

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 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)	IB Docket No. 98-172
and 27.5-30.0 GHz Frequency Bands, and)	RM-9005
the Allocation of Additional Spectrum in)	RM-9118
the 17.3-17.8 GHz and 24.75-25.25 GHz)	
Frequency Bands for Broadcast Satellite)	
Service Use)	

Reply of ASTROLINK International LLC

ASTROLINK International LLC (“Astrolink”), by its attorneys, hereby files this Reply to comments and oppositions to petitions for reconsideration of the FCC’s Report and Order in the above-referenced proceeding.¹ Astrolink supports the arguments of satellite companies that urge rejection of efforts by the Fixed Wireless Communications Coalition (“FWCC”) and Winstar Communications, Inc. (“Winstar”) to skew the *18 GHz Order* even more favorably toward the terrestrial fixed service than it already is.² The filings of terrestrial interests provide no justification for the Commission to rewrite its 18 GHz relocation rules, preserve existing 18 GHz

¹ 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, *Report and Order*, File Nos. IB Docket No. 98-172, RM-9005, RM-9118 (rel. June 22, 2000) (“*18 GHz Order*”).

² *See* Comments of GE American Communications, Inc. (“GE Americom”); Opposition of Hughes Electronics Corporation (“Hughes”); Comment and Opposition to Petition for Clarification and Reconsideration of Winstar Communications, Inc. filed by Pegasus Development Corporation (“Pegasus”); Opposition to Petitions for Reconsideration of TRW, Inc.; Opposition of Teledesic LLC; and Comments in Support of and In Opposition to Petitions for Reconsideration of the Satellite Industry Association (“SIA”).

spectrum for terrestrial fixed service use, or redesignate even more spectrum for FS use.³ With respect to the two specific issues addressed in this Reply, Astrolink: (i) disagrees with the position of GE Americom supporting a proposal to limit the application of Section 25.138 to blanket-licensed earth stations only; and (ii) opposes the “Legacy List” policy and believes its adoption violated the Administrative Procedure Act (“APA”).

I. INTRODUCTION

In its Opposition and Comments, Astrolink urged the Commission to preserve certain elements of the *18 GHz Order*, but to reconsider other aspects of the order that unduly favor the interests of terrestrial operators over those of Ka-band satellite licensees.⁴ Specifically, Astrolink requests that the Commission: (i) reject attempts to rewrite the 18 GHz relocation rules; (ii) designate no less than 250 megahertz of exclusive GSO FSS spectrum in the 18.3-18.8 GHz band; (iii) reconsider its “Legacy List” policy; and (iv) make certain clarifying changes to the earth station licensing rules adopted in the *18 GHz Order*. In addition, Astrolink urged the Commission to retain the language of new Section 25.138, which establishes guidelines for Ka-band earth station operations and, in accordance with longstanding FCC precedent, requires licensees of non-compliant stations to coordinate with affected Ka-band satellite operators and bear the burden of coordinating with future applicants and licensees.

Pleadings filed by other satellite parties generally support the arguments made in Astrolink’s Opposition and Comments. However, Astrolink cannot agree with GE Americom that new Section 25.138(b) should be “corrected” by inserting the word “blanket” before the

³ See Comments by Fixed Wireless Communications Coalition; Opposition to Petition for Partial Reconsideration of the Independent Cable & Telecommunications Association (“ICTA”); and Opposition of Winstar Communications, Inc.

⁴ See generally Opposition and Comments of ASTROLINK International LLC.

phrase “earth station license” in the first sentence of that rule. As explained in Astrolink’s Opposition and Comments, and as discussed more fully below, the Commission correctly crafted Section 25.138(b) to ensure that *all* earth stations using sole primary GSO FSS spectrum operate in a manner that preserves the ability of existing and future Ka-band satellite licensees to deploy ubiquitous blanket-licensed user terminals in these bands.

In addition, Astrolink must reply to Winstar’s opposition to the Petition for Partial Reconsideration filed by Hughes. Winstar argues that adoption of the “Legacy List” policy constitutes a reasonable exercise of discretion and complies with the notice requirements of the APA.⁵ For reasons discussed below, Astrolink believes that the “Legacy List” constitutes an unexplained departure from prior Commission policy and is violative of the APA’s requirements.

