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Cellular Telecommunications & Internet Association

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February 27, 2002

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
12th Street Lobby, TW-A325  
Washington, DC 20554

Re: **Ex Parte Presentation**  
**IB Docket No. 01-185; ET Docket No. 95-18**

Dear Mr. Caton:

On February 26, 2002, the Cellular Telecommunications & Internet Association ("CTIA") represented Diane Cornell, Vice President for Regulatory Policy, and Christopher Guttman-McCabe, Director for Regulatory Policy, along with Dan Swearingen, Consultant for CTIA, and Michelle Mundt, of Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., met with staff from the International Bureau, including James Ball, Associate Bureau Chief for Policy, Breck Blalock, Deputy Chief, Planning and Negotiations Division, Trey Hanbury, Planning and Negotiations Division, Scott Kotler, and Paul Locke, Satellite and Radiocommunication Division, Mark Uretsky, and David Krech, Telecommunications Division. The parties discussed issues relating to the Terrestrial Flexibility NPRM and New ICO's ancillary terrestrial component proposal. In particular, the parties discussed the attached presentation.

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

Sincerely,

Christopher Guttman-McCabe

- cc: James Ball
- Breck Blalock
- Trey Hanbury
- Scott Kotler
- Paul Locke
- David Krech
- Mark Uretsky

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# CELLULAR TELECOMMUNICATIONS & INTERNET ASSOCIATION

Presentation on the  
*Terrestrial Flexibility NPRM*  
*And New ICO's ATC Proposal*

February 26, 2002



# AN APPROPRIATE FRAMEWORK MUST BE ESTABLISHED

- New ICO's Ancillary Terrestrial Component ("ATC") Proposal As Currently Crafted Would Create Far-reaching Precedent That Would Prejudge Flexibility and Terrestrial/Satellite Sharing Issues in Many Contexts.
- New ICO's ATC Proposal Raises Fundamental Policy Issues, Including:
  - How should "ancillary" service be defined in this context?
  - Should similarly situated services be regulated in dissimilar ways?
  - Is granting New ICO's ATC proposal consistent with sound spectrum management policy?
  - Will action on New ICO's request for ATC prejudge a decision in the pending Advanced Services Proceeding or on Nextel's White Paper regarding 2 GHz MSS Spectrum?



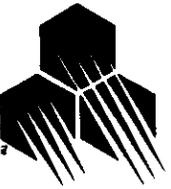
**NEW ICO'S ATC MUST BE  
CONSIDERED WITHIN A BROADER  
REGULATORY FRAMEWORK**

- New ICO's Proposal Must Be Addressed in the Context of Rules of General Applicability That Define a Framework for When and How Satellite Operators Should Be Granted Flexibility to Provide Terrestrial Services.

# NEW ICO'S PROPOSAL DOES NOT FIT INTO ANY ESTABLISHED POLICY FRAMEWORK

- New ICO's ATC as Proposed Does Not Fall Within Established Concepts of "Ancillary Service."

"In this *Notice*, we intend the term 'ancillary' terrestrial service to refer strictly to services provided by MSS operators that are integrated with the satellite network, use assigned MSS frequencies, and are provided for the purpose of augmenting signals in areas where the principal service signal, the satellite signal, is attenuated." *Notice*, para. 30.



# NEW ICO'S PROPOSED ATC IS NOT "INTEGRATED WITH THE SATELLITE NETWORK"

- New ICO's ATC in Effect Uses Band Segmentation to Prevent Interference Between ATC and Its Satellite Services.
  - It does not appear practicable to use overlapping channels for ATC and satellite in satellite uplink spectrum for more than a few ATC users.
  - Some overlap in downlink spectrum is possible, but would severely limit satellite capacity in overlapping bands.
- New ICO's Dynamic Frequency Planning Is Essentially a Mechanism to Achieve Band Segmentation – It Does Not Result in ATC Being Integrated With the Satellite Network.
- New ICO's ATC Replicates a CMRS Network.
- New ICO's ATC Results in Two Parallel Systems: a CMRS System in Urban Areas, and a Satellite System for Users Unable to Access the CMRS System (e.g., Rural Users).



## NEW ICO'S ATC GOES FAR BEYOND BEING 'PROVIDED FOR THE PURPOSE OF AUGMENTING SIGNALS'

- Proposal Is Not Limited to Providing Access to Satellite Coverage Where It Is Not Accessible.
- Proposal Is Not Solely For “Augmenting Signals in Areas Where the Principal Service Signal, the Satellite Signal, Is Attenuated.”
- New ICO’s ATC can originate and terminate calls wholly within the terrestrial component.
- In fact, ATC would significantly *reduce* the capacity of the satellite component, instead of enhancing its operation – this is not an “ancillary” functionality.



