

Before the
FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

DUPLICATE
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JUN - 3 1998

Federal Communications Commission
Office of Secretary

In re Applications, Amendments, and/or Letters of Intent of)	
)	
CELSAT, INC.	)	File Nos. 26/27/28-DSS-P/LA-97
for Authority to Construct, Launch, and Operate	)	88 SAT-AMEND-98
a GSO Hybrid Personal Communications Satellite)	
System for Providing Mobile Voice, Data, Paging,)	
Messaging, Facsimile, Imaging, Video, and Other)	
Digital Services)	
)	
THE BOEING COMPANY	)	File Nos. 179-SAT-P-LA-97 (16)
for Authority to Construct, Launch and Operate	)	90-SAT-AMEND-98
16 NGSO Satellites to Provide a Communications)	
System for Navigation and surveillance, Air Traffic)	
Management, and GPS Augmentation)	
)	
MOBILE COMMUNICATIONS HOLDINGS, INC.	)	File No. 180-SAT-P/LA-97(26)
for Authority to Construct, Launch, and Operate)	
26 NGSO Satellites to Provide Voice and Data)	
Communications Services)	
)	
CONSTELLATION COMMUNICATIONS, INC.	)	File No. 180-SAT-P/LA-97(26)
for Authority to Construct, Launch, and Operate)	
46 NGSO Satellites to Provide Data Services)	
)	
GLOBALSTAR, L.P.	)	File Nos. 182-SAT-P/LA-97(64) &
for Authority to Construct, Launch, and Operate	)	183 through 186-SAT-P/LA-97
64 NGSO and 4 GSO Satellites to Provide Voice)	
and Data Services)	
)	
IRIDIUM, LLC	)	File No. 187-SAT-P/LA-97(96)
for Authority to Construct, Launch, and Operate)	
96 NGSO Satellites to Provide Voice and Data)	
Services)	
)	
ICO SERVICES LIMITED	)	File No. 188-SAT-LOI-97for
Authority to Provide Voice Communications Using	)	(Letter of Intent)
10 to 12 NGSO Satellites)	

TMI COMMUNICATIONS	)	File No. 189-SAT-LOI-97
AND COMPANY, L.P.	)	(Letter of Intent)
for Authority to Provide Voice and High Speed Data)	
Services Using a GSO Satellite)	
)	
INMARSAT HORIZONS	)	File No. 190-SAT-LOI-97
For Authority to Provide Voice and Data	)	(Letter of Intent)
Communications Using 4 GSO Satellites)	

To: CHIEF, INTERNATIONAL BUREAU

**CONSOLIDATED REPLY COMMENTS
OF MOBILE COMMUNICATIONS HOLDINGS, INC.**

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Dated: June 3, 1998

**CONSOLIDATED REPLY COMMENTS
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CONSOLIDATED REPLY COMMENTS OF MOBILE COMMUNICATIONS HOLDINGS, INC.

SUMMARY

In its pleadings filed on May 4, 1998, MCHI demonstrated that the public interest is best served by limiting the use of the 2 GHz Spectrum to Big LEO licensees who propose to offer MSS worldwide. MCHI hereby renews its request and supports those commenters who urge the FCC (1) to afford a priority for the use of such spectrum by the Big LEO licensees, and (2) to limit allocation of the 2 GHz Spectrum to applicants proposing global MSS satellite systems. The Commission has indicated its intention to provide the Big LEO licensees with such a priority and the Big LEO licensees have invested substantial sums to develop their satellite systems in expectation that additional spectrum would be made available. Providing priority access to the Big LEO licensees will most efficiently resolve the mutual exclusivity issue currently encumbering the 2 GHz proceeding. In addition, applicants proposing regional-only MSS satellite systems should be excluded from the instant processing round so that they cannot preempt applications seeking authorization to provide global MSS coverage, which the Commission repeatedly has held is in the public interest.

In the event the Commission chooses not to adopt MCHI's recommendation to resolve the mutual exclusivity issue by granting priority access to Big LEO licensees or by limiting the band to global systems, MCHI proposes that the Commission engage qualifying applicants in a negotiated rulemaking to facilitate sharing of the allocated spectrum and to address other relevant technical issues.

