

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

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In the matter of )  
)  
Use of Returned Spectrum in the 2 GHz ) IB Docket Nos. 05-220 and 05-221  
MSS Frequency Bands )  
)  
Inmarsat Global Limited ) File Nos. SAT-PPL-20050926-00184  
Petition for Declaratory Ruling ) SAT-PDR-20050926-00184  
) SAT-AMD-20051116-00221

Federal Communications Commission  
Office of Secretary

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Policy Branch  
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**CONSOLIDATED REPLY**

Inmarsat replies to the pleadings filed in response to the Petitions for Reconsideration of the two Orders in which the Commission: (1) assigned the entire 2 GHz band to TMI and ICO (the "2 GHz Order"); and (2) dismissed Inmarsat's Petition for Declaratory Ruling ("PDR") to provide MSS at 2 GHz.

In its Petition for Reconsideration, Inmarsat demonstrated that the decision to assign the entire 2 GHz band to TMI and ICO was based on the following flawed and unsubstantiated assumptions: (i) other MSS operators do not need access to 2 GHz because they can use other bands to provide the services possible at 2 GHz; (ii) TMI should have access to more 2 GHz spectrum because it does not have other MSS interests; and (iii) awarding the entire 2 GHz band to TMI and ICO will produce public safety and rural broadband benefits different from those that competing applicants would be able to provide. Moreover, Inmarsat showed that the Commission failed to address alternative solutions that would serve the public interest better than licensing to duopoly at 2 GHz today.

Globalstar's Petition for Reconsideration reiterated many of these same themes, emphasizing that the public interest determinations in the 2 GHz Order were "both premature and unsubstantiated."<sup>1</sup> CTIA and T-Mobile support Inmarsat's and Globalstar's calls for

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<sup>1</sup> Globalstar Petition for Reconsideration at 8.

reconsideration. As T-Mobile states: “the 2 GHz MSS Order cannot withstand APA scrutiny, as it relies upon unrealistic assumptions, fails to fully consider rational suggestions, and arrives at an unsupported conclusion that is contrary to any reasonable interpretation of the record evidence.”<sup>2</sup>

Only two parties oppose reconsideration: TMI and ICO, the recipients of the 2 GHz spectrum windfall. Significantly, TMI and ICO fail to refute the identified deficiencies of the 2 GHz Order. Instead, TMI and ICO rely on arguments that the Commission expressly declined to consider, and on factors that would apply equally to all potential 2 GHz MSS operators. Moreover, TMI and ICO fail to address how it better serves the public interest to assign the entire 2 GHz band *to them*, rather than to authorize additional MSS providers, and thereby provide for increased competition in the band.

For the reasons provided in Inmarsat’s Petition for Reconsideration, and those set forth below, the Commission should reconsider its decisions and reinstate Inmarsat’s PDR to provide MSS to the United States at 2 GHz.

**I. TMI’S AND ICO’S JUSTIFICATIONS DO NOT CURE THE DEFICIENCIES IN THE 2 GHz ORDER**

Inmarsat’s and Globalstar’s Petitions show that the 2 GHz spectrum award to TMI and ICO was unsubstantiated. Namely, there is no rational basis on which to conclude that greater public safety and rural broadband services would accrue by increasing ICO’s and TMI’s spectrum assignments by 250 percent, rather than by allowing a third (or possibly a fourth) competitor in the band.<sup>3</sup> This is particularly true when two qualified MSS operators—Inmarsat

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<sup>2</sup> Comments of T-Mobile at 4 (footnotes omitted).

<sup>3</sup> The relevant issue on reconsideration is whether there is a substantiated and reasoned basis for deciding to award TMI and ICO more spectrum instead of licensing additional operators in the band. *Cf.* ICO Opposition at 8; TMI Opposition at ii, 17.

and Globalstar—were on record with proposals to meet those very same public safety and rural broadband needs by the end of the decade.<sup>4</sup>

Instead of addressing these legal shortcomings, TMI and ICO argue that a number of different considerations could support the Commission's decision: (1) their plans for an ATC network; (2) the technical capabilities of TMI's proposed spacecraft; and (3) the speed at which TMI and ICO could deploy their hybrid MSS/ATC networks.<sup>5</sup> As Inmarsat demonstrated in its Petition for Reconsideration, in reaching its decision, the Commission expressly rejected each of these factors as not relevant. Moreover, these considerations would not support the decision to award the entire 2 GHz band to TMI and ICO in any event.