II. SECTION 25.138(b), AS ADOPTED, PROMOTES THE DEPLOYMENT OF UBIQUITOUS BLANKET-LICENSED USER TERMINALS AND IS CONSISTENT WITH LONGSTANDING COMMISSION POLICY

In its comments, GE Americom agrees with the Hughes proposal to modify new Section 25.138(b) to limit application of that provision to blanket licensed earth stations only.⁶ However, GE Americom fails to recognize that the current language of Section 25.138(b) is necessary to preserve the ability of existing and future Ka-band satellite licensees to deploy ubiquitous blanket-licensed earth stations; is consistent with the record of this proceeding, including the proposal of the GSO FSS Ka-band Blanket Licensing Industry Working Group (“Blanket Licensing Group”); and comports with longstanding FCC earth station licensing policy.

In the *18 GHz NPRM*, the Commission concluded that blanket licensing of satellite earth stations in bands designated for primary use by Ka-band GSO FSS systems is in the public

⁵ See Opposition of Winstar Communications, Inc. at 1-2.

⁶ See Comments of GE Americom at 7-8.

interest.⁷ Accordingly, the Commission endeavored to develop earth station licensing rules and procedures to ensure that GSO FSS systems do not cause harmful interference to GSO FSS systems in nearby orbital slots in a two degree spacing environment, and to permit the fast and efficient licensing of large numbers of ubiquitously deployed earth stations.⁸

In addition, from the outset of this proceeding, the Commission made clear that it intended to extend its Ku-band earth station licensing regime to the Ka-band, including its treatment of earth stations that do not comply with applicable power levels. With respect to the interplay between blanket licensing and non-compliant earth stations, the Commission explained in the *18 GHz NPRM*:

Under our proposal, uplink EIRP density and downlink PFD thresholds would be used to permit routine blanket licensing of earth stations. However, these values need not preclude licensing of earth stations operating at higher uplink power density or downlink PFD levels provided that these earth stations are successfully coordinated with other Ka-band satellite systems. . . . We propose to extend [the Ku-band] licensing approach to non-compliant GSO/FSS earth station applications in the Ka-band. We seek comment on the licensing of non-compliant earth stations, and the effect such licensing would have on present and future licensees in the band.⁹

The foregoing excerpt reveals the Commission's intent to permit both blanket and individually licensed earth stations to operate in sole primary GSO FSS spectrum, and to allow both types of earth stations to coordinate higher power operations consistent with the FCC's earth station

⁷ See 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, *Notice of Proposed Rulemaking*, File Nos. IB Docket No. 98-172, RM-9005, RM-9118, 13 FCC Rcd 19923 (1998) ("*18 GHz NPRM*"), ¶43.

⁸ See, e.g., *18 GHz NPRM*, ¶¶3, 43-62; *18 GHz Order*, ¶¶6, 85-94.

⁹ See *18 GHz NPRM*, ¶60.

licensing policy at Ku-band. Thus, the Commission provided adequate notice of its proposal to regulate non-compliant earth station operations consistent with its Ku-band precedent.

The Commission ultimately adopted the approach outlined in the *18 GHz NPRM*. Section 25.138(b) permits earth stations, whether blanket or individually licensed, to operate in sole primary GSO FSS spectrum in excess of the power levels set forth in Section 25.138(a). However, such operations must be coordinated with affected Ka-band systems and, pursuant to Section 25.138(c), non-compliant licensees must coordinate with future licensees and reduce their power levels if no good faith agreement can be reached.¹⁰

This approach is consistent with Commission practice in the Ku-band. For example, when the Commission authorized Loral SpaceCom Corp. (“Loral”) to launch a satellite to replace Telstar 401, it required Loral to reduce its power levels to those defined in Section 25.212 or coordinate the higher power with adjacent satellites.¹¹ More recently, in waiving its requirement that Intelsat LLC cease non-compliant operations vis-à-vis future U.S. licensees, the Commission explained that its ordinary practice is to require non-compliant operators to coordinate with future satellites or operate on a non-interference basis.¹² Thus, Section 25.138

¹⁰ Astrolink would note that the requirements of Section 25.138 apply only in bands designated exclusively for use by GSO FSS systems on a primary basis. In order to facilitate coordination among Ka-band satellite operators, Astrolink believes that the Commission should apply the operational parameters of Section 25.138(a) as coordination thresholds in *all* Ka-band GSO FSS uplink and downlink spectrum. Thus, Ka-band satellite licensees would not be required to coordinate earth station operations in any band that comply with the values set forth in 25.138(a), but would be required to coordinate operations in excess of those levels with all potentially affected parties (*i.e.*, satellite networks that are 2, 4 and 6 degrees away).

