

Before the  
**Federal Communications Commission**  
Washington DC 20554

In the Matter of )  
)  
The Establishment of Policies and Service )  
Rules for the Broadcasting-Satellite Service )  
at the 17.3-17.7 GHz Frequency Band and )  
at the 17.7-17.8 GHz Frequency Band )  
Internationally, and at the 24.75-25.25 GHz )  
Frequency Band for Fixed Satellite Services )  
Providing Feeder Links to the Broadcasting- )  
Satellite Service and for the Satellite Services )  
Operating Bi-directionally in the 17.3-17.8 )  
GHz Frequency Band )

IB Docket No. 06-123

**REPLY COMMENTS OF THE  
FIXED WIRELESS COMMUNICATIONS COALITION**

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November 15, 2006

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**REPLY COMMENTS OF THE  
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The Fixed Wireless Communications Coalition (FWCC) files these reply comments in the above-captioned proceeding.<sup>1</sup>

The FWCC is interested in the proceeding because the Broadcasting-Satellite Service (BSS) uplinks at 24.75-25.25 GHz are co-frequency with part of the 24.25-25.25 GHz Fixed Service band, and requested BSS authority at 17.7-17.8 GHz would encroach upon Fixed Service spectrum above 17.7 GHz.

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<sup>1</sup> *The Establishment of Policies and Service Rules for the Broadcasting-Satellite Service*, IB Docket No. 06-123, Notice of Proposed Rulemaking, 21 FCC Rcd 7426 (2006) (*Notice*). The FWCC is a coalition of companies, associations, and individuals interested in the Fixed Service -- *i.e.*, in terrestrial fixed microwave communications. Our membership includes manufacturers of microwave equipment, licensees of terrestrial fixed microwave systems and their associations, and communications service providers and their associations. The membership also includes railroads, public utilities, petroleum and pipeline entities, public safety agencies, cable TV and private cable providers, backhaul providers, and/or their respective associations, communications carriers, and telecommunications attorneys and engineers. Our members build, install, and use both licensed and unlicensed point-to-point, point-to-multipoint, and other fixed wireless systems, in frequency bands from 900 MHz to 95 GHz. For more information, see [www.fwcc.us](http://www.fwcc.us).

**A. The Commission Should Not Authorize Domestic BSS Service at 17.7-17.8 GHz.**

Three parties ask the Commission to make the 17.7-17.8 GHz segment available for domestic BSS service. DIRECTV and EchoStar, asserting that BSS will not cause interference to the Fixed Service, seek access to 17.7-17.8 GHz on a non-protected, non-interference basis.<sup>2</sup> Taking a more aggressive stance, Intelsat asks to create what it terms "a very satisfactory arrangement" by freezing Fixed Service deployment in the band, so that BSS operators could site their stations without fear of new interference.<sup>3</sup> A "less satisfactory but still useful" alternative, in Intelsat's view, would allow continued Fixed Service deployment while giving BSS co-primary status with the Fixed Service.<sup>4</sup>

For the Commission to allow BSS operations in the 17.7-17.8 GHz segment would be both bad policy and contrary to law.

The Commission and the affected industries still are not finished with the long and difficult process of segmenting the 18 GHz band between the Fixed Service and the Fixed Satellite Service (FSS). Prior to 1998, the entire band was allocated to both services on a co-primary basis. The Fixed Service used the band heavily even then,<sup>5</sup> and the number of links in use continues to increase. The FSS then did not use the band at all, but had plans eventually to

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<sup>2</sup> DIRECTV, Inc. at 34; EchoStar Satellite L.L.C. at 6 & Technical Annex at 24-25.

<sup>3</sup> Intelsat North America LLC at 9.

<sup>4</sup> *Id.* at 9.

<sup>5</sup> See *Redesignation of the 17.7-19.7 GHz Frequency Band*, IB Docket No. 98-172, 13 FCC Rcd 19923 at para. 8 (released Sept. 18, 1998) (tens of thousands of Fixed Service links, with the numbers expected to increase).

deploy large numbers of small earth stations.<sup>6</sup> Noting that this would complicate coordination with the Fixed Service, the Commission proposed in 1998 to segment the band.<sup>7</sup> That proceeding -- the infamous Docket No. 98-172 -- over the course of several years generated a Notice of Proposed Rulemaking, a Report and Order, three reconsideration orders, and a case before the U.S. Court of Appeals.<sup>8</sup> The Commission's docket held 344 filings, nearly all of them substantive submissions from industry participants.

Even then, the matter was not over. In 2001 the FWCC alerted the Commission that the Fixed Service was left with a wasteful channelization plan, and proposed specific relief. That prompted another five-year proceeding, culminating in a Report and Order that presently awaits publication in the Federal Register.<sup>9</sup>

The satellite commenters now seek to reopen the central question decided in Docket 98-172: the allocation of spectrum between the FSS and the Fixed Service. That question has been as thoroughly aired, extensively briefed, and multiply reconsidered as any in recent Commission history. We ask the Commission to state that the matter is closed.

