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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C.

In the Matter of	)	
	)	
Promoting Efficient Use of	)	
Spectrum Through Elimination	)	WT Docket No. 00-230
of Barriers to the Development of	)	
Secondary Markets	)	

COMMENTS OF THE SATELLITE INDUSTRY ASSOCIATION

The Satellite Industry Association ("SIA") hereby submits comments in response to the Notice of Proposed Rulemaking in the above-referenced proceeding.[1] SIA is a national trade association representing the leading U.S. satellite manufacturers, service providers, and launch service companies. SIA serves as an advocate for the commercial satellite industry on regulatory and policy issues of common concern.[2] As is demonstrated below, SIA has a unique perspective to offer in this proceeding because it represents an industry with a well-developed and growing secondary market.

I. THE SATELLITE INDUSTRY HAS A WELL-DEVELOPED SECONDARY MARKET

SIA supports the Commission's continuing efforts to eliminate unnecessary regulatory barriers to the development of robust secondary markets in radio spectrum. As the Commission recognized in the NPRM, the satellite industry has established a well-developed and efficient

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1 In re Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets, *Notice of Proposed Rulemaking*, WT Docket No. 00-230 (rel. Nov. 27, 2000) ("NPRM").

2 SIA's corporate members include: Astrolink, The Boeing Company, Ellipso, Inc., Final Analysis, Inc., GE American Communications, Inc., Globalstar, Hughes Electronics Corp., Lockheed Martin Corporation, Loral Space & Communications, Motient Corp., Orbital Sciences Corp., PanAmSat Corporation, Teledesic, TRW, Inc., and Williams Vyvx Services.

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secondary market in satellite spectrum. Although SIA has a few minor suggestions to enhance this secondary market, it believes that the current regulatory regime for satellite services promotes spectrum efficiency and full utilization of Commission-licensed spectrum for satellites.

The satellite industry has taken advantage of the Commission's well-established and liberal transponder sales and leasing policies for almost twenty years. Since its *Transponder Sales* Order in 1982, the Commission has permitted geostationary orbit Fixed Satellite Service ("FSS") operators to sell or lease any or all of the transponders on their satellites for any period of time.[3] In the Mobile-Satellite Service, too, the Commission has adopted regulatory policies that recognize and facilitate satellite space station licensees (such as Big and Little LEOs) making satellite capacity available to commercial mobile radio service providers on a contractual basis.[4] As indicated in the NPRM, the satellite licensee remains responsible for ensuring that the satellite complies with all of the Commission's technical rules, operates in conformance with its ITU filings and international obligations and does not cause unacceptable interference.[5] The satellite licensee is not obligated to obtain Commission approval for transponder sales or leases or other contracts or to inform the Commission of the parties to these transactions.[6] These

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[3] See NPRM at ¶¶ 16, 66 (*citing* In re Domestic Fixed-Satellite Transponder Sales, *Memorandum Opinion, Order and Authorization*, 90 FCC 2d 1238 (1982) ("Transponder Sales Order"), *aff'd sub nom.* Wold Communications, Inc. v. FCC, 735 F.2d 1465 (D.C. Cir. 1984), *modified*, Martin Marietta Communications Systems, *Memorandum Opinion and Order*, 60 RR 2d 779 (1986); Amendment to the Commission's Regulations and Policies Covering Domestic Fixed Satellite and Separate International Satellite Systems, *Report and Order*, 11 FCC Rcd. 2429 (1996)). The sale and lease of transponders encourages entry by additional satellite operators, "additional facility investment, more efficient use of the orbital and frequency spectrum and allow[s] for technical and marketing innovation in the provision of" satellite services. Transponder Sales Order at ¶ 41.

[4] NPRM at ¶ 66.

[5] Id. Only the satellite operator "is able to insure that the satellite's operation is consistent with the Commission's licensing responsibilities. It has control over the maintenance of attitude and orbital position of the satellite, the electrical power necessary to operate the transponders, and all other tracking and telemetry responsibilities. If a malfunction occurs only the operator can change the technical parameters, switch on replacement equipment or turn the satellite off." Transponder Sales Order at ¶ 48.

[6] NPRM at ¶ 66.

policies have encouraged a secondary market in satellite spectrum and efficient use of scarce orbital resources.[7] Indeed, the secondary market in satellite spectrum has been successful largely because it operates without regulatory burdens or intervention.