MCHI has demonstrated its qualifications to hold a Commission space station authorization and thus should be included in the instant processing round. No commenter petitioned to deny MCHI's application and the few issues that were raised by commenters are beyond the current scope of this proceeding. However, MCHI urges the Commission to dismiss, deny, or defer action on the applications or letters of intent of Celsat, TMI, Inmarsat, Constellation, and ICO, each of which either is substantially flawed or substantially incomplete. Celsat and TMI failed to propose global MSS satellite systems, and TMI, Inmarsat, and ICO failed to meet the requirements of the Commission's Disco II Order.

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INMARSAT HORIZONS)	File No. 190-SAT-LOI-97
)	(Letter of Intent)
TO: CHIEF, INTERNATIONAL BUREAU)	

CONSOLIDATED REPLY COMMENTS

I. INTRODUCTION

Mobile Communications Holdings, Inc. ("MCHI"),¹ by its attorneys, hereby submits its Consolidated Reply Comments to the comments on the applications and

¹ MCHI filed an application in the instant processing round seeking Federal Communications Commission authorization to launch and operate a second generation satellite system consisting of 26 non-geostationary ("NGSO") satellites in elliptical and circular low earth orbits (the "ELLIPSO 2G" system) in the 2 GHz band for the provision of voice and data communication services. See FCC File No. 180-SAT-P/LA-97(26). In addition, MCHI holds an authorization to construct, launch, and operate a global "Big LEO" satellite system comprised of 16 NGSO satellites in elliptical and equatorial low earth orbits (the "ELLIPSO" system) for the provision of voice, data, paging/messaging, and other narrowband communications services on a global basis. FCC File Nos. 11-

letters of intent (“Applications”) filed by the above-referenced parties seeking authorization to provide various communications services in the 2 GHz band.² These Applications were filed in response to the satellite processing round initiated by the Federal Communications Commission (“Commission” or “FCC”) to allocate 70 MHz of spectrum in the 2 GHz band—1990-2025 MHz and 2165-2200 MHz—for use by the Mobile-Satellite Service (“MSS”) effective January 1, 2000 (such 70 MHz of spectrum collectively referred to as “2 GHz Spectrum”).³ As discussed in MCHI’s May 4th Petitions to Deny and Comments (“Comments”),⁴ MCHI requests priority grant of the applications of the Big LEO licensees—MCHI, Iridium, LLC (“Iridium”) and Globalstar, L.P. (“Globalstar”)—and requests the Commission to dismiss, deny, or defer action on

DSS-P-91(6); 18-DSS-P-91(18); 11 SAT-LA-95; 12 SAT-AMEND-95; 158-SAT-AMEND-96. If MCHI is granted an authorization by the Federal Communications Commission, MCHI intends to operate the ELLIPSO 2G satellite system in conjunction with the ELLIPSO satellite system. See FCC File No. 180-SAT-P/LA-97(26).

² The cut-off date established by the FCC for the filing of initial Applications was September 5, 1997. Clarifications and Corrections to Public Notices Report Nos. SPB-88 and SPB-89 Establishing Deadlines for Applications, Letters of Intent, and Amendments to Applications in the 2 GHz and 36-51.4 GHz Frequency Bands, Public Notice, 12 FCC Rcd 12050 (1997). The FCC established deadlines of May 4, 1998 and June 3, 1998, for the submission of comments and reply comments, respectively. Satellite Applications and Letters of Intent Accepted for Filing in the 2 GHz Band, Public Notice, Report No. SPB-119 (March 19, 1998). Thus, this Consolidated Reply Comment is timely filed.

³ Amendment of Section 2.106 of the Commission’s Rules to Allocate Spectrum at 2 GHz for Use by the Mobile-Satellite Service, First Report and Order and Further Notice of Proposed Rulemaking, 12 FCC Rcd 7388 (1997); see also Satellite Applications and Letters of Intent Accepted for Filing in the 2 GHz Band, Public Notice, Report No. SPB-119 (rel. March 19, 1998); Clarifications and Corrections to Public Notices Report Nos. SPB-88 and SPB-89 Establishing Deadlines for Applications, Letters of Intent, and Amendments to Applications in the 2 GHz and 36-51.4 GHz Frequency Bands, Public Notice, 12 FCC Rcd 12050 (Aug. 13, 1997); Cut-off Established for Additional Space Station Applications, Letters of Intent, and Amendments to Pending Applications in the 2 GHz Frequency Band, Public Notice, 12 FCC Rcd 10446 (July 22, 1997).

