

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

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APR 18 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

File No. SAT-ASG-20010302-00017

APR 23 2001

Satellite Policy Branch
International Bureau

COMMENTS OF AT&T WIRELESS SERVICES, INC.

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April 18, 2001

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COMMENTS OF AT&T WIRELESS SERVICES, INC.

Pursuant to the Commission's March 19, 2001 Public Notice,^{1/} AT&T Wireless Services, Inc. ("AT&T") respectfully submits its comments on the request of Motient Services and Mobile Satellite Subsidiary Ventures, LLC, (collectively "Motient") to provide terrestrial wireless service using spectrum assigned to it pursuant to mobile satellite service ("MSS") licenses.^{2/}

INTRODUCTION AND SUMMARY

Motient submitted the above-captioned application to the Federal Communications Commission ("Commission") on January 16, 2001. Among other things, Motient requests authorization to use spectrum currently allocated for satellite services to provide terrestrial wireless service. Although AT&T enthusiastically supports the opening of new bands for

^{1/} *International Bureau Sets Deadlines Concerning Motient/TMI Assignment and Transfer of Control Applications and Motient's Request for Second Generation Satellite/Terrestrial Base Station System: Deadline Extended for TMI's Applications to Assign Earth Stations*, Report No. SAT-00066, *Public Notice* (rel. Mar. 19, 2001) ("Public Notice").

^{2/} *In the Matter of Motient Services, Inc. and Mobile Satellite Ventures Subsidiary, LLC, Application for Assignment of Licenses and Authority To Launch and Operate a Next-Generation Mobile Satellite Service System*, File No. SAT-ASG-20010302-00017 (filed Jan. 16,

commercial mobile radio service (“CMRS”), Motient’s proposal amounts to a reallocation of satellite spectrum for an entirely new service. As such, it must be denied.

Contrary to Motient’s assertions, Motient cannot claim the right to offer terrestrial services simply by virtue of the fortuity that it holds MSS authorizations on the same frequencies. While Motient attempts to portray its request merely as a proposal to make “ancillary” or “flexible” use of its licensed MSS spectrum, it is plain that the vast majority of its anticipated subscribers would come from areas covered by the terrestrial portion of its system. Specifically, as Motient itself acknowledges, satellite service is not viable in urban areas and, accordingly, the proposed terrestrial service would supplant -- not supplement -- its MSS operations.^{3/} No authority can be found in the Communications Act or elsewhere that would permit a licensee to use the application process to alter its authorization to provide an entirely distinct service on spectrum never allocated for that purpose. Reallocation of spectrum to a new use requires a rulemaking proceeding in which all interested parties may participate and the establishment of the necessary technical, licensing, and service rules.

Assuming that the MSS band can be used for terrestrial service, all qualified parties -- and not just existing MSS licensees -- should have the opportunity to compete for the resulting licenses at auction. Motient fails to demonstrate any public policy considerations that would warrant giving it the requested terrestrial spectrum licenses free of charge without permitting other qualified entities to compete for them. Congress, in enacting Section 309(j) of the Communications Act, and the Commission, in implementing the statutory provisions, have recognized that distribution of licenses through auction is the best method of ensuring the efficient use of spectrum, the rapid introduction and expansion of services to the public, diversity

2001) (“Application”).

in the identity of license holders, and compensation to the public for use of a valuable asset.

While Congress explicitly exempted satellite services from the requirements of Section 309(j), it obviously did not intend to create a huge loophole through which the satellite industry could obtain the rights to use spectrum to offer any terrestrial service without competing in an auction.

Motient justifies its proposed subsidy of MSS on the ground that MSS will die without such aid, but it provides no basis to believe either that such a subsidy would ensure the survival of MSS or that MSS providers are in a unique position to provide services to areas that would not otherwise be served. In light of the growth in demand for existing and new wireless services, it is inexcusable to allow any spectrum to remain idle. If the spectrum currently allocated to MSS has additional or better uses, then the Commission should investigate these possibilities. The Commission should therefore deny Motient's application and instead consider commencing a proceeding to study the feasibility of reallocating some or all of the MSS bands to other services.

I. BEFORE MSS SPECTRUM CAN BE USED FOR TERRESTRIAL WIRELESS SERVICE, IT MUST BE REALLOCATED FOR THAT PURPOSE

The Commission, as the nation's spectrum manager, has the responsibility to allocate frequency bands for particular services. The Commission's ability to guard against interference, require compliance with international agreements, promote fair and efficient distribution of licenses, and adapt spectrum usage to changing technological and economic conditions is based upon its ability to determine the scope of the services to be authorized through the allocation process. Motient's attempt to end run this essential power by expanding its entitlement to use the spectrum allocated for a specific purpose for an entirely new service without a rulemaking to determine whether this is in the public interest should be rejected.

^{3/} Application at ii-iii, 12-13.

In its initial license application, Motient's predecessor, American Mobile Satellite Corporation "requested full use of the frequency bands at 1545-1559/1646.5-1660.5 MHz, *which have been allocated for aeronautical and mobile satellite services*, for communications between the space stations and the mobile units."^{4/} Motient's current licenses are limited both with respect to the bands assigned to it and to the particular use authorized by the Commission's allocation.^{5/} Through its request to provide terrestrial wireless service, Motient in essence seeks to repurpose its spectrum to provide a service entirely different than that for which the bands are allocated.

As Congress and the Commission have repeatedly made clear, spectrum dedicated to a particular use may not be put to a different use absent further Commission action. In the 1997 Budget Act, for instance, Congress directed the Commission to reallocate spectrum then allocated for digital television for several new services.^{6/} In response, the Commission conducted a formal allocation proceeding in which it determined which services would be allowed and which would be barred, specifically "add[ing] the Fixed and Mobile allocation to

^{4/} *In the Matter of Amendment of Parts 2, 22 and 25 of the Commission's Rules To Allocate Spectrum for and To Establish Other Rules and Policies Pertaining to the Use of Radio Frequencies in a Land Mobile Satellite Service for the Provision of Various Common Carrier Services*, Docket No. 84-1234, *Memorandum and Order*, 4 FCC Rcd 6041, ¶¶ 42, 130-31 (1989) (emphasis added); *In the Matter of Amendment of Parts 2, 22 and 25 of the Commission's Rules To Allocate Spectrum for and To Establish Other Rules and Policies Pertaining to the Use of Radio Frequencies in a Land Mobile Satellite Service for the Provision of Various Common Carrier Services*, Docket No. 84-1234, *Final Order* (rel. Jan. 6, 1992); *aff'd sub nom Aeronautical Radio, Inc. v. FCC*, 983 F.2d 275 (D.C. Cir. 1993).

