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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

In the Matter of)
)
Motient Services, Inc.)
)
and)
)
Mobile Satellite Ventures)
Subsidiary LLC)
)
Application for Assignment of Licenses and)
For Authority to Launch and Operate a)
Next-Generation Mobile Satellite Service System)

File Nos.
SAT-ASG-20010302-00017
SAT-AMD-20010302-00019

Received

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Satellite Policy Branch
International Bureau

OPPOSITION OF VERIZON WIRELESS

SUMMARY

Verizon Wireless respectfully submits these comments to oppose an application filed by Motient Services, Inc. (“Motient”) for authority to launch and operate a “next-generation” mobile satellite service system on frequencies licensed to Motient in the 1525-1559 MHz and 1626.5-1660.5 MHz bands.¹ The application proposes to use this spectrum for the provision of terrestrial mobile services in addition to the mobile satellite services (“MSS”) for which Motient is already authorized. In the event that the provision of such services is restricted by the Commission’s rules, Motient asks the Commission to

¹ *In the Matter of Motient Services, Inc. and Mobile Satellite Ventures Subsidiary LLC, Application for Assignment of Licenses and for Authority to Launch and Operate a Next-Generation Mobile Satellite Service System* (“Motient Application”) (filed Jan 16, 2001), SAT-AMD-20010302-00019, SAT-ASG-20010302-00017.

waive those rules. For the reasons provided herein, Verizon Wireless urges the Commission to promptly deny Motient's waiver request.²

I. MOTIENT'S PROPOSED USE OF THE L-BAND IS NOT CONSISTENT WITH THE COMMISSION'S RULES.

In its application, Motient claims that the proposed operations of terrestrial base stations in the MSS L-band are consistent with the FCC's existing rules.³ As evidence, it cites the flexibility afforded to the Aeronautical Mobile Satellite Service ("AMSS") in the upper part of the band and the Commission's 1985 proposal for a generic MSS in which it "proposed to allocate spectrum for the service adjacent to the cellular radio band in order to facilitate the development of inexpensive dual-mode satellite/terrestrial terminals."⁴ However, the service that Motient proposes is not AMSS and the proposed operations are not limited to the use of the upper part of the L-band. The flexibility afforded to AMSS in the 1646.5-1660.5 MHz band, therefore, does not confer authority on Motient to deploy terrestrial mobile services on frequencies licensed to it for MSS. Moreover, a Commission proposal that was made 16 years ago, but was never adopted, hardly constitutes rules that would permit the proposed use. On the contrary, it is clear that the proposed use of Motient's MSS license to provide terrestrial mobile services is not consistent with the Commission's rules.

² This pleading is filed pursuant to the Public Notice, released March 19, 2001, which expressly stated that interested parties would have a future opportunity to file petitions or objections to Motient's application in addition to filing comments today.

³ Motient Application at 15.

⁴ Id.

II. MOTIENT'S "WAIVER" REQUEST CONSTITUTES A SPECTRUM REALLOCATION.

Importantly, the spectrum on which Motient is licensed, 1525-1559 MHz and 1626.5-1660.5 MHz, is not allocated for terrestrial mobile services.⁵ Its "waiver" request therefore is not simply a request to waive the FCC's underlying technical and service rules. It is a request for the Commission to change entirely the U.S. Table of Frequency Allocations and reallocate this spectrum to a new service. In other instances that have involved much less sweeping changes than what Motient is requesting, the Commission has clearly declined to reallocate spectrum by rule waiver.⁶ Motient is requesting a change in service rules, a reallocation of the 1525-1559 MHz and 1626.5-1660.5 MHz band to terrestrial mobile service, and that it be the sole licensee of such spectrum. Clearly, the Commission should decline to take such action by rule waiver.

Spectrum management is one of the most important functions the Commission performs, and spectrum allocation decisions should not be made lightly. This is particularly true given the tremendous demand for spectrum to support Third Generation ("3G") and other advanced mobile services and the difficulty that the United States Government has had in finding suitable spectrum to support such services.⁷ We note that

⁵ 47 C.F.R. § 2.106.

⁶ See *In the Matter of Rulemaking to Amend Part 1 and Part 21 of the Commission's Rules to Redesignate the 27.5-29.5 GHz Frequency Band and to Establish Rules and Policies for Local Multipoint Distribution Service, Notice of Proposed Rulemaking, Order, Tentative Decision and Order on Reconsideration*, 8 FCC Rcd 557 (1993), at ¶¶ 51-53, in which the Commission dismissed several hundred waiver requests on the grounds that granting them "would amount to a de facto reallocation of the 28 GHz band." In this case, the Commission refused to grant waivers that covered a portion of the band in question. What Motient is proposing would reallocate and simultaneously license the entire band in question for use by one entity.

