

MAR 22 2001

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

00-258

In the Matter of:)
)
)
Amendment of the U.S. Table of)
Frequency Allocations to Designate)
the 2500 – 2520 and 2670 – 2690 MHz Frequency)
Bands for the Mobile-Satellite Service)
_____)

RM-9911

To the Commission:

OPPOSITION OF WORLDCOM, INC.

Pursuant to Section 1.429(f) of the Commission's Rules,¹ WorldCom, Inc.

("WorldCom") hereby opposes the Petition for Reconsideration ("Petition") filed by the Satellite Industry Association ("SIA") in response to the Commission's Order² denying SIA's Petition for Rulemaking.³ As set forth in WorldCom's Opposition to SIA's Petition for Rulemaking, WorldCom has a vital interest in the frequency bands that are the subject of this proceeding, having recently invested over \$1 billion for the rights to use this spectrum throughout the United States. WorldCom and other multichannel multipoint distribution service ("MMDS") providers

¹ See 47 C.F.R. § 1.429(f).

² See *In the Matter of Amendment of the U.S. Table of Frequency Allocations to Designate the 2500 - 2520/2670 - 2690 MHz Frequency Bands for the Mobile-Satellite Service*, FCC 00-455 at ¶¶ 70 – 73 (rel. Jan. 5, 2001) ("*SIA Order*"). This Opposition is being timely filed in accordance with the Commission's Public Notice published in the Federal Register. See *Petition for Reconsideration of Action in Rulemaking Proceeding*, Report No. 2468, 66 Fed Reg. 13740 (March 7, 2001).

³ See *In the Matter of the U.S. Table of Frequency Allocations to Designate the 2500 – 2520/2670 – 2690 MHz Frequency Bands for the Mobile-Satellite Service*, Petition for Rulemaking, filed April 28, 2000 ("Petition for Rulemaking").

No. of Copies rec'd
List A B C D E

015

are deploying advanced fixed wireless broadband services in the above-captioned bands and will be providing the only or the first competitive broadband "pipe" to millions of consumers in areas unserved and underserved by other broadband technologies.⁴ SIA's Petition suffers from the same deficiencies that were fatal to its Petition for Rulemaking. Like the majority of parties in this proceeding, the Commission recognized these deficiencies and denied SIA's Petition for Rulemaking. SIA has not identified a material error or new information that justifies reconsideration of the *SIA Order*. Accordingly, the Commission must deny the Petition.

SIA has failed to demonstrate that an MSS allocation of the 2500 – 2520 and 2670 – 2690 MHz frequency bands will not cause harmful interference to incumbent MMDS/ITFS providers. Its belated attempt to introduce a Telecommunications Industry Association ("TIA") and Electronic Industries Alliance ("EIA") "technical bulletin" released in October 1999 (six months prior to SIA's Petition for Rulemaking) is procedurally defective and does not support its claims of non-interference. Indeed, the bulletin does not even address point-to-multipoint fixed services, let alone the two-way fixed wireless broadband services being deployed by incumbent MMDS/ITFS licensees. In addition, SIA's assumption that interference to MMDS/ITFS providers will be mitigated because fixed wireless broadband services will not be provided in rural areas is inaccurate and ignores the record in this proceeding. Finally, SIA still has not demonstrated that there is a real *need* for additional Mobile Satellite Service ("MSS") spectrum. Rather, the continuing economic troubles of MSS applicants and licensees,

⁴ See WorldCom Opposition (filed Aug. 28, 2001) ("WorldCom Rulemaking Opposition").

and the increasing consolidation in the industry, strongly indicate that additional MSS spectrum is not needed.

