

**BELLSOUTH CORPORATION  
NUCENTRIX BROADBAND NETWORKS, INC.  
SPRINT CORPORATION  
WORLD COM, INC.  
WIRELESS COMMUNICATIONS ASSOCIATION INTERNATIONAL, INC.**

September 5, 2002

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 Twelfth Street, SW  
Washington, DC 20554

Re: *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 -- ET Docket No. 00-258*

*Amendment of Flexibility for Delivery of Communications by Mobile Satellite Service Providers in the 2 GHz Band, the L-Band, and the 1.6/2.4 GHz Band -- IB Docket No. 01-185*

*Amendment of Section 2.106 of the Commission's Rules to Allocate Spectrum at 2 GHz for Use by the Mobile Satellite Service -- ET Docket No. 95-18*

Dear Madam Secretary:

On July 11, 2002, BellSouth Corporation, Nucentrix Broadband Networks, Inc., Sprint Corporation, WorldCom, Inc. and the Wireless Communications Association International, Inc. (the "Joint Parties") submitted a compromise proposal (the "MDS Industry Compromise") that, if adopted, would result in the relocation of MDS channels 1 and 2/2A from 2150-2162 MHz to 1910-1916/1990-1996 MHz, thereby clearing the way for the Commission to designate and auction the 1710-1755 MHz band and at least 45 MHz of the 2110-2170 MHz band for third generation mobile services ("3G").<sup>1</sup> Recently, in response to the Commission's request for comment on the July 22, 2002 National Telecommunications and Information Administration ("NTIA") report on spectrum allocation for 3G services (the "*NTIA Report*"),<sup>2</sup> several parties in ET Docket No. 00-258 directly addressed the MDS Industry Compromise and the public interest

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<sup>1</sup> See Letter from BellSouth Corporation, *et al.* to Michael K. Powell, Chairman, Federal Communications Commission, ET Docket No. 00-258 (filed July 11, 2002). The full text of the Joint Parties' proposal, titled "A Compromise Solution for Relocating MDS From 2150-2162 MHz," was attached to that letter and is hereinafter referred to as the "MDS Industry Compromise."

<sup>2</sup> See "An Assessment of the Viability of Accommodating Advanced Mobile Wireless (3G) Systems in the 1710-1770 MHz and 2110-2170 MHz Bands," National Telecommunications and Information Administration (July 22, 2002) [the "*NTIA Report*"]; "FCC Seeks Comment on the National Telecommunications and Information Administration's Report 'An Assessment of the Viability of Accommodating Advanced Mobile Wireless (3G) Systems in the 1710-1770 MHz and 2110-2170 MHz Bands,'" *Public Notice*, DA 02-1780 (rel. July 24, 2002).

benefits thereof. As discussed below, those comments confirm that the Commission can and should adopt the MDS Industry Compromise as soon as possible.

The MDS Industry Compromise has already received substantial support from those who would be most directly affected by the Joint Parties' proposal, *i.e.*, licensees operating on MDS channel 1, 2 and/or 2A.<sup>3</sup> For example, the Ad Hoc MDS Alliance, which includes MDS channel 1 licensees in 17 major markets covering a population of approximately 80 million persons, agrees that "the 1910 and 1990 MHz bands are reasonably comparable to the 2150 MHz band, require the least amount of overall relocation, and provide for the fastest deployment of new, advanced wireless services utilizing [the] next generation of high speed wireless equipment."<sup>4</sup> Similarly, DCT Los Angeles, L.L.C. ("DCT"), which holds MDS channel 2 licenses in the Los Angeles market, has concluded that the MDS Industry Compromise "is a well-conceived, very efficient, flexible, and . . . acceptable displacement plan for MDS Channels 1 and 2."<sup>5</sup> Both the Ad Hoc MDS Alliance and DCT agree that the Commission can and should adopt the MDS Industry Compromise quickly, and that such action is necessary to remove the cloud of regulatory uncertainty that has plagued the MDS industry for the past 18 months.<sup>6</sup>

