

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Flexibility for Delivery	)	IB Docket No. 01-185
Of Communications by	)	
Mobile Satellite Service Providers	)	
In the 2 GHz Band, the L-Band, and the	)	
1.6/2.4 GHz Band	)	
	)	
Amendment of Section 2.106 of the Commission's	)	ET Docket No. 95-18
Rules to Allocate Spectrum at 2 GHz for Use	)	
By the Mobile-Satellite Service	)	

**REPLY COMMENTS OF THE CELLULAR TELECOMMUNICATIONS  
& INTERNET ASSOCIATION**

The Cellular Telecommunications & Internet Association (“CTIA”)<sup>1/</sup> hereby replies to the comments filed in response to the Notice of Proposed Rulemaking released in the above-captioned proceeding.<sup>2/</sup> The comments demonstrate that the terrestrial offerings proposed by New ICO and Motient are in no respect truly “ancillary” services, and in fact are likely to dominate the satellite service. As demonstrated below, if the Commission cannot effectively limit these terrestrial offerings to truly ancillary services, it must give all interested entities the opportunity to compete for terrestrial authorizations and award those authorizations using competitive bidding.

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<sup>1/</sup> CTIA is the international organization of the wireless communications industry for both wireless carriers and manufacturers. Membership in the association covers all Commercial Mobile Radio Service (“CMRS”) providers and manufacturers, including cellular, broadband PCS, and ESMR, as well as providers and manufacturers of wireless data services and products.

<sup>2/</sup> In the Matter of Flexibility for Delivery of Communications by Mobile Satellite Service Providers in the 2 GHz Band, the L-Band, and the 1.6/2.4 GHz Band; Amendment of Section 2.106 of the Commission's Rules to Allocate Spectrum at 2 GHz for Use by the Mobile-Satellite Service, IB Docket No. 01-185, ET Docket No. 95-18, Notice of Proposed Rulemaking, FCC 01-225 (rel. Aug. 17, 2001) (“Notice”).

## DISCUSSION

### I. THE PROPOSED TERRESTRIAL SERVICES GO FAR BEYOND TRULY ANCILLARY OFFERINGS

While the Commission has expressed its desire to limit the terrestrial services proposed by New ICO and Motient to ancillary, subordinate services,<sup>3/</sup> numerous commenters agree with CTIA that these proposed terrestrial offerings come nowhere close to truly “ancillary” services, and in fact are likely to predominate over the satellite service.<sup>4/</sup> For example, Inmarsat argues that if Motient is authorized to provide “ancillary” terrestrial services, it most likely will evolve into just another terrestrial phone company.<sup>5/</sup> As it points out, while the terrestrial component may cover only one percent of the United States land mass, it would be designed to serve over 32 million Americans.<sup>6/</sup> The Wireless Communications Division of the Telecommunications Industry Association (“TIA”) shares Inmarsat’s concerns, and argues that it is clear that New ICO really wants “to replace its satellite network with a mobile terrestrial operation.”<sup>7/</sup> Iridium agrees that “no combination of restraints will prevent a given MSS licensee with a substantial incentive and capability to maximize its terrestrial service offerings from doing so. . . . [I]t is clearly in ICO/Nextel’s long-term interests to spend a few billion dollars constructing, launching

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<sup>3/</sup> Notice at ¶ 30.

<sup>4/</sup> Inmarsat at 26-29; the Wireless Communications Division of the Telecommunications Industry Association (“WCD of TIA”) at 6; Society of Broadcast Engineers (“SBE”) at 3 (arguing that the real goal of MSS operators is “a terrestrial system serving the lucrative major population centers”); Stratos Mobile Networks (USA) LLC and MarineSat Communications Network, Inc. (“Stratos”) at 9 (arguing that ATC will only result in the deployment of terrestrial mobile services in the MSS band, and not enhancement of MSS).

<sup>5/</sup> Inmarsat at 27.

<sup>6/</sup> Id. at 26.

