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FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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Satellite Policy Branch
International Bureau

In re Application of)
)
MOTOROLA SATELLITE)
SYSTEMS, INC.)
)
For Authority to Construct,)
Launch and Operate a)
Non-geostationary)
Satellite System in)
the 40 GHz Band)

File Nos. 157-SAT-P/LA-96(72)
29-SAT-AMEND-97

To: The International Bureau

REPLY TO CONSOLIDATED OPPOSITION AND REPLY
OF MOTOROLA SATELLITE SYSTEMS, INC.

Sky Station International, Inc. ("Sky Station") filed a request for partial dismissal of the above-referenced application (the "M-Star Application"), to the extent that it seeks authorization to operate in the 47.2-48.2 GHz band ("the 47 GHz band"), on the grounds that the application was premature in light of recent Commission decisions affecting the 47 GHz band.^{1/} More specifically, Sky Station requested a partial dismissal because grant of a satellite application in the 47 GHz band would be inconsistent with the Commission's decision to allocate this band for a variety of uses, including fixed stratospheric services, and it would be unfair to Sky Station, whose own application has

^{1/} Sky Station International, Inc.'s Request for Partial Dismissal of M-Star Application to the Extent it Proposes Use of the 47 GHz Band, File Nos. 157-SAT-P/LA-96(72); 19-SAT-AMEND-96 (Aug. 21, 1997).

been treated as rulemaking comments because 47 GHz licensing and service rules have not yet been adopted.

Motorola's Consolidated Opposition and Reply ("Opposition") essentially argues that applications for fixed-satellite services in general and its M-Star Application in particular should be given a green light to go ahead, regardless of the prejudicial effect it would have on the Commission's recent decision affecting the 47 GHz band, and seemingly regardless of the preclusive effect its position would have on the U.S. negotiating posture in the upcoming World Radio Conference. The Commission should reject this effort to use the application process to reverse recent Commission spectrum policy decisions and tilt the U.S. position in international allocation negotiations. Instead, the Commission should either dismiss the application as premature, or at the very least treat the relevant portions of the M-Star Application in the same manner as it has treated Sky Station's application, *i.e.*, as rulemaking comments.

I. GRANTING THE M-STAR APPLICATION AT THIS TIME IS CONTRARY TO THE COMMISSION'S RECENT DECISION IN THE 47 GHz ORDER.

On May 2, 1997, the Commission adopted an Order in the *Millimeter Wave Proceeding* designating the 47 GHz band for use by a variety of services (the "*47 GHz Order*").^{2/} Contrary to the suggestion in Motorola's Opposition,^{3/} Sky Station does not claim that the *47 GHz Order* made an exclusive allocation to

^{2/} See *Millimeter Wave Proceeding*, Second Report and Order, adopted May 2, 1997, released July 21, 1997 (the "*47 GHz Order*").

^{3/} Motorola Opposition at 12.

stratospheric services. Instead, Sky Station has accurately claimed that the Commission designated the spectrum for a variety of services, but that of course all such services would be subject to interference criteria and service rules yet to be written.^{4/} The Commission added that it expected the likely dominant use for this band would be fixed stratospheric services.^{5/}

In stating that competitive bidding and service rules would be proposed in a later proceeding, the Commission effectively decided that now is not the time to consider applications for this band. Indeed, the Commission in the *47 GHz Order* explicitly deferred consideration of issues relating to the service rules which, it said, must be adopted "before any service in the 47 GHz band can be implemented."^{6/} Hence, the Commission also declared in the *47 GHz Order* that it would treat the application that Sky Station had submitted in March 1996 to construct and launch a global stratospheric system as late-filed rulemaking comments.

Motorola seeks to undo this recent Commission decision by urging swift adoption of its M-Star Application. As Sky Station submitted in its initial Request for Partial Dismissal, "If the Commission were to consider 47 GHz satellite proposals at this time, it effectively would reverse the policy of the *47 GHz Order* and obviate its ability to implement flexible licensing and service rules in a later proceeding."^{7/} Motorola's

^{4/} *47 GHz Order* at ¶ 71.

^{5/} *Id.* at ¶ 69.

^{6/} *47 GHz Order* at ¶ 40 (emphasis added); *see id.* at ¶ 72.

^{7/} Request for Partial Dismissal at 4.

Opposition does not answer this fundamental concern. Instead, Motorola simply claims time and again that it can conform its application to any new rules.^{8/}

This argument ignores two critical points. First, granting an application that could be inconsistent with rules that are going to be adopted soon for a service recently allocated is procedurally improper and contrary to the public interest. The Commission should finish the job begun in the *47 GHz Order* before it considers applications for this band. That presumably was the Commission's reasoning for not granting Sky Station's own application and instead treating it as late-filed comments. Second, granting the M-Star Application in light of the uncertainty over the allocation and the service rules would be unfair and arbitrary and capricious given that Sky Station's own application was not granted.

