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JUL 16 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

July 16, 2001

BY HAND

Magalie Roman Salas, Secretary
Federal Communications Commission
445- 12th Street, S.W., TW-A325
Washington, DC 20554

Re: Authorization of 2 GHz Mobile Satellite Service Applications
And Letters of Intent (see Appendix)
IB Docket No. 99-81
ET Docket No. 00-258

Dear Ms. Salas:

On July 13, 2001, Don Brittingham, Director of Wireless Policy at Verizon Wireless, and the undersigned, spoke by telephone to Julius Knapp (Deputy Chief, Office of Engineering and Technology), and Geraldine Matise (Deputy Chief, Policy and Rules Division, Office of Engineering and Technology), regarding the Mobile Satellite Service spectrum in the 2 GHz band. In particular, we discussed Verizon Wireless's view that the Commission should defer grant of any 2 GHz MSS licenses until it considers the issues raised in CTIA's Petition for Rulemaking concerning reallocation of the 2 GHz MSS spectrum. Moreover, we discussed the need to ensure that the entire 2 GHz MSS band be considered for reallocation in order not to limit the Commission's flexibility in its ongoing 3G rulemaking proceeding. In the course of addressing these particular issues, we referred to CTIA's July 12, 2001 and Verizon Wireless's July 13, 2001 *ex parte* letters (copies attached) to Chairman Powell.

Pursuant to Section 1.1206 of the Commission's Rules, an original and one copy of this letter is being filed with your office. If you have any questions concerning this matter, please contact the undersigned.

Sincerely,

WILKINSON BARKER KNAUER, LLP

BY: Kathryn A. Zachem

Attachments

cc: Peter Tenhula
Adam Krinsky
Bryan Tramont
Lauren Van Wazer
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Counsel for MSS Applicants

™ CTIA

Building The Wireless Future™
Cellular Telecommunications & Internet Association

Thomas E. Wheeler
President / CEO

July 12, 2001

The Honorable Michael K. Powell
Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: Petition for Rulemaking of the Cellular Telecommunications & Internet Association Concerning Reallocation of 2 GHz Spectrum for Terrestrial Wireless Use; IB Docket No. 99-81; ET Docket No. 00-258/RM-9920/RM-9911.

Dear Chairman Powell:

The Cellular Telecommunications & Internet Association ("CTIA") submits this letter in response to several *ex parte* filings addressing CTIA's Petition for Rulemaking concerning reallocation of the 2 GHz Mobile Satellite Service ("MSS") spectrum, and the related 2 GHz MSS applications. On behalf of our carrier members, CTIA in its petition urges the Commission to consider the potential reallocation of the 2 GHz band in light of changed circumstances in the MSS industry since applications originally were filed – changes which were highlighted by New ICO in its ancillary terrestrial component proposal. We also submit that the Commission should defer granting any 2 GHz MSS license until it considers the issues raised by CTIA in its petition. As the Commission is considering these issues, there are several measures it could take to further a sound spectrum management policy that are detailed in the text below.

Currently, 70 MHz of spectrum is set aside for MSS use in the 2 GHz band. It is reasonable to expect that most – and perhaps all – of the current MSS applicants will ultimately not launch and provide service in that band. Given increasing spectrum needs for other services, the track record of underutilized MSS spectrum in other bands, the financial condition of numerous MSS companies, and the claims made by New ICO that MSS is not viable without terrestrial flexibility, the Commission should consider whether it is in the public interest to license an additional 70 MHz for MSS. In the long run, the most efficient course for all affected parties would be to consider, on an expedited basis, whether to reallocate the MSS spectrum in the 2 GHz band before individual MSS licenses are granted. If all indications are that the MSS industry may not need all or even most of the 2 GHz band, or that the underlying rationale for the 70 MHz MSS allocation is no longer justified, it makes little sense for the Commission to ignore this reality and proceed with licensing MSS providers.

This is particularly true for New ICO, which claims that terrestrial use is integral to its viability. In this circumstance, the Commission should address New ICO's ancillary terrestrial component ("ATC") proposal before it grants the company's licenses (see Letter from AT&T Wireless Services, Inc., Cingular Wireless LLC, Sprint PCS and Verizon Wireless to Chairman Michael Powell, June 13, 2001 in IB Docket No. 99-81). New ICO's proposal raises broad policy, technical and equity issues that would require extensive comment by affected parties before any such change in the service rules could be considered. Moreover, if the Commission should determine, after notice and comment, that the MSS spectrum may be used for the provision of terrestrial services, that spectrum should be made available via auction to all interested users.

