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July 26, 2002

VIA ELECTRONIC FILING

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Written Ex Parte Communication in IB Docket No. 01-185
Grant of Ancillary Terrestrial Component Authority to
Mobile-Satellite Service Licensees

Dear Ms. Dortch:

The Official Creditors' Committee ("Creditors") of Globalstar, L.P. ("Globalstar") is filing this informal pleading with the Federal Communications Commission ("Commission") to support Commission grant of ancillary terrestrial component ("ATC") authority to Mobile-Satellite Service ("MSS") licensees in IB Docket No. 01-185. This pleading contrasts the benefits of granting ATC authority to MSS licensees with the disadvantages of Commission auction of terrestrial rights to use MSS spectrum. In doing so, the pleading responds to certain assertions made by opponents of Commission grant of ATC authority to MSS licensees. For the reasons set forth herein, the Creditors request the Commission expeditiously to grant ATC authority to MSS licensees.

The Creditors represent the interests of investors in Globalstar that currently hold approximately \$3.5 billion of Globalstar debt and liabilities. The Creditors have funded the substantial majority of Globalstar's satellite system deployment and operations to date.

Akin, Gump, Strauss, Hauer & Feld, L.L.P.

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Please do not hesitate to contact the undersigned with any questions that you may have regarding this matter.

Sincerely,

/s/ Tom Davidson

Tom Davidson, Esq.
*Counsel for Official Creditors
Committee of Globalstar, L.P.*

Informal Pleading of the Official Creditors' Committee of Globalstar, L.P. in Support of Grant of Ancillary Terrestrial Component Authority by the Federal Communications Commission to Mobile-Satellite Service Licensees in IB Docket No. 01-185

I. Introduction and Executive Summary

The Official Creditors' Committee ("Creditors") of Globalstar, L.P. ("Globalstar") request the Federal Communications Commission ("Commission") to expeditiously grant Mobile-Satellite Service ("MSS") licensees ancillary terrestrial component ("ATC") authority so that Globalstar can begin constructing an ATC network in conjunction with its fully deployed Big LEO MSS system.

ATC authority will enable Globalstar to overcome the indoor and urban reception problems that plague all MSS providers. In addition, ATC authority will enable Globalstar to reuse spectrum terrestrially and thereby improve the efficiency of its spectrum use. The efficiency that can be gained by dynamically allocating spectrum between its MSS platform and an integrated ATC platform is estimated by Globalstar to be 50% greater than if the Commission permits a non-MSS licensee to operate a terrestrial network using Globalstar's MSS spectrum assignment. Commission auction of terrestrial rights to use MSS spectrum will result in a net loss of spectrum to MSS licensees without any commensurate benefits. Separate terrestrial licensees will be unable and unwilling to accomplish the degree of technical coordination necessary to enable efficient integration of such terrestrial services with existing and planned MSS constellations.

Moreover, Commission grant of ATC authority to MSS licensees is mandated by the Commission's policy to grant licensees flexible use of their assigned spectrum and is consistent with all laws and Commission regulations. In addition, by adopting appropriate "gating requirements" the Commission can ensure that ATC operations remain ancillary to satellite operations and do not degrade the efficacy or availability of satellite services.

II. The Commission Only Should Grant ATC Authority to MSS Licensees Because Dynamic Spectrum Coordination and Allocation Cannot Occur Between Separately Controlled Entities

The FCC currently is considering whether to grant MSS licensees ATC authority as a modification to their MSS licenses or to auction terrestrial authority to the highest bidder. In making this determination, the Commission is examining how MSS spectrum assignments might be shared between terrestrial and satellite networks, either by a single MSS licensee controlling both networks on an integrated basis or by separate MSS and terrestrial licensees each operating separate networks.

Co-frequency sharing of MSS spectrum between satellite constellations and terrestrial networks is technically infeasible irrespective of which party

controls the terrestrial networks. Thus, some form of spectrum segregation between MSS and terrestrial use will be required. As set forth herein, by granting ATC authority to MSS licensees rather than auctioning terrestrial rights to use MSS spectrum assignments, the Commission can enable MSS licensees to make the most efficient possible use of the available spectrum through temporally and geographically dynamic frequency assignment. Such real-time dynamic frequency assignment cannot be accomplished between separately controlled MSS and terrestrial networks. Thus, if the Commission auctions terrestrial rights to use MSS spectrum to non-MSS licensees, the MSS licensees effectively will lose access to the spectrum authorized to be utilized by the terrestrial licensees. Thus, rather than enabling MSS licensees to overcome the indoor and urban coverage problems from which their service suffers, the Commission effectively will be revoking and reassigning a portion of the MSS licensees' spectrum assignments without any commensurate benefits to the MSS licensees.