It would not only be unfair but also imprudent for the Commission to grant an application for a service that most likely cannot share with the service that the Commission has just deemed to be the likely dominant use of the spectrum in question. As demonstrated by the documents agreed upon within ITU-R Study Groups 4 and 8, sharing between stratospheric and satellite services would be very difficult,^{9/} meaning that sharing would be possible only with a major sacrifice of technological and service potential. A new technology such as stratospheric services should not be hamstrung at the starting gate by having to share spectrum with a service that in any event already has

^{8/} Motorola Opposition at 5, 6, 7.

^{9/} ITU-R CPM-97, Report to the WRC-97, Chapter 7.5.3.2, at 324; ITU-R WP 4-9S/TEMP/30 (Rev. 1) (13 January 1997).

a significant share of spectrum. Moreover, the bare fact that both Sky Station and M-Star, in particular, are intended to be ubiquitous shows the impracticability of their sharing frequencies. Their signals would criss-cross each other's and cause destructive mutual interference.

II. GRANTING THE M-STAR APPLICATION WOULD PREJUDICE THE U.S. POSITION AT THE UPCOMING WRC-97.

The Commission's decision in the *47 GHz Order* states that the dominant use of sub-bands of the 47 GHz band will likely be stratospheric systems. The U.S. position going into the upcoming World Radio Conference is consistent with this decision. Indeed, the current U.S. proposal to WRC-97, which is also an Inter-American Telecommunication Commission (CITEL) Joint Proposal adopted by nine other countries in the Americas including Canada and Mexico, provides for the "designation of the bands 47.2-47.5 and 47.9-48.2 GHz within the fixed service so that a common band is available for [stratospheric/high altitude] systems on a global basis."^{10/}

Equally important, the U.S. will not be alone in asserting this position. In an unusual show of support for a new technology, the world's major regional telecommunications organizations (CEPT in Europe, CITEL in the Western Hemisphere, and APT in the Asian Pacific region) have notified the International Telecommunications Union (ITU) of their support for global stratospheric systems in the 47 GHz band.^{11/}

^{10/} CITEL Joint Proposal for the Work of the Conference WRC-97, Proposal for Agenda 1.9.6, PCC.III/doc875/97Rev.3 (25 September 1997).

^{11/} *Id.* (10 countries have adopted CITEL proposal); European Common Proposals for the Work of the Conference, Agenda Item 1.9.6, High Altitude Relay Platforms (Sky
(continued...))

If the M-Star Application is granted, the U.S. position at WRC-97 would be undermined. The reason is that grant of a satellite application in the 47 GHz band would send confusing signals to other nations. On the one hand, the U.S. seems to be convinced, as are other nations, that global stratospheric systems are appropriate for the 47 GHz band. *See 47 GHz Order*. On the other hand, the Commission would have granted an application that poses significant international frequency coordination problems for the 47 GHz band, especially since service rules for stratospheric services have yet to be written. Moreover, the application runs counter to the goal of global harmonization of spectrum uses.

For these reasons, Sky Station believes that Motorola's Application is not timely at best. After the service rules are adopted, and after the WRC-97 process is complete, then the FCC can consider in a fair process competing applications for this spectrum. As the Commission demonstrated in treating Sky Station's application as late-filed comments, consideration of applications for the 47 GHz band in advance of the rules being set would be unfair and prejudicial to the FCC's decisionmaking process.

¹¹(...continued)

Station), CEPT/ERC/CPG(96)54 Rev.2 - Part 5C at 23 (more than 30 countries have adopted CEPT proposal); Asia-Pacific Telecommunity Common Proposals for the Work of the Conference, Part 14, FS Bands above 30 GHz, Document APT 23 (1 August 1997) (18 countries have adopted APT proposal).

III. MOTOROLA'S ARGUMENT THAT GRANT OF THE APPLICATION IS WITHIN THE COMMISSION'S AUTHORITY MISSES THE POINT THAT THE GRANT WOULD BE UNFAIR AND A DISSERVICE TO THE PUBLIC INTEREST.

Motorola contends that the Commission routinely processes satellite applications in the absence of allocation or service rules, and that the Commission should therefore grant its application "on a conditional basis," allowing it to amend its application later.^{12/} Regardless whether this is, in fact, routine Commission practice in the satellite area, it should not be applied in the present context, in which there are competing satellite and non-satellite uses for the spectrum in question. Motorola argues that delay in processing of applications for a new radio service with "co-primary usage rights" does not justify delaying processing of applications for an established service in the same bands.^{13/} But specifically in the present circumstances, where the likelihood of conflicting uses is great, the Commission's recent decision to delay consideration of Sky Station's application for a new service precisely *does justify* delaying consideration of Motorola's application for an established service in the same band, if the new service is to have even a chance to emerge.

