

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of:

Allocation and Designation of Spectrum for Fixed-Satellite Services in the 37.5-38.5 GHz, 40.5-41.5 GHz and 48.2-50.2 GHz Frequency Bands; Allocation of Spectrum to Upgrade Fixed and Mobile Allocations in the 40.5-42.5 GHz Frequency Band; Allocation of Spectrum in the 46.9-47.0 GHz Frequency Band for Wireless Services; and Allocation of Spectrum in the 37.0-38.0 GHz and 40.0-40.5 GHz for Government Operations

IB Docket No. 97-95

RM-8811

REPLY COMMENTS OF ADVANCED RADIO TELECOM CORP.

Advanced Radio Telecom Corp. (“ART”) hereby submits its Reply Comments in response to the Further Notice of Proposed Rule Making (“FNPRM”) in the above-referenced proceeding. As explained in greater detail below, ART urges the Commission to preserve the integrity of the auction process and to promote needed diversity of facilities by protecting the rights of fixed service (“FS”) licensees. Resolution of the FNPRM will have a direct impact upon ART’s interests. ART is one of the country’s largest and most innovative 39 GHz licensees, having pioneered the offering of high-speed IP broadband services with speeds up to 155 Mbps. Of its nearly 800 39 GHz licenses, 352 were obtained as a result of the FCC’s 39 GHz auction in May 2000. ART spent \$76,968,450 for these 352 licenses. The licenses, which have a ten-year term, were granted only a few short months ago. Like other FS providers, ART

expected to be able to fully use these licenses, pursuant to its understanding of the Commission's regulations governing FS use.

ART generally supports the Commission's efforts to optimize spectrum usage as discussed at the 2000 World Radiocommunication Conference ("WRC-2000"). ART cautions the Commission, however, that any rule modifications should build upon the gains of WRC-2000 and promote the spectrum rights of all users. To this end, ART urges the Commission to refrain from adopting proposals that have been put forth by numerous fixed satellite service ("FSS") providers. The provision of additional spectrum for FSS and the lifting of certain restrictions, as recommended by FSS providers, would effectively eviscerate present FS spectrum rights.

In particular, ART strongly disagrees with Boeing's recommendation that additional V-band spectrum should be designated to satellite use because of the recent financial difficulties of FS providers.¹ This argument is, at best, premature. The winning bidders of the Commission's recent 39 GHz auction have held these ten-year licenses for *less than one year*. Members of the fixed wireless service industry bid on, and paid for, the licenses with the expectation of full use over a period of years. To materially diminish these spectrum rights, especially based upon such a premature assessment and so early within the license term, would severely impede future confidence in the auction process. Future would-be auction participants would be forced to consider that spectrum—in which they would be investing significant sums of money—potentially could be re-designated to others, who would acquire such spectrum without participating in the competitive bidding process. As the Commission must recognize, redistribution of spectrum rights in such a manner would introduce substantial inequities and would have a significant effect upon participation in future auctions.

¹ Comments of the Boeing Company, IB Docket No. 97-95, at 4 (filed Sept. 4, 2001).

In addition, the satellite industry's requests to lift certain restrictions on satellite use also would drastically impair the FS industry rights in the V-band. For example, several satellite providers have argued that the Commission should not restrict satellite use in the 37.5-40.0 GHz band to gateways serving individual customers as proposed in the FNPRM.² However, not limiting the gateways would result in increased satellite deployments, which, in turn, would obstruct existing and future FS deployments. Similarly, various satellite proposals to increase power levels or remove time restrictions on increased power usage would introduce harmful radiation into terrestrial bands for unacceptable periods of time.³

ART urges the Commission to consider the effects of these FSS proposals upon the FS industry. Affording satellite providers additional spectrum or lifting certain operating restrictions would directly impede upon and, in effect, would negate the spectrum rights of FS licensees. The purpose underlying WRC-2000 is the promotion of innovation and growth in both terrestrial and satellite services. Contrary to this purpose, the satellite proposals would destroy any progress in terrestrial services before they are given a chance to reach full potential.

In conclusion, ART urges the Commission to remain faithful to its intent to promote the efficient use of spectrum by both terrestrial and satellite users. The Commission should refrain from adopting the proposals of the FSS industry, which would interfere with the ability of FS licenses to develop and deploy services successfully. Furthermore, the Commission should consider the inequity and financial injuries that would result from revising—and significantly undermining—preexisting FS spectrum rights. The Commission not only would be dealing the

² See, e.g., Comments of Hughes Communications, Inc., IB Docket No. 97-95, at 11-12. (filed Sept. 4, 2001) (“Hughes Comments”); Comments of TRW Inc., IB Docket No. 97-95, at 26-27. (filed Sept. 4, 2001) (“TRW Comments”).

³ See, e.g., TRW Comments at 21-26; Hughes Comments at 10; Comments of Intelsat Global Service Corporation, IB Docket No. 97-95, at 7-9 (filed Sept. 6, 2001)

nascent FS industry a significant blow, but would also be undermining the integrity of its auction process and future faith in Commission decisions.

Respectfully submitted,

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