

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)
)
Flexibility for Delivery of Communications by) IB Docket No. 01-185
Mobile Satellite Service Providers in the 2 GHz)
Band, the L-Band, and the 1.6/2.4 GHz Band)

To: The Commission

**CONSOLIDATED OPPOSITION OF ICO GLOBAL COMMUNICATIONS
(HOLDINGS) LIMITED**

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TABLE OF CONTENTS

	Page
I. INTRODUCTION	1
II. THE ATC GATING CRITERIA WILL ENSURE SUBSTANTIAL SATELLITE SERVICE.....	2
A. The Commission Narrowly Tailored The ATC Gating Criteria To Ensure Substantial Satellite Service Without Restricting An Optimal Mix Of Satellite And ATC Equipment And Services	2
B. The ATC Gating Criteria Will Ensure That MSS Licensees Offer Substantial Satellite Service.....	5
C. CTIA’s And Cingular’s Attempts To Impose Additional ATC Gating Requirements Are Unworkable And Spectrally Inefficient.....	7
III. CTIA’S AND CINGULAR’S REQUESTS FOR CLARIFICATION OF THE ATC ORDER ARE UNWARRANTED.....	9
IV. CINGULAR’S ARGUMENT SUPPORTING AUCTIONING ATC LICENSES IS WRONG.....	10
V. CONCLUSION.....	12

SUMMARY

The Commission's order permitting mobile satellite service ("MSS") operators to provide ancillary terrestrial component ("ATC") service properly balances the public interest goals of encouraging efficient and flexible spectrum use and promoting deployment of global satellite services. It achieves a number of public interest benefits such as remedying MSS signal problems, promoting efficient spectrum use, ensuring that the full benefits of MSS remain available to rural and underserved areas, and serving public safety needs. The ATC gating criteria are more than sufficient to ensure substantial satellite service, while allowing MSS licensees to use their spectrum fully and efficiently. Cingular's and CTIA's requests to revisit these carefully considered criteria aim only to thwart the development of ATC.

In adopting these criteria, the Commission explicitly rejected CTIA's and Cingular's requests for additional gating requirements, finding them unnecessary and burdensome. CTIA's and Cingular's petitions for reconsideration offer no new arguments warranting reconsideration of the ATC gating criteria and therefore should be denied. Moreover, the Commission properly exempted PDAs, laptops, and other computers from the integrated service gating requirement. This exemption will facilitate deployment of innovative, broadband-capable computer devices, while ensuring that ATC remains ancillary to the principal satellite service. In addition, the Commission should reject CTIA's and Cingular's requests for clarification of the ATC rules as frivolous and unnecessary. Finally, Cingular's argument supporting an auction of ATC licenses lacks merit. By adopting rules permitting more flexible use of MSS spectrum,

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I. INTRODUCTION

ICO Global Communications (Holdings) Limited (“ICO”)¹ submits this consolidated opposition to the petitions for reconsideration of the *ATC Order*² filed by Cingular Wireless LLC (“Cingular”) and the Cellular Telecommunications & Internet Association (“CTIA”).³

By permitting more flexible use of MSS spectrum, the *ATC Order* provides for a number of important consumer benefits, including 1) remedying the signal problems that plague existing MSS systems; 2) promoting efficient use of MSS spectrum in areas where it otherwise would lie fallow; 3) ensuring that the full benefits of MSS remain available to rural and underserved areas; and 4) augmenting the capabilities of existing public safety, homeland defense, emergency

¹ ICO is the parent company of ICO Satellite Services G.P., which holds a letter of intent authorization to provide 2 GHz mobile satellite services (“MSS”) in the United States.

² 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 (2003) (“*ATC Order*”).