Moreover, none of the commenting parties has refuted the showing in the MDS Industry Compromise that all of the other bands suggested for 2150-2162 MHz relocation are unsuitable.<sup>7</sup> Indeed, to this day the proponents of moving MDS channels 1 and 2/2A from 2150-2162 MHz remain vague at best as to exactly where those channels should be moved.<sup>8</sup> Yet, two of the

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<sup>3</sup> See Comments of DCT Los Angeles, L.L.C. On NTIA Report, ET Docket No. 00-258 (filed Aug. 8, 2002) [the "DCT Comments"]; Comments of Ad Hoc MDS Alliance Supporting the NTIA Report, ET Docket No. 00-258 (filed Aug. 8, 2002) [the "Ad Hoc MDS Alliance Comments"].

<sup>4</sup> Ad Hoc MDS Alliance Comments at 3.

<sup>5</sup> DCT Comments at 6.

<sup>6</sup> See, *e.g.*, *id.* at 4 ("[I]t is of the utmost importance to MDS Channel 1 and 2 licensees that the Commission decide as soon as possible if they will be displaced by 3G services and, if so, to what spectrum and with what service and technical parameters." MDS Channel 1 and 2 licensees have had to weather an extended period of regulatory limbo inherently damaging to their businesses. Further delay in the decision exacerbates the harm."); Ad Hoc MDS Alliance Comments at 2 ("Absent a prompt decision at this critical junction, it will be virtually impossible for the lessees of Ad Hoc's various licensed stations to deploy the next generation of equipment necessary to provide economical and reliable high speed Internet access the public is demanding. Thus, the current uncertainty places an undue hardship on members of Ad Hoc as small businesses.").

<sup>7</sup> See MDS Industry Compromise at 7-13. In fact, the *NTIA Report* and the comments thereon actually confirm that the band most often mentioned as a potential home for MDS channels 1/2/2A, 2385-2400 MHz, is *not* suitable for MDS. As noted in the MDS Industry Compromise, the 2385-2400 MHz band will not work because of encumbrances created by flight test operations in the 2385-2390 MHz band and the adjacent 2360-2385 MHz band. MDS Industry Compromise at 7-8. Thus, it is significant that the *NTIA Report* suggests that the 2385-2395 MHz band would be suitable relocation spectrum for Department of Defense airborne telemetry operations in the 1710-1770 MHz band – obviously, this would preclude use of the 2385-2400 MHz band for MDS. See *NTIA Report* at 16; Comments of Motorola, Inc., ET Docket No. 00-258, at 7-8 (filed Aug. 8, 2002) [the "Motorola Comments"].

<sup>8</sup> For example, while Verizon emphasizes that MDS must be relocated to facilitate allocation of the 2110-2170 MHz band for 3G, it does not suggest any replacement spectrum. See Verizon Comments at 6-7. Similarly, Nokia recommends that MDS be moved to "spectrum above 3 GHz" but does not specify what spectrum it has in mind or

parties commenting on the *NTIA Report* have opposed the MDS Industry Compromise, albeit with no supporting technical analysis whatsoever. For the reasons set forth below, both oppositions should be denied.<sup>9</sup>

Of the two opponents, only ICO Global Communications (“ICO”) even addresses the question of exactly what the Commission should do with MDS channels 1 and 2/2A at 2150-2162 MHz.<sup>10</sup> ICO alleges that allocation of the 1990-1996 MHz band for MDS will leave ICO with an inadequate amount of spectrum in the 1990-2025 MSS uplink band, since ICO has unilaterally chosen to construct and has launched a satellite capable of operating domestically only over the 1990-2015 MHz band rather than the entire 1990-2025 MHz band.<sup>11</sup> Suggesting it cannot operate with the 1996-2015 MHz band if the MDS Industry Compromise is adopted, ICO suggests that the Commission instead reallocate the non-contiguous 2110-2150 and 2160-2165 MHz bands for 3G rather than the contiguous 2110-2155 MHz band, and leave MDS channels 1 and 2/2A at 2150-2160 MHz.<sup>12</sup>

