Because ATC services will be ancillary to satellite services, there is no reason for the Commission to authorize the provision of ATC services prior to the completion of MSS buildout requirements and the commencement of MSS operation. Once an MSS system is launched and operated, the MSS provider then should be permitted to offer ATC as an ancillary part of such system. Allowing MSS providers to offer commercial ATC services prior to compliance with applicable satellite coverage requirements could undermine the ancillary nature of ATC.

3. Other ATC operating restrictions proposed by commenters to ensure the ancillary nature of ATC are unnecessary and are not in the public interest

Rural subscribers would receive no net benefits from ATC restrictions intended to ensure ATC platforms remain ancillary to satellite platforms. The satellite-only services on which they depend will remain unchanged. Further, subscribers that do depend on ATC platforms, such as urban subscribers, cannot receive the maximum benefit from ATC authority if the Commission artificially restricts ATC authorizations as proposed by several commenters. MSS providers and their subscribers will both achieve maximum benefit from ATC authority when MSS providers are free to structure their ATC platforms consistent with customer demand and without unnecessary government intrusion. The Commission's interest in allowing market forces to determine the extent to which MSS providers rely on ATC platforms clearly outweighs any imagined public interest benefits derived from promulgating unnecessary ATC restrictions. As detailed below, most of the ATC restrictions proposed by commenters not only are unnecessary, but also would have deleterious effects on the MSS industry.

- CTIA suggests requiring the "predominant use" of spectrum to be MSS rather than ATC in each "particular region," or, in the alternative, restricting ATC use to urban areas.[61] Similarly, Comtech suggests that the Commission limit the

[61] CTIA Comments, at 6.

proportion of total traffic that may be carried over an MSS providers' ATC platform.[62] Such restrictions serve no reasoned purpose. Although these restrictions would reduce the amount of traffic carried by ATC platforms, they would concomitantly reduce overall system capacity. Unrestricted terrestrial reuse of MSS spectrum through ATC platforms will provide MSS providers with additional spectrum in the locations where they will have the heaviest concentration of users once MSS's urban reception problems are overcome through grant of ATC authority. Artificially limiting terrestrial spectrum reuse as proposed by these commenters would increase the amount of traffic required to be carried by an MSS provider's satellite system. Some of this traffic could be more efficiently and economically carried via an ATC platform. By requiring this traffic nevertheless to be carried via satellite, the Commission effectively would reduce the amount of spectrum bandwidth available to rural subscribers that only can be economically served by satellites.[63] However, by being able to use the same frequency channels simultaneously on a terrestrial basis in every city across the country, MSS providers will be able to adequately serve potentially vast urban subscriberships without in any way reducing their ability to provide communications services to rural America.[64]

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[62] Comtech Comments, at 5.

[63] Note that this also is one shortcoming of Telenor's proposal to use "local distribution technologies" to improve indoor reception. Telenor Comments, at 7-8. In addition to the prohibitive cost of outfitting every building with fixed directional rooftop MSS antennas and each satellite handset with 802.11 wireless relay capabilities, Telenor's proposal would not enable MSS providers to obtain the spectral efficiency offered by ATC terrestrial reuse.

[64] Each subscriber effectively uses a fixed portion of spectrum when communicating. Without the terrestrial reuse that can be accomplished through a Commission grant of ATC authority, the portion of spectrum occupied by a user will not be able to be occupied simultaneously by any other users located in the same satellite beam or footprint, which beam or footprint can cover a significant portion of the United States. By contrast, if an MSS provider establishes urban ATC platforms, the portion of spectrum occupied by an urban user can be routed through an ATC cell rather than a satellite. As a result, that portion of spectrum can be reused simultaneously by other users in other ATC cells within the same city and within every other city nationwide. Restrictions on ATC platforms necessarily curtail this spectrum-efficient terrestrial reuse. Thus, MSS licensees should be free to design their spectrum use and frequency plans in the most efficient manner without Commission restriction.

- API requests the Commission to require MSS providers to "periodically" demonstrate their compliance with satellite applicable coverage requirements.[65] Such a reporting requirement is an unnecessary administrative burden in that it would be redundant to existing MSS reporting requirements imposed by Section 25.143(e) of the Commission's rules.[66]

- API also requests the Commission to require MSS licensees to provide technical evidence that they are unable to serve via satellite each location that they intend to serve via ATC.[67] First, this proposal would inhibit the efficient use of spectrum. In some areas with heavy usage, satellite service may be available but may not be the most efficient use of spectrum because the spectrum cannot be reused. In such areas, an ATC platform would more efficiently use spectrum by terrestrial spectrum reuse. Therefore, ATC may appropriately be used as an ancillary platform even in areas that can be served via satellite. Second, if adopted, this proposal would create an administrative oversight nightmare. The Commission would have to administer a giant database of acceptable ATC locations for each MSS provider, which database would be subject to change each time a building is constructed, modified, or razed. The Commission largely abandoned such government micro-management of telecommunications industries years ago. In addition, the expense of the numerous tests that would be necessary to make the proposed showing would be prohibitive to MSS providers.

