

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Allocation and Designation of Spectrum for)	IB Docket No. 97-95
Fixed-Satellite Services in the 37.5-38.5)	RM-8811
GHz, 40.5-41.5 GHz and 48.2-50.2 GHz)	
Frequency Bands; Allocation of Spectrum)	
to Upgrade Fixed and Mobile Allocations)	
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 Frequency Bands for)	
<u>Government Operations</u>)	

To: The Commission

REPLY COMMENTS

PVT Networks, Inc. (“PVT”) by its attorneys, and pursuant to Section 1.415 of the Commission’s Rules, 47 C.F.R. § 1.415, hereby submits its reply comments in response to the *Further Notice of Proposed Rulemaking* in the above-captioned proceeding (“*Further Notice*”). PVT holds several 39 GHz Auctioned licenses and is concerned that the Commission might inadvertently reduce the value of PVT’s licenses through its actions in this proceeding. PVT supports the comments of the Wireless Communications Association International, Inc. (“WCA”) and Winstar Communications, Inc. (“Winstar”) in this proceeding.

One of WCA’s concerns is that the Commission proposes to treat satellite earth stations in the 37.5-40.0 GHz band in the same fashion as terrestrial fixed wireless stations, by providing them with interference protection similar to fixed stations.¹ This proposal would require 39 GHz Economic Area (“EA”) licensees to coordinate any operations within 16 km of its service area

boundary with fixed-satellite service (“FSS”) earth stations as well as adjacent EA licensees.² In addition, EA licensees would not receive protection from interference caused by FSS operations located more than 16 km from the border of the EA’s license area. PVT agrees with WCA that this proposal imposes an inequitable technical and economic burden on EA licensees.

WCA points out that EA licensees purchased their licenses at auction, “unlike the vast majority of FSS providers who intend to operate in the 39 GHz band.”³ As such, WCA believes that it is inequitable to restrict fixed wireless deployment, an auctioned service, in favor of FSS, a non-auctioned service. It is likewise PVT’s position that when the Commission is faced with a regulatory determination between auctioned services and non-auctioned services, the Commission should recognize the fact that auction licenses have been paid for and the licensees have committed to a buildout obligation at the risk of losing their investment. A regulatory decision which has an adverse impact on an auctioned service licensee could affect the value of that license, possibly resulting in a taking by the Commission. While PVT is aware that the Commission is not constrained from imposing regulatory burdens on licensees who have purchased their licenses at auction, it is also true that the Commission must balance the benefit of retroactive rule changes against the mischief such changes create.⁴ In this instance, 39 GHz

¹ WCA *Comments* at p. 6.

² *Further Notice* at ¶49.

³ WCA *Comments* at p. 6.

⁴ In Amendment of Parts 20 and 24 of the Commission's Rules -- Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap; Amendments of the Commission's Cellular/PCS Cross-Ownership Rule, *Report and Order*, 11 FCC Rcd 7824 (June 24, 1996), the Commission said:

Finally, we agree with GTE and DCR that retroactive application of any cross-ownership or spectrum cap rule changes would be contrary to the public interest. PCS licensees that participated in the A, B, and C block auctions have already incurred enormous expenses to, inter alia,

auction licensees purchased their licenses with certain expectations concerning their ability to utilize the spectrum. The Commission should avoid retroactively undermining those expectations if at all possible.

In the instant matter, PVT requests that the Commission review the potential impact of its rules on EA licensees. In its comments, Winstar stated that the Commission's proposed power-flux-density (pfd) limits rule would require fixed services operators to monitor the FSS operators "to make sure that the FSS is operating at the required lower pfd levels and also creates the untenable and unworkable dynamic by which satellite operators must cease or alter operations once they are in orbit."⁵ EA licensees should not be put in a position where they are required to monitor FSS operators, but rather, FSS operators should be responsible for their own operations. PVT thus agrees with Winstar that the better approach would be to shift the burden to the FSS operators by requiring them to operate at S21.4 minus 12 dB levels, and then permitting them to increase power up to S21.4 levels during fading conditions.

design their systems, relocate incumbent users of the spectrum, acquire cell sites, and establish marketing plans. Retroactive application of our rules would disrupt this burgeoning industry and delay service to the public. Furthermore, entities that may have been precluded from participating in past auctions for CMRS spectrum based on our prior rules may now acquire additional spectrum through future auctions, assignments of licenses, transfers of control or investments. Thus, we conclude that any changes to our spectrum cap and cross-ownership rules will apply prospectively.

Id., at ¶132 (footnotes deleted), *see also*, SEC v. Chenery Corp., 332 U.S. 194, 203 (1947), and Retail, Wholesale and Department Store Union v. NLRB, 466 F.2d 380, 390 (D.C. Cir. 1972).

⁵ Winstar *Comments* at p. 7.