The Commission's *Transponder Sales* decision was based upon an accurate analysis of an evolving satellite industry's need for flexibility in order to respond to market demands. Since that time, the benefits anticipated by that decision -- the efficient use of licensed spectrum, technological innovation, and expansion of the variety of services offered to the public and the number of suppliers offering such services - - have been largely realized. The Commission's flexible regulatory approach has resulted in significant benefits to the public and is consistent with the Commission's mandate to make available to the public, rapid and efficient communications, so far as possible.[8]

Satellite operators provide spectrum to thousands of secondary use customers through transponder sales and leases and other contracts offered on both a long-term and short-term basis. Certain satellite operators have initiated their businesses as lessees. For example, Primestar commenced its direct-to-home satellite service business by leasing transponder capacity on an FSS satellite licensed to GE Americom.

Most satellite operators sell or lease their capacity to third parties, who in turn provide service directly to consumers or resell capacity to other providers. The secondary market lessees are, in many cases, also Commission licensees by virtue of earth station licenses, Section 214

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7 See "Considerations in the Creation of a Secondary Market for Radio Spectrum" presented by Mike Antonovich, Senior Vice President, Broadcast Services, PanAmSat, at the FCC's Public Forum (May 31, 2000).

8 See 47 U.S.C. § 151.

authorizations or other Commission licenses.[9] Indeed, the secondary market in satellite spectrum supports a wide range of industries and services. For example, billions of minutes of international telephone traffic are carried over satellites. Most broadcast and cable television content is sent via satellite to local affiliates and cable service providers. Broadcasters use satellite spectrum to provide instantaneous coverage of breaking news events, weather-related emergencies, entertainment, political and sporting events. Satellite spectrum is also used for vital public functions such as telemedicine, distance learning and paging. Under the current regulatory regime, satellite service has become an integral part of the worldwide telecommunications infrastructure with distance insensitive and instantaneous communications available to virtually every person.[10]

Most of the proposals set forth in the NPRM apply solely to wireless radio services, not satellites. SIA supports this approach. Although SIA has no objection to the removal or modification of rules that would impede the operation of secondary markets for wireless radio services, that can and should be done without imposing new and burdensome regulations on the satellite industry. The Commission must not allow a proceeding intended to liberalize spectrum usage for wireless services to become a vehicle for adopting new regulations that might impede an already thriving secondary market for satellite spectrum.

The Commission's policy of relying on the marketplace to ensure a competitive satellite industry has been unquestionably successful. While SIA does not address some of the flexible

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9 The Commission "retain[s] superintendence over the users of transponders since all transmissions to the transponder must be sent through a licensed uplink station." Transponder Sales Order at n. 46. See also Amendment of the Commission's Rules to Establish Rules and Policies Pertaining to a Mobile Satellite Service in the 1610-1626.5/2483.5-2500 MHz Frequency Bands, *Report and Order*, 9 FCC Rcd. 5936 at ¶ 208 (1994).

10 See Deployment of Advanced Capability: Second Report, Federal Communications Commission (Aug. 2000).

use proposals advanced by the NPRM with respect to terrestrial services, it is nonetheless concerned that any additional regulations relating to inter-service sharing might have an adverse impact on the satellite industry.[11]

For example, SIA has opposed a set of proposals set forth in IB Docket No. 00-203 in response to petitions filed by the Fixed Wireless Communications Coalition ("FWCC") regarding spectrum sharing between earth station operators and certain terrestrial users.[12] As detailed thoroughly in SIA's comments and reply comments in that proceeding, the elimination of full-band, full-arc satellite spectrum flexibility, as proposed, would have devastating consequences for the satellite industry and its secondary market customers.[13] Full-band, full-arc flexibility is the cornerstone of the secondary market for satellite capacity; the proposed "demonstrated use" requirement would deprive secondary market customers of access to coordinated spectrum and deny essential services to the public. SIA urges the Commission to reject the rule changes sought by the FWCC, consistent with SIA's comments and reply comments in WT Docket No. 00-203. SIA believes that the same type of technical problems argue against the satellite/terrestrial inter-service sharing that the Commission apparently contemplates in the instant proceeding.

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11 See NPRM at ¶¶ 89-97.

12 In re FWCC Request for Declaratory Ruling on Partial-Band Licensing of Earth Stations in the Fixed-Satellite Service That Share Terrestrial Spectrum; FWCC Petition for Rulemaking to Set Loading Standards for Earth Stations in the Fixed-Satellite Service that Share Terrestrial Spectrum; Onsat Petition for Declaratory Order that Blanket Licensing Pursuant to Rule 25.115(c) is Available for Very Small Aperture Terminal Satellite Network Operations at C-Band; Onsat Petition for Waiver of Rule 25.212(d) to the Extent Necessary to Permit Routine Licensing of 3.7 Meter Transmit and Receive Stations at C-Band; *Ex Parte* Letter Concerning Deployment of Geostationary Orbit FSS Earth Stations in the Shared Portion of the Ka-band, *Notice of Proposed Rulemaking*, IB Docket No. 00-203, RM-9649, SAT-PDR-19990910-00091 (rel. Oct. 24, 2000).