<sup>7/</sup> WCD of TIA at 6.

and operating a minimalist MSS constellation in order to gain free access to \$30-40 billion worth of nationwide spectrum . . . .”<sup>8/</sup>

The validity of these concerns is born out by New ICO’s comments. New ICO, while claiming that it seeks only to provide a “truly ancillary” service, objects to any real limits on its proposed ATC.<sup>9/</sup> For example, New ICO opposes using the “commercial availability” of the satellite service as a test for whether there is satellite coverage,<sup>10/</sup> and argues that there should be no requirement for a “central data switch.”<sup>11/</sup> While claiming to support a requirement that there be one hundred percent satellite coverage of all fifty states, Puerto Rico, and the Virgin Islands, New ICO simultaneously argues that “buildout and testing of ATCs should definitely be permitted prior to the achievement of the coverage conditions,”<sup>12/</sup> essentially rendering this requirement meaningless. It is apparent from the few “conditions” that New ICO is willing to accept that its real purpose is not to provide a limited subordinate terrestrial service, but simply to prevent anyone other than an MSS operator from providing terrestrial services using this spectrum.<sup>13/</sup>

As Iridium warns, the end result of New ICO’s proposal “most likely would be the effective monopolization of the 2 GHz band, and the de facto reallocation of . . . perhaps 50 MHz (or more) of highly valuable nationwide spectrum . . . without having to compete for that

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<sup>8/</sup> Iridium at 8.

<sup>9/</sup> New ICO at 43-47.

<sup>10/</sup> Id. at 44.

<sup>11/</sup> Id. at 45.

<sup>12/</sup> Id. at 46.

<sup>13/</sup> Id. at 43, 49 (arguing that the Commission must make clear that ATC is an MSS service to prevent a “spectrum grab” by terrestrial CMRS operators).

spectrum at auction.”<sup>14/</sup> Such a result would be unlawful and contrary to the public interest. As demonstrated below, if the Commission cannot effectively limit New ICO’s and Motient’s terrestrial offerings to truly ancillary services, it must give all interested entities the opportunity to compete for terrestrial authorizations and award those authorizations using auctions.

If the Commission nonetheless decides to permit MSS licensees to offer “ancillary terrestrial services,” it must make every effort to ensure that these terrestrial services are truly ancillary to the satellite service.<sup>15/</sup> In this regard, in its initial comments CTIA proposed that the Commission consider requiring the use of integrated “dual mode” handsets that use the satellite system primarily and revert to the terrestrial system only if the satellite signal is unavailable. CTIA also proposed limiting ATC to the use of terrestrial repeaters in urban areas, and requiring that the predominant use of the service be the provision of the primary MSS service in any particular geographic area. Similar proposals advanced by other commenters may have merit. In particular, the Commission should consider API’s proposal that MSS licensees be required to support their requests to provide terrestrial service with technical evidence demonstrating that they are unable to provide satellite service to the particular locations they seek to serve.<sup>16/</sup>

## **II. ANY FLEXIBLE USE OF THE 2 GHZ BAND MUST BE GRANTED THROUGH A SEPARATE AUTHORIZATION AWARDED BY COMPETITIVE BIDDING**

Like CTIA, most commenters, including other satellite operators, oppose granting MSS operators flexibility to provide terrestrial services, unless it is separately authorized and awarded

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<sup>14/</sup> Iridium at 2-3.

<sup>15/</sup> See, e.g., American Petroleum Institute (“API”) at 5; Association for Maximum Service Television, Inc. and National Association of Broadcasters at 14-16; Comtech Mobile Datacom Corporation at 5.

<sup>16/</sup> API at 5.

via competitive bidding open to all interested parties.<sup>17/</sup> For example, Iridium argues that rather than unjustly enriching MSS providers at the expense of the public interest, the Commission should allow a secondary terrestrial service (“STS”) to be provided in all MSS bands, and award STS authorizations through an auction open to all interested parties, whether or not they are affiliated with an MSS licensee.<sup>18/</sup> Cingular Wireless and Verizon Wireless argue that fundamentally altering the MSS allocation to allow only MSS operators to provide terrestrial services using the 2 GHz spectrum would contravene the Commission’s responsibilities under section 309(j) and deprive the U.S. Treasury and the public of the billions of dollars in revenue that could be obtained through competitive bidding.<sup>19/</sup>