A. Co-Frequency Sharing Between Terrestrial and Satellite Platforms is Infeasible

Both opponents and proponents of granting ATC authority to MSS licensees agree that co-frequency sharing between ATC and MSS platforms is technically infeasible. Because they operate at much higher power, ATC base stations will cause unacceptable interference to MSS satellites operations if the base stations operate using the same communications channels as the satellites. All MSS licensees, including Globalstar, have filed comments that are consistent with this position.

Because co-frequency spectrum sharing between MSS networks and terrestrial use of MSS spectrum is infeasible, this proceeding is clearly distinguishable from the Commission's Multichannel Video and Data Distribution ("MVDDS") proceeding. In its MVDDS proceeding the Commission recently decided to auction MVDDS licenses which share spectrum on a co-frequency basis with Direct Broadcast Satellite ("DBS") licensees.¹ In the MVDDS proceeding, the Commission determined that MVDDS licensees are able to share DBS spectrum assignments with DBS licensees on a co-frequency basis without any concomitant reduction in spectrum capacity to DBS licensees. Thus, the Commission determined that auctioning MVDDS licenses will not meaningfully reduce the amount of spectrum available to DBS licensees. By contrast, because co-frequency sharing is not possible between satellite and terrestrial uses of MSS spectrum, auction of terrestrial licenses to access MSS spectrum necessarily will result in a reduction of spectrum available to MSS licensees, and the protracted demise of the MSS industry.

¹ Amendment of Parts 2 and 25 of the Commission's Rules to Permit Operation of NGSO FSS Systems Co-Frequency with GSO and Terrestrial Systems in the Ku-Band Frequency Range, Memorandum Opinion and Order and Second Report and Order, ET Docket No. 98-206, RM-9147, RM-9245, FCC 02-116 (rel. May 23, 2002).

B. Wireless Providers Fail to Understand the Spectrum Efficiencies That Can be Gained From Dynamic Spectrum Allocation

Because co-frequency spectrum sharing between MSS and terrestrial platforms is not technically feasible, certain Wireless Providers assume that, if the Commission were to grant ATC authority to MSS licensees, MSS licensees merely would segment their spectrum assignments into ATC and MSS bands. They therefore conclude that any party can operate a terrestrial network using MSS spectrum because band segmentation will prevent interference between a terrestrial and MSS platform irrespective of the identity of the terrestrial segment licensee. Consequently, according to certain terrestrial wireless licensees that have opposed Commission grant of ATC authority to MSS licensees (“Wireless Providers”), there is no reason that MSS licensees should be granted ATC authorization to the exclusion of other interested parties. Rather, according to the Wireless Providers, the Commission should use competitive bidding to assign terrestrial rights to whichever party most highly values the right to use the MSS spectrum terrestrially.

These conclusions are fallacious and represent a misunderstanding of the manner in which Globalstar intends to segment its spectrum assignment. As further explained below, Globalstar intends to dynamically assign spectrum between its integrated ATC and MSS platforms on a minute-by-minute basis, independently coordinating each of the dozens of satellite beams crossing the United States at any given moment to enable city-by-city geographic differentiation in the relative amount of spectrum assigned to ATC and MSS platforms. Such dynamic spectrum allocation will enable Globalstar to obtain the greatest possible communications capacity (both terrestrially and from satellites) from its spectrum assignment, while simultaneously overcoming the indoor and urban reception problems that plague MSS systems.

C. The Spectrum Efficiency Benefits of Dynamic Allocation Only Can be Realized if MSS Licensees Control Terrestrial Rights to Their Spectrum Assignments

According to Globalstar, through the geographic and temporal dynamic allocation of spectrum between its integrated ATC and MSS platforms, Globalstar will be able to realize fifty percent more spectrum capacity efficiency than would be possible if terrestrial rights to a discrete segment of Globalstar’s spectrum assignment were assigned to some entity other than Globalstar. As explained above, irrespective of whether terrestrial rights are assigned to Globalstar or to some other entity, the resulting terrestrial network will operate using different spectrum than Globalstar's MSS platform. However, whereas Globalstar will dynamically segment each approximately 1.25 MHz communications channel between its ATC and MSS platforms depending on the relative needs of the

platforms in different geographic locations at different times,² a separately controlled licensee is likely merely to be assigned certain discrete communication channels nationwide. As further discussed below, geographic and temporal dynamic spectrum allocation is too technically complex to be accomplished through coordination between Globalstar and a separately controlled terrestrial licensee, especially given that the terrestrial licensee is likely to perceive the MSS licensee as a competitor and thus have no incentive to facilitate such coordination. The spectrum efficiencies that can be generated by dynamic spectrum allocation only can be accomplished by granting ATC authority to Globalstar, rather than auctioning terrestrial rights to other parties.

