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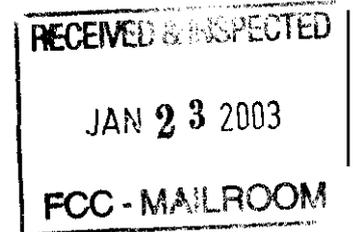
INDEPENDENT MULTI-FAMILY COMMUNICATIONS COUNCIL



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January 14,2003

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 Twelfth Street SW
Washington, DC 20554



Re. Ex Parte Communication in IB Docket No. 98-172, FCC 02-317

Dear Madam Secretary:

On Friday, January 10, 2003, the undersigned, representing IMCC, met in person at the FCC with several FCC staff members listed below. In addition, several members of IMCC were connected by conference telephone and participated in the meeting. They were Mr. Bob Palle of Blonder Tongue Laboratories, Mr. Bill Baines of AML Wireless, Mr. Dave Curtin of TVMax and Mr. Frank Matarazzo of Microwave Satellite Technologies. In addition, Mr. Chris Hardy of Cornsearch was on the call.

The FCC staff in attendance included the following: from the International Bureau, Messers. Ronald Rapasi and Trey Hanbury; from the Media Bureau, Messers. Wayne McKee and Cedric Burgess and Ms. Sarah Mahmood; from the Wireless Bureau Messers. Mike Pollock and Ron Netro and from the Office of Engineering and Technology, Mr. Don Campbell.

The IMCC had prepared and submitted a list of questions before the meeting, all of which related to the subject rulemaking. The list is dated January 9,2003, and is attached to this ex parte filing. That list became the subject matter of discussion for the meeting. The list primarily includes three categories of questions, as follows: questions related to the technical implementation of The Second Order on Reconsideration, questions related to the relocation and reimbursement procedures contained in that Order and questions related to the OETanalyses referenced in that Order.

FCC staff stated at the outset of the meeting that numerous of the questions were of a variety that precluded response for legal and procedural reasons and that some of the questions were of a variety that precluded response because the staff in attendance had not made technical or substantive conclusions regarding their substance.

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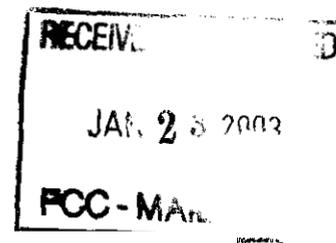
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At the outset of the meeting, IMCC representatives offered the following views:

1. Although the decisions defined in the Second Order on Reconsideration (Order) will cause significant dislocation in the Private Cable Operator (SMATV) industry and impede its ability to provide video competition to franchised cable and impede the PCO industry's ability to fulfill its contractual obligations to multiple dwelling unit (MDU) customers and their residents, the IMCC is not inclined to challenge the Order either by Judicial procedures or by filing another Motion for Reconsideration. IMCC recognizes there may be merit in the longer-term spectrum management plan delineated in the Order.
2. The primary concerns of the IMCC and its members relate to the implementation methodology defined in the Order, including its precise procedures and the timing and impact on certain categories of PCO spectrum users.
3. The Order includes certain termination dates for PCOs to submit applications for licenses to use the 18.3 to 18.58 GHz spectrum and for modifications to existing licenses and for any continued use of that spectrum which will cause hardship for the users and manufacturers of microwave equipment and their customers.
4. The determination in the Order to relocate PCO users to other spectrum, namely 12.7 to 13.2 and 17.7 to 18.3 GHz, commonly termed the Lower and Upper CARS bands, may have merit and may be operationally feasible. However, the practicality and implimentability of the Order rests upon the International Bureau's assertion in the Order that the spectrum reallocation is operationally practical and feasible. Only technical analysis can determine this feasibility. The accurate completion of technical analyses and studies, including congestion mapping and other sophisticated examination of the real world utilization of these frequencies, is essential if any affected party is to have confidence in the usability of the reallocated spectrum plan and if it is to function in the future to serve MDU residents, and other users. These analyses and studies are referenced in the Order, but they are not included in the Order, nor have they been released to affected parties, including PCOs. IMCC has filed an FOIA request for this information.
5. If PCOs were granted some degree of flexibility, primarily as to termination dates for filing of license applications and modifications to existing licenses, interference with PCO obligations to serve MDUs and their residents could be minimized.

Although FCC staff responded to some of the above and to some of the submitted questions with some specific information and guidance, they primarily urged the IMCC to make its own determination about how to proceed procedurally and to be more specific about the exact nature and scope of the impact of the Order. IMCC was urged to study when and how waivers may be granted by the FCC to mitigate hardship upon PCOs and their customers. FCC staff reviewed how the relocation and reimbursement procedures have been applied in other, similar situations and urged the IMCC to study those examples. FCC staff indicated that much of the data and material used to perform the OET work is in the public domain and urged the IMCC to examine that material, but refused to identify what that material is or how to locate it. FCC staff indicated that response to the IMCC FOIA request would be communicated in a timely fashion, consistent with FCC procedural guidelines.

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No other materials were presented by IMCC and no other substantive subjects were discussed.

Sincerely,

William J. Burhop
William J. Burhop, Esquire
Executive Director, IMCC

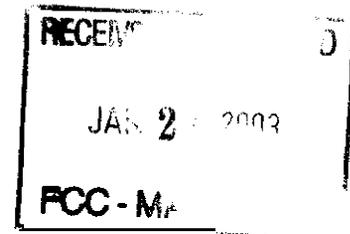
Attachment: January 9, 2003 Questions

To: FCC Staff

From: Independent MultiFamily Communications Council (IMCC)

Re.: 18GHz Second Order on Reconsideration, IB 98-172

Date: January 9, 2003



IMCC represents Private Cable Operators, formerly known as SMATV operators, which serve the MDU market place, many of which utilize microwave technology. Manufacturers, vendors and MDU owners are also members of IMCC. PCOs compete with franchised cable operators and serve approximately 5 - 6% of the MDU communities with 100 units or more, mostly in urban areas. PCOs provide video channels using both analog and digital transmission. Without adequate and usable radio spectrum, PCOs will not be able to offer a number of analog channels adequate to compete with MSOs.