The request by DIRECTV and EchoStar for secondary operation, while less intrusive than Intelsat's call for a Fixed Service freeze, still seeks to disturb the docket's hard-won finality. The FWCC foresees a possible scenario in which satellite interests build out thousands of earth

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<sup>6</sup> *Redesignation of the 17.7-19.7 GHz Frequency Band, supra*, at para. 9.

<sup>7</sup> *Id.* at para. 1.

<sup>8</sup> *Teledesic LLC v. FCC*, 275 F.3d 75 (D.C. Cir. 2001).

<sup>9</sup> *Rechannelization of the 17.7-19.7 GHz Frequency Band for Fixed Microwave Services*, WT Docket No. 04-143, Report and Order, FCC 06-141 (released Sept. 29, 2006).

stations on a non-interference basis, and then claim the need to protect that investment as grounds for greater levels of interference protection.<sup>10</sup>

In any event, for the Commission to consider these requests on the present record would be unlawful. The BSS providers' requests for access to 17.7-17.8 GHz amount to requests for reconsideration of the outcome in Docket No. 98-172. Those are untimely by several years.<sup>11</sup>

Moreover, the *Notice* provides:

[W]e do not propose to authorize or to protect the reception of BSS (space-to-Earth) transmissions into the United States and its possessions in the 17.7-17.8 GHz band.<sup>12</sup>

The Administrative Procedure Act (APA) requires prior notice of a proposed rulemaking,<sup>13</sup> in order to "allow for meaningful and informed comment."<sup>14</sup> Where, as here, the agency's notice expressly took a proposal off the table, and thereby waved off comment, adoption of the rule without further notice would violate the most basic principles of the APA.

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<sup>10</sup> We have seen this pattern before. *E.g.*, Comments of Telenor Satellite Services, Inc. in IB Docket No. 02-10 at 6 (filed Feb. 23, 2004) (company providing C-band Earth Station Vessel (ESV) services, on non-interference basis, requests licensing regime in part to protect "the huge investment that ESV operators have already made in C-band equipment.")

<sup>11</sup> 47 C.F.R. Sec. 1.429(d) (petitions for reconsideration must be filed within 30 days of public notice of action).

<sup>12</sup> *Notice* at para. 30 (footnote omitted).

<sup>13</sup> 5 U.S.C. Sec. 553.

<sup>14</sup> *American Medical Ass'n v. Reno*, 57 F.3d 1129, 1132 (D.C. Cir. 1995). *See also Connecticut Light and Power Co. v. Nuclear Regulatory Comm'n*, 673 F.2d 525, 530 (D.C. Cir. 1982), *cert. denied*, 459 U.S. 835 (1982); *Home Box Office, Inc. v. FCC*, 567 F.2d 9, 55 (D.C. Cir. 1977), *cert. denied*, 434 U.S. 829 (1977).

**B. The Commission Should Proceed Carefully in Authorizing 24 GHz Feeder-Link Earth Stations.**

The Commission requests comment on the feasibility of operating BSS feeder links on a co-frequency basis with 24 GHz Fixed Service licensees.<sup>15</sup>

FiberTower Corporation, a licensee in the 24 GHz service (and a member of the FWCC) filed comments in response. FiberTower notes that the record on these issues is outdated and incomplete. In particular, the characteristics of the proposed BSS feeder links and the BSS system are not well defined. Fixed Service operations in the 25.05-25.25 GHz band are licensed on an area basis, and are subject to recent developments in available equipment and architectures.<sup>16</sup> FiberTower raises several specific questions that are directly relevant to arriving at workable sharing criteria.<sup>17</sup>

We think FiberTower makes a persuasive case. On the present record, without extensive technical testing and analysis, the only safe mechanism for co-primary operation is to authorize not more than five BSS feeder-link earth stations sited at least 100 miles from 24 GHz Fixed Service licensed areas.<sup>18</sup> Closer-in siting will require the Commission and the affected industries first to update the factual background as to developments in both BSS deployment plans and in Fixed Service deployment and technology.<sup>19</sup>

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<sup>15</sup> *Notice* at para. 91.

<sup>16</sup> FiberTower Corp. at 4.

<sup>17</sup> FiberTower Corp. at 4-7.

<sup>18</sup> FiberTower Corp. at 7-10.

<sup>19</sup> FiberTower Corp. at 11-14.

The FWCC does not oppose expedited licensing for up to five BSS feeder-link stations located at least 100 miles from 24 GHz licensed areas. If the Commission wishes to explore the feasibility of siting those stations in or near 24 GHz areas, the FWCC will be pleased to participate in the necessary technical work.

### CONCLUSION

This proceeding is one of several in recent years that seeks to institute or expand satellite or other services in spectrum heavily used by the Fixed Service. The FWCC has not opposed these initiatives in the past, and we do not oppose BSS now. Some new entrants, however, fail to appreciate the importance of finding ways to coexist with incumbents.<sup>20</sup> We ask the Commission to adopt BSS rules that permit the Fixed Service to continue its mission of providing ultra-reliable, high-capacity communications to public safety, utilities, transportation, telecommunications, and a wide variety of other industries.

Respectfully submitted,

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<sup>20</sup> *E.g.*, Intelsat's proposal to freeze Fixed Service deployment in Fixed Service spectrum. Intelsat North America LLC at 8-10.

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