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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

May 1, 2000

Chairman William E. Kennard  
Office of Chairman Kennard  
Room 8-B201H  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, D.C. 20554

Re: IB Docket 98-172

Dear Mr. Chairman:

As the debate over appropriate relocation compensation rules for the 18 GHz band has progressed, some have attempted to portray the *Emerging Technologies* rules as entitling terrestrial incumbents to no more than is necessary to "make them whole." Nothing could be further from the truth. The *Emerging Technologies* enable incumbents to demand large premiums and expensive upgrades before they are obliged to yield to a relocation that the public interest requires. Before the Commission extends this measure of relocation compensation into the 18 GHz band, it is essential that the Commission squarely face the fact that the *Emerging Technologies* rules lead inexorably to unjustifiable windfalls for incumbents.

The *Emerging Technologies* rules, as everyone acknowledges, allow the parties to agree to any mutually acceptable relocation scheme. Ultimately, however, what the parties might agree to is bounded on the low end by what the ET licensee<sup>1</sup> would be required to pay in order to effect an involuntary relocation. Pursuant to section 101.75 of the Commission's rules, involuntary relocation requires the ET licensee to provide "comparable facilities," as that phrase

<sup>1</sup> Neither Teledesic nor any other 18 GHz licensee is covered by the ET rules, of course, but since this is an analysis of the rules already on the books for the 2 GHz band, the phrase "ET licensee" is used throughout to signify the party requesting relocation. As Teledesic has argued on many occasions, satellite licensees in the 18 GHz band have been co-primary with terrestrial services there for over fifteen years, and there is no reason for them to shoulder the entire relocation burden that was placed on ET licensees.

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First, the *Emerging Technologies* rules set up a period of years during which the ET licensee may be required to pay much more to effect relocation voluntarily. An incumbent who is asked to relocate before the expiration of the mandatory negotiation period is perfectly entitled to demand "premiums" far in excess of what it would cost to provide "comparable facilities." Indeed, section 101.73(b) specifically contemplates the payment of such premiums. The only apparent constraint on the incumbent's ability to demand a premium is that if the Commission is asked to determine whether a party is bargaining in good faith, *one of the factors* to consider is "the type of premium requested . . . and whether the value of the premium as compared to the cost of providing comparable facilities is disproportionate." 47 C.F.R. § 101.73(b)(2). There is thus no question that the *Emerging Technologies* rules call for the payment of windfall premiums to incumbents. Even if there were no windfall built into the definition of "comparable facilities," the rules expressly countenance incumbent demands for payments in excess of the cost of "comparable facilities." Unless the references to "premiums" are expunged from the rules, there can be no pretense that these rules merely "make incumbents whole."

Second, the definition of "comparable facilities" does include an inherent windfall – the windfall of receiving new equipment instead of old. The rules require the replacement facilities to "be *at least* equivalent to" the old facilities (emphasis added) in terms of throughput, reliability, and operating cost, but nowhere do the rules require any adjustment for age. Thus, an incumbent with equipment that has already been in service for fifteen years (and whose equipment cannot be retuned) is entitled to insist, *even at the involuntary relocation stage*, that the ET licensee provide brand new equipment – equipment that is "at least equivalent" in all relevant respects *and* has a much longer useful life. Clearly, this is a windfall.

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Teledesic is aware that the Commission is prepared to move quickly on this item. It is important, however, for the Commission to see clearly the type of profiteering it is authorizing.

Under the *Emerging Technologies* rules, terrestrial incumbents get a windfall recovery even at the involuntary relocation phase, and at each earlier phase they are perfectly free to demand “premiums” of much more. This is a far cry from merely “making incumbents whole” or “putting them in the same position they were in.”

