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

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

ORDER

Adopted: February 5, 1999 **Released: February 10, 1999**

By the Commission:

Background

1. The Notice of Proposed Rulemaking ("NPRM") in this proceeding[1] proposed that terrestrial fixed service ("FS") licenses in the 18.3-18.55 GHz and 18.8-19.3 GHz bands that were either pending or approved as of the release date of the NPRM, September 18, 1998, (the "NPRM Date") would retain co-primary status in these bands, effectively "grandfathering" their co-primary status, notwithstanding new primary Fixed Satellite Service ("FSS") designations proposed for these bands in the NPRM. While FS applicants could continue to file for authorizations in these bands after the NPRM Date, such applications would be accorded secondary status to FSS operations in these bands if the proposals set forth in the NPRM were adopted.

2 The Fixed Point-to-Point Communications Section, Wireless Communications Division of the Telecommunications Industry Association ("TIA Fixed Section") and the

[1] *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.

Independent Cable & Telecommunications Association ("ICTA") filed requests with the Commission on November 2, 1998, and November 5, 1998, respectively, asking that the Commission immediately amend its proposal and permit applicants to continue to apply for and obtain co-primary FS licenses until the Commission reaches its final decisions in this proceeding.[2]

3. The TIA Fixed Section asserts that the cut-off proposed in the NPRM constitutes a *de facto* "freeze" on further development of affected terrestrial fixed service in the 18 GHz band, particularly in the segments used for narrowband point-to-point and for video distribution. The TIA Fixed Section states that "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 new Commission rules." Moreover, the TIA Fixed Section argues that the proposed cut-off would interfere with ongoing plans to expand or modify existing systems, and with contracts for the manufacture and delivery of equipment, and would even prevent operators from using equipment on hand. Finally, the TIA Fixed Section notes that, while primary status would continue to be available in other segments of the 18 GHz band such as the 10, 20, 40 megahertz channels, those segments are channelized for relatively wideband operations. It argues that licensing narrow band systems on wideband channels would be "spectrally inefficient."

4. ICTA claims that the proposed cut-off for co-primary terrestrial fixed designations in the 18.3-18.55 GHz band has already had an immediate negative impact on the private cable industry. ICTA notes that the Commission's NPRM proposes to give private cable operators ("PCO's") licensed in the 18.3-18.55 GHz band after the cut-off date secondary status in relation to Geostationary Orbit Fixed Satellite Service ("GSO/FSS") operations. ICTA states that "because GSO/FSS earth stations will be ubiquitously deployed and blanket-licensed in the 18.3-18.55 GHz band, the practical effect of this proposed secondary status is that most private cable operations which are subject to the September 18 cut-off will not survive the advent of these satellite services." ICTA proceeds to argue that "without this 250 MHz of spectrum, the remaining portions of the 18.142-18.580 GHz band would be rendered virtually useless for new or expanded private cable operations." ICTA argues that there are three reasons why the proposal to assign terrestrial fixed operators primary status in the 17.7-18.3 GHz band does not make up for private cable's loss of 450 megahertz of contiguous spectrum. First, two-thirds of the band (17.7-18.14 GHz) is unavailable for video programming, unchannelized and not vendor supported. Second, the remaining one-third of the band (18.14-18.3 GHz) that is video-channelized and vendor-supported cannot absorb private cable's need for 450 megahertz of contiguous spectrum to offer a competing video service. And, third, private cable's point-to-point systems could not be accommodated in the 17.7-18.3 GHz band where they would have to coordinate with numerous other fixed

[2] See "Petition for Interim Relief", filed by the Fixed Point-to-Point Communications Section, Wireless Communications Division of the Telecommunications Industry Association on November 2, 1998, and "Emergency Request for Immediate Relief", filed by the Independent Cable & Telecommunications Association" on November 5, 1998.

terrestrial service providers already using those frequencies.

5. On November 20, 1998, the Commission's International Bureau issued a public notice seeking comment on the pleadings filed by the TIA Fixed Section and the ICTA. Comments have been filed in support of and in opposition to the relief sought.