^{5/} See 47 U.S.C. § 921 (1990) ("The term 'allocation' means an entry in the National Table of Frequency Allocations of a given frequency band *for the purpose of its use* by one or more radiocommunication services.") (emphasis added).

^{6/} Section 337(a) of the Communication Act, 47 U.S.C. § 337(a), as added by § 3004 of the Balanced Budget Act of 1997, U.S.C.A.A.N. (111 Stat. 251) 176, 199.

the Broadcasting allocation in the 746-806 MHz band.”^{7/} Even when a particular band has already been allocated for multiple services, the Commission must first establish technical and licensing rules for each permissible use.^{8/}

Despite the fact that the spectrum on which Motient is authorized is limited to satellite services, Motient argues that it should be able to skip the allocation process and provide terrestrial service immediately. Motient contends that its proposed CMRS offering would merely be an “ancillary” use of the MSS spectrum allocation or that it constitutes the sort of “flexible use” of spectrum encouraged by the Commission and Congress. Neither of these arguments has merit.

A. Motient’s Proposed Terrestrial Wireless Service Is Neither Ancillary Nor Supplemental

Motient argues that its proposed terrestrial wireless service is authorized, or at least supported, by several footnotes to the Table of Allocations permitting very limited ancillary terrestrial use of the L-band by satellites as part of the Aeronautical Mobile Satellite (Route) Service allocation. Motient asserts that those footnotes provide that the use of terrestrial base

^{7/} *In the Matter of Service Rules for the 746-764 and 775-794 MHz bands, and Revisions to Part 27 of the Commission’s Rules*, WT Docket No. 99-168, 14 FCC Rcd 11006, *Notice of Proposed Rulemaking*, 14 FCC Rcd 11006, ¶ 3 (1999) (describing its order implementing Section 3004 of the 1997 Budget Act): *Reallocation of Television Channels 60-69, the 746-806 Band*, ET Docket No. 97-157, *Report and Order*, 12 FCC Rcd 22953 (1998)).

^{8/} *See In the Matter of Amendment of Parts 2 and 25 of the Commission’s Rules to Permit Operation of NGSO FSS Systems Co-Frequency with GSO and Terrestrial Systems in the Ku-Band Frequency Range*, (rel. Dec. 2000). In addition to space radiocommunications services, the 12.2-12.7 GHz band that is the subject of this proceeding was allocated to terrestrial Fixed Service on a primary basis. *Id.* at ¶ 6, n.21.

stations over MSS spectrum is permissible when “such transmissions are used to extend or supplement to satellite-based transmissions.”^{9/}

In fact, the authority granted by these footnotes is far more limited than suggested. They offer no authority or even guidance regarding the use of MSS spectrum for terrestrial wireless service, but instead merely provide that “transmissions . . . from terrestrial aeronautical stations directly to aircraft stations, or between aircraft stations, in the aeronautical mobile (R) service are . . . authorized when such transmissions are used to extend or supplement the satellite-to-aircraft satellite link.”^{10/} Obviously, the type of service Motient proposes is not authorized by the preceding language since it would not be used in connection with any satellite-to-aircraft link.

Nor does the cited authority provide any support by analogy for Motient’s proposed use of its MSS spectrum. Motient does not intend merely to use the terrestrial wireless spectrum to “extend or supplement” its satellite signal as the Aeronautical Mobile (Route) Service allocation cited by Motient permits. Instead, it proposes to offer a service that would allow subscribers to place calls without any use of the satellite system or signal whatsoever.^{11/} Although Motient asserts that the geographic area covered by the terrestrial portion of the system would be a “tiny fraction” of that covered by the combined system,^{12/} it also admits that the terrestrial wireless

^{9/} *Id.* at 15 (citing 47 CFR § 2.106 footnotes US309, 729, and 735).

^{10/} 47 C.F.R. § 2.106, US309.

^{11/} A subscriber residing in the District of Columbia, for instance, making a call to someone else within the city or to other urban areas could complete that call without ever using Motient’s satellite services.

^{12/} *See* Application at 13 (noting that “the base stations will cover only a tiny fraction of the United States”); *id.* at 25 (noting that 99% of the area of the United States will be covered by the satellite system and asserting that “fill-in” terrestrial base stations will “supplement” satellite coverage” in urban areas).

service is intended to be deployed in densely populated urban areas.^{13/} Thus, the vast majority of its anticipated subscribers would come from the urban areas that the terrestrial portion of the service would cover rather than from the areas covered by MSS, regardless of the comparative size of the geographic areas. Motient's almost total reliance on the terrestrial service is not only possible, it seems unavoidable because, as Motient itself notes, satellite service is ill-suited for urban use.^{14/} Thus, Motient is asking the Commission to treat as ancillary or supplementary a service that can and will operate independently from the satellite system that it is intended to "supplement" and which will generate the vast majority of Motient's revenues.^{15/} It is obvious that Motient's MSS will actually supplement its *terrestrial* wireless service, if indeed it continues to provide MSS at all.

The Commission previously has expressed concerns regarding the stretching of the boundaries of spectrum allocations to include services dissimilar to those for which the spectrum was originally allocated. In a 1997 Further Notice of Proposed Rulemaking, the Commission considered whether it should license the use of spectrum allocated for Digital Audio Radio Service ("DARS") for use by terrestrial base stations to boost DARS satellite signals so that they could reach certain blocked areas.^{16/} The Commission focused on the question of whether such an authorization would constitute an independent terrestrial wireless service -- like that proposed

^{13/} See Application at ii-iii, 12-13.

^{14/} Application at 12-13.

^{15/} Even if Motient's proposed terrestrial service actually were ancillary, moreover, the Commission's rules governing satellite services do not contain any express authority to MSS operators to provide ancillary services.

