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

In the Matter of	)	
	)	
Redesignation of the 17.7-19.7 GHz Frequency Band, Blanket Licensing of Satellite Earth Stations in the 17.2-20.2 GHz and 27.5-30.0 GHz Frequency Bands, and the Allocation of Additional Spectrum in the 17.3-17.8 GHz and 24.75-25.25 GHz Frequency Bands for Broadcast Satellite-Service Use	)	IB Docket No. 98-172 RM - 9005 RM - 9118 FCC 02-317

OPPOSITION TO EMERGENCY REQUEST FOR IMMEDIATE RELIEF

The Satellite Industry Association ("SIA") hereby opposes that aspect of the Petition for Reconsideration and Emergency Request for Immediate Relief filed by the Independent MultiFamily Communications Council ("IMCC") on May 8, 2003 that seeks emergency relief.[1] Because the request for emergency relief is made in the same document as a petition for reconsideration, it is unclear whether oppositions to the request for emergency relief are due outside the pleading schedule for the petition for reconsideration of the Second Order on Reconsideration in this proceeding, FCC 02-317.[2] Out of an abundance of caution, SIA therefore files this Opposition within the period specified in Section 1.45(d) for oppositions to a request for stay or other temporary relief.[3] SIA and its members will address the substantive

---

1 IMCC Petition for Reconsideration and Emergency Request for Immediate Relief (filed in IB Docket No. 98-172, RM - 9005, and RM - 9118 on May 8, 2003) ("Petition").

2 *In the Matter of Redesignation of the 17.7-19.7 GHz Frequency Band, Blanket Licensing of Satellite Earth Stations in the 17.7-20.2 GHz and 27.5-30.0 GHz Frequency Bands, and the Allocation of Additional Spectrum in the 17.3-17.8 GHz and 24.75-25.25 GHz Frequency Bands for Broadcast Satellite-Service Use*, Second Order on Reconsideration, 17 FCC Rcd 24248 (2002) ("Second Order on Reconsideration").

3 Section 1.45(d) of the FCC's rules does not provide for a reply to this Opposition. 47 C.F.R. § 1.45(d).

issues raised by IMCC once the pleading schedule for oppositions to the reconsideration petitions has been established.[4]

SIA is a U.S.-based trade association representing the leading U.S. and international satellite manufacturers, service providers, and launch service companies. SIA serves as an advocate for the commercial satellite industry on regulatory and policy issues common to its members. With its member companies providing a broad range of manufactured products and services, SIA represents the unified voice of the commercial satellite industry.[5]

I. INTRODUCTION

On November 19, 2002, in the Second Order on Reconsideration in this proceeding, the Commission appropriately concluded that the 18.3-18.58 GHz band shall be designated for the fixed satellite service ("FSS"). This determination is consistent with the Commission's prior determination that geostationary orbit ("GSO") FSS spacecraft require 1000 megahertz of spectrum for downlinks in the Ka band. As a consequence, the Commission required terrestrial users of the 18.3-18.58 GHz band to vacate the band over the next ten years and prohibited any new applications for terrestrial use in the band. Thus, GSO FSS systems now have available a "matched" 1000 MHz of uplink and downlink spectrum that is suitable for service to ubiquitously deployed small earth terminals. On May 8, 2003, IMCC filed a petition seeking reconsideration of that decision and requested emergency relief.

---

4 *See* 47 C.F.R. § 1.429(f).

5 SIA Executive Members include The Boeing Company; Globalstar, L.P.; Hughes Network Systems, Inc.; ICO Global Communications; Intelsat; Lockheed Martin Corp.; Loral Space & Communications Ltd.; Mobile Satellite Ventures; Northrop Grumman Corporation; PanAmSat Corporation; SES Americom, Inc.; and Associate Members include Inmarsat Ventures PLC and New Skies Satellites Inc.

II. EMERGENCY RELIEF IS UNJUSTIFIED IN THIS CASE.

A. Nothing in the Petition provides a basis for granting emergency relief.

IMCC argues that the Commission should reverse its decision in the Second Order on Reconsideration. Specifically, IMCC requests that the Commission restore the co-primary allocation for terrestrial users in the 18.3-18.58 band, reinstate all applications for terrestrial use in 18.3-18.58 band pending on November 19, 2002, and accept new applications for terrestrial use in the 18.3-18.58 band. In other words, IMCC simply states the reasons why it believes the Second Order on Reconsideration should be reversed on reconsideration.