³ See CTIA Petition for Reconsideration, IB Dkt. Nos. 01-185 & 02-364 (July 7, 2003); Cingular Petition for Reconsideration, IB Dkt. Nos. 01-185 & 02-364 (July 7, 2003). All filings in IB Docket No. 01-185 will hereinafter be short cited.

service, and military systems. The Commission crafted manageable ancillary terrestrial component (“ATC”) gating criteria that properly balanced the public interest goals of encouraging efficient and flexible spectrum use and promoting deployment of global satellite services. Specifically, those criteria will facilitate substantial satellite service without unduly restricting MSS operators’ full and efficient use of their assigned spectrum. The Commission should reject CTIA’s and Cingular’s well-worn requests for additional ATC gating requirements as an anticompetitive ploy to thwart ATC before any MSS licensee has a chance to implement it.

II. THE ATC GATING CRITERIA WILL ENSURE SUBSTANTIAL SATELLITE SERVICE

Contrary to CTIA’s and Cingular’s baseless contentions,⁴ the Commission’s ATC gating criteria are more than adequate to ensure that MSS ATC licensees will provide substantial satellite service. CTIA and Cingular offer no reasoned basis for their request to extend the integrated service gating requirement to personal data assistants (“PDAs”), laptops, and other computers. Accordingly, the Commission should re-affirm its ATC gating criteria and once again dismiss CTIA’s and Cingular’s counter-productive attempts to impose unnecessary, additional ATC gating requirements.

A. The Commission Narrowly Tailored The ATC Gating Criteria To Ensure Substantial Satellite Service Without Restricting An Optimal Mix Of Satellite And ATC Equipment And Services

The Commission adopted the integrated service requirement and other gating criteria to “ensure that MSS remains first and foremost a satellite service and that the terrestrial component remains ancillary to the primary purpose of the MSS system.”⁵ In crafting these gating criteria,

⁴ See CTIA Petition for Reconsideration at 2-6; Cingular Petition for Reconsideration at 2-7.

⁵ *ATC Order*, 18 FCC Rcd at 2009 ¶ 88.

however, the Commission specifically exempted PDAs, laptops, and other computers from the integrated service requirement (“PDA exemption”) to advance its policy objective of fostering both satellite and ATC services.⁶ This exemption reflects an understanding that PDAs, laptops, and other computers provide for more innovative spectrum use and are distinct from the more traditional mobile handsets used primarily, if not solely, for voice communications. By carving out a narrow exemption for PDAs, laptops, and other computers, the Commission ensured that ATC will remain ancillary to the principal satellite service without stifling technological innovation.

CTIA’s and Cingular’s request to eliminate the PDA exemption is an anticompetitive attempt to employ unnecessary regulations to render ATC useless and hinder deployment of innovative, broadband-capable devices offering a wide array of services.⁷ The Commission should resist the call to re-regulate customer premises equipment (“CPE”) by imposing rigid requirements that limit equipment features and design, restrict consumer choice, and increase consumer costs.⁸

The PDA exemption is fully consistent with and supported by the record. In a detailed submission to the Commission, ICO previously expressed its intent to offer digital voice and data services through satellite air-interface repeaters that provide service links to the satellite network and allow customers to connect their PDAs, laptops, and other digital devices to the

⁶ *Id.* at 2008-09 ¶ 87 n.229.

⁷ See CTIA Petition for Reconsideration at 7-8; Cingular Petition for Reconsideration at 11-12.

⁸ The Commission long ago deregulated CPE by requiring carriers to unbundle CPE from regulated telecommunications services. See *Amendment of Section 64.702 of the Commission’s Rules and Regulations*, 77 FCC 2d 384, 442-43 ¶ 149 (1980). The Commission subsequently eliminated its CPE bundling restrictions by first allowing cellular carriers to offer cellular CPE and services on a bundled basis and then allowing all common carriers to offer bundled packages of CPE and telecommunications services. See *Bundling of Cellular Customer Premises Equipment and Cellular Service*, 7 FCC Rcd 4028, 4028 ¶ 1 (1992); *Policy and Rules Concerning the Interstate, Interexchange Marketplace*, 16 FCC Rcd 7418, 7419 ¶ 1 (2001). Consequently, carriers are permitted to offer CPE and telecommunications services on either a bundled or unbundled basis.

satellite network.⁹ Those satellite air-interface repeaters will make it unnecessary to integrate satellite communications capability into every ATC-capable PDA and other digital device. They will allow customers to obtain satellite services without being tethered to any specific digital device.