^{16/} *In the Matter of Establishment of Rules and Policies for the Digital Audio Radio Satellite Service in the 2310-2360 MHz Frequency Band*, IB Docket No. 95-91, Gen. Docket No. 90-357, RM No. 8610, PP-24, PP-86, PP-87, *Report and Order and Further Notice of Proposed*

by Motient -- or simply a method of amplifying or supplementing a service already authorized by the Commission.^{17/} It premised, in part, any approval of such “terrestrial repeaters” on its ability to ensure that their use would be only “complementary to the DARS service and [would be used] only for retransmission of signals received from the satellite.”^{18/} In addition, the Commission suggested that expansion of the fundamental nature of the DARS service -- a satellite service providing national coverage -- to compete directly with terrestrial broadcasters through the transmission of local programming over terrestrial repeaters would be inconsistent with the original allocation of the spectrum.^{19/} The Commission, therefore, proposed that any authorization to use terrestrial repeaters should depend upon the prohibition of their use to transmit locally originated programming.^{20/}

B. Motient’s Proposed Terrestrial Wireless Service Does Not Constitute Flexible Use of Its Existing Spectrum

Notwithstanding Motient’s attempt to characterize its proposed terrestrial service as “flexible use” of an existing allocation, the service is actually an established, independent service -- CMRS -- for which the Commission has consistently allocated and licensed spectrum. Had the Commission intended to authorize the provision of a service so fundamentally different in nature from satellite service as part of the MSS allocation, it would have expressly so stated either in its initial allocation or in the more than a decade that has since passed.

Rulemaking, 12 FCC Rcd 5754 (1997).

^{17/} *Id.* at ¶¶ 139, 142.

^{18/} *Id.*

^{19/} *See id.* at ¶¶ 18, 139, 142.

^{20/} *Id.* at ¶ 142. The Commission has not yet completed this rulemaking proceeding.

Moreover, in 2000, when Congress exempted spectrum allocated for MSS from auction, it presumably would have specified that terrestrial wireless service fell within the MSS allocation had it intended terrestrial services also to be covered by the exemption.^{21/} That it did not do so is telling. To include terrestrial wireless service within the MSS allocation in these circumstances would have so broadened the scope of the exemption as to have swallowed the requirement of competitive bidding almost entirely. Motient cannot simply transform MSS spectrum into terrestrial wireless service spectrum by wishing it so. Only the Commission can expand or change the use of spectrum allocated for a specific service -- either by reallocating the spectrum from one use to another or adding a new use.

The Commission's policy of promoting "flexible use" is intended to maximize efficiency by permitting free market forces to shape spectrum use to the greatest extent possible consistent with its obligations as the nation's primary spectrum manager.^{22/} The Commission can, of course, decide that it wants to change the use of the particular bands licensed to Motient from a targeted MSS use to a more flexible use permitting a variety of services. In order to do so, however, Section 303(y) of the Communications Act requires it to *allocate* the spectrum explicitly for flexible use.^{23/} And, in making such an allocation, the Commission must determine that the proposed use of the spectrum is consistent with international agreements, and, after

^{21/} Instead, the Act refers only to satellite services in defining the scope of the exemption. Congress, presumably intending its language to be interpreted to mean what it says, precludes only the auction of "*orbital locations* or spectrum used for the provision of international or global satellite communications services." Open-Market Reorganization for the Betterment of International Telecommunications Act, Pub. L. No. 106-180, Sec. 647, § 3, 114 Stat. 48, 57 (2000) (emphasis added).

^{22/} See *In the Matter of Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission's Rules*, WT Docket No. 99-168, 15 FCC Rcd 4786 (2000) ¶ 2 ("700 MHz Order").

public notice and comment, that the allocation would be in the public interest, would not deter investment in communications, and would not cause harmful interference.^{24/} None of the authority cited by Motient for the proposition that spectrum may be used for multiple purposes relieves Motient or the Commission of the obligation to satisfy these requirements.^{25/}

Motient has failed to demonstrate that it has any right to use its MSS spectrum -- either under existing rules or pursuant to the flexible use doctrine -- to implement a terrestrial wireless service. Thus, like all other interested parties, Motient must wait for the allocation and licensing of spectrum if the Commission decides to make that spectrum available for other uses in addition to MSS.^{26/}

II. IF THE COMMISSION REALLOCATES MSS SPECTRUM FOR TERRESTRIAL USE, IT SHOULD LICENSE IT THROUGH COMPETITIVE BIDDING

Following any potential reallocation of MSS spectrum for terrestrial mobile use, the Commission would be required to promulgate service rules governing the implementation of the new service, including the establishment of new license areas. Section 309(j)(1) of the Communications Act provides that when mutually exclusive applications are accepted for an

^{23/} See 47 U.S.C. § 303(y).

^{24/} *Id.*; *700 MHz Order* at ¶ 20 (noting that Section 301 “requires the Commission to make affirmative findings before permitting flexible use as a part of the allocations process.”).

^{25/} Application at 14, n.10, 15. The Commission was granted authority to distribute licenses through competitive bidding by the Omnibus Reconciliation Act of 1993, Ch. 47, sec. 6002, § 309, 107 Stat. 312, 392 (1993).

^{26/} Nor, as discussed more fully below, do public interest considerations support waiving restrictions on Motient’s use of the MSS spectrum to the allocated purpose. See Application at 15 (requesting a waiver of the Commission’s rules if the Commission determines that Motient’s proposal is inconsistent with the rules).

initial license or construction permit, the Commission “shall grant the license or permit to a qualified applicant through a system of competitive bidding.”^{27/}

The Commission can only avoid holding an auction if it determines that avoiding mutual exclusivity would further the public interest.^{28/} That showing cannot be made in this case. Simply put, the public interest would not be served in any way by conferring one of the public’s most valuable assets -- the right to use spectrum -- upon a single company, without any competition or compensation, in order to subsidize a failing technology. At a time when the industry and government agencies are investing significant time and money in an attempt to find new spectrum to satisfy existing and emerging consumer needs, the Commission should not reject the method most likely to maximize the efficient use of the new allocation of spectrum requested here on the chance that Motient correctly evaluates its ability to provide a economically sustainable MSS service and the value of that service to the public.

The Commission has long acknowledged that the free market does a far better job of distributing scarce resources and governing the development of new markets than does intrusive regulatory engineering.^{29/} It has thus wisely refrained from choosing industry winners or losers

^{27/} 47 U.S.C. § 309(j)(1).

^{28/} See 47 U.S.C. §§ 309(j)(1); 309(j)(6)(e); *Implementation of Section 309(j) of the Communications Act---Competitive Bidding*, 9 FCC Rcd 2941 ¶ 6.