Globalstar's satellite platform is comprised of 48 low-earth orbit satellites, each of which utilizes 16 spot beams. The spot beams enable each satellite to reuse a single communications channel in different regions of the country and thereby dramatically increase the channel's capacity. Within a single beam, a communications channel can accommodate about 60 simultaneous calls, each of which is assigned a unique code within that communications channel.³ Due to the orbital characteristics of Globalstar's satellite constellation, the footprints of as many as four different spot beams, each from a different satellite, overlap in constantly shifting and moving patterns as the satellites transit the United States in their unique orbits. By coordinating the use of communications channels by individual beams as they cross the United States so as to prevent overlapping beams from interfering with each other, Globalstar is able to allow numerous beams nationwide to use the same communications channel in different locations. Such geographic separation greatly increases the capacity of communications channels to carry satellite calls.

Because the satellites cannot share spectrum on a co-frequency basis with an ATC base station, spectrum being used terrestrially by a base station is

² According to Globalstar, if appropriately coordinated, a single communications channel can be divided between ATC and MSS calls. A single communications channel can accommodate approximately 60 MSS calls in a single satellite beam if the entire channel is designated for satellite use. In the alternative, each MSS call individually can be replaced by 490 ATC calls within the beam without degrading the MCC-capacity of adjacent channels within the same satellite beam or the same channel within adjacent beams. Thus, if a single communications channel within a beam is split evenly between MSS and ATC use, the channel can carry 30 MSS calls and 14,700 ATC calls. Ex Parte Presentation of Globalstar, L.P., Technical Statement, filed in IB Docket No. 01-185, at 10 (June 27, 2002) ("Globalstar Ex Parte").

³ Although CDMA technology enables a communications channel to accommodate slightly more simultaneous calls, each of which is assigned a different code within the communications channel, Globalstar assumed that a beam would carry 60 calls to facilitate its interference calculations. Globalstar Ex Parte, Technical Statement, at 10-11.

unavailable in the geographic region adjacent to the base station for satellite calls.⁴ However, the use of spectrum by an ATC platform in one city will not preempt the use of the identical spectrum by Globalstar's satellite constellation across the remainder of the United States. Even a spot beam which covers the ATC platform can reuse the identical spectrum as long as satellite calls are not placed within 10 kilometers of the nearest ATC base station.

The spectrum efficiency generated by temporal and geographic dynamic spectrum allocation is best explained via an example. Assume that ATC base stations in Dallas, Texas are using communications channels A and B to terrestrially route the calls of Globalstar subscribers in Dallas between 4:00 PM and 6:00 PM.⁵ As a result, Globalstar will make channels A and B, unavailable between these hours to any terminal operating in MSS mode within approximately ten kilometers of Dallas. Further, Globalstar will make the codes within communications channels A and B used for ATC calls unavailable for MSS calls throughout each spot beam that crosses Dallas while the footprint of the spot beam covers Dallas. However, Globalstar will continue to enable all other spot beams nationwide (i.e., spot beams that are not over Dallas) to continue to access the channels A and B without restriction and will enable terminals operating in MSS mode in a spot beam covering Dallas to continue to use these channels as long as the terminals are at least seven kilometers from Dallas. (As noted above, MSS terminals operating in a spot beam covering Dallas will be assigned different codes within channels A and B than are being used by the ATC platform.) If from 9:00 PM to 11:00 PM ATC traffic in Dallas subsides and only channel A is needed in Dallas, Globalstar will turn off only channel A with respect to nearby terminals operating in MSS mode during these hours and will coordinate the use of codes within channel A between the Dallas ATC platform and spot beams

⁴ Similarly, according to Globalstar, a communications channel cannot be used by an MSS terminal within approximately seven kilometers of a handset that is using the same spectrum to operate in ATC mode without the MSS terminal causing interference to the ATC terminal or ATC base station. See Globalstar Ex Parte, Technical Statement, at 3.