IMCC members are endeavoring to understand the rationale behind and the impact of the Second Order so that we can continue to serve MDU residents and provide video competition. Following is a list of questions. The answers will help provide guidance for our industry.

The Second Order seemingly bases its conclusions primarily on two assertions. First, because the Commission, earlier this year, adopted the Media Bureau's recommendation that PCOs be allowed to use the lower CARS band (12.7 -13.2), and because there are fewer (104,000 rather than 170,000) links in the 18.3 - 18.58 space than understood when the First Order was issued in June of 2000, there should be enough space in the Lower and Upper CARS bands to accommodate PCO relocation. Second, that OET has done a complete analysis to demonstrate that this usable space is available.

Just as background, it is our view that the Media Bureau's recommendation was primarily issued as a matter of equity, without an in depth analysis of technology or feasibility. That is, if franchised cable is allowed to use the 12.7 - 13.2 space, PCOs, providing much needed competition to franchised cable, should also be allowed to use that space. There was no sophisticated technical analysis regarding the number of licenses or links or users in the Lower CARS band. For instance, it is known that franchised cable is the largest user of the Lower CARS band, but we also know that many of their links are dormant, but we have no details about their actual usage. The lower CARS band was opened to PCOs as a supplement to and not a supplanting of PCO use of the 18.3 - 18.58 space. IMCC is not aware of the "subsequent analysis" referenced in footnote 38, which is the authority for the assertion about the reduced number of links in the 18.3 - 18.58 space.

1) It takes many months to do the preparation necessary to submit an FCC license application. That includes marketing to the MDU and signing a contract. Then the PCO must do all the site layout and work with a company like Comsearch to do the coordination and technical preapplication process. Plus the PCO must find the financing for the project. This is time consuming and costs many thousands of dollars.

The Order says that no licenses will be granted after November 19, 2002. What if an application was already in an advanced state of progress or a PCO has made service commitments to an MDU client based on the assumption they could get an 18GHz license?

2) Will there be any difference in treatment of a license granted to a PCO before or after the First Order on Reconsideration issued in June of 2000?

- 3) Will the PCO be allowed to proceed if they have applied for frequency coordination or a Prior Coordination Notice?
- 4) Will the FCC consider issuing temporary or contingent licenses so PCO's can meet commitments they made to their MDU clients? These would essentially be hardship case Hughes would still bear the cost to move them if indeed it became necessary.
- 5) Will the FCC fast track Upper and Lower CARS license applications so commitments to MDUs can be met?
- 6) If a PCO buys an MDU system from another PCO or an MSO that is currently using microwave, does the PCO inherit the license or does it have to apply for a new license?
- 7) In today's world roof top real estate is difficult and expensive to acquire. How does the FCC propose that a PCO migrate a system, with 4 transmitters and three repeaters serving over 40 paths, without any significant down time? It seems that all wave-guides will need to be replaced, all feed assemblies will need replacing and all electronics will need to be replaced. As a practical matter, once you make the change at the transmit side, all sites hanging off that transmitter will be down until similar changes are made at each receive site and repeater site. Unless you are able to perform a parallel build of 13GHz to the existing 18 GHz network, service will be terminated for some considerable period of time. Is there some alternative envisioned in the Order?
- 9) What is the exact definition of "equivalent capability" or "comparable facilities"?
- 10) It appears that the Second Order has little analysis regarding the current licensees and actual usage of 12.7 - 13.2 and 17.7 - 18.3, particularly in urban areas, let alone how PCOs can achieve "equivalent capability" in those spaces if they are relocated from 18.3 - 18.58. Has the FCC done such analysis? (an FOIA request was submitted on December 20, 2002)
- 11) CARS band equipment is more expensive than 18GHz equipment. Many PCO's have built their business on the basis of a certain cost structure and have made service commitments based on the costs they were working with. Who will pay the difference if the PCOs have to go to CARS but at a higher cost than they had originally expected?
- 12) If an existing PCO link can not be relocated into CARS that provides equivalent capability and therefore the PCO must buy and install a total new headend, rather than use microwave transmission, to meet its contractual requirement to the MDU, does Hughes have to pay for that new headend?
- 13) If the PCO must relocate but in doing so can not provide the level of service it has contracted to provide to the MDU, does Hughes have to pay as a part of relocation expense any legal liability the PCO is exposed to from the MDU?
- 14) In the event that only one or two paths off of a 10 path system are interfering with the satellite communications, would Hughes be responsible for replacing only those one or two offending paths, leaving the PCO to support equipment at two frequencies with spares etc, or would they replace the complete system?

15) What guidelines exist if the parties cannot agree on a price after two years? Does the FCC make a price determination?

16) How is the "premium" determined during the two year period?

17) This band is also used by others for extra bandwidth (dual band up to 870) and return paths solutions. How will these organizations be affected?

18) What is the channel mapping plan? None was given.

19) We understand that Hughes will have its satellites and many required earth stations deployed and ready to light up in late '04. If so, they must know in which urban areas their stations will be in conflict with PCO pathways. Can a map of same be supplied? If this schedule is correct, how does that leave time for the two years of negotiation and the one year to do the relocation?