- CTIA suggests that the Commission only permit MSS providers to provide ATC services using dual-band handsets that automatically select a satellite transmission path if it is available.[68] Although the Commission may wish to require that MSS handsets be capable of utilizing both ATC and MSS platforms, the Commission should not require the

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[65] API Comments, at 5.

[66] 47 C.F.R. § 25.143(e) (requiring Big LEO and 2 GHz licensees to report the operational status of their satellite constellations on October 15 of each year).

[67] API Comments, at 5. The Commission similarly proposed to restrict ATC authority by only permitting ATC platforms to be used to "augment" MSS systems in areas where MSS signals are "attenuated." See NPRM, at ¶30. The Bondholders object to this proposal for the same reasons that the Bondholders object to API's proposal.

[68] CTIA Comments, at 6.

handsets to default to a satellite-transmission path. Doing so will prevent, in areas in which satellite service is available, the spectrum-use efficiencies generated from terrestrial reuse. As explained previously, spectrum assigned to ATC calls can be reused nationwide in other localities, whereas spectrum assigned to satellite calls effectively is exhausted. Thus, requiring handsets to default to transmitting via satellite actually will reduce the total transmission capacity of an ATC-MSS network.

B. The Commission Should Require MSS Providers to Offer ATC Authority on a Non-Interference Basis

In addition to coverage requirements to ensure ancillary ATC operations, the Commission should prohibit ATC platforms from causing harmful interference to other in-band or adjacent-band licensees.[69] Different interference and relocation concerns are relevant to the different bands in which MSS providers operate—the L-band, the 2 GHz Band, and Big LEO's 1.6/2.4 GHz band.[70] Therefore, the Commission should refrain from promulgating uniform transmission restrictions to prevent harmful interference. The Bondholders have not undertaken

[69] Specifically, ATC operations should be prohibited from causing interference to in-band and adjacent-band non-MSS licensees and should receive protection against interference from such licensees as a primary allocation. MSS licensees should have co-equal rights with other MSS licensees to operate ATC platforms in MSS spectrum that is shared among multiple MSS providers, such as the Big LEO CDMA spectrum (assuming another CDMA Big LEO ultimately commences operations) or the 2 GHz spectrum that is shared on a secondary basis among 2 GHz licensees (other than the individual 2 GHz spectrum assignments selected for operation on a primary basis by operating licensees when the licensees launch their 2 GHz MSS systems). See Amendment of the Commission's Rules to Establish Rules and Policies Pertaining to a Mobile Satellite Service in the 1610-1626.5/2483.5-2500 MHz Frequency Bands, Report and Order, 9 FCC Rcd 5936, at ¶¶ 48, 52 (1994) (granting all CDMA Big LEO licensees the right to operate across the entire 2483.5-2500 MHz band and the 1610-1621.35 MHz band); Establishment of Policies and Service Rules for the Mobile Satellite Service in the 2 GHz Band, Report and Order, 15 FCC Rcd 16127, at ¶ 19 (2000) (authorizing all 2 GHz MSS licensees to operate across the entire 2 GHz band on a secondary basis to other 2 GHz MSS licensees, except spectrum selected by operating 2 GHz MSS licensees as their primary spectrum assignments).

[70] For example, several commenters asserted that additional interference protections are necessary in the 2 GHz band and the L-band. See SBE Comments, at ¶¶ 16-24 (discussing the potential for interference in the 2 GHz band between ATC facilities and the Broadcast Auxiliary Service ("BAS")). Only one commenter, however, asserted that ATC platforms operating in the Big LEO band would cause interference to other licensees. SBE Comments, at ¶ 25.

a technical analysis of the interference potential of ATC networks in the bands allocated to MSS and thus will not offer an opinion as to the necessity or appropriateness of the various restrictions proposed by commenters. Nevertheless, the Bondholders note that commenters expressing interference concerns did not provide any evidence that conventional mitigation techniques would be ineffective. Wholesale elimination of ATC authority because of putative interference that can be easily eliminated if it were to occur is unsound policy.