As an initial matter, it is hardly a foregone conclusion that the Commission will only allocate 45 MHz of the 2110-2170 MHz band for 3G – indeed, NTIA believes that “the entire 2110-2170 MHz band could be made available for 3G wireless systems in an acceptable timeframe,” and many in the mobile telephone industry have urged the Commission to allocate the entire band for 3G.<sup>13</sup> Moreover, there is no basis for ICO’s claim that it is “likely” that the

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otherwise discuss the point any further. *See* Comments of Nokia, Inc., ET Docket No. 00-258, at 3 (filed Aug. 8, 2002). Yet, in its *Emerging Technologies* docket, when the Commission attempted to identify spectrum to which incumbent MDS licensees from the 2.1 GHz band could be relocated, it found that “*there are no frequency allocations above 3 GHz that could readily support the requirements of MDS, which are wide-area and point-to-multipoint in nature.*” *Redevelopment of Spectrum to Encourage Innovation in the Use of New Telecommunications Technologies*, 7 FCC Rcd 6886, 6889 (1992) (emphasis added).

<sup>9</sup> In an August 9, 2002 *ex parte* letter filed in ET Docket No. 00-258, Nextel Communications, Inc. (“Nextel”) opposed the MDS Industry Compromise because it conflicts with a proposal Nextel filed two days earlier in WT Docket No. 02-55, under which Nextel would be given 1910-1915/1990-1995 MHz on a nationwide basis as a *quid pro quo* for implementing and partially funding its proposal to address the interference Nextel’s operations are causing public safety users in the 800 MHz band. *See* Letter from Regina M. Keeney, Counsel for Nextel Communications, Inc., to the Federal Communications Commission, ET Docket No. 00-258 (Aug. 9, 2002). As demonstrated in the Joint Parties’ separate opposition to the Nextel filing, Nextel’s opposition to the MDS industry is meritless and should be rejected in short order. *See* Letter from BellSouth Corporation *et al.* to Michael K. Powell, Chairman, Federal Communications Commission, ET Docket No. 00-258 *et al.* (Aug. 29, 2002).

<sup>10</sup> Comments of ICO Global Communications, ET Docket No. 00-258 (filed Aug. 8, 2002) [the “ICO Comments”].

<sup>11</sup> *See id.* at 6.

<sup>12</sup> *See id.* at 4.

<sup>13</sup> *NTIA Report* at 23. *See also, e.g.*, Comments of the Cellular Telecommunications & Internet Association, ET Docket No. 00-258, at 5 (filed Aug. 8, 2002) [the “CTIA Comments”]; Comments of Motorola, Inc., ET Docket No. 00-258, at 5 (filed Aug. 8, 2002) [the “Motorola Comments”]; Comments of the Telecommunications Industry Association, ET Docket No. 00-258, at 3 (filed Aug. 8, 2002).

Commission would allocate the 2110-2150/2160-65 bands for 3G.<sup>14</sup> Indeed, the mobile telephone industry has stated emphatically that it needs a contiguous allocation at 2110-2170 MHz for 3G to be successful,<sup>15</sup> and, as demonstrated below, the record before the Commission in ET Docket No. 00-258 otherwise leaves no doubt that ICO's proposal is unworkable.

By now it should be obvious to all parties to these proceedings that a guardband is required between 3G and MDS. As the Joint Parties individually and collectively have made clear in the MDS Industry Compromise, formal pleadings in ET Docket No. 00-258 and elsewhere, a guardband will be required to protect MDS from interference by adjacent 3G operations.<sup>16</sup> Indeed, the March 30, 2001 report by the Commission's staff -- Final Report, "Spectrum Study of the 2500-2690 MHz Band: The Potential for Accommodating Third Generation Mobile Systems" ("Final Report") -- concludes that guardbands of up to 4 MHz will be needed to prevent interference between MDS and adjacent channel 3G systems.<sup>17</sup> In response to the Commission's *Public Notice* soliciting comments from the public on the Final Report,<sup>18</sup> The Wireless Communications Association International, Inc. ("WCA") took issue with that conclusion, noting in pertinent part that somewhat larger guardbands might be required.<sup>19</sup> WCA was far from alone in suggesting that guardbands of 5 MHz or more are required between MDS

