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June 27, 2003

VIA ELECTRONIC FILING

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

Re: *Ex Parte IB Docket No. 01-185*

Dear Ms. Dortch:

On behalf of AT&T Wireless Services, Inc., Cingular Wireless LLC, and Verizon Wireless (jointly, the "Carriers"), we hereby respond to the June 26, 2003 letter filed by ICO Global Communications (Holding) Ltd. ("ICO").[1] Incredibly, ICO again asserts that the Commission "clearly and expressly" intended that mobile satellite service ("MSS") licensees obtain ancillary terrestrial component ("ATC") authority prior to satisfying the gating criteria – without even acknowledging the statements to the contrary in the *MSS Flex* decision and by individual Commissioners.[2] The Carriers continue to oppose efforts to obtain ATC authority in a manner inconsistent with the fundamental premise of the *MSS Flex* decision (*i.e.,* MSS licensees must offer substantial satellite service) and the underlying 2 GHz MSS license orders (*i.e.,* MSS licensees must succeed or fail on a satellite-only basis).

ICO asserts that it would be unfair for the Commission to act on its own motion "immediately prior to the due date for any petitions for reconsideration or clarification of those rules."[3] It goes on to claim that the Commission lacks authority even to issue a *sua sponte*

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[1] Letter to Marlene H. Dortch, Secretary, FCC from Cheryl A. Tritt, Counsel to ICO Global Communications (Holdings) Ltd. (June 26, 2003) ("*ICO Letter*").

[2] *See, e.g., 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, ¶ 3 (2003) ("*MSS Flex* decision") ("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); Separate Statement of Commissioner Kathleen Q. Abernathy ("The Commission has adopted stringent requirements that must be met by the satellite operator . . . [t]hese include requirements that the ATC applicant provide substantially a satellite service . . . ."); Separate Statement of Commissioner Jonathan S. Adelstein ("I thus write separately to underscore my commitment to ensuring that mobile satellite service licensees fully comply with the so-called 'gating' restrictions prior to receiving ancillary terrestrial authority.").

[3] *ICO Letter* at 2.

reconsideration, citing a recent D.C. Circuit decision.[4] *See Sprint Corp. v. FCC,* 315 F.3d 369 (D.C. Cir. 2003). These claims have no merit. First, the *Sprint* case reinforces the Commission's authority pursuant to Section 1.108, 47 C.F.R. § 1.108, to issue a reconsideration order on its own motion. The court expressly stated:

> [A]gencies possess the authority in some instances to clarify or set aside existing rules without issuing a new NPRM and engaging in a new round of notice and comment . . . . The authority to clarify or reconsider a rule may arise directly from a statute . . . or pursuant to agency rulemaking authority, *as in the case of the Commission . . . .*[5]

Section 1.108 provides that the Commission may act on its own motion "within 30 days of the date of public notice" of the underlying action.[6] In this case, public notice occurred on June 5, 2003, the date of Federal Register publication.[7] Thus, the Commission may act to clarify the ATC application process on its own motion until July 7, 2003.

Moreover, ICO's claim that the Commission should not act so near to the deadline for filing reconsideration petitions is senseless. First, the relief sought is in the nature of a clarification to reflect the Commission's intent regarding how parties should proceed. Further, ICO fails to acknowledge that the Commission's rules provide 30 days for the Commission to act on its own motion, notwithstanding the fact that the rules allow parties to seek reconsideration within 30 days as well.[8] Indeed, on several occasions that Commission has adopted a *sua sponte* reconsideration order on the same day petitions for reconsideration were due.[9]

In any event, it appears that ICO's real concern is the ability to gain Commission review of its integrated service proposal prior to deploying its MSS service. The Carriers do not object,

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[4] *Id.* at 2 n.7.
[5] *Sprint,* 315 F.3d at 373-374 (emphasis added) (citing 47 C.F.R. § 1.108).
[6] 47 C.F.R. § 1.108.
[7] *See* 47 C.F.R. § 1.4(b); *MSS Flex Report & Order,* 68 Fed. Reg. 33640 (June 5, 2003).
[8] 47 C.F.R. §§ 1.108, 1.429(d). Furthermore, parties may of course seek reconsideration of a *sua sponte* reconsideration order.
[9] *See, e.g., Federal-State Joint Board on Universal Service*, Order and Order on Reconsideration, 18 F.C.C.R. 1421 (2003) (adopting *sua sponte* reconsideration 30 days after public notice of the underlying action); *2000 Biennial Regulatory Review -- Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers*, Order on Reconsideration, 17 F.C.C.R. 4766 (2002) (same); *see also Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended*, Order on Reconsideration, 12 F.C.C.R. 2297 (1997) (released one day prior to the day petitions for reconsideration were due); *Amendment of Parts 2 and 90 of the Commission's Rules to Provide for the Use of 200 Channels Outside the Designated Filing Areas in the 896-901 MHz and the 935-940 MHz Bands Allotted to the Specialized Mobile Radio Pool, Implementation of Sections 3(n) and 322 of the Communications Act*, Third Order on Reconsideration, 11 F.C.C.R. 1170 (1995) (released one business day prior to the day petitions for reconsideration were due).

provided the Commission seeks public comment on the submission. In fact, the Carriers previously proposed that an MSS licensee could file a petition for declaratory ruling to determine whether its proposed integrated service offering complies with the Commission's requirements.[10] Under no circumstances, however, should an MSS licensee obtain ATC authority prior to a Commission finding that it has met the gating criteria.

If the correspondence on this issue indicates anything, it is the need for the Commission to act expeditiously and explain to the public how it expects parties to proceed in the ATC application process.

Pursuant to Section 1.1206(b) of the Commission's rules, an electronic copy of this letter is being filed.

Respectfully Submitted,

/s/ Kathryn A. Zachem
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[10] *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 at 4 (Mar. 6, 2003).