⁷ See *In the Matter of Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, Including Third Generation Wireless Systems, Notice of Proposed Rulemaking and Order ("NPRM")*, FCC 00-455 (rel. Jan. 5, 2001); see also Office of Engineering and Technology, Mass Media Bureau, Wireless Telecommunications Bureau, and International Bureau, Federal Communications Commission, *Spectrum*

Motient believes it will be “difficult to sustain a viable, satellite-only mobile communications business.”⁸ Consequently, it may ultimately be in the public interest to reallocate the 1525-1559 MHz and 1626.5-1660.5 MHz bands from MSS to some other service. However, the Commission cannot make such a determination without properly conducting a rulemaking proceeding. Such a proceeding would undoubtedly uncover many potential uses of the band other than the one proposed by Motient that warrant consideration. For example, the band may be particularly well suited for fixed and mobile services currently provided by various Federal Government agencies in the 1710-1850 MHz band. Since this band has been identified for potential 3G use, the relocation of Federal systems to the 1525-1559 MHz and 1626.5-1660.5 MHz bands may substantially promote the development of 3G services. Obviously, there may be many other alternatives that the Commission would want to consider.

III. MOTIENT’S REQUEST, IF GRANTED, WOULD CONTRAVENE SECTION 309(j) OF THE COMMUNICATIONS ACT.

Section 309(j) of the Communications Act generally requires the Commission to grant licenses or permits to qualified applicants through a system of competitive bidding when mutually exclusive applications are accepted for any initial license or construction permit.⁹ While exceptions are made for public safety, digital television or non-commercial broadcast licenses, the Commission is required to assign commercial mobile

Study of the 2500-2690 MHz Band, The Potential for Accommodating Third Generation Mobile Systems, Final Staff Report, Public Notice, DA 01-786 (rel. Mar. 30, 2001); *see also* NTIA, U.S. Department of Commerce, *The Potential for Accommodating Third Generation Mobile Systems in the 1710-1850 MHz Band: Federal Operations, Relocation Costs, and Operational Benefits*, Final Report (rel. Mar. 30, 2001).

⁸ Motient Application at 12.

⁹ 47 U.S.C. § 309(j)(1).

radio service (“CMRS”) via auction. Motient’s request, if granted, would permit Motient to provide CMRS while circumventing the statutory requirement to auction spectrum used for such services.

The Commission cannot justify such an action in the face of the clear mandate of section 309(j). Importantly, the Commission is not simply required by 309(j) to auction spectrum licenses, but also to develop an auction process that promotes competition, recovers for the public a portion of the value of the public spectrum resource, and avoids unjust enrichment.¹⁰ A grant of Motient’s request would conflict with these important policy objectives.¹¹

IV. MOTIENT’S REQUEST, IF GRANTED, WOULD PROVIDE AN UNFAIR COMPETITIVE ADVANTAGE TO MOTIENT.

The costs of acquiring licenses to provide CMRS are considerable. In the recently concluded reauction of C and F block PCS licenses, applicants purchased 422 licenses (10 MHz to 15 MHz each) in 195 markets for a total of \$16.9 billion. Verizon Wireless alone bid \$8.8 billion for 10 MHz to 20 MHz of spectrum in 111 markets. It would be patently unfair for the Commission to award Motient, at no cost, a license to provide CMRS while other CMRS providers must spend considerable sums to acquire the spectrum they need to compete. That is precisely what the Commission would be doing if it were to grant Motient’s request. As a result, Motient would have a significant competitive advantage in the provision of commercial mobile services.

¹⁰ 47 U.S.C. § 309(j)(3)

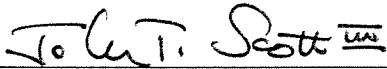
¹¹ Even if the FCC were to determine that it could proceed consistent with Section 309(j), it still could do so only through a rulemaking to apply the many regulatory mandates and other requirements that apply to terrestrial mobile services, such as CALEA, enhanced 911, universal service contributions, resale obligations, and roaming requirements.


CONCLUSION

Verizon Wireless urges the Commission to promptly deny Motient's request. Its proposed use of the 1525-1559 MHz and 1626.5-1660.5 MHz bands is inconsistent with the Commission's rules for MSS, and a waiver of the rules would amount to a de facto reallocation which the Commission has previously found to be contrary to its statutory obligations. To the extent that the Commission believes that MSS cannot be successfully deployed in the band, and that the band should be reallocated for other services, we urge the Commission to promptly initiate a rulemaking proceeding.

Respectfully submitted,

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Dated: April 18, 2001

Certificate of Service

I hereby certify that on this 18th day of April copies of the foregoing "Opposition of Verizon Wireless" in Application of Motient Services (SAT-ASG-20010302-00017, SAT-AMD-20010302-00019) were sent by first class mail or hand delivery (*) to the following parties:

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