⁵ Although this example assumes that Globalstar is dynamically coordinating the use of entire communications channels by MSS and ATC platforms, as explained above in note 2, Globalstar also will be able to dynamically coordinate portions of communications channels between ATC and MSS use. Hence, a single communications channel can be shared between MSS and ATC use but, because co-frequency spectrum sharing between ATC and MSS platforms is not technically feasible, no single code within a communications channel can be shared between Globalstar's ATC and MSS platforms in a single spot beam. However, due to potential interference from an MSS terminal into a terminal operating in ATC mode or an ATC base station, MSS terminals and ATC terminals cannot be operated in the same communications channel within approximately 7 km of each other. See Globalstar Ex Parte, Technical Statement, at 3.

crossing Dallas. All other spot beams will have unrestricted use of channel A and all spot beams nationwide will have unrestricted use of channel B.

One of the advantages of terrestrially reusing MSS spectrum is that a single communications channel (or some portion of the codes that comprise that channel) can be reused terrestrially in numerous cities nationwide. Therefore, this process of toggling channels and codes between ATC and MSS use will be repeated on a minute-by-minute basis as each spot beam's footprint passes over a city in which the communications channel is being used by an ATC base station and as users operating terminals in MSS mode travel within the vicinity of ATC base stations and terminals operating in ATC mode. Globalstar will use a complex algorithm to determine whether a communications channel (or some portion of the codes therein) is available for use in any particular location by a Globalstar spot beam passing over that location and by MSS terminals in the vicinity of that location. The algorithm must take into account the coverage area of the footprint of the spot beam at each moment as it travels across the United States, the spectrum being used by each of the urban areas located within the spot beam's footprint as the footprint crosses over those urban areas, and the vicinity of a terminal operating in MSS mode to ATC base stations and other terminals operating in ATC mode. Further, because the footprints of the spot beams continually overlap each other in ever changing patterns, the algorithm also must align spectrum use among the spot beams to ensure that they do not interfere with each other. Moreover, the algorithm must take into account the constantly changing volume of calls originating in each region being served by Globalstar's satellites and in each urban center in which Globalstar operates an ATC platform.

Globalstar explained in its March 22, 2002 and June 27, 2002 filings in this proceeding that this geographic and temporal dynamic spectrum allocation between ATC and MSS use of its spectrum assignment will enable Globalstar to make 50% more efficient use of its spectrum capacity than if Globalstar is required by the Commission to coordinate terrestrial use of spectrum in urban areas with terrestrial licensees. Moreover, this figure probably significantly underestimates the actual efficiency gains that can be generated by granting ATC authority to MSS licensees, rather than auctioning terrestrial rights to the spectrum. In generating this statistic, Globalstar assumed that terrestrial licensees only would operate in eleven urban areas nationwide. However, if the Commission were to allow terrestrial licensees to operate nationwide, rather than only in the eleven largest urban areas, dynamically coordinating spectrum use between ATC and MSS platforms would take on added importance to prevent ATC platforms from making certain communications channels entirely unavailable for satellite use throughout much of the nation. The degree of coordination necessary to ensure appropriate geographic separation between ATC and MSS spectrum use is unlikely to be possible between separately controlled entities if ATC networks are constructed all across the country. Consequently, Globalstar's spectrum assignment may literally need to be segmented into separate terrestrial and MSS channels to prevent interference between terrestrial and MSS operations. Although Globalstar can share spectrum 50% more

efficiently between its own integrated ATC and MSS platforms than Globalstar can share spectrum with a separately controlled terrestrial platform, it is possible that no spectrum sharing actually would occur if the Commission auctions nationwide terrestrial rights to use MSS spectrum.

D. Auctioning of Terrestrial Rights to MSS Spectrum Will Result in Inefficient Use of Spectrum and a Loss of Spectrum to MSS Providers

Given their current lack of financing, MSS licensees, such as Globalstar, will be unable to participate in any meaningful way in an auction of terrestrial rights to use MSS spectrum. The terrestrial licenses are likely to be awarded to existing Wireless Providers, which will have no incentive to coordinate their services with MSS providers, even if efficient dynamic coordination were technically feasible. It is unrealistic to think that the Wireless Providers will coordinate with MSS licensees to enable separately controlled terrestrial and MSS platforms to share spectrum at all, much less on a dynamic basis. Wireless Providers view the MSS industry as a potential competitor and therefore are highly unlikely to facilitate any spectrum sharing with MSS licensees, much less the dynamic spectrum assignment that Globalstar can achieve if it operates commonly controlled ATC and MSS platforms. As a result, auction by the Commission of terrestrial rights of MSS spectrum merely will result in the segmentation of existing MSS spectrum assignments into an MSS band for use by MSS licensees and a terrestrial band for use by the terrestrial licensee.

