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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)
)

Received

APR 23 2001

Satellite Policy Branch
International Bureau

File Nos.:
SAT-ASG-20010302-00017
SAT-WAV-20010302-00018
SAT-AMD-20010302-00019
SAT-LOA-19880702-00066

In the Matter of)
)
TMI Communications and)
Company, Limited Partnership)
)
Application for Modification and)
Assignment of Licenses to Operate)
Mobile Earth Terminals for)
Mobile Satellite Services)
)

File Nos.
SES-ASG-20010116-00099
SES-MOD-20010116-00097
SES-MOD-20010116-00098

OPPOSITION OF KITCOMM SATELLITE COMMUNICATIONS LTD.

KITComm Satellite Communications Ltd. ("KITComm"), by its attorneys and pursuant to Section 25.154 of the Rules of the Federal Communications Commission ("FCC" or "Commission"),¹ hereby submits its Opposition to the Applications (the "Applications") of Motient Services Inc. ("Motient") and Mobile Satellite Ventures

¹ 47 C.F.R. § 25.154.

Subsidiary LLC² and TMI Communications and Company Limited Partnership (“TMI”)³ (collectively, the “Applicants”). The Applicants propose to combine their North American mobile satellite services businesses into one joint venture and to procure two next-generation satellites for launch starting approximately in 2005.

In considering the Applicant’s proposals and particularly the modified application for next-generation satellites, the Commission has a golden opportunity to reshape its policy framework for the L-band mobile satellite services market in the United States. In acting on the present Applications, the Commission should not slam the door on potential competition in the lower L-band in the interest of saving two struggling incumbent mobile satellite operators. Rather, the Commission should seek to create opportunities for competitors to offer innovative service offerings in competition with what otherwise will become an L-band monopoly controlled by the Applicants. The Commission can start down this road by restricting the Applicants to the L-band frequencies for which they have already been authorized, either through their merged first generation systems or with the next-generation system the Applicants seek authority to launch.

² Motient Services, Inc. and Motient Satellite Ventures Subsidiary, Application for Assignment of License, File Nos. SAT-ASG-20010302-00017, et al, (filed March 19, 2001) (“Motient Application”).

³ TMI Communications and Company, Limited Partnership, Application for Assignment of License, File No. SES-ASG-20010116-00099 (filed January 31, 2001) and Applications for Modification, File Nos. SES-MOD-20010116-00097 and SES-MOD-20010116-00098 (filed January 31, 2001) (collectively “TMI Application”).

I. Introduction and Background

In January 1998, KITComm submitted a Letter of Intent (“LOI”) with the Commission to serve the United States market.⁴ KITComm proposed using a constellation of non-geostationary orbiting satellites to provide two-way communication and geolocation services to the United States and markets around the world. KITComm’s primary business will be the provision of innovative tracking and monitoring services for fixed and mobile assets that the incumbents are ill-equipped to provide to an impatient market. KITComm’s system, which is licensed by Australia, would operate in the 1525-1530 MHz in the space-to-earth direction and 1626.5-1631.5 MHz in the earth-to-space direction.

The Applicants now propose, in addition to various corporate reorganizations and the combination of their businesses, to launch two satellites which would operate across the entire L-band, *e.g.*, 1626.5-1660.5 MHz and 1525-1559 MHz.⁵ The result would be to shut out all other potential operators in the L-band.

II. Discussion

The financial travails of the mobile satellite services business are well-known to the Commission. Commission licensees, such as Iridium and Globalstar, and notable foreign systems, such as London-based ICO Global, have experienced serious financial difficulties and even bankruptcy. Motient and TMI have also not succeeded in building

⁴ Letter of Intent of KITComm Satellite Communications Ltd, File No. 85-SAT-LOI-98 (filed January 30, 1998).

⁵ Motient Application at p. 8. It is not clear from the Application whether the Applicants propose to operate TMI’s MSAT-1 satellite within the United States beyond the frequencies authorized in the Commission’s Order and Authorization granting TMI and Satcom Systems Inc. authority to use MSAT-1 to offer competitive mobile satellite services, 1545-1558.5 MHz and 1646.5-1660 MHz. *See In the Matter of the Applications of Satcom Systems, Inc. and TMI Communications and Company, L.P.*, Order and Authorization, 14 FCC Rcd 20798 at para. 63 (the “TMI Order”).

robust businesses. While claiming that its Canadian customer base is “significant”, TMI admits that the slow growth of both its and Motient’s customer base has “tended to be self-perpetuating”.⁶

In general, the financial difficulties of the mobile satellite services providers stem from a variety of causes, including low user demand, poor product and service conceptualization and design, and significant difficulties in executing their business plans, including global distribution and marketing. In an effort to distract attention away from the specific failures in its business plan, Motient has long claimed that it has access to insufficient spectrum which is hindering its growth. The Commission has every right to lose patience concerning Motient’s repeated failures to successfully commercialize its business despite many years of effort.