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<sup>14</sup> ICO attempts to support its claim by citing to paragraphs 50 and 67 of the Commission's initial *Notice of Proposed Rulemaking* in ET Docket No. 00-258. See ICO Comments at 4 nn. 12-13. Both citations are misleading. At paragraph 50, the Commission merely cited the provision of the Balanced Budget Act of 1997 which requires the Commission to reallocate and auction the 2110-2150 MHz band by September 30, 2002. See *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 Services*, 16 FCC Rcd 596, 617 (2001). Nowhere in paragraph 50 does the Commission even suggest that the statute precludes it from reallocating and auctioning the 2110-2155 MHz or even the entire 2110-2170 MHz band for 3G. At paragraph 67, the Commission solicited comment on the feasibility of pairing the 1710-1755 MHz with the 2110-2150/2160-2165 MHz bands for 3G. See *id.* at 623. ICO conveniently overlooks the Commission's subsequent *Further Notice of Proposed Rulemaking* in the same proceeding, in which the Commission requested comment on whether it should pair the 1710-1755 and 2110-2155 MHz bands and auction them for 3G. See *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*, 16 FCC Rcd 16043, 16062 (2001) [the "Advanced Services FNPRM"].

<sup>15</sup> See, e.g., Comments of Verizon Wireless, ET Docket No. 00-258 *et al.*, at 3-4 (filed Aug. 8, 2002) (footnotes omitted); Motorola Comments at 5; CTIA Comments at 5. Comments of Ericsson Inc, ET Docket No. 00-258, at 3 (filed Aug. 8, 2002).

<sup>16</sup> See, e.g., MDS Industry Compromise, at 10, n.35; Comments of WorldCom, Inc., ET Docket No. 00-258, at 17-18 (filed Feb. 22, 2002).

<sup>17</sup> See FCC, Final Report, Spectrum Study of the 2500-2690 MHz Band: The Potential for Accommodating Third Generation Mobile Systems, at 47-52 (2001).

<sup>18</sup> See "FCC Releases Staff Final Report 'Spectrum Study of 2500-2690 MHz Band: The Potential for Accommodating Third Generation Mobile Systems,'" *Public Notice*, DA 01-786 (rel. Mar. 30, 2001),

<sup>19</sup> See Comments of The Wireless Communications Association International on FCC Final Report, ET Docket No. 00-258, at 4-5 (filed April 16, 2001). See also Comments of Sprint Corporation, ET Docket No. 00-258, at 4-5 (filed April 16, 2001).

stations operating under Part 21 rules and 3G stations.<sup>20</sup> Whether the correct guardband is 4 MHz or something more, the point is beyond peradventure – ICO’s proposal to leave no guardband between 3G at 2110-2150/2160-2165 MHz and MDS at 2150-2160 MHz is grossly inadequate. In addition, the record in ET Docket No. 00-258 and the Commission’s own statements therein have put interested parties on notice for months that the 2160-2165 MHz band encompasses 2 MHz of MDS channel 2 (2156-2162 MHz).<sup>21</sup> ICO brushes this aside and offers no explanation of how MDS channel 2 licensees are to be made whole if the 2160-2165 MHz band is reallocated for 3G.

Furthermore, ICO’s purported wounds plainly are self-inflicted. Notwithstanding the Commission’s prior warning that satellite applicants assume the risk of premature construction, ICO chose to commence construction of its satellites over 18 months before the Commission had even proposed rules for MSS licensing.<sup>22</sup> ICO also chose to launch its first satellite several months before the Commission issued its MSS licensing rules, and, after that satellite was destroyed by a launch vehicle failure, ICO launched its second satellite on June 19, 2001, before it had been issued a license by the Commission.<sup>23</sup> Now, having elected to prematurely construct

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<sup>20</sup> See, e.g., Comments of Verizon Wireless, ET Docket No. 00-258, at 15 (filed Feb. 22, 2001); Comments of Cisco Systems, Inc., ET Docket No. 00-258, at 9-10 (filed Feb. 22, 2001).

