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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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In the Matter of

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

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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OPPOSITION OF MOTOROLA, INC.

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Motorola, Inc. ("Motorola"), Ka-band licensee and applicant in the Fixed-Satellite Service ("FSS"), hereby opposes the Emergency Request for Immediate Relief filed on November 2, 1998, by the Independent Cable & Telecommunications Association ("ICTA"). The Commission should promptly deny the requested relief for the following reasons.

First, contrary to the assertions of ICTA, there currently is no "freeze" - *de facto* or otherwise -- on filing terrestrial microwave applications in the subject bands. As the quoted paragraph from the Notice of Proposed Rulemaking states,

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

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licensee can not cure it, the terrestrial licensee would be required to discontinue the operation of the interfering facility.¹

ICTA does not allege – nor can it -- that there are no alternative bands available to deploy terrestrial facilities or allow for anticipated growth. Indeed, applicants are still free to apply for terrestrial facilities in the restricted bands (comprising 750 MHz of bandwidth) or to apply for facilities in adjacent spectrum (totaling 1.25 GHz of bandwidth) on a primary or co-primary basis. As to the former, operators could utilize their licensed facilities for some time before an NGSO FSS system became operational, and only then would they have to avoid causing interference to the NGSO FSS earth terminals deployed nearby. As to the latter, ICTA's claim that this spectrum (17.7-18.30 GHz) is inadequate is unpersuasive. ICTA asserts that it cannot make use of the spectrum (17.7-18.30 GHz) because two-thirds of this spectrum is unavailable for video programming, unchannelized and not vendor supported, while the remaining one-third is inadequate to support a competing video service.² Thus, according to ICTA, private cable operators will experience significant delays in utilizing this adjacent spectrum. However, ICTA conveniently overlooks that FSS operators themselves have faced – and still face – significant delays in meeting their spectrum needs. In short, as discussed below, the Commission's plan represents a fair balance between the needs of both the satellite and terrestrial service – a balance which successfully minimizes the hardships for both services in an increasingly competitive telecommunications marketplace.

¹ In the Matter of Redesignation of the 17.7-19.7 GHz Frequency Band, Notice of Proposed Rulemaking, FCC 98-235 (rel. Sept. 18, 1998) (“NPRM”) at para. 40.

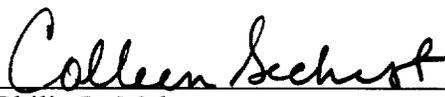
² ICTA Comments at 6-8.

Second, even if the Commission's actions could be interpreted as imposing a freeze on terrestrial applications in certain 18 GHz bands, there is ample precedent for affirming such a freeze pending the adoption of proposed rules. See, e.g., Harvey Radio Laboratories, Inc. v. United States, 289 F.2d 458, 460 (D.C. Cir. 1961) (imposing licensing freeze during pendency of clear channel proceeding); Kessler v. FCC, 326 F.2d 673, 684 (D.C. Cir. 1963) (freeze not arbitrary and capricious in light of Commission's rationale that such action was "essential . . . [to] avoid compounding present difficulties with a continual flow of new assignments based upon existing, possibly inadequate, standards."); see also Neighborhood TV Company, Inc. v. FCC, 742 F.2d 629, 637 (1984); Buckeye Cablevision, Inc., 438 F.2d 948, 953 (1971).

Third, the Commission's decision not to freeze future applications from terrestrial users during the pendency of this rulemaking proceeding, but instead to maintain the status quo, strikes an appropriate balance between terrestrial and satellite interests. On the one hand, terrestrial microwave users are allowed to continue to deploy their systems in the 18 GHz band either on a primary (or co-primary) basis or subject to certain non-interference restrictions. On the other hand, the satellite community must await final action in this proceeding before being assured that it will be able to deploy FSS terminals on a ubiquitous basis in at least a portion of this spectrum. The Commission, therefore, has preserved its options for redesignating the 18 GHz band in a manner that will allow for future satellite systems to enter the market on reasonable economic terms while not unduly constraining the Fixed Service.

Under such circumstances, allowing Fixed Service deployment to continue in the proposed bands designated for ubiquitous FSS terminals pending completion of this proceeding clearly would not be in the public interest and clearly does not warrant the relief sought by ICTA. Accordingly, the Commission should deny the Petition for Interim Relief.

Respectfully submitted,



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December 21, 1998

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I hereby certify that copies of the foregoing Opposition of Motorola, Inc. were sent this 21st day of December, 1998, by U.S. first-class mail or hand delivery (*), to the following persons:

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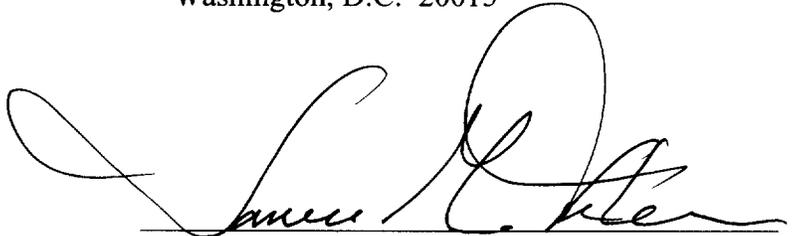
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