For example, Comtech argued in its comments that the Commission should restrict the power flux density for ATC base stations to the same limit as satellite handsets to prevent ATC operations from interfering with MSS systems.[71] This restriction would greatly reduce potential ATC cell size and thus impair ATCs' economic value. It also would limit and possibly preclude penetration of buildings by ATC base stations, furthering reducing the public benefit of ATC to urban users. By adopting Comtech's recommendation and thereby imposing a particular solution to ATC interference concerns, instead of allowing MSS providers to innovate and update their sharing strategies as technology advances, this proposal has the potential to greatly reduce the public benefits of ATC. Rather than adopting such proposed interference prevention mechanisms,[72] MSS providers should be granted maximum flexibility to develop the most spectrum-efficient and economically efficient means of deploying of ATC platforms.

In the interest of providing MSS providers with the most possible operational flexibility, the Commission should enact only its proposed PCS-based rules and adopt an appropriate

[71] Comtech Comments, at 4.

[72] See also SBE Comments, at ¶ 21 (recommending that 2 GHz ATC base stations not be permitted to be constructed within 4.7 kilometers of 2 GHz BAS receiving sites).

measure of harmful interference to be used to adjudicate interference claims.[73] Instead of adopting any of the additional interference protections suggested by commenters to avoid interference in particular bands,[74] the Commission should permit MSS providers to design and develop their ATC platforms at their own risk in light of the adopted harmful interference test and in accordance with the interests of the markets that the MSS providers intend to address.

V. THE COMMISSION SHOULD NOT LICENSE NON-MSS LICENSEES TO PROVIDE ATC SERVICES USING ASSIGNED MSS SPECTRUM

In its NPRM, the Commission proposed to auction ATC authority to interested entities as an alternative to granting MSS providers ancillary ATC authority. The Bondholders explained in their Comments that doing so: (i) was inconsistent with the premise of the NPRM—to aid MSS providers to overcome reception problems inherent to MSS; (ii) would not generate any of the spectrum-use and market efficiencies likely to be generated by the operation of integrated ATC-MSS platforms by MSS providers; (iii) literally would constitute an uncompensated revocation of spectrum assigned to MSS providers because it is unlikely that independent ATC-licensees would be able to share spectrum with MSS providers; and (iv) is inconsistent with recent

[73] This proposal is consistent with MUSA's request for the Commission to treat all MSS providers equally. See MUSA Comments, at 5. The alternative method of treating all parties equally—adopting uniform transmission restrictions across all MSS bands—does not represent an efficient means of regulating affected spectrum because the use of in-band and adjacent spectrum by MSS licensees differs between the 2 GHz band, L-band, and Big LEO band. Thus, interference restrictions that would be appropriate in certain bands would unnecessarily restrict the use of spectrum for ATC services by MSS licensees in other bands.

[74] See, e.g., SBE Comments, at ¶ 4 (urging the Commission to license every terrestrial facility).

Commission precedent.[75] Other MSS providers echoed many of these sentiments in their comments.[76]

A. Grant of ATC Authority to Non-MSS Licensees Would Constitute an Impermissible Revocation of MSS Licenses With Respect to Any Spectrum Assigned for Terrestrial Use to an ATC Licensee Not Affiliated With the MSS Licensee

Significantly, both opponents and proponents of granting ATC authority to MSS providers affirmed that it is not possible to effectively share MSS spectrum between separately controlled MSS and ATC platforms. Opponents of ATC authority alleged that MSS providers will not operate integrated ATC-MSS systems, but instead simply will divide their spectrum assignments into ATC and MSS segments.[77] Presumably, these commenters also believe that it is not possible to integrate ATC and MSS platforms if those platforms are controlled by separate ATC and MSS licensees. Surely, such integration would be easier to achieve in an MSS-ATC network under unified control than in separately controlled networks. Although commenting MSS providers disagree with opponents of ATC regarding the level of ATC-MSS integration that MSS providers will be able to accomplish if the MSS providers are granted ATC authority, both opponents and proponents of ATC authority agree that integration of separately controlled ATC and MSS platforms is not feasible.

Thus, all commenters agree that by auctioning ATC authority to the highest bidder, the Commission effectively will be modifying the MSS providers' licenses to reduce the amount of

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[75] Bondholders Comments, at 32-37.

[76] See, e.g., Constellation Comments, at 21-22; Loral Comments, at 11-15; New ICO Comments, at 38-41.

