CELLULAR TELECOMMUNICATIONS & INTERNET ASSOCIATION

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

April 17, 2002

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AN APPROPRIATE FRAMEWORK MUST BE ESTABLISHED

- New ICO's Ancillary Terrestrial Component ("ATC") Proposal 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:
  - Is granting New ICO's ATC proposal consistent with sound spectrum management policy?
  - Should similarly situated services be regulated in dissimilar ways?
  - Will action on New ICO's request for ATC prejudge a decision in the pending Advanced Services Proceeding or on the 800 MHz NPRM?

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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.

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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 Proposal is Not a More Efficient Use of Its Assigned Spectrum – It is a Spectrum Grab.
  - The FCC has found New ICO only requires 2.5 MHz to commence MSS operations, and its selected assignment is 3.5 MHz.
  - New ICO has said that it needs as much as 15 MHz in each direction to provide its MSS and ATC offerings.
- New ICO's ATC Has Generated Interference Concerns by Both Satellite and Terrestrial Licensees.

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

- 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 services will not require use of the entire allocated band.
- MSS Does Not Need All of the Spectrum Allocated to It in the 2 GHz Band.

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NEW ICO'S ATC IS NOT AN 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.

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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 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).

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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.
  - ATC is unlike Motient's proposal, which uses a handset that would first look for availability of a satellite signal before switching to the terrestrial network.
- Proposal Is Not Solely For "Augmenting Signals in Areas Where the Principal Service Signal, the Satellite Signal, Is Attenuated."
- Unlike the use of repeaters in the satellite DARS context, New ICO's ATC can originate and terminate calls wholly within the terrestrial component.
- Further, according to New ICO's technical filing, ATC and MSS will operate on separate frequencies.
- In fact, ATC would significantly *reduce* the capacity of the satellite component, instead of enhancing its operation – this is not an "ancillary" functionality.

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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.

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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 Segment.

  The FCC "doesn't save companies. . . . We do things on an industry-wide basis, but never in response to one company." Chairman Powell 2/20/2002

  "ICO's proposal (or some close variation on that theme) . . . will all but ensure that few, if any, of the recently authorized 2 GHz MSS systems will ever be built." Iridium – 10/22/2001

- 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.

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NEW ICO's PROPOSED TERRESTRIAL SERVICES GO BEYOND THE BUNDLE OF RIGHTS GRANTED TO MSS LICENSES

- MSS and ATC Users Must Use Separate Frequencies Within the ATC Coverage Area to Avoid Interference.
  - Even New ICO admits that segmenting the spectrum into separate frequency bands "will technically work, quite easily."
  - *"Within the exclusion zone, satellite UTs simply cannot share the same frequencies at the same time with the terrestrial base station."* New ICO March 22 Comments at 4.
- Terrestrial Services Should be Defined as a Separate Service.
- The Commission should not permit a few MSS licensees to convert assigned satellite frequencies to terrestrial use by way of a private reallocation, rather it should segment the MSS band and make terrestrial licenses available to all interested parties via auction.

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IF TERRESTRIAL SERVICES CAN BE PROVIDED SEPARATELY FROM MSS SERVICES, AN AUCTION MUST BE HELD

- 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.

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THE ORBIT ACT DOES NOT PRECLUDE AUCTION OF THE 2 GHz SPECTRUM

- The ORBIT Act only prohibits auctioning spectrum allocated for "international or global satellite" services.
- While the 2 GHz MSS spectrum was allocated for satellite use, New ICO intends to use its spectrum for terrestrial use in the United States – ORBIT does not apply.
- ORBIT was crafted so as to avoid multiple, international auctions that would make satellite systems too costly.
- The intent of Congress could not have been to supplant Section 309 (j)'s mechanism for auctioning spectrum for terrestrial use.

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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.

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