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Cellular Telecommunications & Internet Association

December 23, 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 December 23, 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 Commissioner Jonathan Adelstein and his Legal Advisor, Barry Ohlson. 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 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 and letter.

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,

Diane J. Cornell

Diane J. Cornell

Cc: Commissioner Jonathan Adelstein
Barry Ohlson

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Cellular Telecommunications & Internet Association

December 23, 2002

The Honorable Jonathan S. Adelstein
Commissioner
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

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

Dear Commissioner Adelstein:

The wireless industry has been actively participating in the Mobile Satellite Service ("MSS") and New ICO Ancillary Terrestrial Component ("ATC") proceedings pending before the Commission because of the importance of these issues to our industry. Any decision regarding this very valuable block of spectrum will signal the direction the Commission will take in its comprehensive review of spectrum policy issues. The Cellular Telecommunications & Internet Association ("CTIA") submits that the only justifiable position from both a legal and policy standpoint would be for the Commission to reallocate *and* auction the majority of the 2 GHz MSS spectrum, and to deny the requested ATC terrestrial authority.

As CTIA argued in its pending Petitions before the Commission seeking reallocation and auction of the 2 GHz MSS band,[1] several MSS licensees have admitted that their service is not viable. Additionally, in the interim since the International Bureau licensed the MSS carriers, several have failed to satisfy the initial 2 GHz MSS milestone required as a condition of their license, raising serious questions about whether they have the financial strength even to fulfill the simplest of requirements.[2] This underutilized spectrum, along with the 14 MHz of unassigned

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[1] *See Petition for Rulemaking of the Cellular Telecommunications & Internet Association Concerning Reallocation of 2 GHz Spectrum for Terrestrial Use* (filed May 18, 2001); *see also Petition for Reconsideration of the Cellular Telecommunications & Internet Association*, ET Docket No. 00-258 and 95-18, IB Docket No. 99-81 (filed October 15, 2001).

[2] *See e.g., Letter to Marlene Dortch, Secretary, FCC, from Kathryn Zachem, Esq. and L. Andrew Tollin, Esq., on behalf of AT&T Wireless Services, Inc., Cingular Wireless LLC and Verizon Wireless*, DA 01-1638, File No. 189-SAT-LOI-97, IBFS Nos. SAT-LOI-19970926-00161, SAT-AMD-20001103-00158 (filed December 11, 2002) (asserting that TMI has failed to satisfy the initial 2 GHz MSS milestone); *Petition to Deny Applications of Constellation*

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spectrum originally allocated to MSS in the 2 GHz band, would be put to its best and highest use if it were to be auctioned for other uses.

The most logical location for any spectrum that the Commission reallocates now, or at some point in the future, would be at the bottom of the 2 GHz MSS bands, as close as possible to the PCS and Advanced Services allocations. Following the reallocation, the Commission should initiate a rulemaking to determine the appropriate service and auction rules for the band. This location would increase the attractiveness of that spectrum for mobile uses, and offer the greatest potential for interested bidders to most effectively serve consumers needs. If the Commission is truly focused on a goal of improving the existing inefficiencies of its current allocation scheme, it will strive to group like services in close proximity as the Spectrum Task Force recommended, instead of creating new isolated blocks of spectrum. Moreover, this approach would ensure that any remaining MSS service allocation would be realistically sized, and would not cut into spectrum that could be more valuable – both domestically and internationally – if it were reallocated to other uses.

CTIA continues to oppose any grant of terrestrial capability to the MSS licensees if that capability is not awarded through an auction that is open to all interested bidders. The terrestrial service that several licensees seek from the Commission is at odds with the Commission's interpretation of the ORBIT Act, which recognizes that terrestrial operations using spectrum shared with international satellite services do not fall within the competitive bidding exemption.[3] Section 309(j) of the Communications Act requires that the Commission auction any such grant of terrestrial service.