[77] Certain MSS providers clearly disputed in their comments ATC opponents' claims that MSS providers will not integrate their ATC and MSS platforms. Further, as discussed above, it is premature for MSS providers to articulate the specifics for development of efficient, integrated ATC and MSS operations.

spectrum assigned to the MSS licensees via the licenses. If the separately controlled companies are unable to integrate their ATC and MSS systems, as all commenters uniformly believe, any spectrum used by an ATC-licensee will be unavailable to the MSS provider that formerly was assigned that spectrum. MSS providers have spent millions of dollars over the past decade to obtain their spectrum assignments. Further, operating MSS providers, such as Motient, Iridium, and Globalstar, have in the aggregate spent over ten billion dollars to construct and launch MSS systems in reliance on their spectrum assignments. It would be unprecedented and clearly against the public interest for the FCC to reassign portions of the MSS providers' spectrum assignments at this stage.[78]

B. If the Commission Were to Grant ATC Authority to Independent Licensees, No Efficiencies Would Likely Result From Such Grant

As explained by several commenters, because separately controlled ATC and MSS platforms effectively cannot be integrated, granting ATC authority to non-MSS licensees will not result in the efficiencies that would be accomplished if the Commission grants ancillary ATC authority to MSS licensees. Rather than enabling MSS licensees to gain spectrum-use efficiencies from terrestrial reuse, auctioning ATC authority simply would result in a loss of

[78] The Bondholders oppose any efforts to relocate MSS providers. Nevertheless, they note that the Commission's relocation policy would require the Commission to identify replacement spectrum to which the MSS providers could migrate if the Commission authorizes non-MSS licensees to provide ATC service in MSS spectrum, and requires the new ATC licensees to fund such relocation. See Redevelopment of Spectrum to Encourage Innovation in the Use of New Telecommunications Technologies, First Report and Order and Third Notice of Proposed Rule Making, 7 FCC Rcd 6886 (1992) (establishing the Commission's incumbent relocation policy that new licensees in a band be required to bear the costs of relocation of incumbent licensees in the affected spectrum) ("Emerging Technologies Proceeding"); Amendment of Section 2.106 of the Commission's Rules to Allocate Spectrum at 2 GHz for Use by the Mobile-Satellite Service, Second Report and Order and Second Memorandum Opinion and Order,15 FCC Rcd 12315 (2000) (following the Commission's relocation policy established in the Emerging Technologies Proceeding).

spectrum by the MSS licensees. Also, instead of enabling MSS providers to develop a subscriber-oriented, seamless and ubiquitous mobile telecommunications service, grant of ATC-licenses to separately controlled entities would result in commercial arrangements between ATC licensees and MSS licensees that will suffer from all of the shortcomings of the commercial arrangements between certain MSS and CMRS providers that are described in Section III.A.2. herein.

C. Congress Prohibited the Commission from Auctioning Spectrum Used to Provide International MSS Services

The Bondholders support the position of several commenters that the Open-Market Reorganization for the Betterment of International Telecommunications Act ("ORBIT Act")[79] prohibits the Commission from assigning ATC authority by competitive bidding. The Commission proposed to grant ATC authority as an ancillary service that may be provided by MSS licenses through the addition of appropriate footnotes to the Commission' table of allocations, which proposal was widely supported by MSS providers.[80] If the Commission does so, spectrum used by MSS licensees to provide ATC services will, nevertheless, remain "spectrum used for the provision of international or global satellite communications services."[81]

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[79] 106 P.L. 180, 114 Stats. 48, codified at 47 U.S.C. § 765 (1998). Congress recognized the substantial financial risk entailed in the development, construction, launch, and operation of an MSS system. As a result, Congress prohibited the Commission from auctioning MSS spectrum. See Legislative History, House Comm. On Commerce, Communications Satellite Competition and Privatization Act of 1998, H. Rep. No. 105-494, at 64 (1998) ("The Committee believes that the auctions of spectrum or orbital locations could threaten the viability and availability of . . . satellite services, particularly because . . . spectrum auctions . . . could place significant financial burdens on providers of such services. This problem would be compounded by the fact that the multi-year period required for design, construction, and launch of . . . satellite systems usually requires service providers to invest substantial resources.").

[80] See, e.g., Constellation Comments, at 23; Motient Comments, at 32; New ICO Comments, at 48.

[81] 47 U.S.C. § 765(f).

Irrespective of a grant of ATC authority, MSS providers are required by the Commission's rules to be capable of providing ubiquitous satellite service across all of their assigned MSS spectrum.[82] Thus, authority to provide an ancillary service in this spectrum assignment does not change the underlying nature of the spectrum assignment or alter Congress's mandate to the Commission not to auction the spectrum.

It seems axiomatic that the ORBIT Act would have prohibited the Commission from auctioning 2 GHz and Big LEO spectrum licenses to MSS providers as an initial spectrum assignment mechanism, even if such licenses included ancillary ATC authority from the start. There is no rational distinction that causes ancillary ATC authority to become subject to competitive bidding despite the express prohibition in the ORBIT Act merely because such authority was granted by the Commission after, rather than before, it issued MSS spectrum licenses.