CTIA and its member companies submit that prompt action on our petition for rulemaking is especially important because of its potential relevance to the pending rulemaking proceeding addressing spectrum for advanced mobile services, ET Docket No. 00-258/RM-9920/RM-9911. The Commission could significantly speed a resolution of this complex docket by incorporating the CTIA petition into a Further Notice that would consider whether the 2GHz MSS band could be made available to free up additional spectrum for advanced mobile services, possibly by providing a location for incumbent users from other bands. In this context, it is important that the Commission ensure that the entire 2 GHz MSS band be considered for reallocation in order not to limit its flexibility as this proceeding unfolds.

If, contrary to CTIA's position, the Commission concludes that it is necessary to move ahead with granting the 2 GHz MSS licenses, the terrestrial wireless industry urges the Commission to take the measures detailed below. Absent these safeguards, it would be extremely difficult for the Commission to implement whatever decisions it might ultimately make in a proceeding addressing CTIA's petition for rulemaking and related spectrum matters. Sound spectrum management policy requires that the Commission not in effect prejudge the outcome of that proceeding.

First, the Commission should expressly state that each 2 GHz MSS license is granted subject to any rulemaking proceeding that impacts this band. Second, the Commission should confirm that any 2 GHz MSS license is for the provision of satellite service only, consistent with the existing MSS service rules, and that terrestrial use such as that proposed by New ICO is not permitted.

Third, the Commission should clearly limit any 2 GHz MSS licensee that might launch and start to provide service to the 5 MHz of spectrum (2.5 MHz in each direction) that the FCC found necessary to provide service in its MSS service rule proceeding (see *Establishment of Policies and Service Rules for the Mobile Satellite Service in the 2 GHz Band*, Report and Order, 15 FCC Rcd 16127, ¶17 (2000)). As the rules currently stand, the first licensee that launches its service is able to use the entire 70 MHz of spectrum until subsequent licensees launch. In light of current spectrum constraints, that is not an efficient use of spectrum. It would be more appropriate for the Commission to clarify that a licensee is only entitled to use 2.5 MHz of spectrum in each direction, consistent with its findings in the MSS Service Rules Order. Moreover, in an effort to ensure that

any of the 2 GHz MSS spectrum that is returned to the Commission can ultimately be used efficiently for other services, each licensee should, upon launch, be restricted to utilizing only that location within the 2 GHz MSS band that the Commission decides will best further the FCC's broader spectrum management needs.

Fourth, if the Commission determines that it should proceed with licensing, it should consider applying additional milestones to the 2 GHz licensees in light of the changed conditions that have developed since the plans for this band were originally crafted. For example, the licensees should be required to demonstrate early in the process their ability to relocate and fully compensate incumbent users in the band. In addition, all filings made by 2 GHz licensees that demonstrate their progress in meeting their required milestones should be made available for public comment, and subject to careful FCC review. If any licensees fail to meet their milestones, the Commission should rigorously enforce the milestones and recover that licensee's spectrum for other uses. In this context, if any 2 GHz MSS licensee fails to satisfy any milestone or otherwise withdraws its application, the Commission should clarify that the abandoned spectrum reverts to the FCC to be made available for other services, rather than becoming available to remaining MSS licensees for their use.

In conclusion, CTIA respectfully urges the Commission to consider the possible reallocation of the entire 2 GHz MSS spectrum and New ICO's ATC proposal before it grants any license. If the Commission decides to license the 2 GHz MSS applicants, the clarifications enumerated above will insure that the spectrum is used in an efficient manner as soon as possible.

Respectfully submitted,

Thomas E. Wheeler

cc: The Honorable Gloria Tristani
The Honorable Kathleen Q. Abernathy
The Honorable Michael J. Copps
The Honorable Kevin J. Martin
Peter Tenhula
Adam Krinsky
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July 13, 2001

The Honorable Michael K. Powell
Chairman
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: IB Docket No. 99-81
ET Docket No. 00-258

Dear Chairman Powell:

On June 26, 2001, you wrote to Secretary of Commerce Donald L. Evans regarding your joint efforts to identify additional spectrum for advanced wireless services, including Third Generation ("3G") mobile services. You stated that there was a need for "a careful and complete evaluation of the various possible options for making additional spectrum available for advanced wireless services," and that "the public interest would best be served by additional time for informed consideration, even if this results in some delay in reaching allocation decisions."

