

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

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

To: The Commission

OPPOSITION TO PETITIONS FOR RECONSIDERATION OF TRW INC.

TRW Inc. ("TRW"), by counsel and pursuant to Section 1.429
of the Commission's Rules, hereby opposes various Petitions for Reconsideration with
respect to the above-captioned Report & Order.1 In the Report & Order, the
Commission adopted, with some modifications, its proposal for redesignation of
previously allocated spectrum in the 17.7-20.2 GHz band to separate terrestrial fixed
service operations from the Geostationary ("GSO") and Non-Geostationary ("NGSO")
Fixed-Satellite Service ("FSS") in much of this spectrum. The new rules include
provisions with respect to bands where the GSO FSS or the NGSO FSS will now be
primary for existing Fixed Service licensees to continue operating on a co-primary basis
subject to the right of the satellite providers to require them to relocate to comparable
alternative facilities. The Commission also adopted a blanket licensing procedure that
allows GSO FSS satellite Earth stations in certain Ka-band frequencies to operate under a

1 See Report & Order in IB Dkt. No. 98-172, FCC 00-212, slip op. (released June 22, 2000)
("Report & Order").

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single system license in those portions of these bands that are allocated for their sole primary use. Finally, the Commission adopted a new allocation for the Broadcasting-Satellite Service in the 17.3-17.7 GHz band that will become effective on April 1, 2007, and an associated FSS feeder link allocation at 24.75-25.25 that becomes effective immediately.

TRW has been involved in this proceeding since its earliest stages, as an applicant to utilize spectrum in these bands for service downlinks, along with uplinks in the 28.6-29.1 GHz and 29.25-30.0 GHz bands, in connection with its proposed Global EHF Satellite Network (“GESN”).² TRW intends to use both GSO and NGSO satellites on a co-frequency basis. Due to this interest, TRW has been keenly focused on achieving sound spectrum management in these bands, and has consistently advocated a fair and reasonable compromise to achieve efficient allocation of this Ka-band spectrum.

In petitions for reconsideration, several parties to the original proceeding now seek to persuade the Commission to revisit its well-crafted compromise in order to establish alternative allocations and policies that are more to their liking.³ It is the nature of compromise solutions, however, that all participants generally obtain less than initially sought, and must therefore adapt to conditions that they may find less than optimal. In this instance, the Commission has wrestled with many competing interests and fashioned an equitable approach that, while imperfect from the perspective of both Fixed Service and FSS interests, strikes an appropriate balance among the various competing interests and should be workable for all. Indeed, the essential fairness of the approach is perhaps

² See FCC File Nos. 112-SAT-P/LA-97(15); 60-SAT-AMEND-98; and 61-SAT-AMEND-98(4). This system would also utilize frequencies in the 36 GHz bands.

³ See Petition for Reconsideration of the Fixed Wireless Communications Coalition, IB Docket No. 98-172, filed Oct. 10, 2000 (“FWCC Petition”); Petition for Partial Reconsideration of Hughes Electronics Corporation, IB Docket No. 98-172, filed Oct. 6, 2000 (“Hughes Petition”); Letter of Samuel L. Feder, Counsel to Teledesic Corporation, to Steven D. Selwyn, FCC, International Bureau, dated September 27, 2000 (“Teledesic Clarification Letter”); Petition for Clarification and Reconsideration of WinStar Communications, Inc., IB Docket No. 98-172, filed Oct. 10, 2000 (“WinStar Petition”).

best indicated by the fact that both terrestrial and satellite interests have petitioned the Commission to reconsider significant aspects of the decision.

1. Fixed Service Petitions

Both WinStar Communications, Inc. (“WinStar”) and the Fixed Wireless Communications Coalition (“FWCC”) request that the Commission revisit the allocation decision made in the *Report & Order* to “accommodate the burgeoning demand for new growth” in the portion of the Ka-band allocated to the Fixed Service on a primary or co-primary basis.⁴ WinStar also asks that the Commission modify its relocation policies to provide incumbent licensees in these bands with greater “leverage” in this process.⁵ Neither petitioner, however, makes a sufficient case for the Commission to adopt the changes they have proposed.

Both of the Fixed Service petitioners suggest that “the FS allocation granted by the Order is simply not enough,”⁶ without offering much more than a generalized assertion that additional spectrum is needed.⁷ In fact, the 800 MHz of spectrum in the paired bands at 17.74-18.14 GHz and 19.3-19.7 GHz is only 9% less than the total amount that is requested by these parties. Neither party makes a credible case that the addition of 40 MHz of spectrum at 19.26-19.3 GHz is critical to meeting FS needs, as distinct from those of other communications services. Instead, each relies largely on the rhetorical characterization of Fixed Service demand as “explosive,”⁸

⁴ FWCC petition at 4. *See also* WinStar Petition at 9-10.

