Wireless Communications Association International

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"The Association for Wireless Broadband Access"

June 6, 2003

Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, D.C. 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*
WRITTEN EX PARTE COMMUNICATION

Dear Ms. Dortch:

On May 14, 2003, The Wireless Communications Association International, Inc. ("WCA") filed its opposition to the petitions of ICO Global Communications (Holdings) Limited ("ICO"), the Satellite Industry Association and TMI Communications Company, LP for reconsideration of the Commission's *Third Report and Order* in the above-referenced proceeding, in which the Commission reallocated the 1990-2000 MHz and 2020-2025 MHz bands from the Mobile Satellite Service ("MSS") to the Fixed and Mobile services on a primary basis.[1] In its reply pleading filed May 27, 2003, ICO grossly mischaracterizes WCA's filing and otherwise makes statements that are misleading or erroneous.[2] WCA is submitting this letter to correct the record.

Insofar as WCA is concerned, ICO's reply essentially boils down to its complaint that the Commission's reallocation of the 1990-2000 MHz band will leave MSS collectively with less globally harmonized spectrum than it had before. However, ICO does not contest the fact that global harmonization has never been the Commission's sole

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[1] *See* Opposition of Wireless Communications Ass'n Int'l to Petitions for Reconsideration, ET Docket No. 00-258 (filed May 14, 2003) ["Petition"].

[2] *See* ICO Global Communications Consolidated Reply to Opposition and Comments, ET Docket No. 00-258 (filed May 27, 2003) ["Reply"].

priority where domestic spectrum policy is concerned.[3] In fact, ICO concedes that "[t]he Commission should, of course, consider all public interest objectives, including those that conflict with global harmonization."[4] Nor does ICO dispute that the Commission's MSS licensing scheme never assured each individual 2 GHz MSS licensee of globally harmonized uplink spectrum, and that the Commission's MSS licensing scheme essentially guaranteed that some MSS licensees would not secure any globally harmonized uplink spectrum at all.[5] Instead, ICO launches rhetorical broadsides at WCA for stating that MSS providers had never raised the absence of globally harmonized spectrum for every MSS licensee as a problem before.[6]

ICO's overheated argument obscures the point. The fact that MSS providers may have expressed a preference for globally harmonized spectrum in the past (a matter of public record which WCA has never disputed) does not change the fact that MSS providers accepted the Commission's non-harmonized allocation and licensing scheme without objection and proceeded with their business plans on that basis. Indeed, while ICO claims that global harmonization has been a historical "fixation" of the MSS industry, neither ICO nor any other MSS provider sought reconsideration of the Commission's decision to adopt a non-harmonized MSS allocation, and MSS proponents (ICO among them) generally supported the Commission's MSS licensing scheme which, as noted above, assured that some MSS licensees would receive no globally harmonized uplink spectrum.[7] Moreover, for all its claims of unfair burden due to the absence of complete global harmonization in the MSS allocation, it is telling that ICO has yet to rebut to the Commission's finding that "ICO constructed its system at its own risk prior to receiving a U.S. authorization. Nonetheless, the ICO system is capable of operating

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[3] *See* Petition at 5.

[4] Reply at 8.

[5] *See* Petition at 8. Specifically, by permitting each MSS proponent to select a 3.5 MHz assignment in each of the uplink and downlink MSS bands, the Commission effectively created a scenario under which some MSS proponents would end up with uplink and/or downlink spectrum in the non-harmonized portion of the domestic MSS allocation (*i.e.*, the 2010-2025 MHz and 2165-2170 MHz bands).

[6] *See id.*; Reply at 7-8.