Based on its review of the *ex parte* filings and its own meetings with Commissioners and FCC staff, however, CTIA understands that the Commission is seriously considering granting some form of ATC to MSS licensees. As noted above, CTIA remains opposed to any grant of terrestrial capability to MSS licensees. But, if the Commission should decide to take such action, it must ensure that any ATC capability be *truly* ancillary, and not merely be a pretense for MSS carriers to acquire a terrestrial service capability without having to pay for that right at auction. To achieve that goal, the Commission should apply clear and objective conditions to ensure that the MSS spectrum is utilized primarily for the purpose intended, a satellite service. Otherwise, Commission action threatens to undermine the very purpose behind the MSS allocation and service rules – to "encourag[e] the expeditious delivery of telecommunications services, via

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Communications Holdings, Inc., Mobile Communications Holdings, Inc., File Nos. SAT-T/C-20020718-00114, SAT-MOD-20020719-00103, File Nos. SAT-T/C-20020719-00104, SAT-MOD-20020719-00103 (filed September 4, 2002); *Letter to Marlene Dortch, Secretary, FCC, from Kathryn Zachem, Esq. and L. Andrew Tollin, Esq., on behalf of AT&T Wireless Services, Inc., Cingular Wireless LLC and Verizon Wireless*, Docket No. 01-185 *et al.* (filed Aug, 14, 2002).

[3] *See 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*, ET Docket No. 98-206, Memorandum Opinion and Order and Second Report and Order, FCC 02-116 at ¶¶ 243-45 (rel. May 23, 2002), *pets. for recon pending, appeal pending sub nom.* Northpoint Technology v. FCC, No 02-1194 (D.C. Cir. filed June 3, 2002).

satellite services, to unserved communities."[4] Given the difficult legal and policy questions raised by these ATC requests, if the Commission determines that some ATC grant is necessary, then the Commission should give careful attention to how "*ancillary* terrestrial component" is defined, and ensure that the ATC capability is indeed ancillary.

If the Commission decides to allow MSS licensees to incorporate ATC into their satellite systems, it should use as a starting point its own proposed definition of "ancillary" from the Notice of Proposed Rulemaking – that ancillary services "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."[5] To give content to this definition in the MSS context, the Commission should consider use of the following gating criteria to ensure that the terrestrial service remains ancillary, as the MSS carriers request, and that the overall service continues to be a true satellite service offering, as the MSS carriers have promised.

- The MSS licensee must have fulfilled all of its milestones, the satellite component of the MSS system must be fully deployed (and providing service, as the NPRM proposed, "covering all 50 states, Puerto Rico, and the U.S. Virgin Islands 100% of the time"[6]), and there must be an *actual* service offering throughout the United States, with a track record over a period of time sufficient to demonstrate that rural consumers are in fact being served. If rural consumers are to receive the benefits the MSS carriers have so aggressively touted in their advocacy, the Commission must be sure that a distribution mechanism is in place that ensures *all* U.S. consumers are able to be educated about and subscribe to the MSS offering. MSS licensees received their licenses solely to provide satellite service, and these authorizations were not subject to the 309(j) auction requirement because terrestrial capability was not an issue. If the Commission is to be sure that rural consumers receive the benefits intended when the International Bureau licensed MSS, it must be certain that a robust satellite system has been deployed and that MSS licensees are making a legitimate effort to provide satellite service *before* these licensees should be permitted to launch the ancillary terrestrial component of that service.

- As the NPRM proposed, any ancillary terrestrial services should "use assigned MSS frequencies."[7] By this, it is understood that the bandwidth used for a 2 GHz MSS licensee's ancillary terrestrial component should be entirely within the primary Selected Assignment of that licensee (within the pair of 3.5 MHz wide bands comprising the licensee's Selected Assignment). Because it would be difficult to retune any ancillary component operating outside the Selected Assignment if the spectrum were to be needed by a subsequent MSS licensee, or if it were reallocated, the Commission should not compound the spectrum management problems associated with secondary usage by the licensee of the spectrum

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[4] *The Establishment of Policies and Service Rules for the Mobile Satellite Service in the 2 GHz Band*, IB Docket No. 99-81, Report and Order, ¶ 33 (rel. Aug. 25, 2000).

[5] *See 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*, Notice of Proposed Rulemaking, at ¶ 30, IB Docket No. 01-185, ET Docket No. 95-18 ("NPRM") (released Aug. 17, 2001).

[6] *Id.* at ¶ 32.

[7] *Id.* at ¶ 30.

outside the licensee's Selected Assignment. A further complication is that allowing ATC operations outside of assigned spectrum could create additional interference to incumbent terrestrial fixed operations. A similar requirement may be necessary in other MSS bands as well to protect incumbent satellite operations.