<sup>21</sup> As explained in MDS Industry Compromise and in WCA’s earlier comments in ET Docket No. 00-258, the Commission’s rules currently make the full 6 MHz of MDS channel 2 available in fifty large markets and in smaller markets by waiver; in the remaining markets, only the 4 MHz MDS 2A channel (2156-2160 MHz) is available. See, e.g., MDS Industry Compromise at 2 n.6.

<sup>22</sup> See 47 C.F.R. §25.113(f); *Streamlining the Commission’s Rules and Regulations for Satellite Application and Licensing Procedures*, 11 FCC Rcd 21581, 21585 (1996) (“We underscore again that any [premature] construction will be at the applicant’s own risk, and we will not in any way consider the status of construction or expenditures made when acting on the underlying application.”). According to ICO’s prior filings with the Commission, ICO commenced construction of its satellites on September 1, 1997. ICO Services Limited Section 25.143(e) Annual Report and Certification of Construction Milestones, File No. 188-SAT-LOI-97 *et al.*, at 2-3 (Oct. 22, 2001) [the “ICO Certification Letter”]. The Commission released its *Notice of Proposed Rulemaking* for its MSS licensing rules on March 25, 1999. See *The Establishment of Policies and Service Rules for the Mobile Satellite Service in the 2 GHz Band*, 14 FCC Rcd 4843 (1999). In addition, the fact that ICO is operating a non-U.S. licensed satellite system does not insulate it from the Commission’s rules and policies on premature construction. See *Amendment of the Commission’s Regulatory Policies to Allow Non-U.S. Licensed Space Stations to Provide Domestic and International Satellite Service*, 12 FCC Rcd 24094, 24174 n. 359 (1997) (“We reiterate our intent to hold non-U.S. satellite operators to the same rules as we do our U.S. licensed space station operators.”).

<sup>23</sup> See ICO Services Limited Section 25.143 Report, attached to the ICO Certification Letter, at 1. ICO launched its first satellite on March 12, 2000; the Commission did not issue its MSS licensing rules until August 25, 2000, and ICO did not receive a license until July 17, 2001. See *The Establishment of Policies and Service Rules for the Mobile Satellite Service in the 2 GHz Band*, 15 FCC Rcd 16127 (2000) [the “2 GHz MSS Order”]; *ICO Services Limited – Letter of Intent to Provide Mobile-Satellite Service in the 2 GHz Bands*, 16 FCC Rcd 13762 (International Bureau, released July 17, 2001) [the “ICO Licensing Order”]. The Commission’s proposal in its *Advanced Services FNPRM* to reallocate a portion of the MSS 2 GHz allocation for 3G should have come as no surprise to ICO. See *Advanced Services FNPRM*, 16 FCC Rcd at 16048, 16055. Indeed, the implosion of the MSS industry had been a matter of public record prior to ICO’s launch of its second satellite – in turn, the MSS industry’s failure prompted CTIA to file a Petition for Rulemaking on May 18, 2002 (one month before ICO’s launch of its second satellite) asking that Commission to reallocate the *entire* MSS 2 GHz allocation for 3G. The International Bureau

and launch a satellite that is unable to operate over the entire 1990-2025 MHz band, ICO asks the Commission to compound the problem by hoarding the 1990-1996 MHz band for MSS at the expense of mobile carriers and consumers who stand to benefit directly from immediate adoption of the MDS Industry Compromise.<sup>24</sup> The Commission, however, put all MSS system proponents on notice that “it is important to design and launch 2 GHz MSS systems with sufficient flexibility to address coordination and band arrangement contingencies. *We encourage system proponents to design their systems to be able to operate across more than 70% of the 2 GHz MSS bands in order to be able to provide the maximum amount of flexibility.*”<sup>25</sup> ICO ignored the Commission’s admonition at its own peril, and thus the Commission should not put the MDS industry and the 3G allocation process at risk to shield ICO from the consequences of its actions.<sup>26</sup>