Because satellite air-interface devices can operate with a variety of ATC-capable equipment, customers can obtain both satellite and ATC services without having to purchase new satellite hardware or dual-mode functionality for every ATC-capable PDA, laptop, or other digital device that they choose to use. Absent an integrated service requirement, consumers will have maximum flexibility to obtain at cost-effective prices ATC-capable PDAs and other computers that can be used in conjunction with satellite air-interface repeaters to provide global satellite services.¹⁰ In contrast, imposing an integrated service requirement such as dual-mode functionality on PDAs, laptops, and other computers, could significantly increase the size and cost of those devices, reduce their battery life, severely restrict customers' ability to obtain satellite services using their choice of digital devices, and ultimately deter customers from using either satellite or ATC services.¹¹

The Commission should clarify that PDAs, laptops, and other computers are exempted entirely from the integrated service requirement. Construing the PDA exemption as an exemption from the safe harbor option, as CTIA suggests,¹² would be nonsensical because the safe harbor option is just that—optional, and no exemption is necessary.

⁹ See Letter from Lawrence H. Williams & Suzanne Hutchings, ICO, to Marlene H. Dortch, Secretary, FCC, at 3 (Dec. 16, 2002) ("ICO Letter").

¹⁰ ICO estimates that the combined costs of a satellite air-interface repeater and an ATC-capable user terminal could be significantly lower than the cost of an existing dual-mode MSS-ATC handset. See ICO Letter at 4.

¹¹ See ICO Letter at 3-4.

¹² See CTIA Petition for Reconsideration at 7.

B. The ATC Gating Criteria Will Ensure That MSS Licensees Offer Substantial Satellite Service

CTIA and Cingular re-hash the complaint that the Commission’s satellite coverage requirements are insufficient to ensure “substantial satellite service” because they do not require MSS operators to offer any particular level of satellite capacity or to have any actual subscribers.¹³ The ATC gating criteria, however, effectively require NGSO MSS licensees to invest billions of dollars to launch their satellite systems before they can offer ATC service to a single customer. Those extraordinary upfront costs offer ample incentives for MSS licensees to market aggressively and provide quality satellite services to customers in order to recoup their substantial investments.

The Commission properly concluded that heavy-handed regulatory oversight is unnecessary to ensure that ATC services are ancillary, because the licensees have natural economic incentives to provide quality satellite services.¹⁴ Specifically, the Commission relied in part on an economic analysis, placed in the record and previously uncontested by any party, demonstrating that the significant upfront costs of launching a satellite system “increase the likelihood that the licensees would operate their satellite systems.”¹⁵ Cingular argues that the Commission and the courts have acknowledged that “historic costs do not affect a licensee’s behavior,”¹⁶ but that is beside the point. Only parties highly motivated to provide robust satellite services will be likely to make such investments. Basic economic principles dictate that the MSS operator will operate the system and provide satellite service as long as the anticipated

¹³ See *id.* at 3-4; CTIA Petition for Reconsideration at 4.

¹⁴ See *ATC Order*, 18 FCC Rcd at 1982-83 ¶ 35.

¹⁵ *Id.* (quoting Report of Gregory L. Rosston, Ph.D., Stanford University, Stanford Institute for Economic Policy Research, Deputy Director, ICO Reply Comments, App. A. at A-8).

¹⁶ See Cingular Petition for Reconsideration at 6.

additional revenues exceeds the anticipated additional costs of providing service.¹⁷ Having made extraordinary investments in its satellite system, the MSS operator will seek out every profit opportunity to recoup its investment, service and pay down its debt, and provide a return to its investors.

