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Satellite Policy Branch  
International Bureau

Before the  
Federal Communications Commission  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )

CAI DATA SYSTEMS, INC. )

Application for Authority to Construct,  
Launch, and Operate a Ka-Band  
Satellite System in Fixed Satellite Service )

) File Nos. 88-SAT-P/LA-97;  
) 32-SAT-AMEND-98;  
) IBFS Nos. SAT-LOA-  
) 19970702-00057; SAT-AMD-  
) 19971219-00199; SAT-AMD-  
) 19990930-00093

**JOINT COMMENTS OF MOTOROLA AND TELEDESIC**

Motorola, Inc. ("Motorola") and Teledesic LLC ("Teledesic") hereby comment on the Petition for Waiver or Extension of Milestone filed by CAI Data Systems, Inc. on June 26, 2002.<sup>1</sup> Although Motorola and Teledesic would not otherwise be inclined to file any comments on such a petition, CAI's contention that it, a second round Ka-band GSO licensee, is entitled to an extension or waiver of its construction commencement milestone because of its desire to acquire one of Motorola's orbital locations assigned in the first round is such a legally and factually flawed argument that it demands a response.

As noted in its petition, CAI has had a difficult time deciding at which orbital location it would most like to operate its single satellite. In its July 1997 satellite application, CAI requested to construct, launch, and operate its satellite at one of three orbital locations: 93° W.L., 95° W.L. or 103° W.L.<sup>2</sup> During its participation in orbital assignment plan negotiations

<sup>1</sup> CAI Data Systems, Inc. Petition for Waiver or Extension of Milestone, File Nos. 88-SAT-P/LA-97 and 32-SAT-AMEND-98; IBFS Nos. SAT-LOA-19970702-00057; SAT-AMD-19971219-00199 and SAT-AMD-19990930-00093 (filed June 26, 2002) ("CAI Petition").

<sup>2</sup> CAI Data Systems, Inc. Application for Authority to Construct, Launch, and Operate a Ka-Band Satellite System in Fixed Satellite Service, File Nos. 88-SAT-P/LA-97 and 32-SAT-AMEND-98; IBFS Nos. SAT-LOA-19970702-00057; SAT-AMD-19971219-00199 and SAT-AMD-19990930-00093 filed July 2, 1997).

with other second round Ka-band GSO applicants in 2000, CAI signed both a majority plan wherein CAI agreed to accept the 107° W.L. orbital location,<sup>3</sup> and an alternative plan wherein CAI agreed to the assignment of the 79° W.L. orbital location.<sup>4</sup> Nine months after agreeing to its fourth and fifth selected orbital locations, CAI filed a letter with the Commission in June 2001 in which it asserted a new interest in the 87° W.L. orbital location “*if it becomes available for second round assignments.*”<sup>5</sup> In the same letter CAI renewed its interest in the orbital locations that it had agreed to accept in both the majority and alternative orbital assignment plans devised by the industry: “In terms of its preferences, if CAI could choose its orbital location, 87 degrees W.L. would be its first choice, 79 degrees W.L. its second choice, and 107 degrees W.L. its third choice.”<sup>6</sup>

On August 2, 2001 the Commission licensed CAI to operate its Ka-band satellite and assigned it the 125° W.L. orbital location.<sup>7</sup> In its companion order assigning second round orbital locations to fixed satellite service space stations in the Ka-band, the Commission explicitly renewed its longstanding policy that

“applicants’ requests for particular orbital locations do not limit [the Commission’s] flexibility to assign orbital locations that best serve the public interest. Instead our assignment of orbital locations includes a consideration of each applicant’s request and several competing factors, which may include volume and distribution of traffic requirements, constraints imposed by satellite design, plans of

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<sup>3</sup> See *Ex Parte* Presentation of CAI Data Systems, Inc. et al., File Nos. SAT-AMD-19971219-00199, etc. (filed August 11, 2000); see also Revision to Proposed Orbital Assignment Plan of CAI Data Systems, et al, in File Nos. SAT-AMD-19971219-00199, etc. (filed Nov. 1, 2000).