More important, however, *adoption of the MDS Industry Compromise would still leave more than enough spectrum in the 1990-2025 MHz band for ICO’s operations.* When the International Bureau licensed 2 GHz to MSS in July 2001, it restricted ICO and the seven other MSS system proponents to 3.5 MHz in each of the uplink and downlink (2165-2200 MHz) segments.<sup>27</sup> Since the MDS Industry Compromise would result in reallocation of only 6 of the 7 MHz “reserved” MSS uplink spectrum for MDS, it will leave enough MSS uplink spectrum (1996-2025 MHz, or a total of 29 MHz) to accommodate the Commission’s assignment of 3.5 MHz uplink segments to the eight MSS system proponents (*i.e.*, 3.5 MHz x 8 or 28 MHz). The fact that ICO’s satellites have been built to operate on just the 1990-2015 MHz portion of the MSS uplink band does not change the analysis: even if the 1990-1996 MHz portion of the MSS uplink band is reallocated for MDS, ICO would still have 19 MHz of MSS uplink spectrum to work with (*i.e.*, the 1996-2015 MHz band), or more than five times the amount of MSS uplink spectrum the Bureau actually assigned to it (3.5 MHz). Further, the analysis does not change

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subsequently limited the amount of spectrum licensed to ICO, noting the possibility that MSS spectrum might be reallocated for terrestrial use pursuant to the CTIA Petition. *See ICO Licensing Order*, 16 FCC Rcd at 13765 n.30.

<sup>24</sup> It is worth noting that ICO is the only authorized MSS system proponent that proposed to operate over less than the entire 70 MHz of MSS spectrum at 1990-2025 MHz and 2165-2200 MHz. *See Advanced Services FNPRM*, 16 FCC Rcd at 16056 n.67.

<sup>25</sup> *2 GHz MSS Order*, 15 FCC Rcd at 16132 (emphasis added).

<sup>26</sup> Oddly, ICO also contends that removing the 1990-1996 MHz band from the MSS uplink allocation would put ICO in violation of the Commission’s policy requiring that MSS systems be designed to operate over at least 70% of the 2 GHz MSS allocation. *See id.* ICO’s argument is patently absurd: if the Commission has the authority to reallocate portions of the MSS allocation for MDS and/or 3G (and it clearly does), it obviously has the authority to also eliminate the 70% policy or, for that matter, any other MSS spectrum utilization requirement. In any case, it is not evident from ICO’s own numbers that reallocation of the 1990-1996 MHz band to MDS would put ICO in violation of the 70% policy. Even if the Commission does not count the 1985-1990 MHz band (since that spectrum is not allocated for MSS in the U.S.), ICO is capable of operating on total of 55 MHz (1990-2015 MHz and 2170-2200 MHz), and the Commission’s 70% policy only requires that ICO be capable of operating on 49 MHz (70% of the 70 MHz MSS allocation). Even if the 1990-1996 MHz band is removed, ICO would still be capable of operating on 49 MHz (*i.e.*, 55 MHz minus 6 MHz), and thus would satisfy the 70% policy.

<sup>27</sup> *See, e.g., ICO Licensing Order*, 16 FCC Rcd at 13765.

even if ICO is credited with another 7 MHz of MSS uplink spectrum by virtue of its pending acquisition of the licenses of two of the other MSS applicants, Constellation Communications Holdings, Inc. (“Constellation”) and Mobile Communications Holdings, Inc. (“MCHI”).<sup>28</sup> Under that scenario, ICO would hold 10.5 MHz of MSS uplink spectrum, still 8.5 MHz less than the 19 MHz remaining after allocation of the 1990-1996 MHz band for MDS. In other words, contrary to what ICO alleges in its opposition, adoption of the MDS Industry Compromise will leave ICO with more than sufficient spectrum for its operations.