I. SIA HAS FAILED TO DEMONSTRATE THAT AN MSS ALLOCATION IN THE 2500 – 2520 AND 2670 – 2690 MHz BANDS WILL NOT CAUSE HARMFUL INTERFERENCE TO INCUMBENT MMDS/ITFS PROVIDERS

In its Petition, SIA claims that the *SIA Order* was erroneous because there is no evidence that spectrum sharing between fixed services and MSS will result in harmful interference.⁵ As in its Petition for Rulemaking, however, SIA has failed to provide any information and studies to support its conclusion. As WorldCom previously observed, there are serious interference concerns that arise from any proposed co-frequency operation of ubiquitous satellite and point-to-multipoint terrestrial wireless services.⁶ SIA's failure to make *any* real showing that harmful interference will not occur renders its Petition for Rulemaking inadequate on its face.⁷ Indeed, SIA's Petition for Rulemaking did not even *acknowledge* the existing and planned usage by incumbent MMDS and ITFS licensees of the 2500 -- 2690 MHz frequency band – an inexplicable omission.

SIA now asserts that a TIA and EIA "technical bulletin" released in October 1999 ("the TIA Bulletin") demonstrates that sharing is possible between MSS and MMDS/ITFS licensees.⁸ According to SIA, MMDS and ITFS providers have failed to refute the conclusions of the TIA Bulletin, and as a result, an MSS allocation in the 2500 – 2520 and 2670 – 2690 MHz

⁵ See Petition at 6.

⁶ See WorldCom Rulemaking Opposition at 7.

⁷ *SIA Order* at ¶ 73.

⁸ See Petition at 6.

frequency bands is appropriate.⁹ In addition, SIA claims that any interference between MSS and MMDS/ITFS providers is manageable because MMDS/ITFS fixed wireless broadband services will be used mainly in urban areas whereas MSS is "expected to remain largely a rural service."¹⁰ SIA's arguments are flawed for at least three reasons.

First, SIA wrongly suggests that incumbent MMDS/ITFS licensees somehow have the burden of disproving its unsupported interference claims. As a petitioner for rulemaking, the burden of proof rests squarely with SIA to demonstrate that sharing is feasible.¹¹ SIA did not meet its burden at the time of its Petition for Rulemaking and it has not met its burden now.

Second, SIA's use of the TIA Bulletin in its Petition is untimely and still does not address spectrum sharing between MSS and incumbent MMDS/ITFS providers. As a procedural matter, if SIA intended to rely upon the TIA Bulletin, it should have stated so in its Petition for Rulemaking and provided parties an opportunity to comment upon it. Despite being released six months *prior* to SIA's Petition for Rulemaking, the TIA Bulletin was not even mentioned in SIA's Petition for Rulemaking and, consistent with the Commission's Rules and precedent, it should not be permitted to be relied upon now on reconsideration.¹²

⁹ *See id.*

¹⁰ *Id.* at 6.

¹¹ *See* 47 C.F.R. § 1.401(c) ("The petition shall set forth the text or substance of the proposed rule, amendment. . . *together with all facts, views, arguments and data deemed to support the action requested*, and shall indicate how the interests of the petitioner will be affected.") (emphasis added).

¹² *See* 47 C.F.R. § 1.429 (b)(1); *In re Applications of Beacon Broadcasting Corporation for Renewal of Licenses for Station WBNR(AM) Beacon, New York and Station WSPK(FM) Poughkeepsie, New York*, 11 FCC Rcd. 3012 (1996) ("Reconsideration is appropriate only where
(Continued ...)

Beyond the procedural defect, the TIA Bulletin does not prove that sharing is feasible between MSS and incumbent MMDS/ITFS providers. Indeed, the TIA Bulletin does not address MMDS or ITFS whatsoever, much less conclude that those services can share spectrum with MSS. The TIA Bulletin is entitled “Criteria and Methodology to Assess Interference Between Systems in the Fixed Service and the Mobile-Satellite Service in the Band 2165 – 2200 MHz.” There is *no* MMDS, ITFS or other ubiquitous point-to-multipoint usage in the 2165 – 2200 MHz band and MMDS and ITFS are not even mentioned in the TIA Bulletin. Indeed, the preface to the TIA Bulletin states that the working group that drafted it was comprised of “representatives of the mobile satellite and *terrestrial fixed microwave point-to-point service industries.*”¹³ As a result, SIA's assertion that the TIA Bulletin addresses interference between MSS and MMDS/ITFS licensees is simply not accurate. As WorldCom previously stated, WRC-2000 concluded (more than six months *after* the release of the TIA Bulletin) that more studies needed to be done concerning sharing between MSS and MMDS/ITFS providers.¹⁴ As far as WorldCom is aware, no such studies have been conducted.