<sup>4</sup> See *Ex Parte* Presentation of CAI Data Systems, Inc. et al, File Nos. SAT-AMD-19971219-00199, etc (filed August 11, 2000).

<sup>5</sup> *Ex Parte* Letter from James U. Troup and Adrian Copiz, Counsel for CAI Data Systems, Inc. to Magalie Roman Salas at 1 (filed June 8, 2001) (emphasis added).

<sup>6</sup> *Id.* at 3.

<sup>7</sup> CAI Data Systems, Inc., Order and Authorization, 16 FCC Rcd 14269 (Int’l Bur. rel. Aug. 3, 2001).

other countries for their satellites, and equitable treatment of new and established operators.”<sup>8</sup>

Thus, based on all of the available information supplied to it in the context of the second processing round, the Commission concluded that assigning CAI the 125° W.L. orbital location would best serve the public interest.

CAI’s license, like all of the other Ka-band satellite licenses issued on August 2, 2001, included a clause which afforded the company thirty days to decline the authorization as conditioned, noting that “failure to respond within that period will constitute formal acceptance of the authorization as conditioned.”<sup>9</sup> CAI did not exercise its right to decline the authorization to construct, launch, and operate at the 125° W.L. orbital location. Instead it accepted this license and thereby assumed all of the obligations described therein, including the obligation to sign a construction contract by August, 2002 for a satellite to be launched and operated at the 125° W.L. orbital location.

Now, eleven months after receiving its license and one month before its construction commencement milestone, CAI claims that it is entitled to an extension or waiver of its first milestone because “there is uncertainty for which orbital location CAI Data will be constructing and launching a satellite.”<sup>10</sup> As explained above, this is simply not true. Indeed, in its order released on August 3, 2001 wherein it assigned orbital locations to second round GSO FSS applicants, the Commission explicitly denied CAI’s request for assignment to the 87° W.L. orbital location noting that that location “was assigned in the first round” and that “125

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<sup>8</sup> *Second Round Assignment of Geostationary Satellite Orbit Locations*, 16 FCC Rcd 14389, 14390-91 ¶¶ 5 (Int’l Bur. rel. Aug. 3, 2001) citing *Assignment of Orbital Locations to Space Stations in the Domestic Fixed Satellite Service*, 3 FCC Rcd 6972 (Int’l Bur. 1988) (“*Second Round GSO FSS Assignment Order*”).

<sup>9</sup> *CAI Data Systems, Inc., Order and Authorization*, 16 FCC Rcd at 14277 ¶¶ 32.

<sup>10</sup> CAI Petition at 1 (filed June 26, 2002).

[degrees] W.L. provides one 50-state coverage location with U.S. ITU date priority . . . .<sup>11</sup>

Although CAI has apparently changed its mind again and now would like to trade its licensed orbital location of 125° W.L. for Motorola's licensed orbital location of 87° W.L., neither the Commission's rules nor CAI's license make any provision for such a switch even if the 87° W.L. orbital location were available, which it is not. Indeed, CAI admitted as much in its June 2001 letter in which it requested the 87° W.L. orbital location "if it becomes available to second round applicants."<sup>12</sup> It did not "become available" before the licensing of second round applicants and is not available today.

The orbital location which CAI now seeks is one of four first round Ka-band orbital locations currently licensed to Motorola. In January 2001 Motorola and Teledesic filed an application seeking the Commission's consent to the assignment of Motorola's Ka-band "Millennium license" to Teledesic.<sup>13</sup> That application remains pending. The most popular argument against the assignment application after it was placed on public notice was that the proposed assignment would grievously injure second-round Ka-band applicants (or alternatively that denying the application would inexorably resolve the second processing round). As Motorola and Teledesic noted in their May 22, 2001 Consolidated Joint Opposition to the Petitions to Deny their transfer application, these arguments are contrary to law and unreasonable on their face.<sup>14</sup> The Commission apparently agreed and assigned each of the second round Ka-band GSO FSS applicants orbital locations on August 2, 2001 from the

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<sup>11</sup> *Second Round GSO FSS Assignment Order*, 16 FCC Rcd at 14400 ¶31.

