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March 8, 2001

VIA ELECTRONIC FILING

Ms. Magalie Roman Salas
Office of the Secretary
Federal Communications Commission
445 12th Street, S.W.
Twelfth Street, Lobby, TW-A325
Washington, D.C. 20554

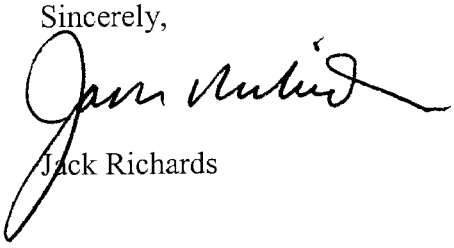
Re: Notification of *Ex Parte* Contact in IB Docket No. 98-172

Dear Ms. Salas:

On March 7, 2001, the undersigned and Barry Ohlson, Senior Director, Federal Regulatory Affairs of our client Winstar Communications, Inc., met with the individuals listed below to discuss the pending reconsideration of the proceeding referenced above. The attached written *ex parte* presentation was discussed during our meeting.

Pursuant to section 1.1206 of the Commission's rules, one copy of this letter has been filed electronically with your office. Please feel free to contact me with any questions.

Sincerely,



Jack Richards

Enclosure

cc: Rick Engelman (IB),
Fred Thomas (OET),
Justin A. Connor (IB),
Breck Blalock (IB),
Julie Knapp (OET)
Tom Stanley (WTB)

Ex Parte Presentation
Winstar Communications, Inc.
IB Docket No. 98-172
Reallocation of 18 GHz Band

In a Petition for Reconsideration filed with the Commission on October 10, 2000, Winstar Communications, Inc. ("Winstar") sought clarification and modification of the Commission's Order regarding the redesignation of the 18 GHz band among Fixed Services ("FS"), Fixed Satellite Services, Mobile Satellite Services and Broadcast Satellite Services.[1] Specifically, Winstar sought clarification of certain issues pertaining to the definition of comparable facilities and the rights of incumbents. Additionally, reconsideration was sought regarding the Commission's failure to account for the explosive growth within the FS industry, the inadequacy of proposed "other media" for replacement purposes, the right of incumbents to return to previous facilities and the failure to establish a Voluntary Negotiation Period.

Several parties filed Oppositions to Winstar's Petition.[2] Winstar maintains that many of the statements contained in the Oppositions are – at best – not entirely correct. The following table summarizes Winstar's position.

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[1] Report and Order, *Redesignation of the 18 GHz Frequency Band, Blanket Licensing of Satellite Earth Stations in Ka-Band, and the Allocation of Additional Spectrum for Broadcast Satellite Service Use*, IB Docket No. 98-172, 65 Fed. Reg. 54,155 (September 7, 2000).

[2] Winstar replied to Oppositions filed on November 13, 2000 by Teledesic, LLC ("Teledesic"); Hughes Electronic Corporation ("Hughes"); Pegasus Development Corporation ("Pegasus"); Satellite Industry Association ("SIA"); GE American Communications ("GE"); ASTROLINK International LLC ("ASTROLINK"); TRW Inc. ("TRW"); and the Independent Cable & Telecommunications Association ("the ICTA") (collectively "the Oppositions").

ISSUE/ PARTY	STATEMENT OF OPPOSITION	RESPONSE
OTHER MEDIA SIA pg. 6-8 Hughes, pg. 5 Teledesic, pg. 11 Astrolink, pg. 3	Several Oppositions imply or explicitly state that Winstar believes fiber and other alternative media will never provide an adequate replacement for 18 GHz spectrum.	Winstar is technologically "agnostic" and uses fiber and other technologies in its network when appropriate (See Winstar Petition 12 – 14). In its Petition, Winstar simply asked the FCC to acknowledge the obvious -- that comparable technologies, such as fiber are often not available to serve the exact customers currently receiving 18 GHz service. Therefore, until a comparable replacement actually exists for a customer, spectrum must remain available.
ADMINISTRA-TIVE SUFFICIENCY SIA, pg. 6 Hughes, pg. 6 Teledesic, pg. 11	Several Oppositions question the procedural and administrative sufficiency of the Winstar Petition. These Parties claim that Winstar failed in its Petition to state with particularity the respects in which the 18 GHz Order should be changed.	This is a classic "red herring." Winstar is an 18GHz licensee that made numerous specific recommendations to change the Order (See Winstar Petition 1-20). If Winstar did not recommend any specific changes to the Order, why are these Entities filing detailed rebuttals asking the FCC not to adopt Winstar's proposals?
FAILURE TO ADDRESS GROWTH OF FS INDUSTRY SIA pg. 6 TRW, pg. 3	Several Oppositions attack Winstar's complaint regarding the Order's failure to account for the explosive growth of the FS industry. Several of these Oppositions misconstrue Winstar's position as opposing band segmentation.	While supporting band segmentation, Winstar made it clear that the Commission's Order allocates an insufficient portion of the 18 GHz spectrum to FS providers. As a result, FS providers will continue to face a shortage of spectrum for their continuously expanding customer base. Winstar continues to strongly support the principle of band segmentation.

