

ORIGINAL

Before the
Federal Communications Commission
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
Redesignation of the 17.7-19.7 GHz Frequency)	IB Docket No. 98-172
Band, Blanket Licensing of Satellite)	RM-9005
Earth Stations in the 17.7-20.2 GHz and)	RM-9118
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)	

Reply Comments of Teligent, Inc.

Teligent, Inc. ("Teligent"), by its attorneys, submits these reply comments in connection with the Notice of Proposed Rulemaking ("NPRM") in the above-captioned proceeding. In its initial comments, Teligent opposed the allocation of a portion of the 24.75-25.25 GHz band to fixed satellite service ("FSS") for broadcast satellite service ("BSS") feeder link use, specifically the 25.05-25.25 GHz frequencies that are already allocated to the digital electronic message service ("DEMS") on a primary basis. As Teligent demonstrated, the allocation of the 25.05-25.25 GHz frequencies for BSS feeder link use is unnecessary, premature, and could cause harmful interference to authorized DEMS systems operating in that band.¹

¹ Teligent Comments at 7-9.

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Specifically, Teligent has now twice articulated that there is no evidence in the record to warrant the contemplated BSS allocation.² Nevertheless, supporting parties simply assume that the Commission would blindly follow an international allocation. As Teligent and others have explained, however, the Commission must first find that such a domestic allocation would be in the public interest of the United States. The record still contains no evidence to support such a conclusion. Indeed, none of the parties commenting in support of the proposed allocation offer any evidence to refute Teligent's position. In fact, while one commenter concedes that the Commission need not allocate more than 300 MHz for BSS, the other filings in response to the NPRM are utterly void of *any showing whatsoever* of consumer demand or any other objective facts that would necessitate allocating additional BSS spectrum to direct broadcast service ("DBS") providers, particularly where such allocation could cause harmful interference to a previously allocated and operational common carrier service.³

Specifically, notwithstanding that it initiated the instant proceeding to allocate 500 MHz of spectrum for BSS uplinks, DIRECTV now states that it will not

² See Teligent Comments at 7-8 (filed November 19, 1998); Joint Opposition to Petition for Rulemaking of DIRECTV Enterprises, Inc. at 15-16 (filed July 31, 1997).

³ As Teligent stated in its initial comments, it does not oppose the proposed allocation to the extent that such allocation lies outside of the 24 GHz DEMS band and the rules provide for appropriate interference protection for out-of-band emissions from BSS stations.

use the entire 500 MHz of spectrum it originally requested.⁴ Instead, DIRECTV's newly designed expansion system will require only 300 MHz of uplink spectrum. This demonstrates, in practice, what Teligent stated in principle in its initial comments – that BSS operators can efficiently implement a variety of techniques for spectrum use that would ameliorate any reason to include the 25.05-25.25 GHz portion of the DEMS band in the proposed BSS feeder link allocation. As Teligent has demonstrated, 300 MHz for BSS feeder links will suffice.

Indeed, comments of other parties in support of the 500 MHz allocation provide no evidence to justify it. For example, Pegasus Development Corporation ("Pegasus") states that there is a "clear need" for BSS expansion and that the public "would clearly benefit" from such an allocation.⁵ Although Pegasus characterizes these facts as "clear," they offer no verifiable or corroborative evidence to demonstrate the need. Previously, in response to the underlying Petition for Rulemaking, Skybridge LLC highlighted the lack of any evidence demonstrating a "shortage of BSS capacity" or a showing that BSS operators "ha[ve] exhausted the technical or channel capacity" of their existing systems.⁶ In the comments filed in response to the NPRM, the supporters of the BSS allocation *still* have failed to make

⁴ DIRECTV states that it "is designing its expansion system to use only the 24.75-25.05 GHz frequencies for its feeder link operations." DIRECTV Comments at 11.

⁵ Pegasus Comments at 15. See also Lockheed Martin Comments at 24.

⁶ Comments of Skybridge L.L.C. at 7 (filed July 31, 1997).

a showing in this regard. In short, the record is devoid of any basis for the allocation of additional BSS spectrum.