ATC: Commission policy is clear that ATC is not a legitimate justification for seeking additional spectrum.<sup>6</sup> Moreover, the Commission emphasized in the *2 GHz Order* that it did not "reach[] the issue of whether ICO and TMI/TerreStar need additional spectrum to provide ATC, as they claim."<sup>7</sup> For this reason, the virtually identical letters from state and local public safety officials that TMI and ICO tout in their Oppositions<sup>8</sup> are not "compelling," or even remotely probative: those letters support the award of spectrum so that TMI and ICO *can provide ATC*.<sup>9</sup> Even if the Commission were to change its policy and rely on ATC plans to justify the spectrum award, there would be no reason to provide ICO's or TMI/TerreStar's 2

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<sup>4</sup> TMI's criticism of Inmarsat's plans to deploy ATC in conjunction with a qualified terrestrial partner, TMI Opposition at 11-12 & n.42, ring particularly hollow in light of press reports that TMI's affiliate, MSV, does not intend to deploy ATC alone. Jesse Drucker, *Catching a Wave, As Satellite Firms Move to Add Cellular Service, Critics Cry Foul*, Wall St. J., Feb. 9, 2006, at A1.

<sup>5</sup> See TMI Opposition at 2-7; ICO Opposition at 3-5.

<sup>6</sup> See Comments of Inmarsat in IB Docket No. 05-220 at 18-20 (citing *Flexibility for Delivery of Communications by MSS Providers*, 18 FCC Rcd 1962, 1974 ¶ 20, 2067 ¶ 215 (2003)).

<sup>7</sup> *2 GHz Order* at ¶ 28, n.76; see also *id.* ¶ 42, n.116 ("we . . . do not rely on contentions that TMI needs additional spectrum to deploy a network using ATC").

<sup>8</sup> TMI Opposition at 3-4; ICO Opposition at 3.

<sup>9</sup> See *2 GHz Order* at ¶ 28, n.74.

GHz ATC plans any greater weight than Inmarsat's or Globalstar's. Neither ICO nor TerreStar has ever provided commercial satellite service, submitted an application to provide ATC, or committed to a specific ATC deployment schedule.

Spacecraft Design: TMI's reliance on the technical capabilities of its proposed spacecraft likewise is unavailing.<sup>10</sup> The Commission appropriately placed no weight on TMI's spacecraft design.<sup>11</sup> Commission policy is clear that TMI cannot "bootstrap" its way into more spectrum by building a larger spacecraft than the Commission has authorized.<sup>12</sup> Even if the Commission were to change that policy, the *2 GHz Order* does not address why TMI's and ICO's still-evolving 2 GHz networks would provide greater public interest benefits than Inmarsat's (or Globalstar's) 2 GHz spacecraft design.

Speed of Deployment: ICO attempts to justify its spectrum award by claiming that the decision "would ensure that the spectrum would be brought into use more quickly than if the spectrum were assigned to others."<sup>13</sup> ICO ignores the Commission's express rejection of "speed" as the basis for increasing ICO's and TMI's spectrum assignments, and the clear finding that increased speed of deployment would not outweigh giving other entities an opportunity to compete at 2 GHz.<sup>14</sup> In this regard, it bears emphasis that Inmarsat and Globalstar provided the Commission with proposals for expeditiously authorizing competing MSS providers, and each indicated that it could deploy its 2 GHz system by the end of the decade. Thus, even if speed of deployment were considered, others could be in a position to bring the returned spectrum into use soon after ICO and TMI are required to commence commercial 2 GHz service.

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<sup>10</sup> TMI Opposition at 4.

<sup>11</sup> *2 GHz Order* at ¶ 42, n.116.

<sup>12</sup> See Inmarsat November 16 *Ex Parte* at 3; Inmarsat Reply Comments in IB Docket No. 05-221 at 37-40.

<sup>13</sup> ICO Opposition at 4-5.

<sup>14</sup> *2 GHz Order* at ¶ 57, n.173.

Other than these three factors (which do not justify the spectrum windfall), ICO's and TMI's Oppositions offer only vague platitudes about how MSS generally can provide public safety and rural broadband benefits. Again, there is no reason to believe that TMI and ICO are better suited to provide those benefits than the two other entities who stand ready to deploy at 2 GHz—Inmarsat and Globalstar. Moreover, as both Globalstar and CTIA aptly note, neither ICO nor TMI *is required* to serve the needs of first responders or to provide broadband services in rural areas.<sup>15</sup> Thus, there can be no basis to conclude that awarding more spectrum to ICO and TMI would better advance those goals than authorizing additional competitors in the band. To the contrary, as Inmarsat has explained, courts are clear in warning that the creation of a duopoly raises the risk that consumers will not receive the benefits that result from healthy competition.<sup>16</sup>

## II. THE COMMISSION DID NOT ADDRESS RELEVANT ARGUMENTS AND PROPOSALS

In addition to the absence of substantiated reasoning, the *2 GHz Order* is legally deficient because it failed to address several relevant issues and alternative proposals.