**NEW ICO'S ATC WOULD HAVE TO BE  
DRAMATICALLY MORE LIMITED TO  
BE CONSIDERED TRULY ANCILLARY**

- First, New ICO Should Be Required to Provide the *Specific* ATC Configuration That It Would Propose to Use, Instead of Four Possible Options.
  - Parties cannot effectively evaluate without relevant technical data.
- New ICO's ATC Would Only be Ancillary If It Did Not Differ Materially In Nature And Character From MSS Service.
  - New ICO's ATC proposal is essentially a "stand-alone" CMRS service, not a mobile satellite service.
  - Contrast to DARS, Where Terrestrial Repeaters Were Intended for Use to Distribute the Satellite Signals.



# THE MSS INDUSTRY SHOULD NOT BE TREATED DIFFERENTLY FROM SIMILARLY SITUATED TERRESTRIAL COMPETITORS

- ATC Would Allow MSS Licensees to Use Spectrum They Obtained for Free to Compete Directly With CMRS Providers Who Paid Billions for Their Spectrum at Auction.
- ATC Is Essentially a CMRS Network, Not an Extension of the Satellite System.
  - Unlike CMRS, under New ICO's proposal, ATC is not subject to regulatory requirements including CALEA, TTY, E-911.
- FCC Should Not Artificially Subsidize New ICO Over Its Terrestrial Competitors.
  - In any event, there is no evidence that ATC, which would primarily be provided in price-competitive urban environments, would in fact create a subsidy flow at all.



**IT IS NOT THE FCC'S JOB TO  
ARTIFICIALLY PROTECT THE  
VIABILITY OF THE MSS INDUSTRY**

- The FCC's Role Should Not Be to Protect the Economic Viability of One Competitor or Industry.
- New ICO Has Not Demonstrated That Its ATC Proposal Is the Only, or the Best, Means of Meeting Rural, Homeland Security, or Any Other Public Interest Needs.
  - These needs can also be met by commercial GEOs or other MSS systems, by military systems, or by CMRS.

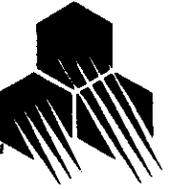
**NEW ICO'S ATC PROPOSAL MUST BE  
CONSIDERED IN THE CONTEXT OF  
SOUND SPECTRUM MANAGEMENT POLICY**

- New ICO's ATC Amounts to a Private Reallocation of a Segmented Band.
  - New ICO's ATC Has Generated Interference Concerns by Both Satellite and Terrestrial Licensees.
  - New ICO's March 2001 Application Squarely Raises the Issue of Whether Efficient Use of Spectrum is Best Achieved by:
    - Granting incumbents flexibility to provide an entirely distinct service,
- or*
- Reallocating spectrum where, as here, it appears that demand for the incumbent service will not require use of the entire allocated band.



**IF TERRESTRIAL SERVICES ARE  
OUTSIDE THE SCOPE OF “ANCILLARY”  
MSS SERVICES, THEY CAN AND  
SHOULD BE AUCTIONED**

- MSS Does Not Need All the Spectrum Allocated to It in the 2 GHz Band.
- If Additional Terrestrial Services Can Be Provided in Segmented Spectrum, They Can and Should Be Defined As a Separate Service.
- Separate Terrestrial Service Offerings in MSS Spectrum Are Subject to Section 309 (j).
  - Section 309 (j) requires that the public, and not just private interests, receive a return on this valuable public resource.
  - Auctioning is the best mechanism for distributing scarce spectrum resources.
    - If contemplated in the initial MSS service rules, more companies would have applied to provide MSS/CMRS in the 2 GHz band.
    - If now being contemplated, additional companies will be interested in providing CMRS in the 2 GHz band.



# CONCLUSION

- There Is No Reason Why New ICO Couldn't Use an Existing CMRS Operator or Reseller for Its Terrestrial Component, or Provide the Terrestrial Component Itself by Getting a License in Existing CMRS Spectrum.
- FCC Should *Not* Grant Incumbent Satellite Licensees "Flexibility" to Provide Terrestrial Services That Go Beyond the Original Bundle of Rights That Came With the Licensed MSS Service, for Free.
- The FCC Should Instead Auction the Additional Right to Provide the Terrestrial Service in a Segmented Portion of the MSS Band.
- If the FCC Should Conclude That the Ability to Provide Terrestrial Services in the MSS Spectrum Cannot Technically Be Conducted by an Entity Independent of the MSS Licensee, It Should Only Grant the MSS Licensee the Additional Right to Provide Terrestrial Service If the Licensee Pays a Fee to Reflect What Would Have Been Recovered in an Auction.

