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November 6, 1998

EX PARTE OR LATE FILED Writer's Direct Dial Number
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Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: **EX PARTE**
ET Docket No. 95-18; RM-7927; PP-28
IB Docket No. 98-172; RM-9005; RM-9118

Dear Ms. Salas:

ICO Services Limited¹ files this letter to urge the Commission, as it continues to address incumbent user transition issues with respect to the 2 GHz MSS spectrum, to be receptive to alternative approaches to these issues. ICO specifically wishes to note the flexible approach to incumbent user transition issues recently advanced in the Commission's 18 GHz proceeding² and to suggest that the Commission adopt a similar approach as it proceeds with the above referenced 2 GHz MSS proceeding. In recent meetings with Commission staff, ICO and the ICO USA Service Group offered an alternative transition approach ("the ICO/SG Transition Proposal") to the measures taken by the Commission in its 1997 report and order and further notice of proposed rulemaking in the 2 GHz MSS proceeding.³ The ICO/SG Transition Proposal -- which is described in an attachment hereto -- will best serve the public interest by ensuring the availability of 2 GHz MSS at the earliest possible date. Accordingly, ICO urges the

¹ ICO Services Limited, a company established under the laws of England and Wales, is a wholly owned subsidiary of ICO Global Communications (Holdings) Limited, which is the ultimate parent of a wholly owned group of companies (referred to herein collectively as "ICO") that is developing a global mobile satellite service ("MSS") system.

² *Redesignation of the 17.7-19.7 GHz Frequency Band, Blanket Licensing of Satellite Earth Stations in the 17.7-20.2 GHz and 27.5-30.0 GHz Frequency Bands, and the Allocation of Additional Spectrum in the 17.3-17.8 GHz and 24.75-25.25 GHz Frequency Bands for Broadcast Satellite-Service Use*, FCC 98-235 (released September 18, 1998) ("18 GHz NPRM").

³ *Amendment of Section 2.106 of the Commission's Rules to Allocate Spectrum at 2 GHz for Use by the Mobile-Satellite Service*, 12 FCC Rcd 7388 (1997) ("2 GHz Order").

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Commission to solicit public comment on the ICO/SG Transition Proposal as part of its ongoing 2 GHz MSS proceeding.

I. BACKGROUND

ICO is an applicant⁴ in the Commission's 2 GHz MSS initial processing round. In 1996, ICO first formally declared its intent to provide MSS in the United States.⁵ Since that time, ICO has participated in the above referenced 2 GHz MSS proceeding, both individually and as part of a coalition of MSS applicants and business partners thereof.

In its 2 GHz Order, the Commission determined, among other things, that because it was then believed that Broadcast Auxiliary Service ("BAS") operators and MSS operators cannot share spectrum, it would be necessary to clear the 1990-2025 MHz band of BAS in order to accommodate MSS.⁶ The Commission further determined that, in such circumstances, MSS operators would bear the costs of relocating the BAS incumbents.⁷ The Commission also determined, with respect to the MSS downlink band of 2165-2200 MHz, that MSS operators would have to relocate only those Fixed Service ("FS") incumbents that receive harmful interference from, or cause harmful interference to, MSS operations.⁸ The Commission proposed rules and policies for relocation of 2 GHz MSS spectrum incumbents in a further notice of proposed rulemaking that was released with the 2 GHz Order.⁹

⁴ ICO uses the word "applicant" herein to refer both to U.S. licensed system's requests for assignment of spectrum and to letters of intent for non-U.S. licensed systems seeking access to 2 GHz spectrum in the United States, unless the context indicates otherwise.

⁵ See Letter from Cheryl A. Tritt, Counsel for ICO, to William F. Caton, Secretary, Federal Communications Commission (Oct. 18, 1996). ICO's intent to serve the United States was commonly known as early as 1995.

⁶ 2 GHz Order, 12 FCC Rcd at 7401.

⁷ *Id.* at 7402.