ISSUE/ PARTY	STATEMENT OF OPPOSITION	RESPONSE
COMPARABLEF ACILITIES SIA pg. 8 Hughes, pg. 4 Pegasus, pg. Teledesic, pg. 8 Astrolink, pg. 3	Several Oppositions attack Winstar's request for clarification regarding the requirement that comparable facilities be provided to incumbent licensees prior to requiring the incumbent to relocate. Some argue that satellite licensees can be ordered to take additional measures to ensure compatibility after the FS licensee has relocated.	No company should be forced to endanger customer service and switch over to a system not established beforehand to be comparable. The adequacy of comparable facilities has been addressed previously in the Commission's 800 MHz and 2 GHz PCS Proceedings. The Commission has viewed prior verification actions as necessary for the protection of the operational interests of incumbent licensees and their existing customers.
FAILURE TO ESTABLISH VOLUNTARY NEGOTIATION PERIOD SIA pg. 9 Hughes, pg. 6 Teledesic, pg. 8 Astrolink, pg. 5	Several Oppositions claim that voluntary negotiation periods allow existing Licensees to refuse to negotiate.	History proves that voluntary negotiations are an integral part of a successful relocation. For example, PCS systems quickly deployed throughout the 2 GHz band. The FCC should not discard a proven and fair system of relocation on the unproven premise that satellite systems require more rapid deployment. More importantly, the Commission should not ignore its own precedent.
RIGHT TO RETURN TO PREVIOUS FACILITIES SIA pg. 9 Hughes, pg. 6 Teledesic, pg. 8 Astrolink, pg. 6	Several Oppositions reject the establishment of the right of an incumbent to return to its previous facilities.	The 18 GHz Order must reaffirm the equitable principle of the right of incumbent licensees to return to previous facilities in the event the new facilities do not prove to be comparable. Despite the fact that such a provision would keep with FCC precedent, almost all of the satellite Oppositions wish to avoid its implementation.

ISSUE/ PARTY	STATEMENT OF OPPOSITION	RESPONSE
FS-FSS INTERFERENCE Astrolink, pgs. 8-10	ASTROLINK – claiming a violation of the APA – argues that adequate notice was never provided with regard to the FCC's establishment of a Legacy List. Specifically, ASTROLINK claims that the 18 GHz NPRM "simply does not request comment on the possible resolution of interference between the FS and FSS as suggested by Winstar."	The Commission was clear in the NPRM with regard to its efforts to address possible interference between the FS and FSS. Paragraph 32 states, "Although sharing with terrestrial fixed services in this 250 MHz of spectrum [i.e. 18.55-18.8] would place some constraints on GSO/FSS satellite licensees, we tentatively conclude that it would be possible for GSO/FSS satellite operators to use this spectrum to meet specialized demands . . . " More important, Paragraph 34 states, "First, we request comment on whether the above proposal adequately meets the spectrum requirements of both terrestrial fixed service and GSO/FSS and NGSO/FSS satellite Licensees. In particular, we seek comment on the feasibility of GSO/FSS operations in the 18.55-18.8 GHz band given the strict PFD limit that is imposed by the Commission's Rules on fixed satellite service operations in the 18.6-18.8 GHz band in order to protect EES (passive) and SR (passive) services in that portion of the band." While Astrolink claims that the 18 GHz NPRM "simply does not request comment on the possible resolution of interference between the FS and FSS," the above referenced sections certainly raise issues regarding possible interference between terrestrial and satellite licensees. Additionally, these two sections make it abundantly clear that the FCC was concerned with PFD limits within the 18 GHz band.