⁴ Petition to Deny and Comments of Mobile Communications Holdings, Inc.

the applications or letters of intent of Celsat America, Inc. (“Celsat”), Constellation Communications, Inc. (“Constellation”), TMI Communications Company, Limited Partnership (“TMI”), Inmarsat Horizons (“Inmarsat”), and ICO Services Limited (“ICO”). If the Commission does not proceed as recommended, then MCHI requests the Commission to initiate a negotiated rulemaking to assign the allocated spectrum among the qualified applicants.

II. BIG LEO LICENSEES PROPOSING MSS SATELLITE SYSTEMS WITH GLOBAL COVERAGE SHOULD BE GIVEN PRIORITY TO USE THE AVAILABLE 2 GHZ SPECTRUM

The Commission stated in its order allocating the 2 GHz Spectrum (“2 GHz Allocation Order”)⁵ that it would establish technical requirements and an assignment procedure for authorizations to provide MSS in the 2 GHz Spectrum following the filing of applications seeking such an authorization.⁶ MCHI urged in its initial Comments that the FCC should grant priority to the current Big LEO licensees and should limit use of the 2 GHz Spectrum to applicants proposing MSS satellite systems that achieve global coverage.⁷ Based on these criteria, MCHI (ELLIPSO), Iridium, and Globalstar would be afforded a priority over the other applicants, thus simplifying the authorization process. If such priority is adopted, MCHI is confident that, through a discussion brokered by the Commission, MCHI, Iridium, and Globalstar will be able to successfully and expediently

⁵ Amendment of Section 2.106 of the Commission’s Rules to Allocate Spectrum at 2 GHz for Use by the Mobile-Satellite Service, First Report and Order and Further Notice of Proposed Rulemaking, 12 FCC Rcd 7388 (1997) (“2 GHz Allocation Order”).

⁶ 2 GHz Allocation Order, ¶¶ 51, 54.

coordinate the use of the 2 GHz Spectrum.⁸ Only in this way will the 2 GHz Spectrum be deployed expeditiously for global MSS and can the existing and anticipated demand for such use be met.

A. The Commission Should Give Priority to Applications Filed By Big LEO Licensees Seeking to Provide MSS in the 2 GHz Band.

Contrary to the comments of ICO and Celsat,⁹ the Commission should give priority to the applications filed by the Big LEO licensees seeking to expand into the 2 GHz Spectrum, as demonstrated by MCHI in its Comments.¹⁰ Recognizing that the market for MSS will expand dramatically in the next several years,¹¹ the Commission acknowledged that the 33 MHz of spectrum now allocated to the Big LEO satellite

⁷ See Petition to Deny and Comments of Mobile Communications Holdings, Inc., 6-10, 14-15.

⁸ MCHI suggested in its initial pleading that the Commission should give further consideration to whether Constellation Communications, Inc. (“Constellation”), the other Big LEO licensee that applied for an authorization to provide MSS using the 2 GHz Spectrum, has proposed global coverage with its MSS satellite system. See Petition to Deny of Mobile Communications Holdings, Inc. filed against Constellation; see also FCC File No. 181-SAT-P/LA-97(46).

⁹ See Consolidated Comments of ICO Services Limited, 5, 7; Comments of Celsat America, Inc., 4, 6. These applicants argued that the Commission should not permit Big LEO licensees to participate in the instant processing round.

¹⁰ Petition to Deny and Comments of Mobile Communications Holdings, Inc., 8-10.