Discussion

6. The NPRM in this proceeding did propose the NPRM Date as the cut-off date regarding "grandfathered" co-primary status for existing or pending terrestrial fixed service licenses in the 18.3-18.55 GHz and 18.8-19.3 GHz bands. While this proposed cut-off would in no way constitute a freeze on future terrestrial operations in this band, the NPRM does propose to assign secondary status to FS applications filed in these bands after the cut-off date. In doing so, the NPRM proposes to preserve co-primary terrestrial usage of spectrum in the 18.3-18.55 GHz and 18.8-19.3 GHz bands only with respect to licenses existing or pending as of the NPRM Date. The NPRM proposes to redesignate that spectrum for the exclusive primary use of FSS, subject only to this proposed "grandfathering."

7. Several of the commenters maintain that this proposed cut-off of co-primary status is in essence a *de facto* freeze on future terrestrial fixed services in the 18.3-18.55 band. The TIA Fixed Section and ICTA argue that this is the case, while several of the commenters, such as Motorola, Inc. and KaStar Satellite Communications, argue the contrary. In fact, the NPRM did not propose a freeze on filings for FS services and therefore does not constitute a freeze. The immediate issue before us, however, is whether the imposition of the cut-off of "grandfathered" co-primary status proposed in the NPRM will accomplish our goal of protecting the existing investment in terrestrial operations in this band pending final resolution of the overall 18 GHz rulemaking. As a general matter we believe that it does. However, in the case of the PCO's, we find that it does not. We reach that determination after a thorough review of the comments filed concerning the practical effect of applying the proposed cut-off date to PCO's.

8. Several parties have filed comments in support of the pleadings filed by the TIA Fixed Section and ICTA. Bell South Corporation states that 18.142-18.580 GHz is used by multichannel video programming distributors ("MVPD") and that it is not now inclined to introduce such a service to the public in view of the possible need to terminate such a service to protect satellite facilities. Bell South also argues that making terrestrial video providers authorized after September 18, 1998, secondary to satellite facilities is inconsistent with efforts to increase competition in the MVPD marketplace. The Fixed Wireless Communications Coalition echoes those sentiments with respect to video service providers and asserts that other microwave services, such as public safety, public utilities, railroads and general business users, should be allowed to retain their current spectrum in the 18 GHz band. Castle Cable Services, a private cable operator, indicates that approximately 40 percent of its planned new business will require microwave links that could not share frequencies with satellite downlinks. Castle contends that its future business plans cannot survive the

uncertainty inherent in waiting for the conclusion of the 18 GHz rulemaking.

9. Several parties have filed comments opposing the relief sought by the TIA Fixed Section and ICTA. Hughes Communications contends that the use of the cut-off proposed in the NPRM provides for a rational transition to a new set of service rules for the 18 GHz band, and that overall goals sought by a new plan for usage of that band will be compromised by continued licensing of terrestrial systems. KaStar Satellite Communications also believes that extending the cut-off date for FS stations would be inconsistent with the purpose of the NPRM and that other spectrum is available for FS stations. KaStar notes that FSS systems would provide services not just domestically, but globally and that FSS licensees have already expended considerable financial investment to provide services around the world. Lockheed Martin Corporation contends that all potential users of the 17.7-19.7 GHz band, and not simply the FS operators, are constrained until a new band plan is adopted. Loral Space & Communications believes that the cut-off date proposed in the NPRM is necessary to protect Ka-band satellite system access to the band and to preserve the various options proposed in the NPRM. The Satellite and Orbit Utilization Section of the Telecommunications Industry Association states that there is alternative viable spectrum available to FS operators that will allow them to retain primary status.

10. We find some merit in the arguments advanced by the TIA Fixed Section, ICTA and the commenters that support relief from the cut-off date discussed above. The imposition of the cut-off proposed in the NPRM, while not constituting a freeze on FS filings, would have the effect of constraining future FS use in the 18.3-18.55 and 18.8-19.3 GHz bands. Since the NPRM proposes that these subbands be designated for future primary use by FSS operations, new FS operations in these bands would certainly be somewhat constrained if these rules were adopted. And, as the TIA Fixed Section, ICTA and their supporters contend, the proposed cut-off of co-primary status for FS applications does introduce an element of uncertainty to future business plans for FS operations.