^{29/} See, e.g., *In the Matter of Principles for Promoting the Efficient Use of Spectrum by Encouraging the Development of Secondary Markets*, 15 FCC Rcd 24178, (“[T]he best way to realize the maximum benefits from the spectrum is to permit and promote the operation of market forces in determining how spectrum is used. A principal tenet of this market-based approach is that in order for competition to bring consumers the highest valued services in the most efficient manner, competing users of spectrum need flexibility to respond to market forces and demands.”).

and trying to guide the development of one technological model over another.^{30/} Not surprisingly, therefore, the Commission has consistently and emphatically supported the use of competitive bidding to award spectrum licenses whenever possible.^{31/} “More than any other method” of awarding licenses, “auctions are likely to foster the rapid deployment of new technologies and products by putting spectrum in the hands of those who value it most highly” and are therefore “most likely introduce spectrum rapidly to the public.”^{32/} A competitive bidding process is not only far more likely to maximize the efficient allocation of spectrum than the sort of behind closed-doors process advocated by Motient, it is also more likely to ensure diversity in the dissemination of licenses and encourage innovation by allowing the market to determine which technologies or applicants are most likely to be successful.^{33/} Finally,

^{30/} See, e.g., *In the Matter of Rulemaking To Amend Parts 1, 2, 21, and 25 of the Commission’s Rules to Redesignate the 27.5-29.5 GHz Frequency Band, To Reallocation the 29.5-30 GHz Frequency Band, To Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services*, CC Docket No. 92-297, *Separate Statement of Chairman William E. Kennard, Third Order on Reconsideration*, 13 FCC Rcd 4856 (stating a preference for pro-competitive policies that remove barriers to entry for all potential entrants and level the playing field as much as possible and noting that picking industry winners and losers is better done by the marketplace).

^{31/} Services that have been auctioned include: (1) narrowband and broadband Personal Communications Services, (2) Public Mobile Services, (3) 218-219 MHz Service, (4) Specialized Mobile Radio Services, (5) Private Carrier Paging Service, (6) General Wireless Communications Service, (7) Local Multipoint Distribution Service, (8) Wireless Communications Service, (9) Digital Audio Radio Service, (10) Direct Broadcast Service, (11) 220-222 MHz radio service, (12) Location and Monitoring Service, and (13) VHF Public Coast Stations. *Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as Amended*, 14 FCC Rcd 5206, ¶ 8 (1999). The Commission has also recently completed its auction of 700 MHz Guard Band and has announced upcoming auctions of (1) the 700 MHz Band, (2) Limited Low Power Television, and (3) 24 GHz Band (“DEMS”).

^{32/} *Implementation of Section 309(j)* at ¶ 21.

^{33/} *Id.* at ¶ 8.

distribution of licenses through a system of competitive bidding provides the public with some measure of direct compensation for the use of an extremely valuable public asset.^{34/}

Even if the Commission were inclined to forgo the many benefits of competitive bidding to subsidize a particular technology, such action in this instance would be wholly unwarranted because Motient has failed to establish that the requested subsidy would perform its intended function of ensuring the survival of MSS or would produce benefits justifying the cost. There is no basis to believe that Motient's ability to use its existing spectrum allocation to provide terrestrial services would transform an admittedly nonviable MSS business model into a flourishing one.^{35/} Nor is there any merit to Motient's argument that it possesses a unique ability to provide telecommunications services to rural and other underserved areas.^{36/}

A. Motient Has Failed To Demonstrate That Adding a New Terrestrial Allocation Would Make the Provision of MSS Economically Viable

Motient identifies the primary problem with satellite service to be an inability to serve urban areas reliably and fully, thus leaving it entirely reliant on a very limited rural subscriber base.^{37/} By providing it with the means to serve urban areas, Motient contends, the Commission would allow it to increase its subscriber base and support its rural service.^{38/} While facially compelling, the obvious problem with this argument is that the additional terrestrial service would simply subsidize the rural MSS rather than make it profitable, thus rendering MSS unlikely to survive whether or not the subsidy is provided.

^{34/} *Id.* at ¶ 7.

^{35/} Application at i-iii, 10-13.

^{36/} *Id.* at ii-iii; 12.

^{37/} *Id.* at ii-iii, 12-13.

^{38/} *Id.*

Motient has failed to promise that it would continue to provide its satellite service for any significant period of time following grant of its terrestrial use application. From an economic perspective, this makes complete sense. If terrestrial services to a far larger and more concentrated urban subscriber base provide the bulk of Motient's revenue, while the satellite portion constitutes the vast majority of its costs with little direct return, the obvious and correct economic choice would be to terminate the satellite business. In addition, Motient has failed to demonstrate that subscribers would be willing or able to pay the premium necessary to support the satellite systems required to provide such enhanced rural service. Thus, the primary benefit of permitting Motient to provide terrestrial wireless service on its MSS spectrum -- vibrant service to rural and other underserved areas -- may never materialize or, if it does, may be unable survive for any extended period of time.^{39/}

Moreover, if Motient stops providing satellite service -- either voluntarily or because of economic necessity -- conflict is certain to ensue over the fate of the spectrum being used to provide terrestrial services. Should Motient be allowed to keep that spectrum to use for exclusive terrestrial wireless service use? Should the spectrum be reallocated? If so, at what point should such allocation be required? What level of MSS should be required to maintain the terrestrial wireless service licenses? Who should be entitled to challenge the status of Motient's license? Rather than jettisoning the far more efficient mechanism of competitive bidding in

^{39/} In addition, contrary to Motient's assertion, MSS providers do not possess some unique ability to serve rural and underserved areas that their terrestrial wireless service competitors lack. Indeed, AT&T and other terrestrial wireless providers already serve such areas and, unlike MSS providers, are able to offer an established, affordable, and stable service that is not subject to the uncertain economic fortunes of a satellite-based service. Similarly, unlike existing terrestrial wireless services providers whose current networks provide integrated rural and urban service, MSS providers must complete the time-consuming process of constructing terrestrial networks from scratch in order to provide their rural consumers with effective service to Motient customers in urban areas.

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commercial mobile radio service (“CMRS”), Motient’s proposal amounts to a reallocation of satellite spectrum for an entirely new service. As such, it must be denied.

Contrary to Motient’s assertions, Motient cannot claim the right to offer terrestrial services simply by virtue of the fortuity that it holds MSS authorizations on the same frequencies. While Motient attempts to portray its request merely as a proposal to make “ancillary” or “flexible” use of its licensed MSS spectrum, it is plain that the vast majority of its anticipated subscribers would come from areas covered by the terrestrial portion of its system. Specifically, as Motient itself acknowledges, satellite service is not viable in urban areas and, accordingly, the proposed terrestrial service would supplant -- not supplement -- its MSS operations.^{3/} No authority can be found in the Communications Act or elsewhere that would permit a licensee to use the application process to alter its authorization to provide an entirely distinct service on spectrum never allocated for that purpose. Reallocation of spectrum to a new use requires a rulemaking proceeding in which all interested parties may participate and the establishment of the necessary technical, licensing, and service rules.