Not surprisingly, the only parties who support a broad grant of “flexibility” that would allow MSS operators to provide terrestrial services using this spectrum exclusively are the MSS operators themselves.<sup>20/</sup> They argue that only they have the capability to serve rural America, but terrestrial operations in urban areas are necessary to ensure their commercial viability.<sup>21/</sup> Numerous commenters dispute these claims, echoing CTIA’s arguments that MSS operators do not need authorization to provide terrestrial services in order to be viable, the economic rationale for the proposed terrestrial service is questionable,<sup>22/</sup> and the services that New ICO and Motient

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<sup>17/</sup> Iridium at 3-5; Cingular Wireless and Verizon Wireless at 6-7; Rural Cellular Association at 2-3; Stratos at 3; Telenor at 8; Telephone and Data Systems (“TDS”) at 2.

<sup>18/</sup> Iridium at 3, 5.

<sup>19/</sup> Cingular Wireless and Verizon Wireless at 6-12.

<sup>20/</sup> Constellation at 2, 5-6; Globalstar at 2; Unofficial Bondholders Committee of Globalstar at 2; Loral at 1-2; Mobile Communications Holdings at 2; Motient at 5-6.

<sup>21/</sup> Constellation at 9-10; Globalstar at 4-5; Unofficial Bondholders Committee of Globalstar at 5-7; Loral at 2-5; Mobile Communications Holdings at 5; Motient at 5-6; New ICO at 5-21.

<sup>22/</sup> Cingular Wireless and Verizon Wireless at 15-16, n. 48 (questioning “whether the underlying economic rationale for New ICO’s and Motient’s terrestrial proposal -- that attracting

propose to provide would merely duplicate existing terrestrial wireless services.<sup>23/</sup> Moreover, as the Society of Broadcast Engineers argues, it “is not the Commission’s job, nor is it in the public interest, to provide a crutch for any commercial venture that cannot stand on its own.”<sup>24/</sup>

The MSS operators also claim that terrestrial authorizations cannot be granted through competitive bidding open to all interested parties because permitting unaffiliated terrestrial providers to operate in the satellite bands would cause insurmountable interference problems and reduce the spectrum available for MSS.<sup>25/</sup> They simultaneously claim, however, that no such interference or spectrum capacity problems would arise if MSS operators are permitted to provide terrestrial services.<sup>26/</sup> However, the Wireless Communications Division of TIA demonstrates that New ICO’s proposal simply “segregate[s] its terrestrial and satellite components of its operations to provide terrestrial services to urban areas and satellite services to rural areas.”<sup>27/</sup> It is therefore unclear why other entities could not provide terrestrial services in these bands using a similar approach. Indeed, Iridium states that unaffiliated entities could provide terrestrial services in the MSS bands, as long as such terrestrial licensees have adequate spectrum to be able to “work around” a given MSS system.<sup>28/</sup>

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more profitable urban customers will enable them to subsidize service to rural areas -- makes any economic sense at all”).

<sup>23/</sup> Aviation Industry Parties at 1; Telenor at 6; Inmarsat at 1-2.

<sup>24/</sup> SBE at 2.

<sup>25/</sup> Constellation at 16-18; Globalstar at 8; Unofficial Bondholders Committee of Globalstar at 32-33; Motient at 16-17, 33-34; New ICO at 30-36.

<sup>26/</sup> Globalstar at 8.

<sup>27/</sup> WCD of TIA at 2. See also Cingular and Verizon Wireless at 16 (explaining that New ICO’s proposal would require segmentation of the MSS band).

<sup>28/</sup> Iridium at 6.