CTIA is the only other party that opposed the MDS Industry Compromise in its comments on the *NTIA Report*. Again without offering any relocation alternative of its own, CTIA opposes (albeit in cursory fashion) the MDS Industry Compromise with the threadbare argument that relocation of MDS channels 1/2/2A to 1910-1916/1990-1996 MHz would confer a “windfall” on the MDS industry.<sup>29</sup> CTIA’s argument is baffling given both the preference of MDS licensees to remain at 2150-2162 MHz and that MDS licensees have agreed to sacrifice a substantial degree of the design flexibility they currently enjoy at 2150-2162 MHz in moving to 1910-1916/1990-1996 MHz.<sup>30</sup> In other words, only MDS licensees, and certainly not the mobile telephone industry, will suffer any significant dislocation as a result of the Joint Parties’ proposal. Of course, the Commission can easily avoid any “windfall” simply by leaving MDS at 2150-2162 MHz.<sup>31</sup> On the other hand, if the creation of at least 45 MHz of contiguous spectrum in the 2110-2170 MHz band for 3G is truly as important as CTIA proclaims, then the Commission can best accommodate CTIA by adopting the MDS Industry Compromise, since it has been demonstrated to be the only viable approach to clearing the 2150-2162 MHz band for 3G.<sup>32</sup>

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<sup>28</sup> See *Public Notice*, Rep. No. SAT-00116 (Aug. 5, 2002); Application of Constellation, File No. SAT-MOD-20020719-00103 (filed July 17, 2002); Application of MCHI, File No. SAT-MOD-20020719-00105 (filed July 18, 2002); Application of Constellation, File No. SAT-T/C-20020718-00114 (filed July 18, 2002); Application of MCHI, File No. SAT-T/C-20020719-00104 (filed July 18, 2002). There is a substantial question as to whether the Commission’s milestone and anti-trafficking rules and policies would permit Constellation’s and MCHI’s spectrum to be credited to ICO in this manner. See *Advanced Services FNPRM* at 16058-59.

<sup>29</sup> CTIA Comments at 7.

<sup>30</sup> See, e.g., MDS Industry Compromise at 4. While CTIA vaguely asserts that the MDS Industry Compromise “creates the potential for interference to the existing PCS licensees, who require a certain separation between the mobile and base transmit assignments” (CTIA Comments at 67), it fails to explain how adoption of the MDS Industry Compromise would impact the standard 80 MHz separation afforded between PCS mobile and transmit assignments. In fact, in a recent *ex parte* filing in ET Docket No. 00-258, Ericsson suggested that the 1910-1915/1990-1995 MHz band be reallocated for 3G services. See Letter from Elisabeth H. Ross and Allison M. Ellis, Counsel for Ericsson Inc., ET Docket No. 00-258 (Feb. 4, 2002) (suggesting in attached exhibit that the Commission could create more 3G spectrum by allocating new PCS channels at 1910-1915/1990-1995 MHz). Since the MDS Industry Compromise envisions that MDS would comport with the broadband PCS rules if relocated to 1.9 GHz, Ericsson’s recommendation indicates that adoption of the MDS Industry Compromise will cause no threat of harmful interference to adjacent PCS operations.

<sup>31</sup> See, e.g. MDS Industry Compromise at 2.

<sup>32</sup> Citing earlier comments filed by the Ad Hoc MDS Alliance in ET Docket No. 00-258, CTIA contends that the MDS Industry Compromise “contradicts the assertions of the MDS licensees earlier in this proceeding that they

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In sum, the MDS Industry Compromise presents the Commission with an opportunity to finally resolve the MDS relocation issue in a manner that benefits the MDS industry, the mobile industry and consumers, without excessive cost or disruption of service to the public. By contrast, what limited opposition there is to the MDS Industry Compromise is largely rhetorical and entirely devoid of merit, and makes no attempt to even suggest a viable alternative. The oppositions to the MDS Industry Compromise should be rejected, and the MDS Industry Compromise promptly adopted.

Respectfully submitted,

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needed the 2150-2162 MHz block of spectrum to pair with MDS operations in the 2500-2690 MHz band.” CTIA Comments at 6 (footnote omitted). The language CTIA appears to be citing to is as follows: “The relocation of MDS channels 1, 2 and 2A to a substantially higher frequency band also could impair the utility of the existing practice of pairing them as return paths with MDS/ITFS channels locating in the 2500-2690 MHz band to offer a single two-way service.” In other words, the Ad Hoc MDS Alliance was merely stating that MDS channels 1 and 2/2A would have less utility if they were moved to a higher frequency, which obviously is not what the Joint Parties are proposing here.

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