¹¹ See Loral SpaceCom Corp., *Order and Authorization*, 13 FCC Rcd 16438 (1998).

¹² See Intelsat LLC, *Memorandum Opinion Order and Authorization*, 2000 FCC LEXIS 4185 (Aug. 8, 2000) at ¶87, *see also* New Skies Satellites, N.V., *Order and Authorization*, 14 FCC Rcd 13003 (1999) at ¶78, USAsia Telecom, LLC, DA 00-913, 2000 FCC LEXIS 2103 (April 24, 2000) at ¶11; Williams Communications, Inc. and W4 Communications Corp., DA 00-663, File

does nothing more than extend the FCC's licensing practice with respect to non-compliant Ku-band earth stations to the Ka-band.

These provisions are essential to ensure that large numbers of blanket-licensed earth stations can be deployed by Ka-band licensees to provide advanced broadband satellite communications services without experiencing harmful interference. The Blanket Licensing Group developed operational parameters that permit the deployment of ubiquitous small-antenna earth stations without the need to coordinate with other U.S. Ka-band licensees. The Commission adopted the recommended parameters and, because *any* non-conforming earth station operations could affect adversely the ability of other Ka-band licensees to deploy blanket-licensed earth stations, also established those parameters as thresholds for routine licensing of other earth stations operating in sole primary GSO FSS spectrum. Although the Blanket Licensing Group could not reach consensus regarding operational parameters for non-blanket licensed earth stations, the Commission properly concluded that it should apply the same guidelines to all earth stations operating in the band, just as it does at Ku-band.

Furthermore, because sole primary GSO FSS spectrum is intended fundamentally for the deployment of large numbers of small-antenna earth stations, the Commission appropriately requires non-compliant operators to bear the burden of coordinating with future licensees to preserve the ability of new operators, such as second-round Ka-band applicants, to utilize GSO FSS spectrum for ubiquitous user terminals, even though an earlier operator may have deployed a non-compliant earth station prior to the time a new Ka-band licensee begins service. Although

...continued

Nos. 482-DSE-MP/L-98 SES-MOD-19980121-00104 SES-AMD-19980715-02115 (rel. March 24, 2000) at ¶11.

some new licensees may be able to accept previously coordinated higher-power operations, others may be unable to tolerate the additional interference from non-compliant operations. In the latter case, non-compliant operations cannot be permitted to preclude use of compliant blanket-licensed terminals to provide new broadband satellite services to U.S. consumers.

Hughes argues that this approach raises the possibility that “critical earth station facilities, such as TT&C stations, even after they are coordinated, could be subject to the requirement that they ‘power down’ to accommodate new operations.”¹³ However, Hughes’s argument is nothing more than a red herring. Because TT&C earth stations utilize large high-gain antennas that have narrow beam-widths, they can operate well within uplink and downlink power levels designed for ubiquitous, small-antenna earth stations. To the extent that temporary higher-power TT&C uplink operations may be required in anomalous or emergency situations, such operations can be coordinated and authorized on an as-needed basis.

Thus, the Commission properly recognized that both blanket *and* individually licensed earth stations will operate in sole primary GSO FSS spectrum and, in adopting Section 25.138(b), affords all earth stations the flexibility to operate in excess of applicable power levels on an individually coordinated basis. However, cognizant that non-compliant operations could undermine future use of the band, and consistent with its precedent at Ku-band, the Commission requires licensees of non-compliant earth stations to bear the burden of coordinating with future licensees and reduce their power levels if good faith negotiations fail to achieve an agreement.

¹³ Hughes Petition for Partial Reconsideration at 24.

III. THE “LEGACY LIST” POLICY CONSTITUTES AN UNEXPLAINED DEPARTURE FROM LONGSTANDING COMMISSION POLICY AND IS VIOLATIVE OF THE APA

In its opposition, Winstar argues that the Commission’s adoption of the “Legacy List” policy constitutes a reasonable exercise of discretion and complies with the requirements of the APA.¹⁴ Astrolink believes, however, that the “Legacy List” constitutes an unexplained departure from longstanding Commission policy and violates the APA’s notice and comment requirements.