Accordingly, in light of DIRECTV's admission that the 25.05-25.25 GHz frequencies are not necessary to the proposed BSS feeder link allocation, and the unmistakable absence of any evidence demonstrating that such an allocation is necessary to meet consumer demand, the Commission, to the extent it adopts an additional BSS feeder link allocation, must modify its proposed allocation to eliminate the 25.05-25.25 GHz portion of the band and protect DEMS operations from interference.⁷

Similarly, requests to accelerate the proposed allocation date from 2007 are equally unsupported. DIRECTV argues that the "technical planning for the use and licensing of these bands" should begin immediately so that BSS operators are licensed to use the bands by 2002. In the NPRM, however, the Commission determined that the earliest date by which it could allocate BSS feeder link spectrum was 2007 because of "the operational needs of the United States Government systems in

⁷ The D.C. Circuit has held that it will reverse a Commission decision when it is not supported by any factual evidence – let alone substantial evidence – in the record to support it. See Tarpon Transmission Co. v. FERC, 860 F.2d 439, 446 (D.C. Cir. 1988) (remanding a case to the Commission so that it may re-examine the issue mindful of its obligation to provide a reasoned explanation for any outcome); Industrial Union Dept., AFL-CIO v. Hodgson, 499 F.2d 467 (D.C. Cir. 1974) (remanding case because the record, after close examination, did not support the reason and rationale for the Secretary's decision); see also 5 USCA § 706 (2)(E).

this band."⁸ Teligent explained that potential interference to DEMS facilities also dictated a deliberate approach to BSS licensing in 25.05-25.25 GHz. Yet DIRECTV and other commenting parties categorically claim that the Commission should "do all it can to move up the effective date."⁹ With no public interest showing by the commenting parties of why the Commission should accelerate its proposed 2007 allocation date, particularly in light of the lack of any evidence of its imminent need and the likelihood of resulting interference, the Commission cannot expedite such an allocation that would affect the encumbered DEMS band.

Finally, DIRECTV's comments to the contrary, to the extent that the Commission were to allocate the proposed 500 MHz, it could not do so prior to determining whether and to what extent DEMS and BSS feeder links can coexist. Indeed, the Commission has already determined that high-powered satellite feeder link earth stations can cause interference to terrestrial fixed microwave services.¹⁰ Because the Commission has previously found that the collocation of terrestrial fixed

⁸ NPRM at ¶ 79. Even assuming that the government relinquishes its use of the spectrum prior to the effective ITU allocation date, there are still no compelling public interest reasons to adopt the proposed allocation particularly where it can cause interference to authorized DEMS operations.

⁹ Pegasus Comments at 15 (asserting that the Commission should make its proposed allocation to BSS by 2004); DIRECTV at 12 (urging that BSS operators be licensed to use feeder link bands no later than 2002).

¹⁰ See In the Matter of Rulemaking to Amend Parts 1, 2, 21, and 25 of the Commission's Rules to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services, CC Docket No. 92-297, First Report and Order and Fourth Notice of Proposed Rulemaking, 11 FCC Rcd 19005, ¶¶ 34-37 (1996).

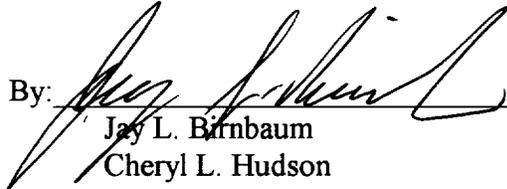
services comparable to DEMS and satellite feeder links will result in harmful interference to the terrestrial services, the Commission cannot now summarily allocate 500 MHz of spectrum, nor can it expedite its allocation, without a definitive showing that the operation of high-powered 24 GHz BSS feeder link transmitters will *not* interfere with authorized DEMS operations.

Conclusion

For the foregoing reasons Teligent urges the Commission to refrain from allocating the 25.05-25.25 GHz portion of the 24 GHz DEMS band for BSS feeder link use.

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