Mandate by the Commission that coordination take place between MSS licensees and separate terrestrial licensees is unlikely to prevent this inefficient spectrum segmentation. Implementation of such a mandate would be a highly technical matter requiring constant Commission oversight and intervention. Terrestrial licensees will interfere with MSS operations simply by failing to adequately coordinate terrestrial operations with MSS licensees. The reverse is not true—MSS licensees are unable to interfere with terrestrial operations. Terrestrial base stations employ much higher power levels than satellites, which causes uncoordinated terrestrial base stations to interfere with satellite services. By contrast, satellite signals are so weak at ground level that they will not interfere with terrestrial services. Thus, MSS licensees will be at a disadvantage in any attempt to coordinate spectrum use with terrestrial licensees. Moreover, as further discussed below, the Wireless Providers have no incentive to fully cooperate to coordinate terrestrial use of the MSS spectrum with MSS licensees, which only increases the likelihood that interference will occur.

Moreover, the highly complex dynamic coordination that is necessary for satellite and terrestrial platforms to use the same communications channels (or portions thereof) in different geographic locations at different times is even less likely to take place between two separately controlled entities operating

independent networks.⁶ Even if terrestrial licensees of MSS spectrum would fully cooperate with coordination efforts, the level of complexity of the algorithm necessary to accomplish geographic and temporal dynamic spectrum allocation prevents separately controlled entities operating distinct networks from achieving maximum efficiencies. In fact, if an MSS licensee and a separately controlled terrestrial licensee are unable to achieve the level of operational coordination necessary to accomplish dynamic spectrum assignment, then Commission auction of terrestrial rights to non-MSS licensees will result in a highly inefficient use of spectrum. To avoid harmful interference, the parties effectively will have to segment the relevant spectrum band into an MSS and ATC component. As a result, any communications channel assigned for terrestrial use anywhere in the United States effectively will be unavailable for MSS. This will be true even if the terrestrial spectrum is not being used by the terrestrial licensee at a particular time or in a particular place. Similarly, spectrum remaining in the MSS band will not be available for terrestrial use even if the MSS licensee is not using the spectrum at any particular moment. Consequently, spectrum unnecessarily will lie fallow at certain times and in certain locations.

Wireless Providers have been unwilling to take the steps necessary to create a seamless satellite/terrestrial service, even when doing so does not require any spectrum coordination. If Globalstar has been unable to develop a successful service offering combining separately controlled terrestrial and satellite services where no spectrum coordination is required, it seems highly unlikely that such a combined satellite and terrestrial service offering can be developed where such combined service requires complex spectrum coordination.

⁶ Certain Wireless Providers have argued that dynamic frequency assignment could be accomplished by requiring MSS licensees to develop and deploy control functions for an integrated MSS/terrestrial network. See Written Ex Parte Communication filed by Sprint Corporation and Cingular Wireless LLC, IB Docket No. 01-185, ET Docket No. 95-18 (filed May 13, 2002), Attachment A at 78. Under this scenario, MSS licensees would be required to undertake all aspects (and costs) of developing and deploying their proposed dynamic spectrum assignment algorithms and related infrastructure. The MSS licensees then would assign communications channels to terrestrial licensees on a real-time basis. This suggestion is tantamount to issuing a second PCS license for each PCS spectrum allocation and then requiring the initial licensee to assign unused communications channels to the cellphones operated by the second licensee. It does not serve the public interest to require spectrum “sharing” between two parties such that one licensee is completely dependent on the other licensee on a minute-by-minute basis to provide access to spectrum. In addition, this scenario would require MSS licensees to fully fund the cost of such complex coordination while the terrestrial licensee derives all of the benefits.

III. Commission Auction of Terrestrial Rights to MSS Spectrum Would Harm Rather Than Benefit MSS Licensees.

A. Globalstar's Prior Experience Demonstrates That a Terrestrial Licensee is Unlikely to Cooperate With Globalstar

Sophisticated coordination is unlikely to occur between an MSS licensee and a terrestrial licensee. Globalstar currently partners with Wireless Providers throughout the world and its experience with the Wireless Providers to date has demonstrated their unwillingness to sufficiently cooperate with MSS licensees. Globalstar's current handsets are capable of operating using Globalstar's satellite constellation or existing terrestrial PCS networks where no satellite signal is available. The Wireless Providers operate Globalstar gateway earth stations, market Globalstar's service, and provide the terrestrial service currently offered on Globalstar's dual band satellite-terrestrial phones. This model has proven very ineffective and the Creditors believe that it is one of the primary factors that have limited subscriber adoption of Globalstar's service.⁷

