

June 20, 2003

**VIA ELECTRONIC FILING AND
HAND DELIVERY**

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: *IB Docket No. 01-185; SAT-MOD-20030604-00110; SAT-MOD-20030604-00111*

Dear Ms. Dortch:

On behalf of AT&T Wireless Services, Inc., Cingular Wireless LLC, and Verizon Wireless (jointly, the “Carriers”), we hereby submit the following in light of Mobile Satellite Ventures L.P.’s (“MSV”) press announcement that it has filed applications for ancillary terrestrial component (“ATC”) authority for its existing and pending mobile satellite service (“MSS”) systems.¹ With the first public announcement of an ATC application and the recent publication of the *MSS Flex* decision in the Federal Register,² the Carriers request that the Commission exercise its *sua sponte* authority promptly to clarify the ATC authorization process.³

The Carriers do not challenge the MSV applications here. As an initial matter, we note that the applications are premature and cannot be accepted for filing. The ATC application rules are not in effect and will not go into effect until after the Office of Management and Budget approves the necessary information collection requirements and the FCC publishes the effective

¹ See Press Release, “MSV Files ATC Application with the FCC, Plans to Begin Buildout of Next-Generation System” (June 5, 2003) available at http://www.msvlp.com/pr/news_releases_view.cfm?id=27. Copies of the instant letter are being submitted electronically with respect to the rulemaking proceeding, and via hand delivery to the Secretary with service on all parties with respect to the applications.

² *Flexibility for Delivery of Communications by Mobile Satellite Service Providers in the 2 GHz Band, the L-Band, and the 1.6/2.4 Bands*, Report and Order, FCC 03-15, 68 Fed. Reg. 33640 (June 5, 2003) (“*MSS Flex Report & Order*” or “*MSS Flex* decision”).

³ 47 C.F.R. § 1.108.

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date in the Federal Register.⁴ Nonetheless, the MSV applications foreshadow the uncertain administrative process surrounding the ATC authorization rules.

The *MSS Flex* decision provides the Commission with the discretion to allow public notice and opportunity to comment on an ATC application or, alternatively, to grant the application without public comment.⁵ Even before the MSV applications were available in the FCC's public files, one satellite provider had already submitted a letter of intention to participate as a party in the application proceedings⁶ – presuming there are public proceedings. The Commission should remove the cloud of uncertainty and clarify that all ATC applications will be subject to public comment.

In addition, the Carriers urge the Commission to make clear that an MSS licensee needs to show that it operates an MSS system consistent with the gating criteria if it wants to obtain ATC authority. As part of the *MSS Flex* decision, the Commission placed significant emphasis on MSS-related gating criteria to ensure that an MSS licensee seeking ATC would *first* demonstrate that it provides substantial satellite service.⁷ Certain parts of the decision, however, contain conflicting language that suggests an MSS licensee need only certify that it *plans* to develop an MSS system consistent with the gating criteria in order to obtain ATC authority. This conflicting language undermines the fundamental tenet of the *MSS Flex* decision and skews incentives for the build-out of robust MSS systems in ways that will undercut achievement of the Commission's stated goals for MSS. Consistent with their previous request, the Carriers urge the Commission to eliminate these discrepancies so that the decision states consistently that the Commission will consider and grant ATC authority only *after* an MSS licensee has met the gating requirements.⁸

⁴ *MSS Flex Report & Order*, 68 Fed. Reg. 33640, 33640 (June 5, 2003) (noting that the ATC application sections, §§ 25.149, 25.252, 25.253, and 25.254, are not subject to the *MSS Flex Report & Order's* July 7, 2003 effective date, and inviting comments on the information collection requirements on or before Aug. 4, 2003).

⁵ *MSS Flex Report & Order* at ¶ 240.

⁶ Letter to Marlene H. Dortch, Secretary, FCC from John P. Janka, Counsel to Inmarsat Ventures plc (June 13, 2003).

⁷ See, e.g., *MSS Flex Report & Order* at ¶ 3 (“We will authorize MSS licensees to implement ATCs, provided that the MSS licensee: (1) *has launched and operates* its own satellite facilities; (2) provides substantial satellite service to the public; (3) provides integrated ATC; (4) observes existing satellite geographic coverage requirements; and (5) limits ATC operations only to the authorized satellite footprint.”) (emphasis added); *id.* at ¶ 72 (“We require MSS licensees that seek authority to offer ATC service to provide substantial satellite service to the public

Applicants for MSS ATC authority must demonstrate compliance with these requirements”) (emphasis added).

⁸ See Letter to Marlene H. Dortch, Secretary, FCC from Kathryn A. Zachem, Counsel to AT&T Wireless Services, Inc., Cingular Wireless LLC, and Verizon Wireless re: IB Docket No. 01-185 (March 6, 2003).

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We note that the *MSS Flex* decision was published in the Federal Register on June 5. The Carriers urge the Commission to act *sua sponte* to clarify the ATC application process.

Respectfully Submitted,

/s/ Kathryn A. Zachem

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