If New ICO and Motient are correct that even segregated services would cause insurmountable interference and capacity problems if provided by an unaffiliated provider, then their proposed terrestrial services are also likely to provide such interference.<sup>29/</sup> The answer to such interference and capacity concerns is simple -- MSS operators can sign agreements with existing CMRS operators.<sup>30/</sup> According to Inmarsat, Motient is fully capable of achieving its business goals through arrangements with existing terrestrial carriers.<sup>31/</sup> But the MSS operators claim that agreements with existing terrestrial providers to provide service in urban areas are not an option because they do not provide MSS operators with enough revenue.<sup>32/</sup> Given the highly competitive nature of the CMRS market, however, it is questionable whether MSS operators would be able to realize sufficient revenues from providing service in highly competitive urban wireless markets to cross-subsidize service in rural areas, even if they offered such services directly rather than in cooperation with existing CMRS carriers.<sup>33/</sup>

The MSS operators also make a variety of legal claims about why terrestrial authorizations for the 2 GHz spectrum cannot be awarded by competitive bidding open to all

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<sup>29/</sup> Numerous commenters express concerns that permitting satellite operators to provide ancillary terrestrial services would cause interference problems with other MSS services and services operating in adjacent bands. See, e.g., Aerospace and Flight Test Radio Coordinating Council at 3-7; Aviation Industry Parties at 1-4; Comtech Mobile Datacom Corporation at 2-4; Inmarsat at 12-16, appendix; KITComm Satellite at 3-4; Stratos at 3; Telenor at 8.

<sup>30/</sup> See SBE at 1 (urging Commission to require MSS to hand off traffic to conventional terrestrial cellular and PCS providers in those already well-served areas where MSS will not work, rather than “authorizing a spectrally wasteful duplication of services”); Telenor at 8 (arguing that MSS systems should complement cellular system coverage, rather than duplicating and attempting to compete head-to-head).

<sup>31/</sup> Inmarsat at 27-28.

<sup>32/</sup> See Motient at 14-15 (explaining that it briefly offered a dual-mode service, but found that MSS users spent much of their time roaming on terrestrial networks and terrestrial users spent very little time roaming on the satellite network).

<sup>33/</sup> Cingular Wireless and Verizon Wireless at 15-16, n. 48.

interested parties. These legal arguments are as unavailing as their technical arguments. First, the MSS operators claim that the ORBIT Act precludes competitive bidding for “spectrum used” for “global satellite communications.”<sup>34/</sup> But the ORBIT Act does not apply in the instant case, because the spectrum will not be used to provide satellite services.<sup>35/</sup> Despite New ICO’s acrobatic attempts to argue that the terrestrial services in question are actually satellite services,<sup>36/</sup> their true terrestrial nature is indisputable. Even if by some stretch of the imagination these terrestrial services were found to be satellite services, they are not international services and the ORBIT Act does not prohibit spectrum used for domestic satellite services from being auctioned.<sup>37/</sup>

MSS operators also argue that there is no mutual exclusivity, and therefore the Commission is not bound by section 309(j) of the Communications Act.<sup>38/</sup> But the policy justification for adopting the 2 GHz MSS band plan in a manner that avoided mutual exclusivity -- to expedite the development of a satellite-only service to unserved communities -- does not apply in the context of terrestrial offerings.<sup>39/</sup> If the Commission adopts New ICO’s and Motient’s proposals, and permits MSS operators to obtain terrestrial spectrum without competing in the auction process, it will devalue spectrum to be made available in future auctions and harm

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<sup>34/</sup> Constellation at 21-22; Loral at 15; New ICO at 39-40.

<sup>35/</sup> Cingular Wireless and Verizon Wireless at 12-14.

<sup>36/</sup> New ICO at 47. See also Constellation at 6 (arguing that allowing MSS licensees to engage in terrestrial offerings will not change the inherent nature of the satellite service offering).

<sup>37/</sup> See Cingular Wireless and Verizon Wireless at 14 (explaining that licenses for domestic satellite services, including DARS and DBS, have been assigned by competitive bidding).

<sup>38/</sup> Constellation at 21; Loral at 10-11; Motient at 31, 36; New ICO at 38.

<sup>39/</sup> Cingular Wireless and Verizon Wireless at 8.

the reasonable expectations of other terrestrial service providers who paid billions of dollars to acquire their spectrum.<sup>40/</sup>

## CONCLUSION

For the reasons set forth above, the Commission should grant flexibility through a separate authorization awarded by a process of competitive bidding that is open to all interested parties.

Respectfully submitted,

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<sup>40/</sup> TDS at 6-10; SBE at 2; Cingular Wireless and Verizon Wireless at 10-11.