Although from a substantive perspective the Petition seeks reversal of the Second Order on Reconsideration, IMCC has styled its Petition both as a petition for reconsideration *and* an emergency request for immediate relief. Nothing in the Petition, however, provides any basis for granting emergency relief, and IMCC has not explained why the requested relief should be granted outside the course of the Commission's usual process. To the contrary, IMCC itself admits that most of the issues raised are "repetitious of issues addressed and decided by the FCC" already.[6] As described below, emergency relief is reserved for cases in which the petitioner will suffer irreparable harm if the relief is not granted. By IMCC's own admission, its Petition does not warrant emergency relief.

Indeed, IMCC's conduct demonstrates that there is no basis for emergency relief. Although the Second Order on Reconsideration was released on November 19, 2002, IMCC waited almost six months before filing its request for emergency relief. Notably, IMCC has

---

[6] Petition at 4.

never requested a stay of the effectiveness of the Second Order on Reconsideration, and as a consequence, the Second Order on Reconsideration has now taken effect. If there truly were a basis for emergency relief, IMCC would have requested a stay of the effectiveness of that order, and it would have filed for emergency relief well before the May 8, 2003 date on which the rule changes became effective.

B. IMCC fails to satisfy the standard for granting emergency relief.

IMCC fails to satisfy the long-recognized standard by which a request for emergency relief should be evaluated. Although the Commission has no "hard line" test, the Commission previously recognized the criteria set forth in *Virginia Petroleum Jobbers*[7] as the relevant standard for determining whether interim injunctive relief or other requests for emergency relief should be granted.[8] Essentially, IMCC appears to ask the Commission to stay the effectiveness of rules that have already become effective. Thus, the Commission should evaluate the instant request for emergency relief based on the following four criteria established in *Virginia Petroleum Jobbers*: (1) likelihood of success on the merits; (2) the threat of irreparable harm absent the grant of preliminary relief; (3) the degree of injury to other parties if relief is granted; and (4) whether the grant of the requested relief will further the public interest.

IMCC clearly does not satisfy any aspect of the four-part standard for granting emergency relief. First, the Commission has already addressed the issues raised by the Petition in the Second Order on Reconsideration. There is nothing in the Petition that is likely to change

---

7 *Virginia Petroleum Jobbers v. Federal Power Comm'n*, 259 F.2d 921 (D.C. Cir. 1958) ("*Virginia Petroleum Jobbers*").

8 *AT&T Corp., et al., Complainants, v. Ameritech Corp., Defendant, and Qwest Communications Corp., Defendant/Intervenor*, Memorandum Opinion and Order, 13 FCC Rcd 14508 (1998).

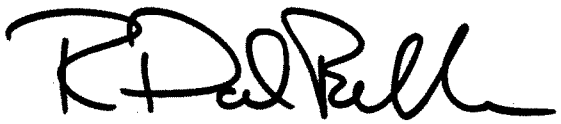
the Commission's decision. Second, IMCC cannot demonstrate that it has or will suffer irreparable harm in light of its own failure to seek a stay of the effectiveness of the order and its six month delay in seeking emergency relief. Third, FSS providers will suffer significant harm if IMCC's request for emergency relief is granted. As IMCC itself acknowledges, PCO service "cannot avoid causing interference to . . . earth station receivers." A number of FSS systems have been licensed to operate in the 18.3-18.58 GHz band, are planning for the phase out of PCO use of the band, and would be adversely affected by the continued deployment of new terrestrial links. Finally, the requested emergency relief will not further the public interest. The Commission reached its decision in the Second Order on Reconsideration after fulsome public debate, and that decision represents the culmination of almost five years of contentious rulemaking proceedings. Moreover, all of the issues raised by IMCC can be addressed fully during the further reconsideration phase of this proceeding.

* * * * * * * * * * *

For the reasons set forth above, SIA respectfully requests that the Commission deny IMCC's request for emergency relief.

Respectfully submitted,

Satellite Industry Association



By:_____

Richard DalBello
President
255 Reinekers Lane
Suite 600
Alexandria, VA 22314
(703) 549-8697

May 15, 2003

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Opposition to Emergency Request for Immediate Relief of Satellite Industry Association was sent by first-class U.S. mail, postage prepaid, on this 15th day of May, 2003, to the following:

William J. Burhop
Executive Director
Independent Multifamily Communications Council
3004 Oregon Knolls Drive, NW
Washington, D.C. 20015

Karen Dent