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OFFICE OF THE SECRETARY

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August 2, 2001

BY HAND

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

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

Dear Ms. Salas:

On August 1, 2001, the undersigned, on behalf of Verizon Wireless, spoke by telephone with Lauren Van Wazer, Legal Advisor to Commissioner Michael Copps, regarding New ICO's request for terrestrial flexibility. The discussion focused on the issues set forth in the attached document.

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

Attachment

cc: Lauren Van Wazer

CELLULAR TELECOMMUNICATIONS & INTERNET ASSOCIATION

Presentation on the
New ICO Request for Terrestrial Flexibility
and the
CTIA Petition for Rulemaking on the 2 GHz Mobile Satellite Services Spectrum

August 2, 2001

NEW ICO's REQUEST FOR TERRESTRIAL FLEXIBILITY RAISES BROAD POLICY CONCERNS

- New ICO's Ancillary Terrestrial Component ("ATC") proposal amounts to a private reallocation of the MSS spectrum.
- Endorsing New ICO's ATC in any way risks prejudging a decision on its terrestrial flexibility proposal, which raises serious policy issues.
- New ICO's ATC proposal as currently crafted would create far-reaching precedent that would prejudge terrestrial/satellite sharing issues in many contexts.

NEW ICO's REQUEST FOR TERRESTRIAL FLEXIBILITY RAISES BROAD POLICY CONCERNS

- New ICO's ATC is not an "ancillary" service – in fact, there is no definition or framework for an ancillary service in the MSS context.
- New ICO's ATC proposal closely resembles Commercial Mobile Radio Service ("CMRS").
- New ICO's proposal would result in similarly situated services being regulated in very dissimilar ways.
    - Endorsing New ICO's request would raise significant policy and equity concerns by enabling MSS applicants to use spectrum they obtained for free to compete directly with CMRS providers who had to pay for their spectrum at auction.

NEW ICO's REQUEST FOR TERRESTRIAL FLEXIBILITY RAISES BROAD POLICY CONCERNS

- If the Commission determines that licensees can provide a terrestrial service in the 2 GHz MSS band, it should initiate auction proceedings pursuant to Section 309(j) of the Act.
- More companies may have applied to provide MSS in the 2 GHz band if the provision of terrestrial service had been contemplated in the service rules.
- Additional companies may now be interested in providing services in this band if a terrestrial component is added to the MSS service rules.

THE COMMISSION SHOULD NOT ENDORSE NEW ICO's ATC PROPOSAL

- If the FCC decides to initiate an NPRM to examine terrestrial flexibility, it should:
  - Recognize that New ICO's ATC is not an "ancillary" service as this concept has been used in other contexts;
  - Seek comment on a policy framework for evaluating terrestrial assignment and use in satellite spectrum – whether by terrestrial or satellite companies;
  - Propose that New ICO's ATC proposal should not be approved as filed.

CTIA's PETITION SEEKS REALLOCATION OF THE 2 GHz MSS SPECTRUM FOR OTHER USES

- Multiple bankruptcy filings and low subscriber figures for operational MSS providers raised viability concerns.
- New ICO's filing highlighted the fact that some applicants may not be viable in the 2 GHz band without a terrestrial component.
- Valuable MSS spectrum could be better used for other services.

CTIA's PETITION

- CTIA's petition for the FCC to revisit its 2 GHz allocation requests a common sense reaction to changed circumstances since the original allocation order in 1997.
- New ICO's filing vividly details the marketplace realities:
  - "The ability of the MSS industry to deliver public interest benefits is in dire jeopardy."
  - "The MSS sector has been decimated by a string of failures."
  - MSS's limitations have "been a crippling impediment for the industry and a terrible waste of available spectrum."
  - "The ATC concept . . . will allow the 2 GHz MSS . . . to become a viable enterprise."

REALLOCATION OF THE 2 GHz MSS SPECTRUM

- The Commission should consider whether it is in the public interest to devote an additional 70 MHz for MSS, given:
  - Increasing spectrum needs for other services;
  - The track record of underutilized MSS spectrum in other bands;
  - The financial condition of numerous MSS companies;
  - The claims made by New ICO that MSS is not viable without terrestrial flexibility.
- Relying on the existing milestone process will mean the FCC would have to wait up to three and one-half years before reclaiming this spectrum.

RESOLUTION OF THE ADVANCED SERVICES RULEMAKING

- The Commission could significantly speed a resolution of the the pending rulemaking proceeding regarding spectrum for advanced mobile services by addressing CTIA's proposal for reallocation of the 2 GHZ MSS band.
- The Commission should ensure that the entire 2 GHz MSS band be considered for reallocation in order not to limit the Commission's flexibility as the advanced mobile services proceeding unfolds.

ENFORCEMENT OF MILESTONES

- If the FCC ultimately chooses not to reallocate the entire 2 GHz MSS Band to other services:
  - The Commission should rigorously enforce the established MSS milestones to ensure that the 2 GHz MSS spectrum is used efficiently;
  - Given the viability issues raised by New ICO, the Commission should consider establishing additional milestones in the MSS Service Rules reconsideration proceeding or in a rulemaking;
  - 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.

CONCLUSION

- The Commission should:
  - Not create broad precedent by endorsing New ICO's ATC proposal.
  - Treat similarly situated services similarly.
  - Consider CTIA's Petition for reallocation of the entire 2 GHz band in the context of the pending advanced services rulemaking proceeding.