Third, SIA incorrectly assumes that MMDS/ITFS two-way fixed broadband wireless services will operate “mainly in urban areas” and thus will be geographically distant from MSS operations.¹⁵ WorldCom, and other MMDS/ITFS licensees, have clearly stated in this

the petitioner either shows a material error or omission in the original order or raises additional *facts not known or not existing until after petitioner's last opportunity to present such matters.*”) (emphasis added).

¹³ TIA Bulletin at iv.

¹⁴ *See* WorldCom Rulemaking Opposition at 8.

¹⁵ *See* Petition at 6.

proceeding and elsewhere that they are already deploying two-way fixed wireless broadband services to consumers in unserved and underserved markets, including those in rural areas.¹⁶ As the Commission recently recognized, “in rural or otherwise underserved markets in the country, ITFS/MDS may be the sole provider of broadband service.”¹⁷

II. SIA HAS NOT DEMONSTRATED A REAL NEED FOR ANY ADDITIONAL MSS SPECTRUM

As set forth in WorldCom's Rulemaking Opposition, SIA failed to provide any concrete evidence as to why additional spectrum was needed for MSS.¹⁸ With the well-publicized failures of MSS providers in the marketplace and the amount of spectrum already allocated to MSS, WorldCom and others concluded, and the Commission agreed, that an allocation of additional spectrum for MSS was not justified. SIA does not offer any new facts which would require the Commission to change its conclusion.

While SIA admits that the MSS industry has access to approximately 171 MHz in the United States, it claims that this is insufficient for non-geostationary ("NGSO") low earth orbit ("LEO") licensees because the majority of MSS spectrum is licensed to geostationary ("GSO") MSS systems.¹⁹ This observation, however, does not address the issue of whether more

¹⁶ See, e.g., WorldCom Rulemaking Opposition at i ("WorldCom and others are now ready to deploy advanced wireless services that will not only compete with other broadband services but also provide millions of Americans with the first high-speed "pipe" into their homes and businesses. These services are ideal for reaching people in rural and other markets unserved or underserved by DSL and cable modem services . . .").

¹⁷ "Interim Report - Spectrum Study of the 2500 – 2690 MHz Band: The Potential for Accommodating Third Generation Mobile Systems," ET Docket No. 00-232, *FCC Staff Report*, at 22 (Nov. 15, 2000).

¹⁸ See WorldCom Rulemaking Opposition at 8-12.

¹⁹ See Petition at 7.

spectrum is *needed* for MSS. Rather, SIA merely summarizes the various MSS licensing decisions made by the Commission. The Table of Allocations does not draw distinctions between GSO and NGSO MSS systems. Accordingly, the Commission should not draw any such distinctions for purposes of determining whether sufficient spectrum has been allocated to the MSS industry in the United States.

In any event, SIA has not shown a need for additional MSS spectrum allocations. As WorldCom and others have already demonstrated in detail, MSS has not succeeded in the marketplace, and accordingly, any new allocation of additional spectrum is not justified.²⁰ The state of the industry continues to deteriorate: Orbcomm has entered into bankruptcy,²¹ and GlobalStar suspended payments on its debt.²² Indeed, in a recent submission to the Commission, one of the few remaining MSS participants, New ICO Global Communication (Holdings) Ltd. ("New ICO") stated that:

Unfortunately, due to the failures of early MSS projects and the instability of the telecom and satellite financial markets, the ability

²⁰ See, e.g., WorldCom Rulemaking Opposition at 9 – 11.