13 See Comments of the Satellite Industry Association, the Satellite Broadcasting and Communications Association, the World Teleport Association, and the Aerospace Industries Association of America (filed Jan. 8, 2001) (incorporated by reference herein).

II. MEANS TO ENHANCE SECONDARY MARKETS IN SATELLITE SPECTRUM

The NPRM seeks comment on whether any modifications to its rules might be appropriate to foster a more efficient secondary market in satellite spectrum and earth station capacity.[14] As discussed below, there are some modest, but meaningful, steps the Commission could take to enhance the secondary market for satellite services.

A. Streamlining the *Pro Forma* License Transfer and Assignment Process

SIA supports elimination of the need for prior Commission approval for *pro forma* transfers of control or assignments of authorizations. However, even just reducing the processing time for *pro forma* transfer of control and assignment applications will reduce transaction costs and regulatory uncertainties, and inevitably enhance the secondary market in satellite spectrum.

The ultimate goal of the instant proceeding is to promote the public interest by increasing the availability of spectrum to expand the variety of services that are offered to consumers. Those services and the facilities that provide them must be financed. Such financing often involves corporate restructuring and reorganization which may require the *pro forma* transfer of control or assignment of Commission licenses. The Commission's current rules impose a significant obstacle to this process. *Pro forma* transfers of control or assignments of satellite and earth station licenses are in many ways treated in the same manner as non-*pro forma* transfers of control or assignments. Yet, in the *pro forma* case, no actual transfer of ultimate control occurs. Unlike some other services, the satellite form and the application processing fee are the same for *pro forma* assignments and transfers as they are for non-*pro forma* transfers or assignments of actual control, although the amount of work it takes to process applications for these very

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[14] NPRM at ¶ 68.

different types of transactions is not at all equivalent. *Pro forma* applications do not go on public notice and the Commission's analysis should be cursory and routine. Despite this fact, *pro forma* transfer and assignment applications often take months to process.

The processing of *pro forma* transfer and assignment applications is an area where the wireless and other services have a significant advantage over the satellite service. Specifically, the Commission has used its authority to forbear from Section 310(d) requirements for *pro forma* transactions for certain wireless services.[15] In that proceeding, the Commission noted that its "approval of *pro forma* assignments and transfers is not needed because such transactions, by their nature, do not change the underlying ownership or control of licensees that the Commission has already reviewed and approved."[16] Such transactions are "considered presumptively in the public interest because no substantial change of control is involved."[17] The Commission determined that a notification procedure would effectively and more efficiently permit it to carry out its objectives.

SIA recognizes that the Commission may have some difficulty in using its authority to forbear from Section 310(d) requirements in the case of satellite operators, most of which operate as non-common carriers. However, SIA suggests that the Commission could utilize the grant stamp procedures it currently uses to process other applications, including applications processed by the International Bureau for satellite and earth station applications for special temporary authority, *pro forma* transfers of control and assignments of Section 214

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15 See In re Federal Communications Bar Association's Petition for Forbearance from Section 310(d) of the Communications Act Regarding Non-Substantial Assignments of Wireless Licenses and Transfers of Control Involving Telecommunications Carriers and Personal Communications Industry Association's Broadband Personal Communications Services Alliance's Petition for Forbearance For Broadband Personal Communications Services, *Memorandum Opinion and Order*, 13 FCC Rcd. 6293 (1998).

16 Id. at ¶ 18.

17 Id.

authorizations and certain undersea cable licenses.[18] SIA also suggests that the FCC seek statutory authority to reduce the processing fee for *pro forma* transfer and assignment applications.

B. Modifications to Satellite Technical and Service Rules

The industry appreciates the Commission's efforts to date to streamline the earth station licensing process including the expedition of routine C- and Ku-band earth station applications.[19] In furtherance of these efforts, SIA also supports examining ways to further expedite the licensing of both earth stations and space stations and has been having informal consultations with the Commission on an ongoing basis concerning these issues. It is essential that the Commission's satellite and earth station licensing regimes be swift and certain in order to more easily facilitate a secondary market in satellite spectrum.

For example, one rule that should be eliminated in order to promote easier access to spectrum in secondary markets is the Section 25.131(j) requirement that a receive-only earth station operating with a non-U.S. licensed satellite on the Permitted Space Station List obtain a

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[18] The International Bureau adopted a grant stamp procedure in 1994 for approving Section 214 *pro forma* transfers of control and assignments and for approving requests for special temporary authority for international and domestic earth station use. International Bureau Launches New Procedures, *Public Notice*, 1994 FCC LEXIS 5792 (Nov. 21, 1994). See Wireless Telecommunications Bureau and International Bureau Complete Review of Proposed Investment by Telefonos de Mexico, S.A. de C.V. in Parent of Cellular Communications of Puerto Rico, *Public Notice*, 15 FCC Rcd. 1227 (1999).

