CTIA
Building The Wireless Future™
Cellular Telecommunications & Internet Association

Thomas E. Wheeler
President/CEO

November 26, 2002

The Honorable Kevin J. Martin
Commissioner
Federal Communications Commission
445 Twelfth Street, S.W., Room 8A-204
Washington, D.C. 20554

Re: IB Docket No. 01-185, ET Docket No. 95-18

Dear Commissioner Martin:

As you know, the Cellular Telecommunications & Internet Association ("CTIA") has taken a keen interest in the proceedings pending before you relating to Mobile Satellite Service ("MSS") and New ICO's request for an Ancillary Terrestrial Component ("ATC") in the 2 GHz band. CTIA has a Petition before the Commission seeking reallocation of the 2 GHz MSS band for other uses unless MSS licensees can demonstrate that their service is viable. Additionally, CTIA has argued that New ICO's request for authorization to provide ATC is wholly unjustified in the context of this band. CTIA believes that the record in this proceeding reinforces its view that consumers would be best served if the Commission were to reallocate 2 GHz spectrum that is not likely to be used for MSS -- before it becomes tied up in endless legal proceedings. The Commission's recent experience with Auction 35 underscores the message that consumers lose when spectrum lies fallow for years, instead of being employed to meet consumer needs.

As CTIA argued in its reconsideration petition and other parties have argued in other contexts, the Commission should have deferred licensing the 2 GHz MSS systems until it had determined whether the 2 GHz spectrum would be put to its most efficient use by a reallocation from MSS to other services. CTIA emphasized that the information MSS providers themselves filed suggested that most proposed MSS offerings were not viable, and that the 70 MHz of spectrum that had been devoted to MSS in the 2 GHz band far exceeded any credible estimate of MSS needs.

The case for reallocating the 2 GHz spectrum to services other than MSS has only been strengthened in the last year. The market for MSS has grown more challenging over that time, and available capital continues to be very constrained. The milestone filings of the 2 GHz licensees have raised serious questions about whether they have the financial strength even to fulfill the relatively simple first milestone. The Commission has a choice: it could continue to allow non-viable satellite licensees to occupy spectrum for the foreseeable future, *or* it could follow the vision of its new spectrum policy and take affirmative steps to ensure that this spectrum is reclaimed and made available via auction for the kinds of flexible services contemplated in the FCC Spectrum Task Force Report.

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The present 2 GHz MSS service rules do not permit terrestrial use. What several of the MSS licensees seek from the Commission – the authority to provide terrestrial services in spectrum that was obtained for free and was exempt from auction due to the satellite nature of the service – is at odds with the letter and spirit of Section 309(j) of the Communications Act, as well as the Commission's own decision in the Northpoint proceeding. Any spectrum made available for commercial terrestrial services *must* be auctioned pursuant to Section 309(j) of the Communications Act. A decision by the Commission to give MSS licensees the ability to provide terrestrial services would not only violate the statute, it would be inconsistent with the Commission's overarching goal of ensuring that spectrum is put to its highest and best use. The result would be a morass of legal proceedings, and a guarantee that this spectrum would either lie fallow or be inefficiently used for years to come.

CTIA urges the Commission to conclude that the far better course to fulfill its obligation to manage the radio spectrum effectively is to reallocate spectrum of non-viable MSS licensees to other uses. The Commission's role should not be to protect the viability of one competitor or industry segment, but rather to serve the broader public interest.

Very Truly Yours,

Thomas E. Wheeler

cc: Marlene Dortch