⁵ WinStar Petition at 17.

⁶ *Id.* at 15.

⁷ For example, one of the principal indicia of growth cited by WinStar is simply a substantial increase in the number of FS applications filed with the FCC. *See* WinStar Petition at 10.

⁸ WinStar Petition at 15.

“mushrooming”⁹ and “just now at the knee of the curve.”¹⁰ These are adjectives, however, that could be applied across a broad range of expanding services, including Ka-band satellite applications, that are seeking to launch and to grow their businesses offering new broadband data services to an increasingly bandwidth hungry public. Truisms about growing spectrum demand provide no basis for upsetting the balance of use among various satellite and terrestrial services that the Commission has carefully established in the 18 GHz bands. These accommodations to each service even-handedly promote the goal of intermodal broadband competition.

Nor do claims that alternative options for new capacity are more costly or less desirable to FS licensees provide sufficient grounds to tilt the scales toward the preferred allocation scheme of the Fixed Service interests.¹¹ All spectrum users must be willing to make some concessions to facilitate the efficient use of spectrum and, contrary to the FWCC’s view, none is in the position to dictate its own terms to the Commission by imposing conditions upon “its acquiescence to accommodate the NGSO/FSS community.”¹² The Commission is empowered by statute to impose limitations on spectrum use that impact individual licensees,¹³ but licensees do not have a converse power to impose conditions upon Commission actions.

Similarly unsupported is WinStar’s assertion that the Commission has unreasonably constrained the flexibility of FS licensees in establishing new facilities outside the bands that are now reallocated to the FSS on a primary basis.¹⁴ While WinStar maintains that FS incumbents in these bands should have the right to revert to

⁹ *Id.* at 16.

¹⁰ FWCC Petition at 4.

¹¹ *See* WinStar Petition at 12-14.

¹² FWCC Petition at 3.

¹³ *See* 47 U.S.C. § 303.

¹⁴ *See* WinStar Petition at 9 *et seq.*

their prior assignments “in the event that the relocation proves to be inadequate,”¹⁵ it offers no reason for the Commission to take this step – except for the fact that such an approach was followed when terrestrial service providers were relocated from the 1.9 GHz PCS band.

WinStar boldly suggests that this single precedent establishes “the right of incumbent licensees to return to previous facilities” if they are not satisfied that their new facilities are comparable.¹⁶ WinStar thus ignores the fact that the Commission carefully distinguished in the *Report & Order* the circumstances that impacted its decisionmaking in the 1.9 GHz band from the dissimilar situation posed by relocation of 18 GHz band licensees. FS spectrum users that are currently operating in the 18.58-19.3 GHz will be required to relocate permanently not because the Commission has decided to disadvantage them arbitrarily, but because the characteristics of the satellite services transitioning into these bands are markedly different from the terrestrial mobile PCS services that were moving into the 1.9 GHz frequencies.

As the Commission noted in the *Report & Order*, the incumbent licensees in the 1.9 GHz band were being displaced by another terrestrial service – for which the band had not been previously allocated – that required extensive buildout of facilities “that would be gradually rolled out in various locations over time.”¹⁷ By contrast, as the Commission stated, FSS is a service that has always been co-primary in the 18 GHz bands with the Fixed Service, and FSS licensees will roll out service quickly to all areas of the country at once, “often to ubiquitously deployed end-user terminals,” and therefore “will require expedited access to spectrum.”¹⁸ In the more analogous circumstance

¹⁵ WinStar Petition at 17.

¹⁶ *Id.*

¹⁷ *See Report & Order*, FCC 00-212, slip op. at 39 (¶ 80).

¹⁸ *Id.*

involving relocation of terrestrial facilities above 2 GHz to make way for 2 GHz mobile-satellite service systems, the Commission has already firmly rejected a “right of return” for terrestrial incumbents, finding such an approach “infeasible” due to the disruptive impact on region-wide or world-wide satellite systems.¹⁹

WinStar’s contrary assertions that the 1.9 GHz band requirements are appropriate to the 18 GHz band are simply unsupported, as it offers no countervailing reasons for the Commission to reject the sound conclusions reached in the *Report & Order*, except for an unwarranted aspersion concerning the sometimes lengthy implementation timetable for satellite systems.²⁰ This assertion misses the point of the Commission’s discussion. While it is correct that satellite systems take time to shepherd from planning to launch, many Ka-band systems are already well down this road. The Commission’s rationale for distinguishing these systems from PCS at 1.9 GHz is soundly premised on the fact that satellites are instantaneously capable of providing transmission service throughout their coverage areas immediately upon launch, justifying the Commission’s determination that there must be a mechanism for rapid incumbent relocation at this time.