Verizon Wireless strongly supports your efforts to address these important spectrum issues and agrees that all possible options must be examined. As we have said previously, the availability of adequate spectrum is essential to the continued growth of the wireless industry and the development of advanced services that will yield significant benefits to the public and the United States economy.[1] Current spectrum resources for mobile services are inadequate, and the United States has fallen behind many other countries in making adequate spectrum available. In making decisions that affect not only spectrum policy but also the growth and international competitiveness of one of this nation's key industries, the Commission must fulfill its statutory duties by ensuring there will be sufficient spectrum for the next generation of mobile services.

The national interest, as you and Secretary Evans have recognized, is to ensure that sufficient spectrum is available for the public – for, after all, it is the public, not

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[1] *See* Comments of Verizon Wireless (filed Feb. 22, 2001), *Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, Including Third Generation Wireless Systems*, ET Docket No. 00-258, Notice of Proposed Rulemaking, FCC 00-455 (rel. Jan. 5, 2001) at 1.

carriers, that will use this scarce resource to meet their communication needs. The way to ensure that this national interest is met is – precisely as you said – to conduct a "complete evaluation" of "all options" on spectrum and how to meet the public's needs. Piecemeal decisions involving specific bands or carriers do not meet this requirement. They should be made after, not before, the FCC is able to set its course on a "complete" spectrum policy as a result of the 3G proceeding. Otherwise, the real benefits that comprehensive policy-making on spectrum can achieve may well be undermined.

Two pending matters raise this concern. First, some occupants of the 2150-2162 MHz and 2500-2690 MHz bands ask that those bands be removed from any further consideration in the reallocation rulemaking.[2] Until the Commission has devised a plan for accommodating the needs of advanced mobile services, it is extremely premature for it to eliminate any spectrum bands from consideration, particularly bands that have been identified worldwide for potential 3G use. Verizon Wireless opposes such action at this time.

Second, certain applicants for 2 GHz MSS spectrum ask that you grant their applications,[3] in the face of a record raising substantial doubt as to whether that would be wise or even lawful spectrum management policy. As the Cellular Telecommunications and Internet Association ("CTIA") has shown in its petition to reallocate a portion of the 2 GHz Mobile Satellite Service ("MSS") band,[4] and as we and other wireless carriers argued in our letter to you dated June 13, 2001, the 2 GHz MSS band (i.e., 1990-2025 MHz and 2165-2200 MHz) could be used to accommodate advanced mobile services, such as 3G, or to accommodate those commercial or government systems that might be displaced from other 3G bands.[5] Given the difficulties that the Commission and the Department of Commerce have had in identifying sufficient spectrum to allocate for 3G services, the proper course is, as you acknowledged in your letter to Secretary Evans, to examine all options. Therefore, Verizon Wireless urges you to quickly initiate a proceeding to consider the reallocation of the 2 GHz MSS band consistent with CTIA's request, and to defer grant of the 2 GHz MSS licenses until that proceeding is completed.

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[2] *See e.g., Ex Parte* filing of the Catholic Television Network, South Carolina Educational Television Commission, Sprint Corporation, WorldCom, Inc., Nucentrix Broadband Networks, Inc., and the National ITFS Association, filed July 3, 2001 (concerning ET Docket No. 00-258).

[3] *See e.g.. Ex Parte* filing of New ICO, filed June 14, 2001 (concerning IB Docket No. 99-81).

[4] Petition for Rulemaking of the Cellular Telecommunications & Internet Association ("CTIA Petition"), filed May 18, 2001.

[5] *See Ex Parte* filing of AT&T Wireless Services, Inc., Cingular Wireless LLC, Sprint PCS, and Verizon Wireless ("Ex Parte of Wireless Carriers"), filed June 13, 2001.

MDS/ITFS Bands

Last year, the World Radiocommunications Conference (WRC-2000) identified two spectrum bands for potential deployment of 3G services worldwide; the 1710-1850 MHz band currently used by the Federal Government and the 2500-2690 MHz band currently used by the Multipoint Distribution Service ("MDS") and Instructional Television Fixed Service ("ITFS"). This multi-band approach was widely supported by the United States Government and more than 150 other countries around the world. Subsequent to that decision, the Commission initiated a proceeding to determine what specific bands should be allocated in the U.S. to support the development of advanced mobile services.