First, the Commission failed to address the aspects of the 2 GHz band that make it uniquely suited among MSS bands to support high-data-rate, next-generation multimedia MSS offerings over mobile handheld devices, and that highlight the dangers of licensing to duopoly at 2 GHz.<sup>17</sup> Although the Commission concluded that 2 GHz MSS providers will be able to compete with MSS operators in other bands, the Commission simply did not address the converse: whether other MSS bands can support the same product offerings as those proposed at

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<sup>15</sup> CTIA Comments at 6 (citing Globalstar Petition at 9). ICO's citation to the geographic coverage rules that apply to MSS providers, ICO Opposition at 3-4 (citing 47 C.F.R. § 25.143(b)(2)(iv)), is unavailing. There is no requirement that ICO and TMI actually provide broadband service, nor any specification of the data rates they must achieve or the other salient conditions on which they are to provide "broadband service" to "rural areas."

<sup>16</sup> Inmarsat Petition at 5-7.

<sup>17</sup> See Reply Comments of Inmarsat in IB Docket No. 05-221 at 17-22; Letter from John P. Janka to Marlene H. Dortch, IB Docket Nos. 05-220 and 05-221, at 8 (filed Sep. 28, 2005).

2 GHz, or whether MSS providers in other bands can compete with the MSS offerings possible at 2 GHz.<sup>18</sup>

ICO's cursory responses to these competitive issues do not bear scrutiny. The fact that Inmarsat will soon introduce BGAN service at L-Band in the United States does not obviate the need for further competition at 2 GHz. The future opportunities to deploy 2 GHz multimedia services to handheld MSS devices are far different than any of the services that Inmarsat is able to offer at L-Band today or in the near term. TMI admits as much.<sup>19</sup>

Nor is it relevant, as ICO asserts, that the Commission has not chosen to extend to the 2 GHz band the same licensing reform rules that apply in other bands.<sup>20</sup> The *policy* underlying those rules, first articulated in the *DIRECTV/EchoStar Hearing Designation Order*, applies with equal force here. In that case, the Commission recognized that the anticipated provision of broadband services in a nascent frequency band presents issues that warrant a much more sophisticated look at the definitions of markets and market participants than those assumed by ICO's and TMI's broad-brush assertions that all MSS frequency bands are fungible. In fact, one of the very reasons the Commission designated for hearing the proposed DIRECTV/EchoStar merger was a concern about the transaction's impact on the provision of broadband services by satellite in the nascent Ka band.<sup>21</sup> Nor is there any record basis here to conclude that the broadband MSS services to be provided in the nascent 2 GHz Band would be reasonably interchangeable with MSS services possible in other bands.<sup>22</sup> Nothing in the various

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<sup>18</sup> Cf. TMI Opposition at 8.

<sup>19</sup> *Id.* at 6 (describing how TMI's 2 GHz system will provide services not available from Inmarsat or any other satellite provider).

<sup>20</sup> ICO Petition at 6-7.

<sup>21</sup> See *EchoStar Communications Corp.*, 17 FCC Rcd 20559, 20665-66 ¶ 289 (2002). Much as the 2 GHz band should be treated here, the Commission treated the nascent FSS Ka band as different from the existing, congested FSS bands in which satellite services already were being provided. See *id.* at 20650 ¶ 241.

<sup>22</sup> See *id.* at 20651 ¶ 244.

submissions of Professor Cowhey or Dr. Bruce Owen that TMI has submitted fills these gaps in the record.<sup>23</sup>

Second, the Commission ignored the fact that TMI is an incumbent MSS provider with close business ties to, and substantial overlapping ownership with, MSV. In fact, MSV does not dispute Globalstar's documentation of that relationship in its Petition.<sup>24</sup> Thus, the Commission's stated inclination to award the returned spectrum to "new entrants," rather than to existing MSS operators, is flatly inconsistent with the decision to award more 2 GHz spectrum to TMI.<sup>25</sup> In fact, despite the stated desire to facilitate new entrants, as a result of the *2 GHz Order*, the MSV/TMI ventures have approximately twice the amount of MSS spectrum over the Americas as any other provider.<sup>26</sup>