¹¹ See 2 GHz Allocation Order, ¶ 13 (“We note that the Radiocommunication Sector of the ITU estimates that up to 206 megahertz of additional spectrum will be needed for MSS by the year 2005.”); see also 2 GHz Allocation Order, ¶ 14 (“Because of the projected need for more MSS spectrum internationally, WRC-95 reallocated the 2010-2025 MHz portion to MSS in Region 2, effective January 1, 2005; Amendment of Section 2.106 of the Commission’s Rules to Allocate Spectrum at 2 GHz for Use by the Mobile-Satellite Service, *Notice of Proposed Rulemaking*, 10 FCC Rcd 3230 (1995), ¶ 7 (“We continue to believe that a need exists for allocating a substantial amount of spectrum for MSS.”)).

systems is inadequate to meet projected demands for global MSS and contemplated, when it granted MCHI's Big LEO license, allowing the Big LEO licensees to expand into the 2 GHz Spectrum.¹²

Each of the Big LEO licensees have made substantial investments in system design and development in expectation that expansion spectrum will be made available. The 2 GHz Spectrum is the only band suitable for Big LEO expansion and available within the relevant time frame. In addition, inasmuch as MCHI is confident that it can quickly reach a mutually acceptable spectrum sharing agreement with Iridium and Globalstar, by adopting MCHI's request, the Commission can immediately resolve the mutual exclusivity issue currently burdening the 2 GHz proceeding while assuring that the 2 GHz Spectrum is as efficiently allocated as possible.

¹² Mobile Communications Holdings, Inc., Order and Authorization, 12 FCC Rcd 9663 (1997), ¶ 24 (As a result of the Commission's allocation of additional [2 GHz] spectrum to MSS . . . unassigned spectrum with equivalent propagation characteristics is now available . . . either for new systems or for the expansion of existing systems."); see also Amendment of the Commission's Rules to Establish Rules and Policies Pertaining to a Mobile Satellite Service in the 1610-1626.5/2483.5-2500 MHz Frequency Band, *Report and Order*, 9 FCC Rcd 5936 (1994), ¶ 224 ("[W]e note that the 2 GHz bands have not yet been allocated for MSS in the United States. . . . Nevertheless, we note the increasing demand for access to MSS spectrum worldwide and the potential value of the 2 GHz bands for the provision of MSS.").

B. None of the Comments Disputes the Commission's Inclination Only to Grant 2 GHz MSS Satellite System Authorizations to Applicants That Propose Satellite Systems Capable of Providing MSS Worldwide.

As demonstrated by MCHI in its Comments,¹³ in the 2 GHz Allocation Order the Commission expressed its preference to reserve the 2 GHz Spectrum for MSS satellite systems that will provide MSS worldwide.¹⁴ In addition, the Commission expressly recognized in previous allocation proceedings that the public interest supports requiring domestic licensees to develop global MSS satellite systems.¹⁵ None of the commenters has effectively assailed this Commission position. On the contrary, several commenters joined MCHI in endorsing the Commission's preference for MSS satellite systems which are capable of achieving global coverage.

Iridium, for example, states that "in acting upon the applications in this processing round, the Commission should not assign any of the scarce spectrum that could be used

¹³ Petition to Deny and Comments of Mobile Communications Holdings, Inc., 6-7.

¹⁴ See 2 GHz Allocation Order, ¶¶ 14, 51 ("As we stated in the Notice, we believe that any 2 GHz MSS allocation should be as consistent as possible with the WARC-92 and WRC-95 allocations. This will help ensure truly *universal* service. . . . We believe that this allocation will allow the United States to participate in *global MSS systems* and realize the benefits to consumers of such systems."); see also Amendment of Section 2.106 of the Commission's Rules to Allocate Spectrum at 2 GHz for Use by the Mobile-Satellite Service, *Notice of Proposed Rulemaking*, 10 FCC Rcd 3230 (1995), ¶ 8.

¹⁵ Amendment of the Commission's Rules to Establish Rules and Policies Pertaining to a Mobile Satellite Service in the 1610-1626.5/2483-2500 MHz Frequency Bands, *Report and Order*, 9 FCC Rcd 5936, 5945 (1994) ("The public interest would best be served by the technology that offers the broadest potential coverage."); Rulemaking to Amend Parts 1, 2, 21, and 25 of the Commission's Rules to Redesignate the 27.5-29.5 GHz Frequency Band, to Reallocate the 29.5-30.0 GHz Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Service, *Third Report and Order*, 12 FCC Rcd 22310 (1997), ¶ 34 ("We agree that NGSO FSS systems are capable of fostering a seamless global communications network and we believe that it serves the public interest to adopt [such] a coverage area requirement for these systems."

