November 17, 2003

Mr. Honorable Michael K. Powell
Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

RE: Written Ex Parte Communication Regarding Petitions for Reconsideration in ET Docket No. 00-258

Dear Mr. Chairman Powell:

The Satellite Industry Association ("SIA")[1] would like to bring to your attention certain developments and suggest a compromise solution to the issues raised in the Petitions for Reconsideration that were filed with the Commission on April 14, 2003 addressing the Commission's *Third Report and Order* in the above captioned proceeding.[2] As SIA has made clear, both in formal pleadings and in *ex parte* presentations, it is unequivocally opposed to the Commission's unfortunate decision in its *Third Report and Order* to reallocate almost half of the mobile satellite service ("MSS") spectrum at 2 GHz. Although SIA firmly believes there is no basis for *any* reallocation of 2 GHz MSS spectrum, SIA focused its Petition for Reconsideration of the *Third Report and Order* solely on the fact that the Commission reallocated 10 megahertz of globally harmonized MSS spectrum at 1990-2000 MHz while leaving in place 10 megahertz of *non*-globally harmonized MSS spectrum at 2010-2020 MHz.

The Commission has now compiled an extensive public record on SIA's petition, on other petitions for reconsideration of the *Third Report and Order*, and on the related *Third Notice of Proposed Rulemaking*. That record confirms the fundamental weakness of the case for any reallocation of MSS spectrum. Furthermore, it demonstrates that there is virtually no public interest benefit to be obtained by reallocating globally harmonized MSS spectrum rather than non-globally harmonized MSS spectrum. Indeed, although the Commission was presented with a couple of proposals for alternative uses of the 1990-

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[1] SIA Executive Members include: The Boeing Company; Globalstar, L.P.; Hughes Network Systems, Inc.; ICO Global Communications; Intelsat; Iridium Satellite LLC, Lockheed Martin Corp.; Loral Space & Communications Ltd.; Mobile Satellite Ventures; Northrop Grumman Corporation; PanAmSat Corporation; SES Americom, Inc. and Associate Members include Inmarsat, New Skies Satellites Inc, and Verestar Inc.

[2] Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Service to Support the Introduction of New Advanced Wireless Services, including Third Generation Wireless Systems, ET Docket No. 00-258, *Third Report and Order, Third Notice of Proposed Rulemaking, and Second Memorandum Opinion and Order*, 18 FCC Rcd 2223 (2003), *recon. pending* (*Third Report and Order)*.

1995 MHz band, the consensus on the 1995-2000 MHz band (among those parties who favor reallocation of that spectrum) seems to be that it should be used as a guard band. This would be tragic and senseless waste of globally harmonized spectrum.

One way to avoid wasting this global allocation would be to restore 5 megahertz of 2 GHz MSS spectrum at 1995-2000 MHz for use as a "non-ATC MSS" band. Restoring 5 megahertz of uplink spectrum to MSS, along with 5 megahertz or more of corresponding downlink spectrum would help mitigate the injury that the Commission inflicted on 2 GHz MSS licensees in the *Third Report and Order.*

The Commission decided to remove MSS from the entire 1990-2000 MHz band based on the last-minute; speculative claims of PCS carriers that harmful adjacent-band interference would result from ATC operations above 1990 MHz. No demonstrated technical basis exists for those claims. In any event, since it is recognized by all parties in this proceeding that PCS operations must be robust enough to tolerate adjacent-band operation of traditional MSS networks, there is no need to separate non-ATC MSS operations from the edge of the PCS band. Traditional MSS operations could still take place immediately adjacent to the 1990 MHz band edge, or at least at 1995 MHz and above.

This straightforward, logical case for restoring at least the 1995-2000 MHz band to MSS on a non-ATC basis received further support from recent comments on the *Third Report and Order*. Comments in this docket have amply demonstrated that the 1995-2000 MHz band is of no use for terrestrial services for two reasons. First, if there really were an adjacent-band interference problem at 1990 under the existing MSS allocation, then moving the band edge to 2000 MHz while leaving the services adjacent would do nothing to address the interference. Second, the 1995-2000 MHz band would be paired with the 1915-1920 MHz band under any PCS-like use of the band, and the record reflects unanimous agreement that PCS-like use of the 1915-1920 MHz band would interfere with PCS operations above 1930 MHz. Thus, terrestrial carriers have supported the use of 1995-2000 MHz as a guard band between ATC MSS operations and PCS operations. But a "non-ATC MSS" band is unambiguously superior to a guard band solution, because it allows the public to benefit from that spectrum instead of intentionally leaving it fallow.

Moreover, the record also demonstrates that the large and widening disparity between the Commission's most recent 2 GHz MSS allocation and the one that the rest of the world adopted (after much urging from the United States) presents an extremely serious problem for 2 GHz MSS operators. Notwithstanding the years and years of hard work that the United States contributed to the goal of a globally uniform MSS allocation at 2 GHz, the Commission now seems to conceive of itself as starting from scratch, attempting to balance the terrestrial mobile industry's desire for more urban spectrum against the satellite industry's need for a spectrum allocation that is uniform throughout the planned service areas of the MSS systems. Even if the Commission believes these interests must be evenly balanced, it would be highly illogical for the Commission to take

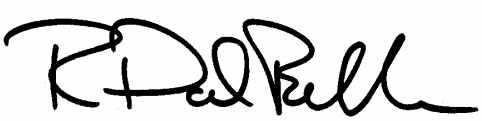
a block of spectrum that is so intensely desired by all sides and dedicate it to *nothing*. A guard band simply does not make sense under these circumstances.

Obviously, while a "non-ATC MSS" band below 2000 MHz is preferable to a guard band, it is no substitute for any of the 20 megahertz of MSS uplink spectrum in which the Commission has already determined that ATC operations should be permitted. Thus, any uplink spectrum restored to the MSS on a non-ATC basis should be *in addition* to the 20 (or more) megahertz of MSS uplink spectrum in which ATC operations can be conducted. This will require slight modification of the procedure for choosing "Selected Assignments," because the uplink spectrum will no longer be fungible. Each 2 GHz MSS licensee that successfully deploys its MSS network should be permitted to select a *pro rata* share of any non-ATC MSS band segment, *in addition* to its *pro rata* share of the 20 (or more) megahertz of ATC MSS uplink spectrum.

It is readily apparent that none of the interference issues that are driving the fragmentation of the MSS uplink allocation are relevant to the MSS downlink allocation. For example, if the MSS allocation were to comprise 25 megahertz of uplink spectrum, of which 5 megahertz would be "non-ATC" spectrum, there is no reason why the downlink allocation could not continue to be 25 megahertz wide *without* any "non-ATC" segment carved out. The public interest is best served by robust spectrum use – particularly involving services to customers and areas that are not adequately served by terrestrial architectures. If there is no interference-based reason to restrict the use of ATC in the downlink spectrum, then ATC should be permitted anywhere in the downlink band.

In raising this possible compromise, SIA is not compromising its underlying position that the Commission should have refrained from reallocating any spectrum from the 2 GHz MSS band, particularly spectrum that is allocated globally for this purpose. SIA proposes this compromise, however, in the hopes of bringing an expedient resolution of this proceeding, thereby providing greater regulatory certainty for spectrum users in the 2 GHz band.

Sincerely,



Richard DalBello
President

Cc: Commissioner Abernathy
Commissioner Copps
Commissioner Martin
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Paul Margie
Sam Feder
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