Additional market incentives also ensure that licensees will provide satellite service. For example, as the Commission properly found, MSS licensees are unlikely “to abandon satellite services merely for the opportunity to compete only in the market for terrestrial mobile services where much larger, better financed competitors already engage in ‘competitive, intense [and] aggressive’ price competition.”¹⁸ MSS licensees also are motivated to provide satellite service in conjunction with ATC in order to distinguish themselves from larger terrestrial wireless incumbents.¹⁹ Neither CTIA nor Cingular disputes those findings.

Through a leap of logic, however, Cingular speculates that New Globalstar Corporation’s (“New Globalstar”) proposed purchase of Globalstar assets at a fair market price and the cost-cutting efforts by MSS licensees somehow indicate a reduced commitment to commence or continue offering satellite services. New Globalstar’s proposed purchase of Globalstar assets in fact demonstrates its commitment to making full use of those assets and continuing Globalstar satellite services. As Cingular acknowledges, the amount previously paid for an asset has no impact on any future business decisions.²⁰ Moreover, measures to reduce costs are sound business practices implemented to increase the expected returns from providing service. As a result, they should offer more, not fewer incentives to provide service.

¹⁷ See *Alenco Communications, Inc. v. FCC*, 201 F.3d 608, 615-16 (5th Cir. 2000); See *MCI Communications Corp. v. American Tel. & Tel. Corp.*, 708 F.2d 1081, 1116-17 (7th Cir. 1983); *Fresno Mobile Radio, Inc. v. FCC*, 165 F.3d 965, 969 (DC Cir. 1999).

¹⁸ *ATC Order*, 18 FCC Rcd at 1982 ¶ 35.

¹⁹ *Id.*

²⁰ See Cingular Petition for Reconsideration at 5-6.

C. CTIA's And Cingular's Attempts To Impose Additional ATC Gating Requirements Are Unworkable And Spectrally Inefficient

In a transparent attempt to stifle ATC deployment, CTIA and Cingular serve up warmed over proposals to impose additional, unnecessary gating requirements²¹ that the Commission firmly rejected as unduly complex, costly, and inefficient.²² The Commission should continue to reject CTIA's and Cingular's efforts to construe the substantial service standard to require more onerous burdens upon MSS ATC licensees than upon terrestrial wireless licensees.²³ Contrary to CTIA's and Cingular's contentions, substantial service does not require the licensee to provide any specific services or amount of bandwidth to any particular number of customers. In fact, the Commission has adopted a substantial service standard in circumstances where it expected that more flexible construction requirements, rather than fixed benchmarks, would more likely facilitate efficient spectrum use and deployment of service to rural and underserved areas.²⁴ Thus, by designing the ATC gating criteria to ensure substantial satellite service, the Commission purposely and properly avoided establishing rigid service benchmarks.

In addition, Cingular's argument that the Commission adopted analogous limits on ancillary services in connection with direct broadcast satellite ("DBS") and broadcast television

²¹ These additional gating requirements include 1) limiting licensees' ability to reduce their satellite capacity; 2) requiring ATC handsets to check for an available satellite signal before defaulting to ATC mode; 3) requiring MSS licensees to ensure that satellite services constitute the "predominant" use of their systems; 4) prohibiting ATC-only subscriptions; and 5) requiring ATC services to be the same as satellite services. *See* CTIA Petition for Reconsideration at 3-6; Cingular Petition for Reconsideration at 8-11.

²² *See ATC Order*, 18 FCC Rcd at 2013-14 ¶ 98.

²³ The Commission typically defines "substantial service" as "service that is sound, favorable, and substantially above a level of mediocre service which might minimally warrant renewal." *See, e.g.*, 47 C.F.R. § 101.1413(b) (applicable to multichannel video distribution and data services); 47 C.F.R. § 22.940(a)(1)(i) (applicable to cellular services); 47 C.F.R. § 27.14(a) (applicable to wireless communications services). This substantial service standard generally requires a licensee to construct its system and offer signal coverage sufficient to provide service to a given geographic service area or to the population within that area within a prescribed period of time. *See Facilitating the Provision of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies to Provide Spectrum-Based Services*, Notice of Inquiry, 17 FCC Rcd 25554, 25560 ¶ 9 (2002).

