the reasoned approach adopted by the Commission in the *NPRM*. As a practical matter, it would be far better to advise applicants *now* what the limitations are than it would be to approve additional stations that might need to be displaced.

6. The two cases relied upon TIA do not support deferring the grandfather date. In both instances, the Commission had imposed a *complete* freeze on the filing of new applications in a frequency band and subsequently decided to lift the freeze. As discussed above, the *NPRM* did not impose a filing freeze but merely put future applicants on notice that certain frequencies would be encumbered with secondary status designation.

7. TIA can not now profess surprise that the *NPRM* imposes some restrictions on future operation of FS systems in certain portions of the 18 GHz band. Since the release of the *28 GHz First Report and Order* almost two years ago, the FS community has known that it would have to share the 18 GHz band with the FSS. On January 16, 1997, the Commission placed on public notice a proposal for blanket licensing of GSO FSS earth stations in the 18 GHz band. During the past ten months, the 18 GHz Joint Working Group ("JWG") has met to discuss potential resolution of sharing and band segmentation of the 18 GHz band in anticipation of the release of the *NPRM*.⁷ The FS community has had almost two years to prepare for the *NPRM*. For the Commission to provide FS applicants with an opportunity to file applications in contravention of its proposed rules would be unfair and disruptive, and could undermine any redesignation plan for the 18 GHz band.

8. To be sure, primary and co-primary spectrum in the 17.7-18.3, 18.55-18.8 and 19.3-19.7 GHz frequency bands still remains available for FS use. The FS applicants are free to file applications for these frequency bands without condition.

⁷ The 18 GHz JWG has met on a monthly basis since January 1998 and is comprised of representatives of the FS and FSS industries.

II. EXTENDING THE GRANDFATHERING DEADLINE WILL HARM FSS

9. Extending the grandfather deadline would undermine the objectives of the *NPRM* to redesignate the 18 GHz band between FSS and FS systems. Like pouring water on a drowning man, the continued deployment of FS stations in the 18.3-18.55 and 18.8-19.3 GHz bands would increase the difficulty in segmenting the 18 GHz band in a manner acceptable to all parties. Both FSS and FS systems acknowledge that sharing between the two systems is problematic, if not impossible. It does not make logical sense to continue to accept FS applications on a primary and co-primary basis when to do so would exacerbate an already difficult situation. The Commission made a more prudent choice in the *NPRM* when it decided to limit the disruption in services now rather than later.

10. TIA's Petition fails to take into consideration the effect that continued deployment of new FS stations in the 18 GHz band would have upon future FSS systems. In March and May 1997, the Commission authorized 13 GSO FSS systems and one NGSO FSS system to construct, launch and operate FSS satellites. On December 22, 1997, the Commission accepted applications for additional GSO and NGSO FSS systems. These licensees and applicants propose to operate in the 18 GHz band consistent with the *28 GHz First Report and Order* by ubiquitously deploying FSS earth stations in portions of the 18 GHz band. This ubiquitous deployment would be hindered by TIA's proposal to afford primary or co-primary status to applications filed after September 18, 1998 for the 18.3-18.55 and 18.8-19.3 GHz bands.

11. FSS systems propose to provide competitive internet, video, multimedia and telemedicine services to the public, not just domestically but globally. In order to provide these new services to the public, their business plans require blanket licensing and deployment of FSS

earth stations in the millions. TIA's proposal would undermine those efforts, thereby eliminating new and competitive services to millions of potential customers worldwide.

Conclusion

The Commission should dismiss or deny TIA's Petition. The *NPRM* did not freeze the filing of FSS applications. Extending the grandfather date for FS stations would be inconsistent with the purpose of the *NPRM*, the *28 GHz First Report and Order*, and the authorizations for the FSS systems. In addition, there is spectrum available for new FS stations.

FSS licensees have worked diligently since 1992 to develop a new satellite service for the public. They have expended significant financial capital in investment to provide new internet, video, multimedia and telemedicine services to the public around the world. The continued deployment of FS stations on a primary basis could jeopardize these efforts. The Commission must dismiss or deny the Petition.

Respectfully submitted,

**KASTAR SATELLITE COMMUNICATIONS CORP.
KASTARCOM. WORLD SATELLITE, LLC
@CONTACT, LLC**

By: 
Stephen E. Coran
David G. O'Neil

Rini, Coran & Lancellotta, P.C.
1350 Connecticut Avenue, N.W., Suite 900
Washington, DC 20036
(202) 296-2007

November 9, 1998

Their Attorneys

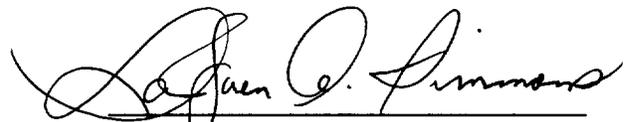
CERTIFICATE OF SERVICE

I, LaJuan A. Simmons, a secretary with the law firm of Rini, Coran & Lancellotta, do hereby certify that I have caused a copy of the foregoing "OPPOSITION OF KASTAR SATELLITE COMMUNICATIONS CORP., KASTARCOM. WORLD SATELLITE, LLC AND @CONTACT, LLC" to be mailed, first-class, postage prepaid this 9th day of November 1998 to the following persons:

*Regina Keeney
Chief, International Bureau
Federal Communications Commission
2000 M Street, NW
Suite 800
Washington, DC 20554

Ron Coles, Chairman,
Eric Schimmel, Vice President
Fixed Point-to-Point Communications Section
Wireless Communications Division of the TIA
2500 Wilson Boulevard
Suite 300
Arlington, VA 22201

Leonard R. Raish, Esq.
George Petrutsas, Esq.
Fletcher, Heald & Hildreth, PLC
1300 North 17th Street
Arlington, VA 22209



LaJuan A. Simmons, Esq.

* Via Hand Delivery