VI. THE COMMISSION SHOULD SUMMARILY DISMISS ARGUMENTS RAISED BY OPPONENTS OF ATC AUTHORITY THAT ARE NOT PREMISED ON FURTHERING THE PUBLIC INTEREST

The commenters clearly demonstrated that a grant of ATC authority to MSS providers will provide significant public interest benefits. By enacting coverage and interference requirements as further discussed in the previous section, the public interest benefits derived from ATC authority can be achieved without any detriment whatsoever to the interests of the American public. MSS providers, such as Globalstar, will continue to be capable of providing ubiquitous satellite coverage. ATC authority will enable more Americans to receive Globalstar's

[82] See 47 C.F.R. § 25.143(b)(2) (providing Big LEO and 2 GHz coverage requirements); Amendment of Parts 2, 22 and 25 of the Commission's Rules to Allocate Spectrum for and to Establish Other Rules and Policies Pertaining to the Use of Radio Frequencies in a Land Mobile Satellite Service for the Provision of Various Common Carrier Services, 4 FCC Rcd 6041, ¶ 97 (1989) (providing coverage requirements applicable to Motient).

services and to do so in more places without reducing in anyway the current service and coverage levels offered by Globalstar, without requiring the FCC to commit any additional spectrum, and without interfering with services offered by other licensees. Many of the opponents of ATC authority offer arguments against Commission grant of ATC that do not dispute these facts. Such arguments do not support the public interest, but instead are arguments premised on furthering the interests of specific commenters, irrespective of the public interest. As further discussed below, all such arguments should be summarily dismissed by the Commission.

To further underscore the self-serving nature of the initial comments of the wireless carriers and their agents, it should be noted that not one of them even mentioned the tragic events of September 11, despite the fact that their comments were filed just six weeks after the terrorist attacks. Conspicuously absent from the wireless carriers' comments were any references to the importance of public safety or homeland security in general. It is the view of the Bondholders that these intentional omissions result from the wireless carriers' inability to counter effectively the compelling public interest arguments which favor MSS and flexible ATC.

A. The Anticipated 3G Spectrum Shortage is Not Relevant to the Instant Proceeding and, in Any Event, ATC Authority Will Help Resolve the Shortage

Several commenters argued that additional spectrum will be needed to provide third generation ("3G") services.[83] This almost certainly is true but has little bearing on the instant proceeding. The Commission is attempting to identify additional spectrum for the provision of 3G services in several other, separate and pending proceedings.[84] Although the Commission's

[83] See AWS Comments, at 10-11; Cingular/Verizon Comments, at 20.

[84] 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,

need to identify additional 3G spectrum is of great importance to the American public and to the future of the domestic telecommunications industry, it is not germane to the Commission's consideration of whether to grant ATC authority to MSS providers in their existing spectrum assignments. The Commission has not proposed to assign additional spectrum to MSS licensees for the construction of ATC platforms and MSS providers have not requested any such additional spectrum. Thus, Commission grant of ATC authority to MSS providers does not in any way reduce the amount of spectrum available to be allocated in the future to wireless providers.

Further, even if the Commission's effort to identify additional 3G spectrum was pertinent to the instant proceeding, this spectrum shortage weighs in favor of, not against, the grant of ATC authority. As thoroughly explained by several commenters, the IMT-2000 3G standard developed over the past decade by the International Telecommunications Union presupposes that 3G networks will be hybrid terrestrial-satellite networks.[85] Consequently, a thriving MSS industry is crucial to the successful roll out of IMT-2000 services. In fact, MSS providers will be among the first telecommunications providers to provide 3G services domestically.[86] The

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Including Third Generation Wireless Systems, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, ET Docket Nos. 00-258 & 95-18, IB Docket No. 99-81, RM-9498, RM-10024, FCC 01-224 (rel. Aug. 20, 2001) (proposing to reallocate an unassigned portion of the 2 GHz band for terrestrial 2 GHz services); ITFS/MMDS Order, at ¶ 2 (" . . . making [ITFS/MMDS spectrum] potentially available for advanced mobile and fixed terrestrial wireless service, including third generation ("3G") and future generations of wireless systems.").

[85] Celsat Comments, at 2-5 (arguing that the Commission should remain committed to facilitating the development of integrated 3G/IMT-2000 satellite-terrestrial mobile wireless networks); Comments of Mobile Communications Holdings, Inc., at 2-5 (arguing that the Commission should migrate towards "platform-neutral" spectrum regulation due to convergence of satellite and terrestrial IMT-2000 mobile services) ("MCHI Comments").