The Wireless Providers simply have no incentive to cooperate with Globalstar because they receive relatively little benefit from Globalstar's subscribers in terms of revenues or minutes of terrestrial use, but are benefited by the relatively poor adoption of Globalstar's service in terms of reduced competition. In fact, the Wireless Providers directly benefit from the failure of MSS licensees in two ways. In addition to poaching subscribers from MSS providers, Wireless Providers also are seeking the reallocation of MSS spectrum for terrestrial use. The Wireless Providers are more likely to obtain such spectrum if MSS providers are unsuccessful. Globalstar already has served as a "crash test dummy" for such an arrangement and it simply has not worked. (As a result, Globalstar is obtaining control over its end user services and gateway earth stations as part of its reorganization.) This problem only would intensify if Globalstar is required both to operate in cooperation with separate terrestrial licensees and to coordinate spectrum use with the licensees. Moreover, because Globalstar already has demonstrated the infeasibility of a cooperative business model in which Wireless Providers offer the terrestrial component of an MSS service, the Creditors believe that no iteration of the same failed business model will be able to attract financing.⁸ Consequently, the MSS industry only will

⁷ Globalstar's subscribers have separate telephone numbers for their terrestrial and satellite services, are forced to deal with separate customer service representatives, and receive separate bills. In addition, Wireless Providers have been unwilling to cooperate to market effectively the combined satellite/terrestrial service.

⁸ In fact, Sprint's CEO William Esrey, recently emphasized the importance of providing integrated telecommunications services. According to Mr. Esrey:

[F]ailure to integrate brings slow and painful death in a rapidly changing industry. One can simply not compete against a well

overcome present funding obstacles if they are authorized to operate fully integrated ATC platforms.

Further, Commission segmentation of Globalstar's spectrum assignment into a satellite and terrestrial band and assignment of the terrestrial band via competitive bidding will not assist Globalstar to overcome its indoor and urban reception problems and will not provide Globalstar with additional spectrum capacity through terrestrial reuse. Moreover, such Commission action also will not assist Globalstar or other MSS licensees to lower their equipment and per minutes pricing or raise additional capital. Consequently, issuance of terrestrial licenses via competitive bidding will not help sustain Globalstar or the rest of the MSS industry through the current difficult economic conditions. Rather, auction of terrestrial rights merely will result in an unwarranted revocation and reallocation of a portion of Globalstar's spectrum without compensation or other net benefits to Globalstar.

B. The Commission Already Has Proposed to Reallocate MSS Spectrum in its Pending 3G Proceeding

The Commission currently is considering reallocating certain 2 GHz MSS spectrum (but not Big LEO spectrum) in its pending proceeding to identify spectrum for the terrestrial provision of advanced voice and data services in ET Docket No. 00-258 ("3G Proceeding").⁹ Even in that proceeding, however, the Commission has not proposed to effectively revoke a portion of an existing licensee's spectrum assignment. Rather, the Commission proposed to reallocate unused MSS spectrum for terrestrial use. If the Commission is not considering revoking a portion of an MSS licensee's spectrum assignment in the 3G proceeding, which is directly aimed at locating additional terrestrial spectrum, the Commission should not do so with respect to licensed Big LEO spectrum, especially not under the guise of an attempt to aid MSS licensees.

integrated provider if you have to operate multiple networks, billing systems or customer care systems.

Sprint CEO William Esrey, Address at SUPERCOM luncheon (June 5, 2002).

⁹ 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, including Third Generation Wireless Systems, Notice of Proposed Rulemaking and Order, 16 FCC Rcd 596, ¶¶ 50-58 (2001).

IV. Granting ATC Authority to MSS Licensees is Consistent With All Laws and FCC Policies

The Creditors have fully explained in their earlier filings that Commission grant of ATC authority to MSS licensees is fully consistent with all applicable laws and with the Commission's flexible use policy. Further, despite the contentions of the Wireless Providers, no law or Commission policy requires the Commission to assign terrestrial rights via competitive bidding.