Unfortunately, a spectrum plan that will accommodate the development of advanced mobile services has not yet been developed. Key to this plan is the availability of the 1710-1850 MHz band currently used by the Federal Government. While a portion of this band (1710-1755 MHz) has already been reallocated for commercial uses, reallocation of the remaining spectrum (1755-1850 MHz) is critical to the long-term growth of mobile services in the U.S. Verizon Wireless and others from the wireless industry have been working closely with the FCC, the Department of Commerce, and various other Federal agencies to develop a workable reallocation plan. We have made significant progress, but a final decision on this band has not yet been made.

Additional spectrum will, however, be needed even if the Federal Government band is reallocated for commercial use. The 2110-2165 MHz band, for example, will be needed to provide additional spectrum for pairing with spectrum in the 1710-1850 MHz band. Unfortunately, a significant portion of this band (2150-2162 MHz) is licensed to MDS. The continued use of this band for MDS and the requirements for guard bands to protect both 3G and MDS from harmful interference would render the 2145-2165 MHz band unusable for 3G services. It is, therefore, critically important that MDS systems be relocated to alternate spectrum, and that the 2150-2162 MHz band be reallocated for mobile services. As a result, we urge the Commission to reject the request of some MDS proponents to withdraw this band from further consideration.

Verizon Wireless remains committed to working with government and industry to develop a 3G band plan based on the 1710-1850 MHz band as the primary band. However, in the event that the 1755-1850 MHz band cannot be reallocated for commercial use, the Commission must consider other spectrum options including the 2500-2690 MHz band currently licensed to MDS/ITFS. It is, therefore, premature for the Commission to eliminate this band from further consideration for reallocation to mobile services. Sound spectrum policy requires that a 3G band plan first be developed.

MSS Bands

Recent filings by MSS applicants, as well as recent business failures, raise questions as to the viability of MSS and suggest, at a minimum, that the public interest may be served by reallocating MSS spectrum for other purposes.[6] Certain MSS licensees and applicants have themselves made clear that MSS as a stand-alone satellite service will not be viable. Consequently, granting the 2 GHz MSS applications could undermine the Commission's well-settled policies regarding satellite construction and build-out and encumber its ability to effectively manage the radio spectrum.[7]

The 2 GHz MSS band may provide a unique opportunity to help resolve the 3G spectrum problem. For example, a portion of the band could be used to accommodate the relocation of MDS systems from 2150-2162 MHz or Federal Government systems from 1710-1850 MHz. Some portion of the band might also be used for the provision of advanced mobile services, though the prospects for worldwide harmonization of the spectrum would have to be examined.

The FCC should fully evaluate any options for using the 2 GHz MSS band to facilitate the development of advanced mobile services. As a result, Verizon Wireless urges the Commission to quickly initiate a further notice of proposed rulemaking in ET Docket No. 00-258 to consider the reallocation of MSS spectrum for purposes that would advance the Commission's 3G spectrum initiative, and to defer grant of the 2 GHz MSS licenses until that proceeding is completed.

Thank you for your consideration of our views on these important matters.

John T. Scott III

John T. Scott, III

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[6] *See gen.* CTIA Petition; Ex Parte of Wireless Carriers at 2.

[7] Ex Parte of Wireless Carriers at 4.

cc: The Honorable Gloria Tristani
The Honorable Kathleen Abernathy
The Honorable Michael Copps
The Honorable Kevin Martin
Peter Tenhula
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Counsel for Wireless Communications Association
Counsel for National ITFS Association

APPENDIX

Celsat, Inc.	File Nos. 26/27/28-DSS-P/LA-97 88-SAT-AMEND-98
The Boeing Company	File Nos. 179-SAT-P/LA (16) 90-SAT-AMEND-98
Mobile Communications Holdings, Inc.	File No. 180-SAT-P/LA-97 (26)
Constellation Communications, Inc.	File No. 181-SAT-P/LA-97 (46)
Globalstar, L.P.	File Nos. 182-SAT-P/LA-97 (64) and 183 through 186-SAT-P/LA-97
Iridium, LLC	File No. 187-SAT-P/LA-97 (96)
ICO Services Limited	File No. 188-SAT-LOI-97
TMI Communications and Company, L.P.	File No. 189-SAT-LOI-97