Motorola's argument that because the Commission may at times grant applications of competing satellite systems in advance of determining service rules it should also grant go-ahead approval to one satellite system where there are competing services misses the distinction between these two contexts. Where there are competing

^{12/} Motorola Opposition at 5-9.

^{13/} Motorola Opposition at 15.

services, and particularly where the potential conflict is great and the Commission has explicitly deferred consideration of applications for one class of service, granting an application for another class of service would be highly prejudicial. Providing a special exception for satellite services in the 47 GHz band where there are mixed uses for the band would place competing non-satellite services on an unequal footing. Even though Motorola may be willing to bear the risk that the Commission will establish allocation or service rules that make it impossible for Motorola to reap a reward for the investment it proposes to make, it would be unfair to grant Motorola an opportunity to take that risk which Sky Station has been denied. Motorola's further argument that because generic processing rules for satellite services exist its application should be processed under those rules even though Sky Station's application cannot be processed^{14/} simply ignores Sky Station's fairness argument.

Furthermore, granting Motorola's application would disserve the public interest and contravene the premises of the *47 GHz Order* by permitting an inefficient use of the spectrum. Efficiency is an explicit objective of the *47 GHz Order*.^{15/} Fixed services, such as Sky Station, are far more spectrum efficient than satellite services. As noted in Sky Station's Request for Partial Dismissal, a stratospheric service can deliver more broadband channels than satellite because of its superior frequency reuse capabilities.^{16/} Based on available data regarding the proposed M-Star system, Sky

^{14/} Motorola Opposition at 14, 16.

^{15/} See, e.g., *47 GHz Order* at ¶ 3.

^{16/} ITU-R WP 9B/TEMP/38 (Rev. 1) at Annex 1 (13 January 1997); ITU-R WP 4-9S/TEMP/30 (Rev. 1) at Annex 1 (13 January 1997).

Station would be nearly 40 times more spectrum efficient than M-Star in a metropolitan area. Yet, Motorola is now attempting to grab even more spectrum for satellite services than the large amount already allocated. In the entire above-40 GHz band proceeding 80% of the bandwidth has already been designated for FSS, and now Motorola argues that it should share the remaining 20% or less, which has been designated as having a likely dominant use for stratospheric FS.

Finally, granting Motorola's application would be procedurally improper and contrary to the public interest because other nations -- including Australia, Colombia, and Italy -- have already endorsed use of the 47 GHz band for stratospheric services through the notification of stratospheric stations to the International Telecommunications Union.^{17/} In light of the likelihood that FSS will not obtain a global allocation at 47 GHz, the Commission would waste its scarce resources by processing the M-Star application for frequency bands it has no practical possibility of using.^{18/}

^{17/} Part 1-A of the Weekly Circular.

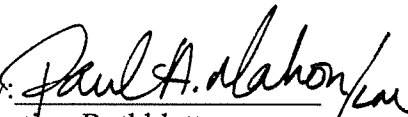
^{18/} In addition, it is unlikely that Motorola has the financial capability to implement three LEO systems within a span of five years. It is well-known that Motorola succeeded in financing the Iridium system only after several years of false starts. Yet now Motorola proposes to simultaneously finance Iridium second generation, M-Star, and Celestri. It appears that Motorola's purpose in this proceeding may be to grab and warehouse as much spectrum as possible. Condoning such a purpose would only encourage other countries to float paper systems before the ITU in order to reserve frequencies.

CONCLUSION

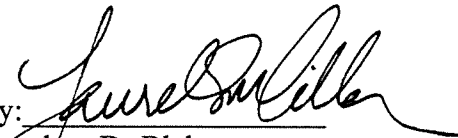
Motorola's essential argument is that the FCC *may* grant the M-Star Application and could do so on a conditional basis that would permit after-the-fact compliance. However, even assuming that claim *arguendo*, granting the application would be procedurally unfair and contrary to the public interest. For the reasons stated above, the Commission should dismiss the M-Star Application, and not accept any subsequently filed satellite applications at this time, to the extent they request authorization to operate in the 47 GHz band, or should at the least treat them as rulemaking comments.

Respectfully submitted,

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September 30, 1997

CERTIFICATE OF SERVICE

I, Laurel E. Miller, do hereby certify that a copy of the attached September 30, 1997 Reply to Consolidated Opposition and Reply of Motorola Satellite Systems, Inc. was served by hand delivery on this the 30th day of September, 1997, upon the following:

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