A. Grant of ATC Authority is Mandated by the Commission's Flexible Use Policy

The Commission has a long standing policy to permit spectrum licensees flexible use of their spectrum assignments to enable them to achieve the highest and best use of their assigned spectrum. In fact, Section 303(y) of the ("Communications Act") of 1934, as amended, lays a statutory foundation for this policy by expressly authorizing the Commission to grant licensees flexible spectrum use. The Commission's flexible use policy, which Chairman Powell repeatedly has endorsed, dictates that licensees should be permitted to conduct their operations in whatever manner they believe the market dictates as long as such operations do not interfere with other licensees. Moreover, Commissioner Kathleen Abernathy recently emphasized the increasing importance of the Commission's flexible use policy:

There was a time when allocations and service rules were very detailed and narrow. Times have changed at the Commission—and I think increasingly the Commission is inclined to create broad and flexible allocations and service rules where internationally permitted to do so. *Flexibility essentially means more rights are put into commercial use. Lack of flexibility essentially leaves these broader rights in government storage--meaning they will inevitably lie fallow.* So granting flexibility is about granting rights—which is about getting services to the American people.¹⁰

For example, the Commission has modified its rules, granted special temporary authority, or taken other actions as necessary to authorize flexible spectrum use for: (i) instructional television fixed service ("ITFS") and multichannel multipoint distribution service ("MMDS") licensees to provide both two-way and mobile services; (ii) cellular and PCS licensees to offer fixed services and ancillary services, such as data services; (iii) digital audio radio service ("DARS") licensees to operate terrestrial repeater networks; (iv) broadcast licensees to offer non-broadcast supplemental and ancillary digital services using

¹⁰ Commissioner Kathleen Q. Abernathy, What Tomorrow May Bring--the Future of the FCC's Licensed Spectrum Policy, Address at FCBA Seminar West San Diego, CA (July 20, 2002) (emphasis added), available at <http://www.fcc.gov/Speeches/Abernathy/2002/spkqa219.html>.

excess broadcast spectrum; and (v) wireless communications service licensees to offer any service of their choosing using their spectrum assignments. Grant of ATC authority to MSS licensees is completely consistent with prior application of the Commission's flexible use policy.

B. Section 309(j) of the Communications Act and Commission Precedent Does Not Require the Commission to Auction Terrestrial Rights to Use MSS Spectrum

Despite the claims of the Wireless Providers to the contrary, Section 309(j)¹¹ merely requires the Commission to auction spectrum for which mutually exclusive applications are filed. To trigger this section, the Commission first must determine that the public interest would be served by auctioning terrestrial licenses to access MSS spectrum. As explained above, such an auction is not in the public interest because it would harm MSS licensees by revoking a portion of their spectrum assignments and represents an inefficient use of MSS spectrum.¹² Thus, if the Commission decides that MSS licensees should be granted ATC authority and terrestrial rights should not be auctioned, Section 309(j) is not implicated by this proceeding at all.

Further, the claims of Wireless Providers that grant of ATC authority to MSS licensees amounts to an unjust enrichment are disingenuous. Prior to congressional grant of auction authority to the Commission, cellular licenses were assigned via lotteries and comparative hearings. According to data collected by the Cellular Telecommunications and Internet Association, in 1994, when the Commission held its first auction, cellular licensees already served over twenty million subscribers and were generating over twelve billion dollars in revenue annually using spectrum that they were assigned without charge by the Commission.¹³

Over reliance on auctions serves to stifle innovation for new services. Auctions are most appropriate after a technology becomes established and numerous mutually exclusive applicants seek the same spectrum. Therefore, as the Commission did with respect the terrestrial wireless industry, the Commission should refrain from auctioning spectrum for use by new technologies until the market for the new technologies is firmly established and understood by the financial markets. Because they utilize proven technologies, have an incumbent user base, and a proven financial track record, Wireless Providers always will be able to pay more for spectrum than startups, such as MSS licensees. MSS

¹¹ 47 U.S.C. § 309(j).

¹² Concurrently with this informal pleading, the Creditors also filed a second informal pleading further discussing the reasons that Commission auction of terrestrial rights to MSS spectrum assignments will not serve the public interest.

¹³ CTIA's Semi-Annual Wireless Industry Survey Results, available at <http://www.wow-com.com/images/survey/chart2full.gif>.

licensees will be unable to compete with Wireless Providers for access to terrestrial rights to their own MSS spectrum assignments.¹⁴

C. Grant of ATC Authority to MSS Licensees is Consistent With the Open-Market Reorganization for the Betterment of International Telecommunications (“ORBIT”) Act.

In Section 647 of the ORBIT Act,¹⁵ Congress prohibited the FCC from assigning spectrum used by international satellite systems by competitive bidding. In the legislative history to the ORBIT Act, Congress recognized the inherent risk and expense of deploying international satellite constellations and expressed concern about setting international precedent that dramatically would increase the global expense of such systems if the precedent was followed by other nations.¹⁶ Consistent with these concerns, the Commission should refrain in the instant proceeding from saddling MSS licensees with new expenses, such as having to compete in auctions to obtain terrestrial rights to their already assigned spectrum. Further, if adopted by other nations, the cost of international auctions of terrestrial rights to MSS spectrum assignments would be prohibitive. Not being able to compete with better funded Wireless Providers, MSS licensees would be forced to cede a segmented terrestrial portion of their spectrum assignments worldwide.