Assuming that the MSS band can be used for terrestrial service, all qualified parties -- and not just existing MSS licensees -- should have the opportunity to compete for the resulting licenses at auction. Motient fails to demonstrate any public policy considerations that would warrant giving it the requested terrestrial spectrum licenses free of charge without permitting other qualified entities to compete for them. Congress, in enacting Section 309(j) of the Communications Act, and the Commission, in implementing the statutory provisions, have recognized that distribution of licenses through auction is the best method of ensuring the efficient use of spectrum, the rapid introduction and expansion of services to the public, diversity

2001) (“Application”).

in the identity of license holders, and compensation to the public for use of a valuable asset.

While Congress explicitly exempted satellite services from the requirements of Section 309(j), it obviously did not intend to create a huge loophole through which the satellite industry could obtain the rights to use spectrum to offer any terrestrial service without competing in an auction.

Motient justifies its proposed subsidy of MSS on the ground that MSS will die without such aid, but it provides no basis to believe either that such a subsidy would ensure the survival of MSS or that MSS providers are in a unique position to provide services to areas that would not otherwise be served. In light of the growth in demand for existing and new wireless services, it is inexcusable to allow any spectrum to remain idle. If the spectrum currently allocated to MSS has additional or better uses, then the Commission should investigate these possibilities. The Commission should therefore deny Motient's application and instead consider commencing a proceeding to study the feasibility of reallocating some or all of the MSS bands to other services.

I. BEFORE MSS SPECTRUM CAN BE USED FOR TERRESTRIAL WIRELESS SERVICE, IT MUST BE REALLOCATED FOR THAT PURPOSE

The Commission, as the nation's spectrum manager, has the responsibility to allocate frequency bands for particular services. The Commission's ability to guard against interference, require compliance with international agreements, promote fair and efficient distribution of licenses, and adapt spectrum usage to changing technological and economic conditions is based upon its ability to determine the scope of the services to be authorized through the allocation process. Motient's attempt to end run this essential power by expanding its entitlement to use the spectrum allocated for a specific purpose for an entirely new service without a rulemaking to determine whether this is in the public interest should be rejected.

^{3/} Application at ii-iii, 12-13.

In its initial license application, Motient's predecessor, American Mobile Satellite Corporation "requested full use of the frequency bands at 1545-1559/1646.5-1660.5 MHz, *which have been allocated for aeronautical and mobile satellite services*, for communications between the space stations and the mobile units."^{4/} Motient's current licenses are limited both with respect to the bands assigned to it and to the particular use authorized by the Commission's allocation.^{5/} Through its request to provide terrestrial wireless service, Motient in essence seeks to repurpose its spectrum to provide a service entirely different than that for which the bands are allocated.

As Congress and the Commission have repeatedly made clear, spectrum dedicated to a particular use may not be put to a different use absent further Commission action. In the 1997 Budget Act, for instance, Congress directed the Commission to reallocate spectrum then allocated for digital television for several new services.^{6/} In response, the Commission conducted a formal allocation proceeding in which it determined which services would be allowed and which would be barred, specifically "add[ing] the Fixed and Mobile allocation to

^{4/} *In the Matter of Amendment of Parts 2, 22 and 25 of the Commission's Rules To Allocate Spectrum for and To Establish Other Rules and Policies Pertaining to the Use of Radio Frequencies in a Land Mobile Satellite Service for the Provision of Various Common Carrier Services*, Docket No. 84-1234, *Memorandum and Order*, 4 FCC Rcd 6041, ¶¶ 42, 130-31 (1989) (emphasis added); *In the Matter of Amendment of Parts 2, 22 and 25 of the Commission's Rules To Allocate Spectrum for and To Establish Other Rules and Policies Pertaining to the Use of Radio Frequencies in a Land Mobile Satellite Service for the Provision of Various Common Carrier Services*, Docket No. 84-1234, *Final Order* (rel. Jan. 6, 1992); *aff'd sub nom Aeronautical Radio, Inc. v. FCC*, 983 F.2d 275 (D.C. Cir. 1993).

^{5/} See 47 U.S.C. § 921 (1990) ("The term 'allocation' means an entry in the National Table of Frequency Allocations of a given frequency band *for the purpose of its use* by one or more radiocommunication services.") (emphasis added).

^{6/} Section 337(a) of the Communication Act, 47 U.S.C. § 337(a), as added by § 3004 of the Balanced Budget Act of 1997, U.S.C.A.A.N. (111 Stat. 251) 176, 199.

the Broadcasting allocation in the 746-806 MHz band.”^{7/} Even when a particular band has already been allocated for multiple services, the Commission must first establish technical and licensing rules for each permissible use.^{8/}

Despite the fact that the spectrum on which Motient is authorized is limited to satellite services, Motient argues that it should be able to skip the allocation process and provide terrestrial service immediately. Motient contends that its proposed CMRS offering would merely be an “ancillary” use of the MSS spectrum allocation or that it constitutes the sort of “flexible use” of spectrum encouraged by the Commission and Congress. Neither of these arguments has merit.

A. Motient’s Proposed Terrestrial Wireless Service Is Neither Ancillary Nor Supplemental

Motient argues that its proposed terrestrial wireless service is authorized, or at least supported, by several footnotes to the Table of Allocations permitting very limited ancillary terrestrial use of the L-band by satellites as part of the Aeronautical Mobile Satellite (Route) Service allocation. Motient asserts that those footnotes provide that the use of terrestrial base

^{7/} *In the Matter of Service Rules for the 746-764 and 775-794 MHz bands, and Revisions to Part 27 of the Commission’s Rules*, WT Docket No. 99-168, 14 FCC Rcd 11006, *Notice of Proposed Rulemaking*, 14 FCC Rcd 11006, ¶ 3 (1999) (describing its order implementing Section 3004 of the 1997 Budget Act): *Reallocation of Television Channels 60-69, the 746-806 Band*, ET Docket No. 97-157, *Report and Order*, 12 FCC Rcd 22953 (1998)).

^{8/} *See In the Matter of Amendment of Parts 2 and 25 of the Commission’s Rules to Permit Operation of NGSO FSS Systems Co-Frequency with GSO and Terrestrial Systems in the Ku-Band Frequency Range*, (rel. Dec. 2000). In addition to space radiocommunications services, the 12.2-12.7 GHz band that is the subject of this proceeding was allocated to terrestrial Fixed Service on a primary basis. *Id.* at ¶ 6, n.21.

stations over MSS spectrum is permissible when “such transmissions are used to extend or supplement to satellite-based transmissions.”^{9/}

In fact, the authority granted by these footnotes is far more limited than suggested. They offer no authority or even guidance regarding the use of MSS spectrum for terrestrial wireless service, but instead merely provide that “transmissions . . . from terrestrial aeronautical stations directly to aircraft stations, or between aircraft stations, in the aeronautical mobile (R) service are . . . authorized when such transmissions are used to extend or supplement the satellite-to-aircraft satellite link.”^{10/} Obviously, the type of service Motient proposes is not authorized by the preceding language since it would not be used in connection with any satellite-to-aircraft link.