Contrary to what TMI asserts, the Commission did not "find" that TMI, TerreStar, and MSV's MSS businesses are "independent." The Commission's *silence* on this issue cannot be construed as a conclusion that TerreStar and MSV "are separately owned and managed, . . . will operate separate MSS systems, and that the two companies plan to compete against one another."<sup>27</sup> Nor could the Commission have assumed that the 2 GHz spectrum awarded to TMI ultimately would be held by an independent, new entrant. TMI still holds its 2 GHz authorization, and, as recent press releases reflect, the possible restructuring of the relationship between and among TMI, MSV, and TerreStar remains in flux.<sup>28</sup>

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<sup>23</sup> See TMI Opposition at 9.

<sup>24</sup> Globalstar Petition at 18-21 (providing a detailed account of the interrelationship between TMI and MSV); Letter Comments of MSV at 1.

<sup>25</sup> See *2 GHz Order* at ¶ 56 & n.173.

<sup>26</sup> Inmarsat Petition at 8-9.

<sup>27</sup> TMI Opposition at 12-13.

<sup>28</sup> See Press Release, Motient Corp., *Motient Corp. Updates Shareholders on MSV Roll-Up* (Feb. 2, 2006); Press Release, SkyTerra, *SkyTerra Issues Update on Proposed MSV and TerreStar Consolidation* (Feb. 2, 2006). Thus, this issue is not "mooted," as TMI asserts, by

Third, the Commission simply failed address several of Inmarsat's proposals that would both (i) avoid prematurely constraining access to the 2 GHz band to two entities who remain years away from deploying their systems, and (ii) allow the entry of a third (and possibly a fourth) 2 GHz competitor, without undue delay.<sup>29</sup> Inmarsat proposed incentives to ensure additional competitors would commence service as quickly as possible, and offered a way to increase TMI's and ICO's spectrum assignments to 2 x 6.67 MHz (as the Commission originally proposed) while also licensing additional competition in the band.<sup>30</sup> While TMI debates the merits of one of these proposals for the first time now,<sup>31</sup> ICO erroneously argues that the Commission was not required to address them at all.<sup>32</sup>

TMI criticizes Inmarsat's proposal whereby the award of 2 GHz spectrum rights would go to the first of several competitors to actually deploy a satellite system in the band.<sup>33</sup> Contrary to what TMI would have the Commission believe, this type of market-based solution already has proven effective in facilitating innovation in the satellite industry. Entrepreneurs have funded a number of initiatives that have competed for (and won) the \$10 Million prize in the X Prize Cup, which was established to spur technological innovation in space.<sup>34</sup> If funding is available for speculative space ventures that seek to claim such a prize, there is no reason to assume that funding would not be readily available to pursue the spectrum "prize" that is 2 GHz.

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Motient's recent announcement that it does not intend to increase its ownership in MSV.  
TMI Opposition at 13, n.51.

<sup>29</sup> See Inmarsat Petition at 12-13.

<sup>30</sup> See *id.* at 12-14.

<sup>31</sup> TMI Opposition at 15.

<sup>32</sup> ICO Opposition at 11.

<sup>33</sup> TMI Opposition at 15 (citing Inmarsat Petition at 13).

<sup>34</sup> See <http://www.xprizefoundation.com>; *SpaceShipOne captures X Prize, Privately funded craft reaches altitude requirement* (Oct. 4, 2004), available at <http://www.cnn.com/2004/TECH/space/10/04/spaceshipone.attempt.cnn/index.html>.



ICO is wrong that the Commission was not obliged to consider these types of proposals that Inmarsat submitted in response to the Commission's express solicitation.<sup>35</sup> Inmarsat proposals were "front-and-center" in its pleadings,<sup>36</sup> and were made in numerous *ex parte* presentations detailing alternatives to providing the entire 2 GHz band to ICO and TMI.<sup>37</sup> Inmarsat's alternatives are not, as ICO implies, the type of "rather subtle suggestion[s]" that the Commission may not be obligated to address.<sup>38</sup>

### III. OTHER ISSUES

#### A. Inmarsat Has Standing

ICO is wrong that, in order to establish "standing," Inmarsat must show that it is an aggrieved party within the meaning of Section 316 of the Communications Act.<sup>39</sup> First, because the Commission recognized that Section 316 does not squarely apply to the *2 GHz Order*, the statutory strictures of Section 316 do not apply either.<sup>40</sup> Second, the Public Notices in these proceedings expressly solicited comment from a wide range of interested parties,<sup>41</sup> pursuant to which Inmarsat and a host of others actively participated, and Inmarsat submitted a competing proposal for its own 2 GHz MSS system. Finally, the *2 GHz Order* specifically allowed further challenges to be lodged pursuant to two different avenues – one for any licensee or permittee that believed that its license would be modified by the decision, and one for any

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<sup>35</sup> See Public Notice, FCC 05-133 (rel. Jun. 29, 2005); Public Notice, FCC 05-134 (rel. Jun. 29, 2005).