¹⁴ In addition, the wireless industry and the MSS industry are not similarly situated. Unlike the wireless industry, which can deploy infrastructure on a piecemeal basis largely using revenues from previously deployed infrastructure, the MSS industry is required to sink the vast majority of its total multi-billion dollar capital expenditures prior to generating its first dollar of revenue. For example, Globalstar was required to spend over \$3.5 billion to deploy its system before serving its first customer. By contrast, by the time the entire wireless industry cumulatively had spent over \$3 billion dollars to deploy their networks (i.e., 1989), the wireless industry already served over 2.5 million subscribers. See CTIA’s Semi-Annual Wireless Industry Survey Results, available at <http://stageweb.wow-com.com/industry/stats/articles.cfm?ID=250> (charting aggregate wireless subscriber growth) and <http://stageweb.wow-com.com/industry/stats/articles.cfm?ID=250> (charting cumulative capital expenditures of the wireless industry).

¹⁵ Pub. L. No. 106-180, 114 Stat. 48 (enacted March 12, 2000).

¹⁶ 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.”).

V. The Commission Should Not Saddle MSS Licensees With “Gating Requirements” to Artificially Ensure the Ancillary Nature of ATC Platforms

Opponents of Commission grant of ATC authority to MSS licensees have suggested that the Commission impose “gating requirements” to artificially constrain the terrestrial use of MSS spectrum. Although the Commission should ensure that operation of ATC platforms by MSS licensees does not cause the MSS licensees to degrade in any way their provision of MSS services, such artificial gating requirements are unnecessary. In fact, certain proposed “gating requirements” could completely undermine the value of Commission grant of ATC authority to MSS licensees and the public.

To ensure that all MSS licensees continue to offer MSS as their primary service offering, the Commission only should grant ATC authority to MSS licensees that have satisfied their MSS coverage requirements. In addition, the Commission should consider requiring all handsets with ATC capabilities also to be capable of utilizing MSS space segment to place calls. This will ensure the integrated nature of the ATC and MSS components of the network by having both components share terminals. It also ensures the production of large numbers of MSS capable handsets, helping to drive the price of such handsets downward.

In addition, the Commission should consider requiring MSS licensees to prioritize MSS calls over ATC calls so that no MSS calls are prevented due to ATC call volume. This ensures that ATC calls will remain ancillary to satellite services and that in times of crisis the entire range of MSS spectrum remains available for satellite services. In combination, these gating requirements will ensure that ATC platforms remain fully integrated into MSS/ATC systems and do not eclipse or degrade the provision of MSS services by MSS licensees. As explained by the Creditors in their ex parte presentations on May 9, 10, and 13, 2002, all other proposed gating requirements will substantially undercut the efficacy of ATC authorization and must be avoided. These extraneous and artificial gating requirements will render the deployment of ATC networks infeasible and render the entire current proceeding moot.

VI. Conclusion

As fully set forth herein, the Commission is faced with a choice of granting ATC authority to MSS licensees or auctioning terrestrial rights to use MSS spectrum assignment. By granting ATC authority to MSS licensees, the Commission can enable MSS licensees, such as Globalstar, to overcome the indoor and urban reception problems that plague the MSS industry. Further, by operating integrated ATC and MSS platforms, Globalstar will be able to use highly efficient geographically and temporally dynamic spectrum assignment to dramatically increase the overall capacity of its existing spectrum assignment without reducing the availability of satellite services and using without additional spectrum resources.

By contrast, auction of terrestrial rights to MSS spectrum assignments will harm MSS licensees by effectively revoking a portion of their spectrum assignments without offering any net benefits in return. Independent terrestrial licensees will be both unable and unwilling to coordinate and cooperate with MSS licensees to overcome the urban and indoor reception problems of MSS and to accomplish the spectrum efficiencies that can be generated by fully integrated ATC/MSS networks.

Moreover, Commission grant of ATC authority to MSS licensees is fully consistent with the Communications Act and Commission policies. In addition, Commission adoption of appropriate gating requirements will ensure that ATC operations remain ancillary to satellite operations and that the efficacy and availability of satellite services is not reduced as a result of ATC operations.