

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Satellite Industry Association Request) RM-9911
For Amendment of the U.S. Table of)
Frequency Allocations to Designate)
2500-2520/2670-2690 MHz Frequency)
Bands for the Mobile-Satellite Service)

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

To: The Commission

OPPOSITION BY THE NATIONAL ITFS ASSOCIATION

The National ITFS Association ("NIA") opposes the "Petition for Rulemaking" filed April 28, 2000 by the Satellite Industry Association ("SIA"), which seeks the Commission's institution of a rulemaking proceeding to amend the U.S. Table of Frequency Allocations to allocate the 2500-2520 MHz and 2670-2690 MHz bands for the Mobile Satellite Service ("MSS"). The SIA Petition is a patently defective basis for commencing the requested rulemaking proceeding, as it fails to recognize that the 2500-2520 MHz and 2670-2690 MHz bands are allocated to incumbent services, that there are pervasive and invaluable licensed uses of the bands by stations in these incumbent services, and that such uses are expanding exponentially. SIA fails to suggest, much less demonstrate, that there is any mechanism which might accommodate MSS use of the bands while protecting these incumbent services.

Therefore, the SIA Petition should be dismissed or denied.

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Background

The National ITFS Association, established in 1978, is a non-profit, professional organization of ITFS licensees, applicants and others interested in the Instructional Television Fixed Service. The goals of NIA are to gather and exchange information about ITFS, to act as a

conduit for those seeking information or assistance about ITFS, and to represent the interests of ITFS licensees and applicants. NIA and its members have participated in virtually every FCC proceeding affecting ITFS. It has a particular interest in the SIA Petition, which proposes rule changes that will disrupt or threaten the very existence of many of its members' ITFS operations.

The SIA Petition

The SIA Petition seeks to have the FCC institute a rule making proceeding to allocate the frequency bands at 2500-2520 MHz (space to earth) and 2670-2690 MHz (earth to space) (collectively, the "Requested Bands") for mobile satellite use in the United States. SIA asserts that it is critical to the satellite industry in the United States "for as much spectrum as possible" to be available for the satellite component of IMT-2000, and that the Requested Bands would help meet this need.

Argument

I. The 2500-2520 MHz And 2670-2690 MHz Bands Are Allocated To Incumbent ITFS And MMDS Services And There Is Pervasive And Invaluable Licensed Use Of The Bands By Stations In These Services

Incredibly, the SIA Petition does not even acknowledge, much less satisfactorily address, the single biggest possible problem with its proposed allocation of the Requested Bands to MSS – the existence of pervasive and invaluable incumbent fixed services in the bands. In fact, 2500-2520 MHz constitute Channels A1, B1, A2 and part of B2 of the Instructional Television Fixed Service ("ITFS") and 2670-2690 MHz constitute part of ITFS Channel G3 and all of ITFS Channel G4, Channel H3 of the Multichannel Multipoint Distribution Service ("MMDS"), and the I band of 125 KHz ITFS and MMDS response channels. These channels are not only subject to ubiquitous use developed over the past 35 years across the United States for one-way educational video services, they are also the core "upstream" channels to be used in the imminent rollout of two-way broadband data services for both educational and commercial purposes.

ITFS was created by the FCC in 1963 to meet the needs of educators for the transmission of visual and aural instructional material to students enrolled in courses of formal education.¹ There are now thousands of ITFS stations authorized by the FCC, operating in the 2.5 GHz band across the United States, and serving literally millions of students and lifelong learners. Based on NIA's review of the FCC's database on ITFS, approximately 1,275 entities hold over 2,175 ITFS licenses for stations utilizing some 8,000 ITFS channels. Nationwide, ITFS stations serve over 70,000 locations that are registered as receive sites, most of which are schools and other learning locations (such as community centers). However, because registration has never been required for a site to receive ITFS programming (and indeed, the FCC no longer even registers receive sites), NIA estimates that the number of actual locations at which ITFS programming is viewed is many times that number, and it expects the number of locations to increase dramatically as line of sight problems are resolved with new two-way, digital technologies. Furthermore, ITFS educational programming is received by hundreds of thousands of subscribers to wireless cable systems operating on ITFS and MMDS channels.

There are about 1,375 ITFS stations on Channels A1, A2, B1, B2, G3 and/or G4. Thus, a substantial majority of ITFS stations -- about 63% of all licensed ITFS stations -- plus their respective receive sites and learners, would be directly and adversely affected by the allocation of ITFS spectrum as proposed by SIA.

¹ ITFS in 1963 was originally allowed to use all 31 six MHz channels in the 2500 through 2690 MHz band on a shared basis with Operational Fixed Service ("OFS") stations. In 1971, the FCC gave 28 channels exclusively to ITFS and the three H Channels to OFS. In 1983, the FCC reallocated 8 of the ITFS channels (2596-2644 MHz) to create the MMDS band. ITFS now uses 2500 - 2596 MHz and a portion of 2644 -2686 MHz (sharing it with MMDS channels), although there are grandfathered ITFS stations in the reallocated MMDS band. In addition, because the FCC recently authorized channel-swapping between ITFS and MMDS licensees, ITFS licensees may in the future operate anywhere in the 2500 through 2690 MHz band.

