™ CTIA
Building The Wireless Future™
Cellular Telecommunications & Internet Association

November 27, 2002

Ms. Marlene Dortch
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 Ms. Dortch:

On November 26, 2002, the Cellular Telecommunications & Internet Association ("CTIA") represented by Diane Cornell, Vice President for Regulatory Policy, and Christopher Guttman-McCabe, Director for Regulatory Policy, met with Tom Sugrue, Chief, Wireless Bureau; Margie Weiner, Chief, Auctions and Industry Analysis Division, Wireless Bureau; and Bill Huber, Acting Legal Advisor, Office of the Bureau Chief, Wireless Bureau. The parties discussed issues related to Mobile Satellite Services spectrum in the 2 GHz band and New ICO's proposal for ancillary terrestrial service in that band. CTIA reiterated its belief that the 2 GHz MSS spectrum should be reallocated to other uses if demand for MSS services will not require use of the entire band. CTIA argued that the MSS licensees should not be granted the terrestrial flexibility that they have requested. CTIA also argued that any proposed refinement of ancillary criteria or creation of gating criteria by the Commission must be based on information submitted on the record, and subject to additional notice and comment. In particular, the parties discussed the attached presentation.

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

Sincerely,

Christopher Guttman-McCabe

Christopher Guttman-McCabe

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CELLULAR TELECOMMUNICATIONS & INTERNET ASSOCIATION

Presentation on Terrestrial Flexibility NPRM and New ICO's ATC Proposal

November 26, 2002

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OVERVIEW

- Broad goal of proceeding should be sound spectrum management policy
- MSS spectrum in the 2 GHz band should be reallocated to other uses if demand for MSS services will not require the entire band
- MSS licensees should not be granted the terrestrial capability they request

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2 GHZ MSS SPECTRUM SHOULD BE REALLOCATED FOR OTHER USES

- As CTIA's Petition for Reconsideration argued, it makes sense to reallocate 2 GHz MSS spectrum for other services to the extent MSS licensees are not viable
  - MSS licensees have said they are not viable and ATC is not able to subsidize their operations
  - It is highly unlikely that all of the 2 GHz allocation is going to be used for MSS
    - FCC found licensees only require 3.5 MHz for MSS
    - Capital not likely to be available to fund buildout of multiple MSS systems

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2 GHZ MSS SPECTRUM SHOULD BE REALLOCATED FOR OTHER USES

- Much of 2 GHz spectrum would find its "highest and best use" for services other than MSS, whether CMRS or some other offering
- CMRS will need additional spectrum over time, despite economic downturn
  - MOU and subscribers continue to increase

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THE FCC SHOULD INVESTIGATE INCENTIVES FOR INCUMBENTS TO TURN BACK SPECTRUM IN FUTURE NPRM

- The FCC should consider whether there are effective market-based incentives for incumbent licensees to turn back under-utilized spectrum
- These incentives should be explored in a future NPRM

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MSS LICENSEES SHOULD NOT BE GRANTED FLEXIBILITY TO PROVIDE TERRESTRIAL SERVICES

- Granting 2 GHz MSS licensees terrestrial flexibility will undermine sound spectrum management
  - Granting terrestrial flexibility will further entrench an inefficient spectrum allocation for "non-viable" services
- Several satellite licensees have expressed concern that ATC will interfere with their MSS systems and/or limit the spectrum available for MSS

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2 GHz LICENSEE RIGHTS ARE TIED TO SATELLITE

- MSS licensees' rights and benefits were granted in the context of the unique nature of satellite service
- New ICO's proposed terrestrial rights go beyond the bundle of rights granted to MSS licensees
  - Unlike other licensed commercial spectrum users, satellite spectrum is not auctioned, so MSS licensees do not have the same incentive to use spectrum efficiently
  - If terrestrial capability were part of original rights, others providers would have been interested

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IF TERRESTRIAL SERVICES CAN BE PROVIDED SEPARATELY FROM MSS, AN AUCTION IS REQUIRED

- If terrestrial services can be provided in segmented spectrum, they can and should be defined as a separate service
  - *"Within the exclusion zone, satellite UTs simply cannot share the same frequencies at the same time with the terrestrial base station."* New ICO Comments at p. 4, March 22, 2002.
- Separate terrestrial service offerings, even if they are in satellite spectrum, must be auctioned under Section 309 (j).
- As the FCC properly concluded in the Northpoint Order, the ORBIT Act does not prohibit the auction of spectrum used for terrestrial services, even if that spectrum is otherwise being used for satellite offerings.

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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
- FCC needs to look past the rhetoric to see this is really a "spectrum grab": MSS licensees are positioning themselves to sell their "flexible" rights to the spectrum
- ATC as proposed is essentially a CMRS network, not an extension of the satellite offering
- New ICO proposes that ATC be exempt from the regulatory requirements that apply to CMRS, such as E911, TTY, etc.

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NEITHER 2 GHZ MSS NOR ATC MERIT SPECIAL TREATMENT

- The FCC's role should not be to protect the viability of one competitor or industry segment
- Public interest needs such as homeland security, public safety or rural service can be effectively met by CMRS systems or other MSS or Geo satellite systems
- If Congress believed MSS or ATC was essential to meet these needs it would have included MSS in the Universal Service system or appropriated targeted funding

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NEW ICO'S ATC PROPOSAL DOES NOT QUALIFY AS AN ANCILLARY PROPOSAL

- "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. We expect the character of such services to remain the same whether provided by satellite or terrestrially" **FCC 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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ANY ANCILLARY "CRITERIA" MUST BE PUT OUT FOR COMMENT

- The proposed criteria in the NPRM are inadequate to define ancillary status
- Any additional specific "gating" proposals offered by MSS licensees should be made part of the record
- Any proposed refinement of ancillary criteria should be subject to notice and comment

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SUMMARY

- 2 GHz MSS spectrum should be reallocated and auctioned for other uses if it is not fully utilized for viable MSS offerings
- An MSS operator should obtain the right to provide a terrestrial service the same way every other entity must -- through an auction

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