⁸ *Id.* at 7406.

⁹ See *id.* at 7414 ("2 GHz Further Notice")

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ICO and other members of the satellite industry filed a petition asking the Commission, among other things, to reconsider its decision in the 2 GHz Order to impose relocation expenses on MSS operators.¹⁰ That petition remains pending.¹¹

In its recent 18 GHz NPRM, the Commission also addresses the transition of incumbent operators from spectrum now allocated to satellite services. The Commission asked commenters to address a number of questions posed by the Commission regarding relocation. *Most important, the Commission asked, in the event general relocation becomes necessary, whether the relocation policies set forth in the emerging technologies and 2 GHz MSS proceedings should apply or whether "alternative relocation mechanisms" should be considered.*¹²

II. THE COMMISSION MUST CONSIDER THE EFFECTS OF ITS DECISIONS REGARDING SPECTRUM ACCESS ON THE VIABILITY OF GLOBAL SATELLITE SYSTEMS

The U.S. satellite industry is an extremely dynamic one. In the absence of undue regulatory risks and burdens, in the next few years this industry will continue to grow as satellite operators begin to serve regional and international markets in addition to their respective domestic markets. The U.S. economy stands to benefit substantially from this growth in terms of revenues and jobs. Last year, for example, the U.S. satellite industry generated more than \$23 billion in revenue and employed more than 100,000 people.

As the Commission considers market access issues with respect to global satellite services, it should be aware that as a leader in encouraging and enabling advanced communications services, the Commission is emulated by many countries.

¹⁰ Petition for Partial Reconsideration of the MSS Coalition, ET Docket No. 95-18, RM-7927, PP-28 (May 20, 1997) ("Coalition Petition").

¹¹ The Mobile Satellite Services Ad Hoc Industry Group also has asked the Commission to reverse its decision in the 2 GHz Order regarding the relocation of incumbent users of 2 GHz MSS spectrum. *See* Letter from Mobile Satellite Services Ad Hoc Industry Group to Magalie Roman Salas, Federal Communications Commission (May 22, 1998). In addition, the Satellite Industry Association has asked the Commission to "explore alternative approaches" to the approach taken in the 2 GHz Order. Letter from Clayton Mowry, Director, Satellite Industry Association, to William F. Caton, Acting Secretary, Federal Communications Commission (July 2, 1997) at 2.

¹² 18 GHz NPRM, at ¶41.

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The Commission's regulatory approaches thus often become the model upon which other countries base their regulations.

Many countries are watching the Commission's handling of pending global satellite proceedings. The Commission should take care not to send the signal to these countries that spectrum access fees -- be they in the form of relocation expenses or some other costs -- are a proper mechanism for determining access for global satellite systems to the U.S. market. The imposition of such expenses by the United States alone would have a negative effect on the ability of satellite operators to serve this country. If other countries also impose such fees, the compounded negative effect could prevent some satellite operators -- including U.S. operators -- from competing on a global basis.

III. THE COMMISSION SHOULD ADOPT IN THE 2 GHZ MSS PROCEEDING THE FLEXIBLE APPROACH TO TRANSITIONING INCUMBENT OPERATORS' USE OF THE SPECTRUM TAKEN IN THE 18 GHZ PROCEEDING

As noted above, in both the 2 GHz MSS and 18 GHz proceedings, the Commission addressed the difficult issue of transitioning incumbent operators' use of the spectrum. In the 18 GHz proceeding, however, the Commission approaches the relocation issue in a more flexible and open manner than it did in the 2 GHz Order. In the 18 GHz NPRM, the Commission solicits comment on whether the relocation policies enunciated in the emerging technologies and 2 GHz MSS proceedings should apply to global satellite systems, or whether "alternative relocation mechanisms" should be considered.¹³ The Commission thus seems willing in the 18 GHz proceeding to consider alternatives to requiring satellite operators to pay to relocate incumbents. ICO encourages the Commission to focus its efforts in that proceeding on finding ways to avoid government mandated relocation when reasonable transition approaches are available.