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- As suggested above, the Commission could require incumbents to rebate prior tax write-offs in order to avoid a double recovery, and eliminate any reference to “premiums” from the rules.
- The Commission could shorten the sunset date to five years from the date of the Report and Order, in order to give satellite service providers a realistic chance to avoid a major “holdout” problem.
- The Commission could make some rough estimate of per-link relocation costs and establish a “sliding scale” for involuntary relocation payments, with the relocation payment falling over time to reflect the fact that the value of the replaced equipment diminishes over time.<sup>2</sup> For example, the following scale could be used for all 18 GHz equipment that cannot be returned:

<b>Time of Involuntary Relocation:</b>	<b><u>Before January 1, 2002</u></b>	<b><u>During 2002</u></b>	<b><u>During 2003</u></b>	<b><u>During 2004</u></b>	<b><u>January 1, 2005 until “sunset”</u></b>
<b>Required Payment to Incumbent:</b>	Subject to Negotiation	\$80,000	\$60,000	\$40,000	\$20,000

(Of course, the values in this sliding scale do not perfectly reflect the fair market value of the used equipment at any point in time as well as the “unamortized value” or “remaining useful life” approach, but they do create the proper incentives for voluntary negotiations, and they better reflect the economic reality that fixed microwave equipment does not, like antique collectibles or rare coins, generally hold its value or appreciate over time.)

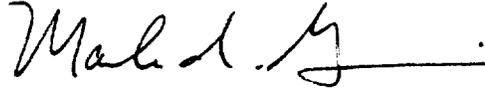
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Chairman William E. Kennard  
May 1, 2000  
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Sincerely,

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Mark A. Grannis  
Counsel to Teledesic

cc: Ari Fitzgerald  
Magalie Roman Salas (2 copies)

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Commissioner Susan Ness  
Office of Commissioner Ness  
Room 8-B115H  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, D.C. 20554

Re: IB Docket 98-172

Dear Commissioner Ness:

As the debate over appropriate relocation compensation rules for the 18 GHz band has progressed, some have attempted to portray the *Emerging Technologies* rules as entitling terrestrial incumbents to no more than is necessary to "make them whole." Nothing could be further from the truth. The *Emerging Technologies* enable incumbents to demand large premiums and expensive upgrades before they are obliged to yield to a relocation that the public interest requires. Before the Commission extends this measure of relocation compensation into the 18 GHz band, it is essential that the Commission squarely face the fact that the *Emerging Technologies* rules lead inexorably to unjustifiable windfalls for incumbents.

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Time of Involuntary Relocation:	Before				January 1, 2005
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Required Payment to Incumbent:	Subject to Negotiation	\$80,000	\$60,000	\$40,000	\$20,000

(Of course, the values in this sliding scale do not perfectly reflect the fair market value of the used equipment at any point in time as well as the “unamortized value” or “remaining useful life” approach, but they do create the proper incentives for voluntary negotiations, and they better reflect the economic reality that fixed microwave equipment does not, like antique collectibles or rare coins, generally hold its value or appreciate over time.)

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Commissioner Susan Ness

May 1, 2000

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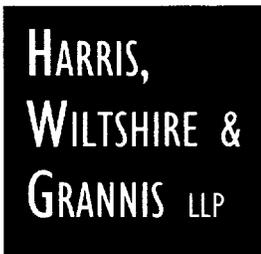
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Mark A. Grannis  
Counsel to Teledesic

cc: Mark Schneider  
Magalie Roman Salas (2 copies)

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OFFICE OF THE SECRETARY

Commissioner Gloria Tristani  
Office of Commissioner Tristani  
Room 8-C302C  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, D.C. 20554

Re: IB Docket 98-172

Dear Commissioner Tristani:

As the debate over appropriate relocation compensation rules for the 18 GHz band has progressed, some have attempted to portray the *Emerging Technologies* rules as entitling terrestrial incumbents to no more than is necessary to "make them whole." Nothing could be further from the truth. The *Emerging Technologies* enable incumbents to demand large premiums and expensive upgrades before they are obliged to yield to a relocation that the public interest requires. Before the Commission extends this measure of relocation compensation into the 18 GHz band, it is essential that the Commission squarely face the fact that the *Emerging Technologies* rules lead inexorably to unjustifiable windfalls for incumbents.