In the present application, the Applicants propose to solve their commercial problems by combining their businesses and engaging in what can only be characterized as a spectrum grab designed to shut out competition. By merging, the Applicants are consolidating expenses and traffic by using Motient’s and TMI’s current satellites. In fact, the consolidation of their respective businesses and traffic on the two existing satellites should provide them with significant additional flexibility and usable bandwidth to meet their current and future needs.

The Applicants also propose a next-generation system that will allegedly permit multiple reuses of frequency spectrum, providing the Applicants with significantly more bandwidth than their currently modest customer bases require. In addition, the

⁶ See TMI Application at Appendix D, p. 3.

Applicants seek to encompass all available spectrum and foreclose competition by requesting that the new satellites be authorized to operate over the entire L-band.

While the design of the new satellites purports to resolve a supposed spectrum shortage, combined with the merger, it will also result in the barring of any possibility of competition in the U.S. L-band mobile satellite services market. The Commission recognized the value, on balance, of competition in the provision of L-band mobile satellite services when it authorized TMI and SatCom Systems, Inc. (“SatCom”) in 1999 to provide service in the U.S. market using TMI’s MSAT satellite.⁷ Balancing Motient’s long term cries for more spectrum versus the public interest to be found in encouraging competition, the Commission stated clearly that the benefits of competition outweighed any unsupported allegations that competition would be endangered in the U.S. market by permitting competitors to enter.⁸ A key portion of that order bears repeating:

...In effect, AMSC⁹ claims that, in exchange for allowing a foreign L-band operator to serve the United States, we should require the foreign operator to relinquish to AMSC spectrum already coordinated under the annual operator-to-operator agreement. Put another way, AMSC requests that we keep foreign carriers out of the U.S. market long enough for AMSC to use its monopoly power over U.S. customers to increase its traffic so significantly that it justifies its increased spectrum assignment. We find that such a *quid pro quo* would be inconsistent with U.S. market access commitments in the WTO Agreement.¹⁰

The Commission should not back away from the analysis that supported its TMI Order. The Applicants should not be able to achieve through the proposed merger and reorganization what Motient failed to achieve in the TMI Order, Commission approval of

⁷ See, generally TMI Order.

⁸ TMI Order at para. 18.

⁹ AMSC has since changed its name to Motient.

¹⁰ TMI Order at para. 30.

their claim to a complete L-band monopoly. The Commission should once again keep the door open to competition by not ceding all L-band frequencies to the Applicants. In fact, the historical performance of the Applicants calls into question whether they would be able to justify, by using historical traffic data, access to additional spectrum either before the Commission or in operator-to-operator coordination negotiations.

The Commission should continue both its longstanding policy of encouraging competition generally, as well as its commitment to the WTO Basic Telecommunications Agreement – as it expects other governments to honor their commitments to open up markets to U.S. systems. International systems such as KITComm’s and others will be able to inject some measure of competitive vigor into the U.S. market, if not shut out.¹¹

The history of the mobile satellite services market is largely a sad one. Spectrum shortages, however, have not been the root cause of these failures. Rather, poor product development and service delivery, mismanaged relationships with investors and distributors, failure to execute business plans in a timely fashion and failure to correctly assay the competition and customer demand have all been contributing factors to the failures seen to date. This high level of failure speaks loudly to the wisdom of *not* putting all of one’s faith in one operator or one business model, but rather to continue to allow various operators to seek the formula for success.

Mobile satellite services may yet follow in the path of the DBS and DTH businesses. The success of DBS operators beginning in the mid-1990s followed the painful decade of the 1980s, which saw virtually every applicant and licensee struggle

¹¹ KITComm views the Commission’s decision not to accept, at this time, the Applicants’ proposal to use terrestrial base stations in urban areas as an encouraging sign that the Commission recognizes that use of such facilities would undoubtedly close out competition in the L-band.

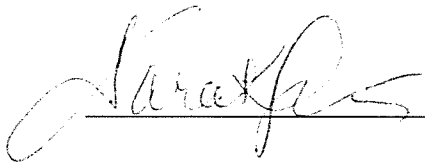
and in some cases fail. The robust survivors of that experience are the result of the Commission's decision to rely on a competitive market to determine which systems should survive. The mobile satellite services business may yet emerge to emulate the success of the DBS market, which is not only internally competitive, but competitive with terrestrial alternatives. This can only be achieved if the Commission does not, in essence, favor one system over others by giving it a monopoly on the available spectrum.

IV. Conclusion

The Commission should not grant the application for a next-generation satellite system as proposed by the Applicants or permit expanded frequency use by current generation satellites. Rather, the Commission should seek to preserve the opportunity for competition by permitting the Applicants to operate only in those portions of the L-band for which they have already been authorized by the Commission.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Christine L. Zepka, hereby certify that on this 18th day of April 2001, a true and correct copy of the foregoing "Comments" was sent by first class U.S. mail, postage prepaid, to the following parties:

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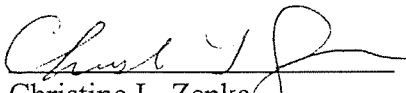
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