The Commission similarly should consider such *alternative* transition proposals for incumbent terrestrial radio systems in the 2 GHz MSS proceeding. As ICO previously has explained, the relocation policies established in the emerging technologies proceeding and applied in the purely domestic terrestrial wireless context (*i.e.*, PCS) are not appropriate in an environment of multiple regulatory jurisdictions faced by global satellite services such as MSS.¹⁴ The imposition of relocation expenses on MSS operators by the Commission, and other administrations that likely will follow

¹³ *Id.*

¹⁴ *See* Coalition Petition at 28-30.

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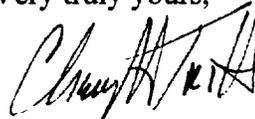
the Commission's lead, could significantly impair those operators' ability to offer service -- to the detriment of U.S. consumers.

ICO urges the Commission to seek comment in its anticipated further 2 GHz MSS rulemaking on the attached ICO/SG Transition Proposal. The ICO/SG Transition Proposal can provide an overall framework within which negotiations between MSS operators and incumbents can take place and will allow for a rapid and inexpensive transition, ensuring the availability of 2 GHz MSS service in the United States at the earliest possible date.

* * *

Twelve copies of this letter (two for each of the above referenced dockets) have been submitted to the Secretary of the Commission for inclusion in the public record, as required by Section 1.1206(b)(2) of the Commission's rules.

Very truly yours,



Cheryl A. Tritt

Enclosure

cc: Ari Fitzgerald
Dan Connors
Paul Misener
Peter Tenhula
Karen Gulick
Mindy Ginsburg
Rebecca Dorch
Sean White

**PROPOSED ELEMENTS OF FCC SPECTRUM ACCESS POLICY
FOR GLOBAL MSS SYSTEMS AT 2 GHz**

1. Establish global model/precedent for market opening for MSS systems.
2. Global MSS should not pay for spectrum access, whether by auctions, fees or direct relocation costs to any party but will provide accommodation such as technical assistance, product development support and operational constraints where required to allow a rapid and inexpensive transition of incumbent users.
3. Allow for negotiated transition and accommodation arrangements (as described in paragraph 2 above) between MSS entrants and terrestrial incumbents.
 - FCC to allow in-band retuning (FS) prior to Sunset date.
4. Given the near term entry of 2 GHz MSS (August 2000), establish the following basic transition rules and policies to apply in the absence of negotiated arrangements.
 - a. 'Sunset' date (1/1/2005) - for all incumbent terrestrial systems, after which MSS systems in 2 GHz bands may commence unconstrained operations.
 - b. Terrestrial Licensing in Uplink (1990-2025 MHz)/Downlink (2165-2200 MHz):
 - Freeze on applications for new licenses and modifications as of issuance of the FNPRM.
 - No new licenses granted upon issuance of the R&O.
 - All renewals granted after issuance of 2 GHz FNPRM conditioned on secondary status as of January 1, 2000.
 - c. Harmful interference:
 - Adopt ITU interference standards and interference assessment methods for protection of primary Fixed Service systems.
 - MSS to avoid harmful interference to authorized primary terrestrial systems prior to 'Sunset' date.
 - In view of the expected improvement in spectrum efficiency in the digital ENG environment, discontinue BAS Channel 1 (Global MSS spectrum) prior to first MSS operational use.
 - BAS continues use of Channel 2 until such time as additional authorized entry of MSS requires additional spectrum take-up but, in any event, no later than 1/1/2005. It is not expected that accommodation will be necessary for BAS Channel 2.
 - d. BAS ENG conversion to digital as soon as possible but, in no event, later than in accordance with FCC fixed DTV conversion schedule (e.g. complete conversion of all commercial television stations by May 1, 2002.)
 - e. Shared (entrant and incumbent) operational constraints during transition period.