[86] Globalstar is in the process of developing a mobile data service offering capable of data throughout of 200 kbps. See http://www.globalstar.com/pages/dataserv.html. This service will be among the highest bandwidth mobile data services available today, and, unlike lower bandwidth data services provided by terrestrial mobile services, will be available everywhere in the country from the first day that it is offered.

MSS industry thus will help the United States catch up with the roll out of 3G services in Japan and Europe, and facilitate the United States' efforts to regain a world leadership position with respect to mobile wireless services.[87]

The additional spectrum capacity generated through terrestrial reuse of MSS spectrum represents a net increase in the amount of spectrum capacity available for 3G services, which net increase directly will be attributable to Commission grant of ATC authority. Moreover, operating MSS providers, such as Globalstar, which already have satisfied their coverage requirements, will be able to begin taking advantage of this additional spectrum capacity immediately. Consequently, Commission grant of ATC authority will reduce the need for additional spectrum to be allocated for 3G in the short term.

ATC authority also will decrease the long-term need to identify additional 3G spectrum. As discussed above, ATC authority will reinvigorate the MSS industry. The additional capital attracted to the industry by a grant of ATC authority will enable Globalstar to take advantage of its bent-pipe architecture to upgrade its current service offerings and ensure compatibility with new technologies. Globalstar will be able to develop new and innovative packet-data services and higher bandwidth capabilities. In addition, this capital inflow will enable other MSS licensees that have not yet constructed and launched satellite systems to obtain the funding necessary to do so. Just as Globalstar's MSS system represents a technological advancement over MSS systems launched earlier by Motient, Iridium, and Inmarsat, these yet newer MSS systems will take advantage of the most sophisticated and innovative technologies available

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[87] By contrast, some industry analysts predict that terrestrial 3G services will not be offered domestically for several years and may not be offered outside of the largest metropolitan centers for far longer. See 3G Wireless Deployment In Slo-Mo, CommWeb.com, June, 28, 2001, available at http://www.commweb.com/article/COM20010627S0013 (quoting recent report by research firm Frost & Sullivan for proposition "that the U.S. won't see 3G wireless happen before 2004 or 2005").

when they are launched. These systems are likely to use spectrum efficiently and to provide cutting-edge IMT-2000 capabilities.

B. The Assertion by Some Commenters That it Would be Unfair to the CMRS Industry for the FCC to Grant ATC Authority to MSS Providers Should be Given Little Credence by the Commission

Certain commenters argued that grant of ATC authority to MSS licensees is not fair to CMRS providers because CMRS providers were required to obtain spectrum through competitive bidding.[88] These commenters appear to believe that, following Commission grant of ATC authority, CMRS providers and MSS providers will directly compete and thus must be assigned spectrum in a uniform manner. The Commission should disregard this argument for several reasons. First, MSS providers will not compete directly with CMRS providers in their core business. Unlike the primary customer base targeted by CMRS providers, MSS providers' services will be most attractive to customers who require ubiquitous and seamless wireless services in rural and remote areas not served by CMRS providers, as well as in areas served by CMRS providers. Therefore, the primary MSS-ATC customer base will not be the same as the primary CMRS customer base. Second, this argument does not consider the public interest, but instead solely is intended to support the interests of CMRS providers, which, as a telecommunications industry sector, dominates MSS. By comparison to the MSS industry, the CMRS industry has been serving the mobile telephony market more than a decade longer,

[88] For example, TDS argued that the Commission should not grant ATC authority because it may "devalue" CMRS spectrum. See TDS Comments, at 7. This argument entirely fails to take into account the interests of the American public. Obviously, CMRS spectrum will increase in value if the Commission does not make any additional CMRS spectrum available despite the need for such spectrum to satisfy the public's demand for mobile services. However, no one would argue that the interests of CMRS providers in realizing appreciation of their spectrum should trump the interest of mobile subscribers in obtaining adequate service.

currently has well in excess of 150 times as many subscribers, and annually generates over 300 times as much revenue.[89]

Because the Commission has been charged by Congress to identify and support the public interest, convenience, and necessity,[90] and not the interests of a particular market segment, the Commission should disregard arguments based on claims of inequitable treatment of CMRS providers. However, even if the Commission were to consider the CMRS providers' claims, the arguments nevertheless should be summarily dismissed for the reasons discussed below.