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Mark A. Grannis  
Counsel to Teledesic

cc: Adam Krinsky  
Magalie Roman Salas (2 copies)



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May 1, 2000

Commissioner Harold Furchtgott-Roth  
Office of Commissioner Furchtgott-Roth  
Room 8-A302C  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, D.C. 20554

Re: IB Docket 98-172

Dear Commissioner Furchtgott-Roth:

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- The Commission could shorten the sunset date to five years from the date of the Report and Order, in order to give satellite service providers a realistic chance to avoid a major “holdout” problem.
- The Commission could make some rough estimate of per-link relocation costs and establish a “sliding scale” for involuntary relocation payments, with the relocation payment falling over time to reflect the fact that the value of the replaced equipment diminishes over time.<sup>6</sup> For example, the following scale could be used for all 18 GHz equipment that cannot be returned:

Time of Involuntary Relocation:	Before <u>January 1, 2002</u>	<u>During 2002</u>	<u>During 2003</u>	<u>During 2004</u>	January 1, 2005 until “sunset”
<b>Required Payment to Incumbent:</b>	Subject to Negotiation	\$80,000	\$60,000	\$40,000	\$20,000

(Of course, the values in this sliding scale do not perfectly reflect the fair market value of the used equipment at any point in time as well as the “unamortized value” or “remaining useful life” approach, but they do create the proper incentives for voluntary negotiations, and they better reflect the economic reality that fixed microwave equipment does not, like antique collectibles or rare coins, generally hold its value or appreciate over time.)

To date, terrestrial interests have shown no interest in discussing these or any other options on reasonable economic terms, but it would be arbitrary and capricious for the FCC to proceed with the ET rules in the 18 GHz band without a clear-eyed economic analysis of what

<sup>6</sup> Naturally, if the Commission were to establish a schedule of relocation fees, it would have to be based on actual equipment values in the 18 GHz band. Microwave equipment in the 18 GHz band is considerably less expensive than in some other bands. Teledesic estimates that brand new 18 GHz radios currently cost between \$50,000 and \$60,000.

Commissioner Harold Furchtgott-Roth

May 1, 2000

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these rules actually yield in the real world. Teledesic remains ready to sit down with terrestrial interests and discuss any approach to relocation that is rooted in the principle of *just* compensation for equipment that must be replaced.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark A. Grannis", followed by a horizontal line extending to the right.

Mark A. Grannis  
Counsel to Teledesic

cc: Bryan Tramont  
Magalie Roman Salas (2 copies)

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Commissioner Michael K. Powell  
Office of Commissioner Powell  
Room 8-A204C  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, D.C. 20554

Re: IB Docket 98-172

Dear Commissioner Powell:

As the debate over appropriate relocation compensation rules for the 18 GHz band has progressed, some have attempted to portray the *Emerging Technologies* rules as entitling terrestrial incumbents to no more than is necessary to "make them whole." Nothing could be further from the truth. The *Emerging Technologies* enable incumbents to demand large premiums and expensive upgrades before they are obliged to yield to a relocation that the public interest requires. Before the Commission extends this measure of relocation compensation into the 18 GHz band, it is essential that the Commission squarely face the fact that the *Emerging Technologies* rules lead inexorably to unjustifiable windfalls for incumbents.

The *Emerging Technologies* rules, as everyone acknowledges, allow the parties to agree to any mutually acceptable relocation scheme. Ultimately, however, what the parties might agree to is bounded on the low end by what the ET licensee<sup>9</sup> would be required to pay in order to effect an involuntary relocation. Pursuant to section 101.75 of the Commission's rules, involuntary relocation requires the ET licensee to provide "comparable facilities," as that phrase

<sup>9</sup> Neither Teledesic nor any other 18 GHz licensee is covered by the ET rules, of course, but since this is an analysis of the rules already on the books for the 2 GHz band, the phrase "ET licensee" is used throughout to signify the party requesting relocation. As Teledesic has argued on many occasions, satellite licensees in the 18 GHz band have been co-primary with terrestrial services there for over fifteen years, and there is no reason for them to shoulder the entire relocation burden that was placed on ET licensees.