²⁴ *See, e.g., Amendment of the Commission's Rules to Establish Part 27*, 12 FCC Rcd 10785, 10843 ¶¶ 111-12 (1997); *Amendment of the Commission's Rules to Establish New Personal Communications Services*, 9 FCC Rcd 4957, 5018-5020 ¶¶ 154-58 (1994).

services is flawed because ATC is not remotely similar to DBS or broadcast ancillary services.²⁵ In the *ATC Order*, the Commission noted that in defining “ancillary” in the ATC context, it intended “to distinguish [its] use of ‘ancillary’ in the context of the *Flexibility Notice* from other instances in which the Commission has employed the term, not to suggest any additional requirements.”²⁶ Consequently, the Commission clarified that, unlike ancillary services in connection with other licensed services, MSS ATC “refer[s] to a proposed set of conditions under which an MSS licensee might offer integrated mobile services in the bands allocated for the MSS licensee’s use, consistent with its existing MSS authorization.”²⁷ Because the term “ancillary” has a very different meaning when used in connection with MSS ATC, as opposed to other licensed services, restrictions placed on DBS and broadcast ancillary services are not analogous and cannot be applied to MSS ATC.

Furthermore, Cingular contradicts itself by, on the one hand, noting that an MSS licensee’s decision to provide satellite service will be based on its expected rate of return and, on the other hand, arguing that additional ATC gating requirements are necessary to motivate the licensee to provide satellite service.²⁸ As discussed above, having made substantial investments in their satellite infrastructure, MSS operators will have every incentive to provide robust satellite services and seek out profit opportunities. Additional ATC gating requirements have no bearing on the additional revenues or costs of providing satellite service and thus no impact on the MSS operator’s decision to provide satellite service.

²⁵ See Cingular Petition for Reconsideration at 9.

²⁶ *ATC Order*, 18 FCC Rcd at 2000 ¶ 68.

²⁷ *Id.* (citation omitted).

²⁸ See Cingular Petition for Reconsideration at 6 n.14, 7.

III. CTIA'S AND CINGULAR'S REQUESTS FOR CLARIFICATION OF THE ATC ORDER ARE UNWARRANTED

The Commission should reject Cingular's request to clarify that MSS licensees must meet all their implementation milestones before providing ATC.²⁹ The ATC gating criteria requiring the satellite system to be commercially available and to comply with geographic coverage requirements before offering ATC service are more than sufficient to ensure substantial satellite service. Denying ATC authority simply because an MSS operator has met those requirements through the launch of fewer satellites than authorized would serve no policy objective. It also would unfairly penalize MSS operators for offering satellite service ahead of schedule. Moreover, it would place NGSO MSS operators at a competitive disadvantage by permitting GSO MSS operators to provide ATC upon launch of only one or two regional satellites, while requiring NGSO MSS operators to launch their entire constellation of satellites even though fewer satellites may be sufficient to support commercial service. The Commission already has clarified in a *sua sponte* reconsideration order that an MSS licensee may not offer ATC until the satellite system is in actual compliance with gating criteria requiring geographic and temporal coverage, replacement satellites, and commercial service.³⁰ No further clarification on this issue is warranted.

Cingular's proposal to require MSS licensees to submit credible evidence, in addition to certifications, of compliance with the ATC gating criteria is unnecessary and duplicative because licensees already are required to submit specific information to demonstrate compliance with milestone requirements.³¹ The proposal also is administratively burdensome to the extent it

²⁹ See *id.* at 12-14.

³⁰ 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*, FCC 03-162, ¶ 7 (July 3, 2003).