First, it simply is untrue that CMRS providers were required to purchase all of their spectrum. The Commission had no authority to award licenses pursuant to competitive bidding until the adoption of the Balanced Budget Act of 1993,[91] and did not hold its first spectrum

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[89] See Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services, Sixth Report, FCC 01-192, at Appendix C, Tbl. 1, and Part II.A.2.b. (rel. July 17, 2001) (citing the Cellular Telecommunications Industry Association's Semi-Annual Mobile Telephone Industry Survey which estimates total 2000 revenue for wireless providers, i.e., Cellular, PCS, and common carrier SMR, to be $200 billion, and estimating that there were approximately 109 million wireless subscribers in the United States at the end of 2001) ("CMRS Report"); MUSA Comments, at 2 (stating that there are 750,000 MSS subscribers worldwide). The Commission's CMRS Report does not include a total revenue estimate for all MSS providers. However, it does provide 2000 revenue estimates for Globalstar ($3.7 million) and Iridium ($36 million). In addition, Motient's total revenue for satellite and terrestrial services was approximately $75 million in 2000, and Inmarsat reported revenue of approximately $400 million. See Motient Corporation Reports Fourth Quarter and Year-End 2000 Financial Results, Press Release, Feb. 8, 2001 (noting that Motient's 2000 revenue was approximately $73.5 million); INMARSAT Orders 3 Astrium Satellites, Press Release, May 28, 2001, available at, http://www.spaceandtech.com/digest/flash-articles/flash2000-024.shtml ("Inmarsat is a US$400 million revenue satellite consortium . . . "). Because the revenue figure for Inmarsat is global rather than domestic and much of Motient's revenue is derived from its operation of its terrestrial data network, the aggregate annual domestic MSS revenue probably is significantly less than the $500 million sum of the figures cited above.

[90] See 47 U.S.C. § 303 (requiring the Commission to regulate spectrum use "as public convenience, interest, or necessity requires"); § 308 (requiring the Commission to grant applications relating to spectrum use if the Commission finds "that public interest, convenience, and necessity would be served by the granting thereof").

[91] See 47 U.S.C. § 309(j).

auction until July 1994.[92] However, the FCC began awarding cellular service licenses in 1982.[93] Under the original cellular licensing rules, one of the two cellular channel blocks in each market was awarded to a local wireline carrier, while the other block was awarded to a carrier other than the local wireline incumbent through either comparative hearing or a lottery.[94] With the exception of a handful of licenses, all 50 MHz of spectrum allocated for cellular service nationwide was not awarded via competitive bidding.[95] This spectrum accounts for roughly one third of all spectrum used to provide common carrier terrestrial mobile voice services (i.e., cellular, PCS, and common carrier SMR licenses).[96]

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[92] See FCC Opens First Ever Airwave Auctions, News Release (rel. July 25, 1994) (announcing commencement of auction for narrowband PCS licenses).

[93] See Inquiry Into the Use of the Bands 825-845 MHz and 870-890 MHz for Cellular Communications Systems; and Amendment of Parts 2 and 22 of the Commission's Rules Relative to Cellular Communications Systems, Memorandum Opinion and Order on Reconsideration, 89 F.C.C. 2d 58 (1982). The FCC awarded the first thirty Metropolitan Statistical Area ("MSA") licenses pursuant to comparative hearing rules, and adopted rules in 1984 to award the remaining cellular licenses through lotteries. See Amendment of the Commission's Rules to Allow the Selection from Mutually Exclusive Competing Cellular Applications Using Random Selection or Lotteries Instead of Comparative Hearings, Report and Order, 98 F.C.C. 2d 175 (1984).

[94] Id.

[95] There are a total of 734 Cellular Market Areas ("CMAs") comprised of 305 MSAs, 428 Rural Service Areas ("RSAs"), and the Gulf of Mexico. Of these, licenses in a mere 18 markets were awarded by auction or scheduled for auction. See In the Matter of Implementation of Section 309(j) of the Communications Act–Competitive Bidding, Amendment of Part 22 of the Commission's Rules to Provide for the Filing and Processing of Applications for Unserved Areas in the Cellular Service, Ninth Report and Order, FCC 96-361 (rel. Nov. 7, 1996) (establishing rules governing the award of licenses for cellular unserved areas in 13 MSAs and one RSA through competitive bidding); In the Matter of Implementation of Competitive Bidding Rules To License Certain Rural Service Areas, 16 FCC Rcd 4296 (2001) (proposing to auction four cellular licenses originally awarded to lottery winners that later were disqualified or withdrew their applications).

[96] Of the 180 MHz of CMRS spectrum used to provide mobile telephony and that is subject to the spectrum cap, 50 MHz are cellular licenses, 120 MHz are PCS licenses, and up to 10 MHz can be SMR licenses. Further, the cellular spectrum awarded through comparative hearings and lotteries constitutes a significant percentage of the total CMRS spectrum held by many of the

Terrestrial mobile telephony was a nascent and unproven service when cellular spectrum comparative hearings and lotteries took place, much like MSS satellite networks are today. The CMRS industry was securely financially viable by the time the FCC began assigning licenses by competitive bidding. It is disingenuous for CMRS providers to argue that MSS licensees should be required to pay for their initial spectrum allocations when the CMRS providers were not required to do so.