- The NPRM seeks to identify "what measures [to] take to ensure that an MSS operator maintains sufficient satellite coverage and service availability once it has initiated commercial use of its terrestrial facilities."[8] The amount of separate bandwidth that is set aside for the ATC must be relatively small and limited so as to leave sufficient bandwidth to meet the system's satellite traffic demands, and to ensure that rural users and others who truly need access to satellite capacity have a minimal probability of encountering a busy signal. A reasonable criterion would be that the capacity in any satellite antenna beam is never reduced by more than 20% from what it would be in the absence of an ancillary terrestrial component. Another approach would be to limit the minutes of use on the ATC to 20% of the minutes used on the satellite service.

- Since, as the Commission proposed in its NPRM, any ancillary service should only be "provided for the purpose of augmenting signals in areas where the principal service signal, the satellite signal, is attenuated,"[9] ATC-only subscriptions should not be allowed. Moreover, the ATC should be accessible only via a satellite/terrestrial multi-mode terminal, and the handset should be required to "look" first to the satellite, and only revert to the terrestrial mode if it cannot "see" the satellite. Allowing MSS licensees the ability to provide ATC using a terrestrial-only phone would highlight that ATC is intended as a stand-alone terrestrial service, not as an ancillary offering. If the Commission chooses to allow some form of ATC, the purpose of the terrestrial component should be to augment the reach of the offering, not to establish a stand-alone terrestrial CMRS service that is the default in certain areas (*i.e.* urban areas). Such action would be consistent with the Commission's treatment of Satellite Digital Audio Radio Service (SDARS) terrestrial repeaters, which does not allow stand alone operations, but requires "complementary" repeaters to simply retransmit DARS services to subscribers' receivers.[10]

- The NPRM proposed that an ancillary terrestrial service should be "integrated with the satellite network....We expect the character of such services to remain the same whether provided by satellite or terrestrially."[11] To fulfill this criterion, the services and marketing packages offered to users when accessing the ATC should be the same as those offered via the satellite component. In addition, network operations in the ATC should be truly integrated with those in the satellite component, including call routing, user authorization, and supplementary services. The MSS applicants seeking ATC have said they seek that

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[8] *Id.* at ¶ 45.

[9] *Id.* at ¶ 30.

[10] *See XM Radio Inc., Application for Special Temporary Authority to Operate Satellite Digital Audio Radio Service Complementary Terrestrial Repeaters*, DA 01-2172, ¶ 11 (rel. Sept. 17, 2001); *see also Establishment of Rules and Policies for the Digital Audio Radio Service in the 2310-2360 MHz Band,* Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, 12 FCC Rcd. 5754, ¶¶ 138-142 (1997).

[11] *See* NPRM at ¶ 30.

authority solely to offer integrated service offerings – the Commission should take them at their word. The *ancillary* terrestrial component should not provide capability upgrades or cost savings for only the ATC customers of MSS licensees.

- Finally, ATC must be subject to restrictions that ensure it does not create any additional interference to services/users in adjacent bands than would be the case with the traditional MSS offering. This safeguard is even more relevant if the Commission is considering reallocation of some portion of the 2 GHz band. The Commission should not condone the establishment of a service that harms surrounding FCC licenses solely in order to provide a benefit to MSS licensees who are asking for capabilities that extend beyond their original bundle of rights.

The FCC should at a minimum put any gating criteria that it is considering out for comment before moving ahead. This issue need not be decided by the Commission immediately, as the second MSS milestone is still more than seven months away. As CTIA has cautioned before, a hasty decision by the Commission granting ATC will most likely result in a morass of legal proceedings, and a guarantee that this spectrum would either lie fallow or be inefficiently used for years to come. With the recently released Spectrum Policy Task Force Report highlighting the Commission's desire to focus on sound spectrum management policy, it is more important than ever that the Commission establish a sound record before making a decision in this important potentially precedent-setting proceeding. Consumers would be far better served if the Commission were to reallocate and auction the 2 GHz spectrum that is licensed to MSS companies that have missed milestones or are not viable, than to grant those licensees additional terrestrial capabilities that the MSS licensees themselves have conceded will do nothing to help their profitability outlook.

Very truly yours,

Thomas E. Wheeler

Cc: Marlene Dortch, Secretary
Don Abelson, Chief, International Bureau
Tom Sugrue, Chief, Wireless Telecommunications Bureau
Ed Thomas, Chief, Office of Engineering and Technology

CELLULAR TELECOMMUNICATIONS & INTERNET ASSOCIATION

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

To

Commissioner Jonathan S. Adelstein

December 23, 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

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

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.

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

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