²¹ See "Getting In The Last Lifeboat Before The Titanic Sinks," *Mobile Satellite News* (Oct. 5, 2000) ("The MSS industry has been plagued with bad news ever since the Iridium bankruptcy, with the most recent blow to the Little LEOs [sic] was the recent filing for Chapter 11 bankruptcy protection by Orbcomm Global L.P.").

²² See "Globalstar Suspends Debt Payments To Keep Business Going," *RCR Wireless News* at 25 (Jan. 22, 2001) ("Globalstar. . . took a bold, albeit peculiar, step last week, announcing it is suspending indefinitely principal and interest payments on all its funded debt, including its credit facility, vendor financing agreements, senior notes, dividend payments and preferred stock."); "Globalstar Loss Forces Loral To Focus On New Partners," *Communications Daily* (Feb. 16, 2001) ("Loral plans to write off \$1 billion loss on Globalstar 'to get it behind us' while looking for new strategic partnerships to spur new growth in company, CEO Bernard Schwartz told investors in conference call on Thurs. . . .").

of the MSS industry to deliver. . .important public interest benefits is in dire jeopardy.²³

Further, continued consolidation in the MSS industry (*e.g.*, the recent agreement between New ICO and Ellipso, Inc.) undermines SIA's conclusions and calculations that additional spectrum is needed to accommodate the "seven to nine" applicants for MSS spectrum at 2 GHz.²⁴ The realities of the marketplace have clearly demonstrated that few, if any, of these applicants will ever provide any services to consumers. Accordingly, there is simply no need for *more* MSS spectrum in the United States.

III. CONCLUSION

WorldCom urges the Commission to deny SIA's Petition for Reconsideration and affirm the *SIA Order*. In both the Petition for Rulemaking and the instant Petition, SIA has failed to submit any supporting information to demonstrate that the operation of MSS in the requested bands would not interfere with the important MMDS/ITFS services currently allocated and now being deployed there. Indeed, SIA's original Petition for Rulemaking fails even to acknowledge the existence of incumbent MMDS/ITFS licensees in the 2500 – 2520 MHz and 2670 – 2690 MHz frequency bands.

²³ Letter from Lawrence H. Williams to Chairman Powell at 1 (March 8, 2001). *See also* "McCaw Unit New ICO Signs Agreement with Ellipso," *Communications Daily* at 3 (March 15, 2001) (quoting ICO-Teledesic Chairman Craig McCaw as saying that the MSS industry "has failed spectacularly" in delivering promises to users).

²⁴ Petition at 7 – 8. *See* "McCaw Unit New ICO Signs Agreement with Ellipso," *Communications Daily* at 3 (March 15, 2001) (quoting Chairman McCaw as stating that "[w]e look forward to pooling our talents and creativity with our peers in the industry to overcome the challenges that have dragged down those who have launched before us.").

SIA has also failed to demonstrate that there is a real need for additional MSS spectrum allocations. With the number of MSS operators decreasing and with the remaining operators chasing after a small number of subscribers, there is no need for the Commission to allocate more spectrum to MSS.

Respectfully submitted,

WorldCom, Inc.

By: 

Robert S. Koppel
Vice President
Wireless Regulatory Affairs
WorldCom, Inc.
1133 19th Street, N.W.
Washington, DC 20036
(202) 887-2248

Philip L. Malet
Marc A. Paul
Steptoe & Johnson LLP
1330 Connecticut Avenue, N.W.
Washington, D.C. 20036
(202) 429-3000

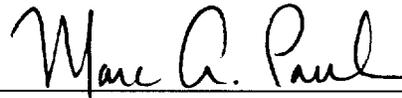
Counsel for WorldCom, Inc.

Dated: March 22, 2001

CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of March, 2001 a true and correct copy of the foregoing Opposition by WorldCom, Inc. was sent by First Class Mail to the following:

Michael Fitch, Chair
Clayton Mowry, Executive Director
The Satellite Industry Association
225 Reinekers Lane, Suite 600
Alexandria, VA 22314

A handwritten signature in black ink that reads "Marc A. Paul". The signature is written in a cursive style with a horizontal line underneath it.

Marc A. Paul