<sup>12</sup> *Ex Parte* Presentation of CAI Data Systems, Inc. at 1 (filed June 8, 2001).

<sup>13</sup> Application of Motorola, Inc. and Teledesic LLC for Consent to Assignment of Authorization to Construct, Launch, and Operate a Geostationary Fixed Satellite System, File No. SAT-ASG-20010109-00005 (filed Jan. 9, 2001).

<sup>14</sup> Consolidated Joint Opposition of Teledesic LLC and Motorola, Inc. to Petitions to Deny, File No. SAT-ASG-20010109-00005 (filed May 22, 2001).

available pool of remaining Ka-band orbital locations. CAI's renewal of its contention that the Commission's decision on its milestone compliance is "highly dependent" on Motorola and Teledesic's assignment application suffers from the same legal and factual infirmities as those filed back in May 2001 and is now completely moot.<sup>15</sup>

Section 310(d) of the Communications Act expressly forbids the Commission from considering "whether the public interest, convenience, and necessity might be served by the transfer, assignment, or disposal of the permit or license to a person other than the proposed transferee or licensee."<sup>16</sup> Therefore, the Commission is not legally entitled to consider assigning Motorola's 87° W.L. orbital location to any party other than Teledesic. Moreover, denial of the assignment application would not cancel the Millennium license as assumed by CAI but instead simply leave Motorola in place as the licensee. Indeed, even if there were reasonable grounds for revoking the license, which there are not, no second round licensee including CAI would be eligible to receive this orbital location; it would simply become part of the available pool of orbital locations for the third Ka-band GSO FSS processing round. Thus, quite apart from the legal prohibitions of section 310(b), there is simply no factual basis upon which the Commission could conclude that the proposed assignment to Teledesic could have any effect whatsoever on CAI's prospects for successfully constructing, launching, and operating its satellite.

Motorola and Teledesic urge the Commission to judge both their pending assignment petition and the instant petition of CAI on their individual merits and to dismiss summarily this and any other request by second round applicants to "trade up" on their orbital assignments.

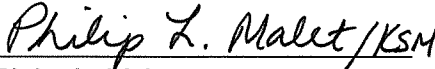
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<sup>15</sup> CAI Petition at 4. CAI also incorrectly alleges that "Teledesic has already been assigned numerous Ka-band orbital locations." CAI Petition at 6. Teledesic is licensed to construct, launch and operate an NGSO FSS satellite system. Unlike GSO systems, NGSO operators do not require assignments of orbital locations and Teledesic has not been previously licensed to operate a GSO satellite system in the Ka-band.

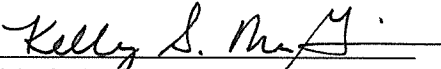
<sup>16</sup> 47 U.S.C. § 310(d) (emphasis added).

The Commission should provide CAI with the certainty it craves by summarily denying the instant petition and thereby reminding CAI of its obligation to enter into a non-contingent construction contract for a satellite to operate at 125° W.L. by August, 2002.

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Date: July 10, 2002

## CERTIFICATE OF SERVICE

I, Mónica A. Lizama, do hereby certify that I caused the foregoing Comments of Motorola, Inc. and Teledesic LLC to be served on the parties listed below by first class mail, postage prepaid on this 10th day of July, 2002.

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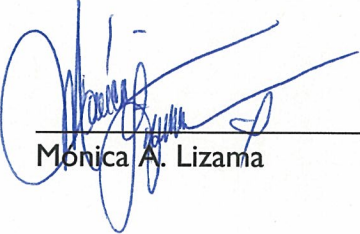
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