[7] *See The Establishment of Policies and Service Rules for the Mobile Satellite Service in the 2 GHz Band*, 15 FCC Rcd 16127, 16140 n.88 (2000) (citing supporting comments from MSS proponents); Comments of ICO Services Limited, IB Docket No. 99-81, at 2 (filed Feb. 17, 2000) (stating that the Commission's MSS licensing scheme "would promote the efficient, market-driven operation of 2 GHz MSS systems and help to reduce the impact of 2 GHz MSS operations on terrestrial incumbents"); Reply Comments of Celsat America, Inc., ET Docket No. 95-18, at ii (filed June 21, 1995) ("The overwhelming majority of twenty-one commenters in this proceeding support the Commission's proposal to domestically allocate the 1990-2025 MHz and 2165-2200 MHz band to MSS . . . .").

across the revised allocated MSS bandwidth, and thus the economic impact on ICO should be minimal."[8]

ICO also misses the mark in attacking WCA's statement that equipment manufacturers will be able to design equipment for PCS or PCS-like services at 1910-1915/6 and 1990-1995/6 MHz that will tolerate interference from Ancillary Terrestrial Component ("ATC") operations at 2000-2020 MHz.[9] In lieu of a substantive response, ICO fabricates a conflict between WCA's statement and the Commission's statement in the *Third Report and Order* that reallocating the 1990-1995 MHz as proposed by WCA and others "could allow for use of existing PCS equipment with *little modification* and easier manufacture and design equipment, thereby enabling significant economies of scale."[10] There is no conflict here – the Commission is merely confirming WCA's assertion that manufacturers will be capable of modifying the design of current handsets to operate in the G Block, which modification will include added rejection of interference from ATC operations at 2000-2020 MHz. It is difficult to understand how ICO divined a conflict from the Commission's use of the phrase "little modification" in this context.

Finally, there is one point on which WCA and ICO agree - WCA does not oppose consideration of an asymmetric pairing of MSS uplink and downlink frequencies if the MSS industry can demonstrate a demand for services requiring greater downlink capabilities.[11] The Commission has already ruled that the 2180-2200 MHz band be utilized for base-to-subscriber ATC transmissions, and in all likelihood the Commission similarly will mandate in WT Docket No. 02-353 that the 2110-2155 MHz band be utilized for base-to-subscriber transmissions.[12] Extension of the 2180-2200 MHz MSS downlink band into the 2165-2180 MHz band would be entirely compatible with base-to-customer transmissions at 2110-2155 MHz, thus eliminating the risk of harmful

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[8] *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*, 18 FCC Rcd 2223, 2242 n.104 (2002).

[9] *See* Reply at 6 n. 8.

[10] *Id.*, *quoting Third Report and Order*, 18 FCC Rcd at 2247 (emphasis added).

[11] *See* Reply at 6.

[12] *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 Bands*, 18 FCC Rcd 1962, 2019-20 (2003); Comments of Cellular Telecommunications & Internet Ass'n, WT Docket No. 02-353, at 4-5 (filed Feb. 7, 2003); Comments of AT&T Wireless Services, Inc., WT Docket No. 02-353, at 7-9 (filed Feb. 7, 2003); Comments of Lucent Technologies, WT Docket No. 02-353, at 1-2 (filed Feb. 7, 2003); Comments of Motorola, Inc., WT Docket No. 02-353, at 5-7 (filed Feb. 7, 2003); Comments of Nokia Inc., WT Docket No. 02-353, at 1 (filed Feb. 7, 2003); Comments of Wireless Communications Ass'n Int'l in Response to Third Notice of Proposed Rulemaking, ET Docket No. 00-258, at 24 (filed Apr. 14, 2003).

interference created by putting base-to-customer transmission spectrally adjacent to customer-to-base transmissions. Of course, terrestrial mobile interests have already asked the Commission to allocate the 2155-2180 MHz band for Advanced Wireless Services ("AWS") and authorize an asymmetric pairing of the 1710- 1755 MHz band and 2110-2180 MHz band for AWS.[13] Ultimately, the Commission will have to decide which allocation of the 2155-2180 MHz band serves the consumers best, based on the public interest factors already discussed throughout this docket.

Should there be any questions concerning this matter, please contact the undersigned.

Respectfully submitted,

/s/ Andrew Kreig
Andrew Kreig
President

[13] *See*, e.g., Comments of Motorola, Inc., ET Docket No. 00-258, at 14 (filed Apr.14, 2003); Comments of Cellular Telecommunications and Internet Ass'n, ET Docket No. 00-258, at 5-6 (filed Apr. 14, 2003); Comments of Verizon Wireless, ET Docket No. 00-258, at 7-8 (filed Apr. 14, 2003).