³¹ See, e.g., *The Establishment of Policies and Service Rules for the Mobile Satellite Service in the 2 GHz Band*, 15 FCC Rcd 16127, 16178-79 ¶¶ 107-108 (2000).

requires licensees to submit additional information beyond what is required to demonstrate milestone compliance.

The Commission should dismiss CTIA's and Cingular's frivolous requests to clarify that a licensee's satisfaction of ATC gating criteria for one MSS band cannot be used to satisfy the gating criteria for another MSS band. This restriction is explicit in the *ATC Order*.³² No reasonable reading of the *ATC Order* could produce this interpretation.

IV. CINGULAR'S ARGUMENT SUPPORTING AUCTIONING ATC LICENSES IS WRONG

Cingular claims that Section 309(j) of the Communications Act of 1934, as amended ("Communications Act") requires the Commission to auction ATC licenses because 1) the technical evidence demonstrates that ATC likely will be implemented through band segmentation and by a separate terrestrial wireless provider; and 2) granting ATC licenses without an auction would unjustly enrich MSS licensees.³³ Cingular's technical evidence, however, consists solely of the Telcordia Study, which has been thoroughly discredited by ICO's own technical study.³⁴ In any event, the Commission did not base its decision to grant ATC authority to MSS licensees upon whether ATC will be implemented through band segmentation. The Commission expressly stated that it "need not resolve the debate over whether MSS ATC will use a 'dynamic' or 'static' frequency-assignment mechanism to achieve greater frequency reuse."³⁵ Because the "separate-band, separate-operator" approach effectively would reallocate MSS spectrum for other uses, the Commission concluded that "reconsideration of the spectrum-management decision to allocate resources to MSS is unreasonable and unwarranted."³⁶ The

³² See *ATC Order*, 18 FCC Rcd at 2011-12 ¶ 93; 47 C.F.R. §25.149(b)(5).

³³ See Cingular Petition for Reconsideration at 16-23.

³⁴ Letter from Larry Williams, ICO to Donald Abelson, Chief, International Bureau, FCC (June 13, 2002).

³⁵ *ATC Order*, 18 FCC Rcd at 1996 ¶ 58.

Commission further noted that it has initiated other proceedings “to comprehensively address the proper amount of spectrum to allocate to MSS.”³⁷

The Commission has granted additional spectrum rights for other wireless licensees without requiring an auction of those additional rights.³⁸ Granting MSS licensees additional flexible use of their assigned spectrum does not unjustly enrich them any more so than granting additional spectrum rights for other wireless licensees. Rather, it facilitates full and efficient use of MSS spectrum, bolsters the commercial viability of MSS, and extends the benefits of global MSS to rural and underserved areas.

The Commission properly concluded that granting ATC authority to an MSS licensee will not give it an unfair advantage over a CMRS provider because the two are not direct competitors.³⁹ Rather than adopting a categorical finding of no competition between MSS and CMRS, the Commission fairly concluded that “[w]hile there is always some competition on the margin between [the] two mobile voice and data services, the operating, functional, and cost characteristics of MSS with ATC are sufficiently different from CMRS terrestrial services that we do not believe they will be close substitutes for each other for the vast majority of customers.”⁴⁰

Furthermore, unjust enrichment is not the only objective that the Commission must consider under Section 309(j)(3). The Commission correctly recognized that Section 309(j)(3) requires it “to consider a number of objectives, which [it] must consider together and sometimes balance against each other.”⁴¹

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.* at 1979 ¶ 30 n.66 (citing number of cases granting additional spectrum flexibility to wireless licensees).

³⁹ *See ATC Order*, 18 FCC Rcd at 2072 ¶ 229.

⁴⁰ *Id.*

⁴¹ *See id.*

V. CONCLUSION

Based on the foregoing, ICO urges the Commission to reject immediately CTIA's and Cingular's petitions for reconsideration. ICO further requests the Commission to clarify the PDA exemption, as set forth above.

Respectfully submitted,

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