In the *18 GHz Order*, the Commission established a “Legacy List” policy requiring Ka-band satellite licensees using the 18.3-18.8 GHz band to pay to alleviate interference experienced by FS operators whose receivers are pointed within two degrees of the GSO arc, even if the satellite licensee’s downlink transmissions comply with the p.f.d. limits of Section 25.208(c) of the Commission’s rules.¹⁵ As discussed in Astrolink’s Opposition and Comments, the power limits set forth in Section 25.208(c) have received broad international recognition and were adopted to protect FS operations and to avoid the need for FS/FSS coordination, regardless of the elevation angle and azimuth of an FS receiver.¹⁶ In adopting the “Legacy List” policy, however, the Commission failed to acknowledge Section 25.208(c)’s current protections for fixed service operations, or to reconcile these existing protections with its new policy. The Commission’s failure to explain its reasoning or provide a rational basis for implementing the “Legacy List” policy constitutes a violation of the APA.

¹⁴ See Opposition of Winstar Communications, Inc. at 2-4.

¹⁵ See *18 GHz Order*, ¶¶ 43-47.

¹⁶ See Opposition and Comments of ASTROLINK International LLC at 10-12.

In addition, Astrolink agrees with Hughes that adoption of the “Legacy List” policy does not comply with the notice and comment requirements of the APA.¹⁷ The *18 GHz NPRM* did not discuss the terms or substance of such a proposal, nor was any such proposal raised in comments before the Commission. Thus, from the outset, this proceeding never proposed to revise any aspect of the longstanding p.f.d. limits applicable to FS/FSS sharing in the band.

In its opposition, Winstar responds that adequate notice of the Commission’s “Legacy List” policy was provided in the *18 GHz NPRM* because: (i) the Commission noted it was considering co-primary FS/FSS sharing in the 18.55-18.8 GHz band; (ii) the Commission requested comment on the resolution of possible interference between the two services; and (iii) “the issue was sufficiently raised in the NPRM to the extent that Hughes itself filed Comments responsive to it.”¹⁸ However, Winstar’s contentions are groundless.

First, mention of co-primary FS/FSS sharing in the 18.55-18.8 GHz band cannot be considered notice of any change to the FCC’s FS/FSS sharing regime because the spectrum *already* was shared on co-primary basis by the FS and FSS pursuant to the p.f.d. limits of Section 25.208(c). Second, the *18 GHz NPRM* simply does not request comment on the possible resolution of interference between the FS and FSS as suggested by Winstar.¹⁹ The paragraphs cited by Winstar conclude that sharing between the FS and MSS FL in the 19.3-19.7 GHz band should continue under current sharing requirements and request comment on how continued FS access to the band can be ensured, but do not address FS/FSS sharing in any way.²⁰ Finally,

¹⁷ See Hughes Petition for Partial Reconsideration at 15-16.

¹⁸ See Opposition of Winstar Communications, Inc. at 3-4

¹⁹ See *id.* at n.9 (citing *18 GHz NPRM*, ¶¶32 and 34).

²⁰ See *18 GHz NPRM*, ¶¶32 and 34.

Winstar's suggestion that a Hughes *ex parte* submission responds to the possible rule change is disingenuous at best.²¹ In the context of establishing that FS and FSS interests have an equal claim to the 18.3-18.8 GHz band, the Hughes submission merely states that the spectrum has been a shared FS/FSS band for more than 25 years, the Commission's rules define the permissible level of interference from FSS downlinks and that satellite applications have been filed to use the 18 GHz downlink band.²² Hughes in no way responded to the possibility that the Commission's existing FS/FSS sharing regime might be altered in the context of this proceeding.

In sum, the *18 GHz NPRM* fails to provide notice of the possible adoption of the "Legacy List" policy or other substantial change to the Commission's longstanding FS/FSS sharing regime, and thus must be rescinded as violative of the APA's notice and comment requirements.

IV. CONCLUSION

For all of the foregoing reasons, Astrolink respectfully requests that the Commission take the actions on reconsideration consistent with this Reply.

Respectfully submitted,

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²¹ See Opposition of Winstar Communications, Inc. at 3.

²² See Letter to Magalie Roman Salas from John P. Janka and Arthur S. Landerholm dated February 22, 2000, in IB Docket 98-172.

CERTIFICATE OF SERVICE

I, Vicki Lynne Lyttle, a legal secretary at Dow, Lohnes & Albertson, do hereby certify that on this 22nd day of November, 2000, copies of the foregoing "Reply of ASTROLINK International LLC" were sent via first-class mail, postage prepaid to the following:

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