Nor does the cited authority provide any support by analogy for Motient’s proposed use of its MSS spectrum. Motient does not intend merely to use the terrestrial wireless spectrum to “extend or supplement” its satellite signal as the Aeronautical Mobile (Route) Service allocation cited by Motient permits. Instead, it proposes to offer a service that would allow subscribers to place calls without any use of the satellite system or signal whatsoever.^{11/} Although Motient asserts that the geographic area covered by the terrestrial portion of the system would be a “tiny fraction” of that covered by the combined system,^{12/} it also admits that the terrestrial wireless

^{9/} *Id.* at 15 (citing 47 CFR § 2.106 footnotes US309, 729, and 735).

^{10/} 47 C.F.R. § 2.106, US309.

^{11/} A subscriber residing in the District of Columbia, for instance, making a call to someone else within the city or to other urban areas could complete that call without ever using Motient’s satellite services.

^{12/} *See* Application at 13 (noting that “the base stations will cover only a tiny fraction of the United States”); *id.* at 25 (noting that 99% of the area of the United States will be covered by the satellite system and asserting that “fill-in” terrestrial base stations will “supplement” satellite coverage” in urban areas).

service is intended to be deployed in densely populated urban areas.^{13/} Thus, the vast majority of its anticipated subscribers would come from the urban areas that the terrestrial portion of the service would cover rather than from the areas covered by MSS, regardless of the comparative size of the geographic areas. Motient's almost total reliance on the terrestrial service is not only possible, it seems unavoidable because, as Motient itself notes, satellite service is ill-suited for urban use.^{14/} Thus, Motient is asking the Commission to treat as ancillary or supplementary a service that can and will operate independently from the satellite system that it is intended to "supplement" and which will generate the vast majority of Motient's revenues.^{15/} It is obvious that Motient's MSS will actually supplement its *terrestrial* wireless service, if indeed it continues to provide MSS at all.

The Commission previously has expressed concerns regarding the stretching of the boundaries of spectrum allocations to include services dissimilar to those for which the spectrum was originally allocated. In a 1997 Further Notice of Proposed Rulemaking, the Commission considered whether it should license the use of spectrum allocated for Digital Audio Radio Service ("DARS") for use by terrestrial base stations to boost DARS satellite signals so that they could reach certain blocked areas.^{16/} The Commission focused on the question of whether such an authorization would constitute an independent terrestrial wireless service -- like that proposed

^{13/} See Application at ii-iii, 12-13.

^{14/} Application at 12-13.

^{15/} Even if Motient's proposed terrestrial service actually were ancillary, moreover, the Commission's rules governing satellite services do not contain any express authority to MSS operators to provide ancillary services.

^{16/} *In the Matter of Establishment of Rules and Policies for the Digital Audio Radio Satellite Service in the 2310-2360 MHz Frequency Band*, IB Docket No. 95-91, Gen. Docket No. 90-357, RM No. 8610, PP-24, PP-86, PP-87, *Report and Order and Further Notice of Proposed*

by Motient -- or simply a method of amplifying or supplementing a service already authorized by the Commission.^{17/} It premised, in part, any approval of such “terrestrial repeaters” on its ability to ensure that their use would be only “complementary to the DARS service and [would be used] only for retransmission of signals received from the satellite.”^{18/} In addition, the Commission suggested that expansion of the fundamental nature of the DARS service -- a satellite service providing national coverage -- to compete directly with terrestrial broadcasters through the transmission of local programming over terrestrial repeaters would be inconsistent with the original allocation of the spectrum.^{19/} The Commission, therefore, proposed that any authorization to use terrestrial repeaters should depend upon the prohibition of their use to transmit locally originated programming.^{20/}

B. Motient’s Proposed Terrestrial Wireless Service Does Not Constitute Flexible Use of Its Existing Spectrum

Notwithstanding Motient’s attempt to characterize its proposed terrestrial service as “flexible use” of an existing allocation, the service is actually an established, independent service -- CMRS -- for which the Commission has consistently allocated and licensed spectrum. Had the Commission intended to authorize the provision of a service so fundamentally different in nature from satellite service as part of the MSS allocation, it would have expressly so stated either in its initial allocation or in the more than a decade that has since passed.

Rulemaking, 12 FCC Rcd 5754 (1997).

^{17/} *Id.* at ¶¶ 139, 142.

^{18/} *Id.*

^{19/} *See id.* at ¶¶ 18, 139, 142.

^{20/} *Id.* at ¶ 142. The Commission has not yet completed this rulemaking proceeding.

Moreover, in 2000, when Congress exempted spectrum allocated for MSS from auction, it presumably would have specified that terrestrial wireless service fell within the MSS allocation had it intended terrestrial services also to be covered by the exemption.^{21/} That it did not do so is telling. To include terrestrial wireless service within the MSS allocation in these circumstances would have so broadened the scope of the exemption as to have swallowed the requirement of competitive bidding almost entirely. Motient cannot simply transform MSS spectrum into terrestrial wireless service spectrum by wishing it so. Only the Commission can expand or change the use of spectrum allocated for a specific service -- either by reallocating the spectrum from one use to another or adding a new use.

The Commission's policy of promoting "flexible use" is intended to maximize efficiency by permitting free market forces to shape spectrum use to the greatest extent possible consistent with its obligations as the nation's primary spectrum manager.^{22/} The Commission can, of course, decide that it wants to change the use of the particular bands licensed to Motient from a targeted MSS use to a more flexible use permitting a variety of services. In order to do so, however, Section 303(y) of the Communications Act requires it to *allocate* the spectrum explicitly for flexible use.^{23/} And, in making such an allocation, the Commission must determine that the proposed use of the spectrum is consistent with international agreements, and, after

^{21/} Instead, the Act refers only to satellite services in defining the scope of the exemption. Congress, presumably intending its language to be interpreted to mean what it says, precludes only the auction of "*orbital locations* or spectrum used for the provision of international or global satellite communications services." Open-Market Reorganization for the Betterment of International Telecommunications Act, Pub. L. No. 106-180, Sec. 647, § 3, 114 Stat. 48, 57 (2000) (emphasis added).