[19] Commission Launches C-Band Earth Station Streamlining Initiative, *Public Notice*, 2000 FCC LEXIS 6482 (Dec. 7, 2000) (Commission announced (i) automatic grant of routine satellite earth station applications proposing use of certain C-band frequencies and communicating with satellites on the Permitted Space Station List; and (ii) reduction in the number of required emission designators identified in applications for digital systems). Commission Launches Earth Station Streamlining Initiative, *Public Notice*, 14 FCC Rcd. 9834 (1999) (Commission announced (i) automatic grant of routine satellite earth station applications proposing use of certain Ku-band frequencies and communicating with ALSAT satellites; and (ii) reduction in the number of required emission designators identified in applications for digital systems). The Commission recently released a Notice of Proposed Rulemaking to further streamline its rules regarding routine earth station applications as well as streamline the process for non-routine earth station applications. In re 2000 Biennial Regulatory Review - - Streamlining and Other Revisions of Part 25 of the Commission's Rules Governing the Licensing of, and Spectrum Usage by, Satellite Network Earth Stations and Space Stations, *Notice of Proposed Rulemaking*, IB Docket No. 00-248 (rel. Dec. 14, 2000).

separate license to operate this station.[20] This requirement appears to be inconsistent with: (i) the Commission's recent Order on Reconsideration which determined that all U.S. earth stations with ALSAT licenses should be permitted to communicate with any non-U.S. satellite on the new Permitted Space Station List without obtaining an additional authorization;[21] and (ii) the Commission's rules which do not require licenses for receive-only earth stations which operate with U.S.-licensed satellites.[22]

C. Availability of Information on Spectrum

The NPRM also seeks comment on whether the Commission should have a greater role in collecting and disseminating information on licensed spectrum to the public in aid of secondary use.[23] SIA believes there is no need for the Commission to establish additional information sources for satellite spectrum. As noted in the NPRM, "the private sector is better suited both to determine what types of information parties might demand, and to develop and maintain information on the licensed spectrum that may be available for use by third parties."[24] There do not appear to be any regulatory barriers hindering private parties from developing such information sources; indeed, these resources are currently being provided by the private sector. For example, the London Satellite Exchange's on-line service, www.e-sax.com, links

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20 47 C.F.R. § 25.131(j).

21 In re Amendment of the Commission's Regulatory Policies to Allow Non-U.S. Licensed Space Stations to Provide Domestic and International Satellite Service in the United States, *First Order on Reconsideration*, 15 FCC Rcd. 7207 (1999).

22 47 C.F.R. § 25.131. Section 25.131(b) permits receive-only earth station operators that operate with U.S.-licensed satellites to register with the Commission in order to protect them from interference. 47 C.F.R. § 25.131(b). On January 4, 2000, Home Box Office filed a Motion for Clarification and Declaratory Ruling in IB Docket No. 96-111 requesting that the Commission clarify its rules to permit receive-only earth stations to receive signals from non-U.S. licensed satellites without obtaining a license. This request is pending.

23 NPRM at ¶ 99.

24 Id. at ¶ 100.

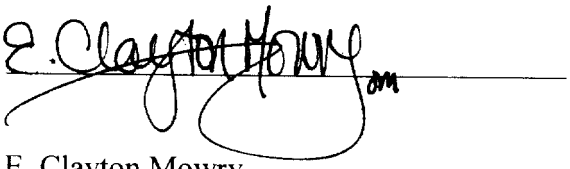
prospective customers to satellite space and ground segment operators and offers both off-line and on-line satellite capacity trading.[25] SIA understands that a similar resource is currently under development in the United States.

III. CONCLUSION

SIA supports the Commission's efforts to facilitate secondary markets for radio spectrum in a way that does no harm to any individual service. SIA believes that the Commission's current regulatory regime for transponder sales and leases has permitted the secondary market for satellite spectrum to flourish. Therefore, SIA suggests only the modest changes to the satellite rules, described above, in order to improve the conditions for secondary markets.

Respectfully submitted,

SATELLITE INDUSTRY ASSOCIATION



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[25] The E-sax website states that the London Satellite Exchange is "actively working with in excess of 76% of the world's satellite fleet, 74% of launchers and 81% of the ground segment industry." http://www.e-sax.com/philosophy.esax. RateXchange Corporation and the London Satellite Exchange recently announced an alliance to provider users with the ability to fulfill both satellite and fiber optic bandwidth requirements at the same time. http://www.e-sax.com/press.esax.

CERTIFICATE OF SERVICE

I, Dennette Manson, do hereby certify that on this 9th day of February, 2001 copies of the Comments of the Satellite Industry Association were delivered by hand to the following parties:

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