11. It is our goal in this proceeding to balance the need to protect the existing FS investment in these bands with the band segmentation proposed in the NPRM. Although we believe that this goal is furthered, in most respects, by the cut-off of co-primary FS status as proposed in the NPRM, we believe that the application of the proposed cut-off date may not strike an equitable balance in the case of the PCO's for several reasons. First, as demonstrated by ICTA, there simply is no other spectrum available at this time in the 18 GHz band, or in any other band, -- even on an interim basis -- to adequately accommodate either new PCO operations or existing PCO operations seeking to expand during the pendency of this proceeding. Without access to spectrum, PCO's may no longer be able to meet consumer needs for new services. Moreover, this result would clearly be inconsistent with our expressed goal of increased competition in the provision of new video services. In addition, a lack of new spectrum for PCO's could undermine the existing investment that was made by PCO's in these bands. Furthermore, it would not appear that the relatively small number of PCO applications that are likely to be filed during the pendency of this proceeding would

significantly disrupt the potential future use of the 18.3-18.55 GHz band by FSS operations.[3] Accordingly, we will grant the relief sought only as it applies to PCO's, and are hereby modifying our proposal in this proceeding so that the proposed cut-off date for PCO applications in the 18.3-18.55 GHz band to be co-primary with future FSS operations in that band is the date of release of the Report and Order in the 18 GHz rulemaking.[4]

12. As the TIA Fixed Section concedes, authorizations with primary status would continue to be available in the interim in other segments of the 18 GHz band, and in other FS bands, for terrestrial fixed service operators other than PCO's. We will, therefore, make no change with respect to the proposed cut-off date as it applies to all terrestrial fixed service operators other than private cable operators.

13. In order to ensure that there is no "warehousing" of spectrum in the 18.3-18.55 GHz by any PCO, a concern raised by commenters in this proceeding, we will require that applications for new authorizations in the 18.3-18.55 GHz band filed by PCO's in the interim will provide sufficient documentation of plans for immediate implementation of the proposed facility, including such items as binding contracts for new equipment, binding contracts for the provision of new PCO services and other related legal documentation that the Commission requires to demonstrate a firm commitment to new and expanded video service, in order to qualify for co-primary status with future GSO/FSS operations.

Ordering Clauses

14. Accordingly, It IS ORDERED THAT THE PROPOSED CUT-OFF DATE for co-primary status for new FS authorizations in the 18.3-18.55 GHz band, IS CHANGED, as it applies to private cable operators and as described above, to the date of the release of the future Report and Order in this proceeding. There is no change with respect to the proposed cut-off date for other terrestrial fixed operations in the 18.3-18.55 GHz and 18.8-19.3 GHz bands. A final determination regarding the cut-off date and grandfathering status for all terrestrial fixed services will be made in that Report and Order.

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[3] ICTA indicates that private cable operations file about 125 applications per year. Emergency Request at 11.

[4] ICTA requested in its Emergency Request that the cut-off date be extended "until the difficult spectrum allocation issues involved in the *Notice* are resolved." *Supra* at 2. We recognize, however, that there may be a few days difference between the date the issues are resolved, i.e., the decision date of the upcoming Report and Order, and the date the text of that decision is released. Recognizing that it would be important that the PCO industry understand and ultimately respond to whatever decisions will be taken in the Report and Order, we are extending the proposed cut-off date to date of release of the Report and Order rather than the earlier decision date requested by ICTA.

15. IT IS FURTHER ORDERED that the Petition For Interim Relief filed by the Fixed Point-to-Point Communications Section, Wireless Communications Division of the Telecommunications Industry Association IS GRANTED to the extent that it seeks relief for private cable operators and it IS DENIED in all other respects. Finally, IT IS ORDERED that the Emergency Request For Immediate Relief filed by the Independent Cable & Telecommunications Association IS GRANTED to the extent indicated herein.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas

Magalie Roman Salas
Secretary