^{22/} See *In the Matter of Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission's Rules*, WT Docket No. 99-168, 15 FCC Rcd 4786 (2000) ¶ 2 ("700 MHz Order").

public notice and comment, that the allocation would be in the public interest, would not deter investment in communications, and would not cause harmful interference.^{24/} None of the authority cited by Motient for the proposition that spectrum may be used for multiple purposes relieves Motient or the Commission of the obligation to satisfy these requirements.^{25/}

Motient has failed to demonstrate that it has any right to use its MSS spectrum -- either under existing rules or pursuant to the flexible use doctrine -- to implement a terrestrial wireless service. Thus, like all other interested parties, Motient must wait for the allocation and licensing of spectrum if the Commission decides to make that spectrum available for other uses in addition to MSS.^{26/}

II. IF THE COMMISSION REALLOCATES MSS SPECTRUM FOR TERRESTRIAL USE, IT SHOULD LICENSE IT THROUGH COMPETITIVE BIDDING

Following any potential reallocation of MSS spectrum for terrestrial mobile use, the Commission would be required to promulgate service rules governing the implementation of the new service, including the establishment of new license areas. Section 309(j)(1) of the Communications Act provides that when mutually exclusive applications are accepted for an

^{23/} See 47 U.S.C. § 303(y).

^{24/} *Id.*; 700 MHz Order at ¶ 20 (noting that Section 301 “requires the Commission to make affirmative findings before permitting flexible use as a part of the allocations process.”).

^{25/} Application at 14, n.10, 15. The Commission was granted authority to distribute licenses through competitive bidding by the Omnibus Reconciliation Act of 1993, Ch. 47, sec. 6002, § 309, 107 Stat. 312, 392 (1993).

^{26/} Nor, as discussed more fully below, do public interest considerations support waiving restrictions on Motient’s use of the MSS spectrum to the allocated purpose. See Application at 15 (requesting a waiver of the Commission’s rules if the Commission determines that Motient’s proposal is inconsistent with the rules).

initial license or construction permit, the Commission “shall grant the license or permit to a qualified applicant through a system of competitive bidding.”^{27/}

The Commission can only avoid holding an auction if it determines that avoiding mutual exclusivity would further the public interest.^{28/} That showing cannot be made in this case. Simply put, the public interest would not be served in any way by conferring one of the public’s most valuable assets -- the right to use spectrum -- upon a single company, without any competition or compensation, in order to subsidize a failing technology. At a time when the industry and government agencies are investing significant time and money in an attempt to find new spectrum to satisfy existing and emerging consumer needs, the Commission should not reject the method most likely to maximize the efficient use of the new allocation of spectrum requested here on the chance that Motient correctly evaluates its ability to provide a economically sustainable MSS service and the value of that service to the public.

The Commission has long acknowledged that the free market does a far better job of distributing scarce resources and governing the development of new markets than does intrusive regulatory engineering.^{29/} It has thus wisely refrained from choosing industry winners or losers

^{27/} 47 U.S.C. § 309(j)(1).

^{28/} See 47 U.S.C. §§ 309(j)(1); 309(j)(6)(e); *Implementation of Section 309(j) of the Communications Act---Competitive Bidding*, 9 FCC Rcd 2941 ¶ 6.

^{29/} See, e.g., *In the Matter of Principles for Promoting the Efficient Use of Spectrum by Encouraging the Development of Secondary Markets*, 15 FCC Rcd 24178, (“[T]he best way to realize the maximum benefits from the spectrum is to permit and promote the operation of market forces in determining how spectrum is used. A principal tenet of this market-based approach is that in order for competition to bring consumers the highest valued services in the most efficient manner, competing users of spectrum need flexibility to respond to market forces and demands.”).

and trying to guide the development of one technological model over another.^{30/} Not surprisingly, therefore, the Commission has consistently and emphatically supported the use of competitive bidding to award spectrum licenses whenever possible.^{31/} “More than any other method” of awarding licenses, “auctions are likely to foster the rapid deployment of new technologies and products by putting spectrum in the hands of those who value it most highly” and are therefore “most likely introduce spectrum rapidly to the public.”^{32/} A competitive bidding process is not only far more likely to maximize the efficient allocation of spectrum than the sort of behind closed-doors process advocated by Motient, it is also more likely to ensure diversity in the dissemination of licenses and encourage innovation by allowing the market to determine which technologies or applicants are most likely to be successful.^{33/} Finally,

^{30/} See, e.g., *In the Matter of Rulemaking To Amend Parts 1, 2, 21, and 25 of the Commission’s Rules to Redesignate the 27.5-29.5 GHz Frequency Band, To Reallocation the 29.5-30 GHz Frequency Band, To Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services*, CC Docket No. 92-297, *Separate Statement of Chairman William E. Kennard, Third Order on Reconsideration*, 13 FCC Rcd 4856 (stating a preference for pro-competitive policies that remove barriers to entry for all potential entrants and level the playing field as much as possible and noting that picking industry winners and losers is better done by the marketplace).

^{31/} Services that have been auctioned include: (1) narrowband and broadband Personal Communications Services, (2) Public Mobile Services, (3) 218-219 MHz Service, (4) Specialized Mobile Radio Services, (5) Private Carrier Paging Service, (6) General Wireless Communications Service, (7) Local Multipoint Distribution Service, (8) Wireless Communications Service, (9) Digital Audio Radio Service, (10) Direct Broadcast Service, (11) 220-222 MHz radio service, (12) Location and Monitoring Service, and (13) VHF Public Coast Stations. *Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as Amended*, 14 FCC Rcd 5206, ¶ 8 (1999). The Commission has also recently completed its auction of 700 MHz Guard Band and has announced upcoming auctions of (1) the 700 MHz Band, (2) Limited Low Power Television, and (3) 24 GHz Band (“DEMS”).

^{32/} *Implementation of Section 309(j)* at ¶ 21.

^{33/} *Id.* at ¶ 8.

distribution of licenses through a system of competitive bidding provides the public with some measure of direct compensation for the use of an extremely valuable public asset.^{34/}

Even if the Commission were inclined to forgo the many benefits of competitive bidding to subsidize a particular technology, such action in this instance would be wholly unwarranted because Motient has failed to establish that the requested subsidy would perform its intended function of ensuring the survival of MSS or would produce benefits justifying the cost. There is no basis to believe that Motient's ability to use its existing spectrum allocation to provide terrestrial services would transform an admittedly nonviable MSS business model into a flourishing one.^{35/} Nor is there any merit to Motient's argument that it possesses a unique ability to provide telecommunications services to rural and other underserved areas.^{36/}

A. Motient Has Failed To Demonstrate That Adding a New Terrestrial Allocation Would Make the Provision of MSS Economically Viable

Motient identifies the primary problem with satellite service to be an inability to serve urban areas reliably and fully, thus leaving it entirely reliant on a very limited rural subscriber base.^{37/} By providing it with the means to serve urban areas, Motient contends, the Commission would allow it to increase its subscriber base and support its rural service.^{38/} While facially compelling, the obvious problem with this argument is that the additional terrestrial service would simply subsidize the rural MSS rather than make it profitable, thus rendering MSS unlikely to survive whether or not the subsidy is provided.