Second, CMRS networks are not economically analogous to MSS networks. MSS providers must expend far more capital to initiate service and must do so much longer before initiating service. Thus, MSS systems inherently entail a much higher degree of financial risk than terrestrial systems. The disparate financial situations of CMRS providers and MSS providers independently warrants creating different spectrum assignment mechanisms for the two.

CMRS providers were able to build out their terrestrial networks gradually initially only serving select urban markets and then funding later construction with the revenues generated by initial network build out. In addition, CMRS providers realized their initial subscriber revenues soon after expending the capital necessary to construct their networks. By contrast, Globalstar was forced to raise and irretrievably spend $4.5 billion dollars several years before Globalstar was able to offer service to its first customer and before Globalstar had any concrete demonstration of the demand for its MSS services. In the interim years, Globalstar was subject to the risk that the economy would take a sharp downturn and the nature of its intended market would radically change. Both occurred and substantially depleted Globalstar's potential

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largest national CMRS providers. For example, the terrestrial wireless networks of Verizon Wireless, AT&T Wireless, and Cingular each have large cellular components.

subscriber base. The telecommunications sector of the economy is severely depressed and CMRS networks have grown far more quickly than initially had been predicted.

Third, and similarly, MSS providers and CMRS providers will never truly be direct competitors, thus undercutting any equitable argument that they must be treated similarly to avoid favoring one technology over the other. Although a portion of the markets addressable by CMRS and MSS providers overlap, the majority of the markets served by the two industries do not. MSS services always will be more expensive than CMRS services because of the additional billions of dollars that MSS providers must spend to develop, construct, and launch MSS satellite systems and because MSS providers will never benefit from the economies of scale available to CMRS providers. Although MSS providers will be able to draw far more subscribers with a grant of ATC authority than the industry's current estimated 750,000 subscribers globally, the potential MSS market simply is not as large as the CMRS market of more than 100 million subscribers in the United States alone.[97] Many people are adequately served by CMRS providers and will not obtain sufficient value from ubiquitous coverage to justify the additional cost of MSS services. In addition, due to the different transmission characteristics of CMRS and MSS, MSS handsets will always be significantly larger and heavier than CMRS handsets, which will estrange certain potential customers. For these reasons, to suggest that MSS and CMRS providers are direct competitors that should be treated uniformly is a false analogy.

VII. CONCLUSION

For the reasons set forth herein, the Bondholders urge the Commission to expeditiously grant ATC authority to MSS providers. As demonstrated in the comments of proponents of ATC authority, such action will preserve and substantially enhance the public interest benefits

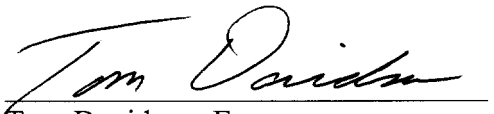
[97] MUSA Comments, at 2.

provided to the American public, and in particular to rural Americans. In granting ATC authority, the Commission need only seek to accomplish two objectives through the ATC regulations that it promulgates. The Commission should reject the other various ATC restrictions proposed by commenters. First, the Commission should enforce existing MSS satellite coverage requirements to ensure that ATC services remain ancillary to MSS services, and that ATC operations do not degrade MSS services. No additional restrictions aimed at ensuring ATC authority's ancillary status are necessary. Second, the Commission should enact only the minimum possible operational restrictions aimed at suppressing interference. Specifically, the Commission should adopt PCS-based transmission rules and adopt an appropriate interference test. Further generic restrictions are unlikely to be appropriate in each of the three, very disparate MSS bands.

The argument asserted by several commenters that grant of ATC authority is unfair to CMRS providers because they were required to pay for spectrum rights is both irrelevant and misleading. The Commission was charged by Congress with supporting the public interest, not the private interests of CMRS providers, and thus the Commission should pay no heed to this self-serving complaint. Further, as recognized by Congress in the ORBIT Act, CMRS and MSS providers are not similarly situated and thus there is no equitable imperative to assign spectrum to them in the same manner. In addition, it simply is disingenuous for CMRS providers to claim that they were required to pay for all of their spectrum. Much of it was obtained by lottery and through comparative hearings. For these reasons, the Commission should disregard the arguments of the CMRS providers.

Respectfully Submitted,

UNOFFICIAL BONDHOLDERS COMMITTEE
OF GLOBALSTAR, L.P.

By: 

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