Accordingly, the Commission has properly determined that the public interest will be served both by requiring 18 GHz licensees to relocate more quickly, and by eliminating any voluntary negotiating period. At the same time, it has ensured that these licensees are guaranteed similar facilities in their new bands by adopting specific criteria for comparable facilities that are being codified in Section 101.89(d) of its rules and mandate that substitute facilities be equivalent with respect to channel throughput,

¹⁹ See *Amendment of Section 2.106 of the Commission's Rules to Allocate Spectrum at 2 GHz for Use by the Mobile-Satellite Service*, ET Dkt. No. 95-18, FCC 00-233, slip op. at 17 & 31 (¶¶ 48 & 94) (released July 3, 2000).

²⁰ See WinStar Petition at 18 (“the Commission must be well aware by now that ‘rapidly’ in satellite language means a minimum of 5 years”).

system reliability and operating costs.²¹ These provisions offer ample protection to relocating incumbents and obviate any need for the Commission to accord FS licensees extra negotiating “leverage” by re-establishing a voluntary negotiating period, as gratuitously suggested by WinStar.²² Such a step would only serve to lengthen the transition period and delay the initiation of new competitive service to the public.

2. Satellite Petitions

TRW understands and sympathizes with the views expressed by of Hughes Electronics Corporation (“Hughes”) in its petition,²³ and at one time would have supported many aspects of its argument. However, there comes a time when reasonable compromises must occur to resolve difficult spectrum issues, and TRW believes that the Commission appears to have struck an appropriate compromise in the *Report & Order*. It therefore is in the public interest for those seeking to operate either satellite or terrestrial systems in the 18 GHz band to try to adjust their system plans to comply with the operating parameters that have been established.

Finally, TRW supports the clarification request of Teledesic Corporation, which merely asks that the Commission make consistent all references in the order and the rules to the grandfathering dates for terrestrial facilities in the 18.58-18.8 GHz and

²¹ See *Report & Order*, FCC 00-212, slip op. at 41 (¶ 83) and 74-74 (New Rule 101.89(d)).

²² WinStar Petition at 18. This oxymoronic appeal for leverage as a means of ensuring “a level playing field” is tantamount to a request that FS licensees be given a “fair advantage.”

²³ One aspect of the Hughes Petition has recently been mooted in that the Commission has taken up the issue of blanket licensing in the 18.3-18.58 GHz and 29.25-29.5 GHz bands as part of its Notice of Proposed Rule Making in IB Docket No. 00-203, which was released late last month. See *FWCC Request for Declaratory Ruling on Partial-Band Licensing of Earth Stations in the Fixed-Satellite Service That Share Terrestrial Spectrum*, FCC 00-369, slip op. at 41-42 (¶¶ 98-99)(released Oct. 24, 2000); Hughes Petition at 18-20.

18.8-19.3 GHz bands.²⁴ As Teledesic states, the Commission should issue a correction to make clear that the cut-off date for grandfathering in the 18.8-19.3 GHz band remains the date on which the *NPRM* was issued – September 18, 1998; and the cut-off date for grandfathering in the 18.58-18.8 GHz is the date upon which the *Report & Order* was adopted – June 8, 2000.

3. Conclusion

For all of the foregoing reasons, TRW urges the Commission to reject the requests for reconsideration that are before it in this proceeding that seek to revisit the compromise band plan it has adopted, and to affirm the fundamental provisions of its *Report & Order*. The allocation plan that has been established by the Commission strikes a reasonable balance, and there is no need at this time to revisit its terms. Swift rejection of the petitions will provide all interested parties with assurances that they may move forward to deploy new services consistent with the rules that have been established.

Respectfully submitted,

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²⁴ See Teledesic Clarification Letter at 1-2.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing "Opposition to Petitions for Reconsideration of TRW Inc." was mailed to the individuals set forth below by first class mail, postage prepaid, this 13th day of November 2000:

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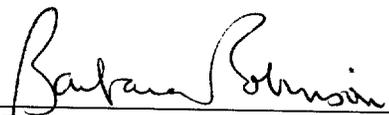
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