<sup>36</sup> See, e.g., Comments of Inmarsat in IB Docket No. 05-220 at 25-32; Reply Comments of Inmarsat in IB Docket No. 05-221 at 10-29.

<sup>37</sup> See, e.g., Letter from John P. Janka to Marlene H. Dortch, File No. SAT-PPL-20050926-00184, IB Docket Nos. 05-220 and 05-221, at 2 (filed Aug. 24, 2005); Letter from John P. Janka to Marlene H. Dortch, IB Docket Nos. 05-220 and 05-221, at 10-12 (filed Sep. 28, 2005); Letter from John P. Janka to Marlene H. Dortch, SAT-PPL-20050926-00184, IB Docket Nos. 05-220 and 05-221, at 1 (filed Nov. 16, 2005).

<sup>38</sup> See ICO Opposition at 11 (citing *MCI Worldcom. v. FCC*, 209 F.3d 760 (D.C. Cir. 2000)).

<sup>39</sup> *Id.* at 11-13.

<sup>40</sup> *2 GHz Order* at ¶ 2, n.3 & ¶ 18.

<sup>41</sup> See *id.* at ¶¶ 3-4.

entity that is entitled to seek reconsideration under Section 1.106 of the Commission's rules.<sup>42</sup>

Inmarsat chose the latter procedural vehicle, which it has standing to pursue by virtue of its active participation in this proceeding and its PDR.<sup>43</sup>

**B. Reconsideration of Inmarsat's Petition for Declaratory Ruling Is Warranted**

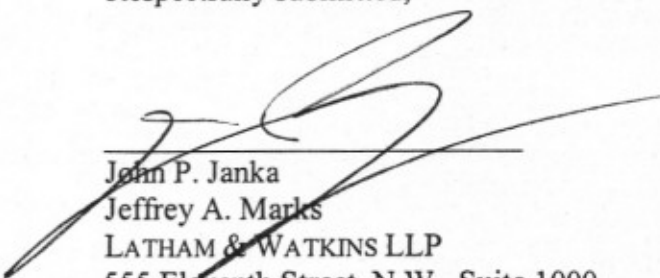
In its Petition, Inmarsat urged, to the extent the Commission revisits its 2 GHz decision, that the Bureau reconsider the dismissal of Inmarsat's PDR to provide 2 GHz MSS service to the United States.<sup>44</sup> That result is warranted because the only reason Inmarsat's PDR was dismissed was that the entire 2 GHz band already had been awarded to TMI and ICO. Neither TMI nor ICO disputes that reconsideration of Inmarsat's PDR would be appropriate in these circumstances.<sup>45</sup> Thus, Inmarsat reiterates its request that the Commission reinstate Inmarsat's PDR and grant Inmarsat authority to compete as a third provider of 2 GHz MSS.

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For the foregoing reasons, the Commission should reconsider its *2 GHz Order* and reinstate Inmarsat's Petition for Declaratory Ruling to provide 2 GHz MSS.

Respectfully submitted,

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<sup>42</sup> *Id.* at ¶¶ 68-69.

<sup>43</sup> 47 C.F.R. § 1.106(b)(1).

<sup>44</sup> Inmarsat Petition at 16.

<sup>45</sup> TMI argues only that a decision *not* to reconsider the *2 GHz Order* would negate the need to reconsider dismissal of Inmarsat's market access petition. TMI Opposition at 15, n.56.

## CERTIFICATE OF SERVICE

I, Jeffrey A. Marks, hereby certify that on March 1, 2006, I caused to be served a copy of the foregoing Consolidated Petition for Reconsideration by first-class U.S. mail (unless otherwise indicated) upon the following:

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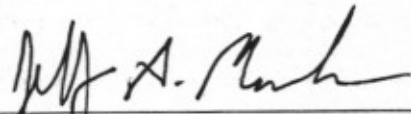


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