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is defined in the Commission's rules. The definition of "comparable facilities" includes not only "hard costs" or "actual costs," but also "engineering, equipment, site and FCC fees," as well as other types of transaction costs. Involuntary relocation is not possible until the end of the voluntary negotiation period and the mandatory negotiation period. This framework provides a windfall to incumbents in at least three ways.

First, the *Emerging Technologies* rules set up a period of years during which the ET licensee may be required to pay much more to effect relocation voluntarily. An incumbent who is asked to relocate before the expiration of the mandatory negotiation period is perfectly entitled to demand "premiums" far in excess of what it would cost to provide "comparable facilities." Indeed, section 101.73(b) specifically contemplates the payment of such premiums. The only apparent constraint on the incumbent's ability to demand a premium is that if the Commission is asked to determine whether a party is bargaining in good faith, *one of the factors* to consider is "the type of premium requested . . . and whether the value of the premium as compared to the cost of providing comparable facilities is disproportionate." 47 C.F.R. § 101.73(b)(2). There is thus no question that the *Emerging Technologies* rules call for the payment of windfall premiums to incumbents. Even if there were no windfall built into the definition of "comparable facilities," the rules expressly countenance incumbent demands for payments in excess of the cost of "comparable facilities." Unless the references to "premiums" are expunged from the rules, there can be no pretense that these rules merely "make incumbents whole."

Second, the definition of "comparable facilities" does include an inherent windfall – the windfall of receiving new equipment instead of old. The rules require the replacement facilities to "be *at least* equivalent to" the old facilities (emphasis added) in terms of throughput, reliability, and operating cost, but nowhere do the rules require any adjustment for age. Thus, an incumbent with equipment that has already been in service for fifteen years (and whose equipment cannot be retuned) is entitled to insist, *even at the involuntary relocation stage*, that the ET licensee provide brand new equipment – equipment that is "at least equivalent" in all relevant respects *and* has a much longer useful life. Clearly, this is a windfall.

Finally, nothing in the *Emerging Technologies* rules takes account of the fact that much of the cost of any commercial incumbent's equipment will already have been recovered through depreciation charges that reduce the incumbent's taxes. If an incumbent amortizes its equipment over a ten-year period using straight-line depreciation, then after five years it has deducted fully half the cost of its facilities, effectively excluding an equivalent amount of profits from taxation. By ignoring this factor, the *Emerging Technologies* rules actually require the ET licensee to pay a commercial incumbent not only for costs the incumbent had to bear, but also for costs the incumbent did *not* have to bear – or more specifically, taxes the incumbent did not have to pay. For the "comparable facilities" definition to be adapted to elementary financial realities, the incumbent would have to rebate to the ET licensee the full amount that it had previously deducted from its taxes. Without such a rebate, it is impossible to deny that the rules provide for windfall recoveries.

Teledesic is aware that the Commission is prepared to move quickly on this item. It is important, however, for the Commission to see clearly the type of profiteering it is authorizing.

Under the *Emerging Technologies* rules, terrestrial incumbents get a windfall recovery even at the involuntary relocation phase, and at each earlier phase they are perfectly free to demand “premiums” of much more. This is a far cry from merely “making incumbents whole” or “putting them in the same position they were in.”

There are a number of ways the Commission can address the windfall element in its rules. One way, which Teledesic has suggested since the very start of this proceeding, would be to permit involuntary relocation upon payment of the book value of the replaced equipment (plus 2% to cover transaction costs, as under the current ET rules). But other alternatives would also address the problem in an economically defensible manner:

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Commissioner Michael K. Powell

May 1, 2000

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Mark A. Grannis  
Counsel to Teledesic

cc: Peter Tenhula  
Magalie Roman Salas (2 copies)