FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

November 4, 2009

The Honorable Mary Bono Mack
U.S. House of Representatives
104 Cannon House Office Building
Washington, D.C. 20515

Dear Congresswoman Bono Mack:

Thank you for your September 4, 2009 letter bringing to my attention concerns expressed to you by some members of the industry about the efficiency of the Commission's satellite licensing process. I also appreciate our discussion in August on FCC matters, and look forward to our continuing discussions about the work of the Commission.

I can assure you that a key goal of my Chairmanship is to ensure that the Commission acts as expeditiously as possible in completing its work. As you may know, I have initiated a Commission-wide reform process to further address many of these concerns. This process is headed by the FCC's Special Counsel for FCC reform, who is working closely with our Managing Director and General Counsel to review the FCC's existing processes and procedures and make appropriate recommendations for improvement and reform. Let me now turn to addressing the specific points raised in your letter.

Application Processing Times Are Too Long.

Let me say at the outset that I agree completely with the underlying premise of your letter, namely, that we should improve the current satellite application processing time periods. In this regard, while the last four years has seen a major reduction, for example, in the average processing time for satellite applications from 567 days to 227 days, my goal is to do what is necessary to reduce this time period even further. However, as noted in the attached description of our overall "Satellite Processing Procedures and Time Periods", a number of the applications that are filed involve special issues requiring inter-agency and/or inter-bureau coordination or special waiver consideration. Other applications may be related to pending rulemaking proceedings or are awaiting international allocation determinations.

We will examine processing times for the entire process very carefully, particularly uncontested applications that do not involve the above noted special situations. We also will carefully review any obstacles that lead to pre-Public Notice processing delays.

Some Information Required In Satellite Applications Is Redundant Or Unnecessary (for example 0.1 degree satellite moves; fleet management requirements).

On its own motion, the Commission regularly evaluates its satellite licensing rules to determine whether any have become outdated or burdensome on the industry with little or no corresponding public interest benefit. In fact, the Commission is required, by statute, to conduct a review of all of its rules every two years to determine whether any should be modified or eliminated. In conducting this Biennial review, the Commission seeks comment from all interested parties. Moreover, interested parties can file requests to change the rules pursuant to the FCC's rulemaking procedures.

The Commission has determined that some requests by operators are important enough to require a full Public Notice and Comment airing and subsequent agency review to determine whether approval of the request is in the public interest. For example, requests to change an orbital location, even by as little as 0.1 degree, can increase the potential for interference into operations of satellites at adjacent orbital locations and the potential for in-orbit collisions. These requests often involve coordination with other U.S. Government Agencies, and ultimately may require an Order specifying certain operational restrictions.

Commission Delay Can Tilt The Playing Field To The Disadvantage of U.S. Licensees.

As I am sure you agree, the most important factor here is service to U.S. consumers. FCC policies do not favor any particular operator as long service is provided to the public. Significantly, however, U.S. and foreign licensees are on equal footing when they submit applications to provide service to the United States. A foreign operator must file the same application and related information as required of a U.S. operator seeking to provide the same service. They must meet the same technical and service standards and follow the same process as their U.S. counterparts.

Unwritten Policies and Procedures Frequently Applied In An Inconsistent Manner ("Reflagging Cases").

"Reflagging" involves the transfer of a satellite from the licensing jurisdiction of the United States to the licensing jurisdiction of a foreign country. The Commission has proceeded with caution in this area. Specifically, the Commission has proceeded on a case-by-case basis in the few instances where this issue has presented itself. To the extent this process has created uncertainty for U.S. licensed satellite operators who desire to be reflagged, as suggested in your letter, the Commission will, of course, consider any rulemaking request filed by interested parties to reexamine this particular matter in a public proceeding.

In conclusion, I want to thank you again for bringing these matters to my attention so that I may address them. I look forward to continuing to work with you and your colleagues in Congress. Please do not hesitate to contact me if you have any further questions.

Sincerely,

Julius Genachowski
Chairman

Enclosure

Attachment

SATELLITE PROCESSING PROCEDURES AND TIME PERIODS

In the four year period from 1999-2002, the average processing time for a space station application was 567 days. In August of 2003, the Commission adopted the International Bureau recommendation for a major overhaul of the satellite application licensing procedures. These changes were fully implemented in late 2003 and 2004. Thus in the subsequent four-year period of 2005-2008, the average processing time for a space station application was reduced from a previous average high of 567 days to an historic low of 227 days, a 60% reduction in the average processing time for such applications. Moreover, over 600 or 75% of the 808 satellite applications processed during this period were processed in 180 days or fewer. Significantly, this reduction in average processing time was achieved while the total number of applications received increased from 699 in the 1999-2002 timeframe to 836 in the 2005-2008 timeframe.

Further, the 227 day average for the total of 808 applications is skewed upward by a relatively small number of highly unusual applications. In particular, 42 of the 808 applications filed between 2005 and 2008 had processing times of greater than 1,000 days each, greatly increasing the average. Most of these applications involved requests for unprecedented systems and/or systems where there was no frequency allocation for the proposed service. For these type of applications, the U.S. government must, by treaty, participate in the World Radio Conference which is held only once every four years. An allocation may take multiple conferences to implement. It is only at these conferences that allocation decisions are made. Once an allocation is made by the international body, the Commission must conduct a rulemaking to implement the allocation domestically. Examples of allocations in this category include those associated with the 17/24 GHz band and the non geostationary satellites in the Ku-band and Ka-band. Other applications on file for more that 1000 days involve novel rulemaking proceedings which can take several months to complete, e.g., the pending DBS Reduced Orbital Spacing proceeding. These applications remain on file and continue to be counted in the pending average calculation until all of the steps noted herein are completed.

For applications that are not in the highly unusual category, the application procedures are as follows. Typically, routine applications can be granted in a much shorter period of time, while non-routine applications take longer. However, for the reasons explained below, it takes at least 60 days before even routine applications can be granted.

When filed, an application must first undergo a legal and engineering staff review to determine if it is acceptable for filing or is deficient in providing certain basic information and therefore must be dismissed. Thereafter, if it is found acceptable, the application is placed on Public Notice for a period of 30 days as required by statute. If comments or oppositions are filed, an additional 15-day period is provided for an applicant to reply and a further 10-day period for commenters to respond.

Most applications for satellites that are filed are non-routine and require additional steps prior to grant. For example, many applications involve proposed operations in frequency bands shared

with non-satellite delivered commercial service providers and/or government users. In the case of commercial inter-band sharing, the applications must be coordinated between the relevant Bureaus to ensure that the respective licensees affected will not receive any interference from the proposed operations that will adversely impact the primary or co-equal status of existing licensees. Where the proposed operation will potentially impact government operations in shared commercial/governmental frequency bands, the applications must be coordinated with the federal government through the National Telecommunication Information Administration (NTIA) of the Department of Commerce. NTIA in turn coordinates the technical parameters in the application with the Department of Defense, NASA and other agencies for national security, homeland security and/or public safety purposes, as appropriate.

In addition to the above, many non-routine applications request some form of waiver of the Commission's technical or other rules. These waiver requests require a case-by-case review and analysis to determine whether the public interest would be served by a departure from the Commission's rules in the case presented. Waiver requests also will require inter-agency coordination where government uses may be adversely impacted by grant of the waiver requests.