The licensees of ITFS stations are numerous state government agencies, state universities and university systems, public community and technical colleges, private universities and colleges, public elementary and secondary school districts, private schools (including Catholic school systems in a number of large metropolitan areas), public television and radio stations, hospitals and hospital associations, and private, non-profit educational entities.²

Federal and state governments and the private sector have invested substantial funds for the development and use of ITFS. Federal support has come largely from the Public Telecommunications Facilities Program (“PTFP”) of NTIA, and the federal government maintains an interest in PTFP-funded facilities. Other federal support has been provided by the Department of Education. State support has come directly from state legislative appropriations and from institutional support from public educational institutions. Private sector support has taken the form of investment and support by nonprofit licensees and business partners.

ITFS stations have traditionally been used to deliver point to multipoint educational video and audio programming. In many places, ITFS provides a critical “last mile” distribution channel for a wide variety of valuable transmission services, including the provision of formal telecourses (on the K-12, secondary and post-secondary levels) to schools, hospitals, workplaces and other places of learning; transmission of other educationally valuable programming into schools (such as news, public affairs and similar material); provision of professional and worker training (such as for teachers, health professionals and public safety officers); transmission of

² The FCC’s rules for ITFS limit eligibility for licenses to accredited educational institutions, governmental entities engaged in formal education (such as school districts) and nonprofit organizations that exist to provide educational and instructional television services to schools. The rules require that ITFS stations be used primarily to further the educational mission of accredited schools providing formal educational and cultural development to enrolled students. However, excess capacity on ITFS stations may be leased to third parties for other purposes.

teleconferences for educational and training purposes; and transmission of other administrative communications.

Although ITFS stations have been providing critical educational service in their traditional one-way video configurations, ITFS licensees anticipate future explosive growth in the use of their channels for two-way broadband data service. The FCC recently authorized ITFS and MMDS channels to be used on a two-way basis, and the filing applications for two-way facilities has already begun. As a result of the rule changes and application process, in addition to wireless broadband service to schools and other public locations, ITFS channels will shortly be used to provide critical interactive video, audio and data services to students and lifelong learners in their homes and places of business. These services will be integrated into two-way systems constructed and operated by commercial enterprises using MMDS channels. By participating in the development of this new service, ITFS operators will be working in the present (rather than the long-range time frame contemplated by SIA for MSS use of the Requested Bands), towards the achievement of an important goal established by the Commission – the development of a competitive broadband environment in the United States through wireless technology.

The channelization plans being implemented by broadband wireless operators consistently require use of the A and B Channel Groups and the G and H Channel Groups as “upstream” capacity, to be combined with downstream capacity on the other groups. The use of the “ends” of the 2.5 Ghz band in this manner facilitates the frequency separation necessary to roll out two-way broadband data service on an interference-free basis where there are substantial and pervasive incumbent one-way video operations. Taking approximately half of those A, B, G and H Channel groups (as well as over one quarter of the entire ITFS band) for MSS purposes as

requested by SIA would do severe damage to not only existing operations over the country, but to the rollout of wireless broadband data services. It is clear that this would not serve the public interest. That being so, there is no purpose to be served by the institution of a rulemaking proceeding to consider the SIA proposal.

II. SIA's Petition Fails to Suggest, Much Less Demonstrate, That There Is Any Mechanism By Which MSS and Incumbent Services Can Co-Exist In The Requested Bands

The inevitable consequence of SIA's failure to acknowledge the existence or appreciate the nature of incumbent ITFS and MMDS services in the Requested Bands is that SIA does not even suggest that there is any potential solution to the problem posed by its proposed invasion of occupied spectrum. Indeed, SIA would need to actually demonstrate that any potential solution shows enough promise to make the FCC's inquiry worthwhile.

The FCC's standard for initiating a rulemaking proceeding in response to a petition is stated in Section 1.407 of its Rules:

If the Commission determines that the Petition discloses sufficient reasons in support of the action requested to justify the institution of a rulemaking proceeding, and the notice and public procedure thereon are required or deemed desirable by the Commission, an appropriate notice of proposed rule making will be issued.

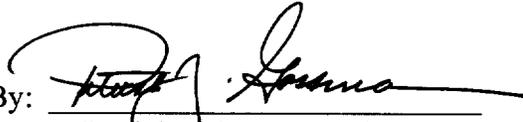
Here, it is clear that SIA has not disclosed "sufficient reasons in support" of the allocation of the Requested Bands to the MSS. It has claimed a need for additional MSS spectrum, which claim may or may not be valid, or may be valid only at some distant point in time. What SIA has not done, however, is show the FCC any sort of sound, considered plan in support of its proposal that takes into account the incumbent services and explains how MSS use of the bands could still be accommodated. In the absence of such a sound, considered plan, there is no basis for the institution of a rulemaking, as there is no prospect whatsoever that the allocation can be made.

Conclusion

The educational community holding ITFS licenses or relying on ITFS stations to transmit or receive services, represented by the National ITFS Association, states its unequivocal objection to the SIA Petition and the suggestion – indeed *any* suggestion – that any portion of ITFS channels be allocated to the MSS or any other service. For the reasons stated in this document, the SIA Petition must be denied.

Respectfully submitted,

NATIONAL ITFS ASSOCIATION

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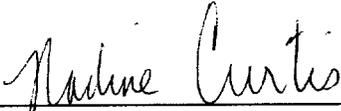
CERTIFICATE OF SERVICE

I, Nadine Curtis, hereby certify that a true copy of the foregoing Comments on the Satellite Industry Association's Petition for Rulemaking was mailed first-class, postage prepaid, this 28th day of August, 2000 to the following:

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