^{34/} *Id.* at ¶ 7.

^{35/} Application at i-iii, 10-13.

^{36/} *Id.* at ii-iii; 12.

^{37/} *Id.* at ii-iii, 12-13.

^{38/} *Id.*

Motient has failed to promise that it would continue to provide its satellite service for any significant period of time following grant of its terrestrial use application. From an economic perspective, this makes complete sense. If terrestrial services to a far larger and more concentrated urban subscriber base provide the bulk of Motient's revenue, while the satellite portion constitutes the vast majority of its costs with little direct return, the obvious and correct economic choice would be to terminate the satellite business. In addition, Motient has failed to demonstrate that subscribers would be willing or able to pay the premium necessary to support the satellite systems required to provide such enhanced rural service. Thus, the primary benefit of permitting Motient to provide terrestrial wireless service on its MSS spectrum -- vibrant service to rural and other underserved areas -- may never materialize or, if it does, may be unable survive for any extended period of time.^{39/}

Moreover, if Motient stops providing satellite service -- either voluntarily or because of economic necessity -- conflict is certain to ensue over the fate of the spectrum being used to provide terrestrial services. Should Motient be allowed to keep that spectrum to use for exclusive terrestrial wireless service use? Should the spectrum be reallocated? If so, at what point should such allocation be required? What level of MSS should be required to maintain the terrestrial wireless service licenses? Who should be entitled to challenge the status of Motient's license? Rather than jettisoning the far more efficient mechanism of competitive bidding in

^{39/} In addition, contrary to Motient's assertion, MSS providers do not possess some unique ability to serve rural and underserved areas that their terrestrial wireless service competitors lack. Indeed, AT&T and other terrestrial wireless providers already serve such areas and, unlike MSS providers, are able to offer an established, affordable, and stable service that is not subject to the uncertain economic fortunes of a satellite-based service. Similarly, unlike existing terrestrial wireless services providers whose current networks provide integrated rural and urban service, MSS providers must complete the time-consuming process of constructing terrestrial networks from scratch in order to provide their rural consumers with effective service to Motient customers in urban areas.

favor of a technology subsidy that may have long-lasting and difficult-to-reverse effects upon the availability of spectrum for all wireless services if the Commission reallocates the spectrum used now by Motient for terrestrial use, it should then distribute the resulting licenses pursuant to auction.

B. The Commission Should Investigate Whether the Public Interest Would Be Served by Freeing Underutilized MSS Spectrum for More Efficient Uses

Motient has not presented any evidence to show that its proposal to shore up its MSS business through provision of terrestrial wireless service would be any more beneficial to consumers than permitting the market to pick from a variety of possible uses. Both the Commission and NTIA have recently released reports acknowledging the intense demand for spectrum for commercial wireless services and analyzing the possibility of reallocating government or other spectrum to meet that demand.^{40/} Motient has failed to demonstrate that it would put the spectrum to higher use than would other potential licensees, particularly its most likely direct competitors for the spectrum -- terrestrial wireless service operators.

It would constitute a profound misuse of one of the public's most valuable resources to offer it free of charge to one provider. This spectrum was provided to MSS operators without compensation to the public, and without regard to the possible costs to competition, for the specific purpose of exploring MSS. Boundless expansion of the possible uses of this narrowly targeted allocation is not consistent with congressional intent and does not serve the public interest. Indeed, Senator John McCain recently referred to similar attempts by broadcasters to make alternative use of free spectrum provided to them for the limited purpose of developing

^{40/} See generally *Spectrum Study of 2500-2690 MHz Band: The Potential for Accommodating Third Generation Mobile Systems*, ET Docket No. 00-258, Federal Communication Commission, Staff Final Report, 66 Fed Reg 18740 (2001); *The Potential for Accommodating Third Generation Mobile Systems in the 1710-1850 MHz Band*, Department of Commerce, NTIA,

digital television as “one of the great rip-offs in American history.”^{41/} The Commission should reject Motient’s attempts to obtain a similar windfall at the expense of existing terrestrial wireless providers and the public.

Rather than address Motient’s request in the limited context of its application, the Commission should consider commencing a general rulemaking proceeding to determine whether reallocation of some or all of the MSS spectrum (including that licensed to Motient, as well as other allocated bands) would further the public interest. In so doing, the Commission should consider whether the new uses would cause harmful interference to existing and proposed MSS operations and which additional services would be technically compatible. The Commission also would be required to investigate how this use would be consistent with international allocations, as required by Section 303(y).^{42/} In light of the growing demand for commercial wireless services and its attendant pressure on existing carriers’ bandwidth requirements, it makes no sense to permit spectrum to remain unused or underutilized. Motient and other MSS operators apparently envision a better use for these particular bands, and the Commission should investigate whether that is possible.

Final Report (rel. March 30, 2001)

^{41/} See Erick Glick, *Former Presidential Candidate, A Potential Telecom Ally?*, *Wireless Week*, Apr. 2, 2001, at 19.

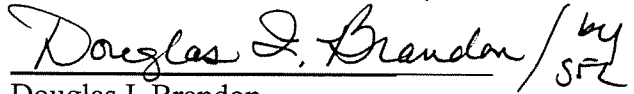
^{42/} 47 U.S.C. § 303(y); 47 C.F.R. § 2.106.

CONCLUSION

For the foregoing reasons, the Commission should deny Motient's request to provide terrestrial wireless services on spectrum allocated to MSS use. Instead, the Commission should consider commencing a rulemaking proceeding to determine whether to reallocate the spectrum at issue for other uses and license it through a system of competitive bidding open to all qualified entities.

Respectfully submitted,

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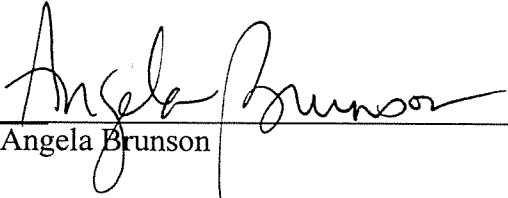
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