for global MSS systems to applicants that do not propose to provide global MSS services”¹⁶ Thus, Iridium requests the Commission to exclude both Celsat and TMI from this proceeding because “[n]either of these systems is global in nature; they are regional GSO proposals.”¹⁷ Similarly, Boeing argues that “the Commission should deny Celsat’s application because Celsat seeks to provide regional-only services,”¹⁸ and “the Commission should deny the LOI of TMI to the extent that it seeks to utilize 2 GHz MSS spectrum to provide regional-only service.”¹⁹

MCHI supports these comments and agrees with the Commission that global MSS satellite systems provide:

a broad range of public interest benefits for the United States, including increased possibilities of U.S. leadership in developing and implementing satellite technology, and enhanced U.S. global competitiveness in telecommunications.²⁰

¹⁶ Consolidated Comments and Petition to Deny of Iridium, LLC, 3-4.

¹⁷ Consolidated Comments and Petition to Deny of Iridium, LLC, 9.

¹⁸ Petition to Deny or Hold in Abeyance of the Boeing Company filed against Celsat, Inc., 3. Boeing Company (“Boeing”) noted the Commission’s repeated recognition of the “substantial public interest benefits that can result from global satellite systems.” *Id.* at 4.

¹⁹ Petition to Deny or Hold in Abeyance of the Boeing Company filed against TMI Communications and Company, 5.

²⁰ Amendment of the Commission’s Rules to Establish Rules and Policies Pertaining to a Mobile Satellite Service in the 1610-1626.5/2483.5-2500 MHz Frequency Bands, *Report and Order*, 9 FCC Rcd 5936 (1994), ¶ 12.

C. In the Event the Commission is Unable to Resolve the Applicants' Mutual Exclusivity, the Commission Should Initiate a Negotiated Rulemaking to Facilitate the Sharing of the 2 GHz Spectrum.

In order to avoid the deleterious effects of a spectrum auction,²¹ MCHI requested the Commission to initiate a negotiated rulemaking to allocate the 2 GHz Spectrum in the event that the Commission does not grant priority for use of the 2 GHz Spectrum to the Big LEO licensees and cannot otherwise resolve the mutual exclusivity of the Applications.²² A spectrum auction is not an efficient means of coordinating spectrum when the applicants' proposed satellite systems have such dramatically varied spectrum requirements. Competitive bidding may place MSS satellite systems prone to interfering with each other in adjacent spectrum, will prevent spectrum sharing, and may require applicants to redesign their satellite systems in an inefficient manner to conform to the structure of the auction. In addition, other countries may follow the United States' example and auction MSS spectrum, resulting in prohibitive costs of entry and ultimately

²¹ The Commission stated in its 2 GHz Allocation Order that it intended "to award licenses for MSS in [the 2 GHz band] by competitive bidding" but because "all commenters opposed the idea of awarding MSS licenses by competitive bidding," the Commission deferred "the decision on whether to license MSS in these bands by competitive bidding until after [the Commission has] accepted applications for licensing." 2 GHz Allocation Order, ¶¶ 52-54. MCHI notes that none of the comments filed on May 4, 1998 embraced the use of competitive bidding to assign authorizations and all commenters strongly encourage the Commission to consider other licensing procedures. In addition, MCHI supports the views expressed by the Mobile-Satellite Services Ad Hoc Industry Group in the joint letter filed on May 19, 1998 opposing the use of competitive bidding by the Commission to assign authorizations for use of the 2 GHz Spectrum.

²² MCHI requests that the current mutual exclusivity of the Applications be resolved by granting priority for the use of the 2 GHz Spectrum to the Big LEO licensees and allowing the Big LEO licensees to arrange a plan to efficiently share the spectrum.

harming consumers.²³ For these reasons, MCHI opposes the use of competitive bidding to grant authorizations for use of the 2 GHz Spectrum.

As MCHI noted, giving MCHI, Iridium, and Globalstar priority access to the 2 GHz Spectrum would lead to the most efficient and expeditious use of the spectrum.²⁴ In the alternative, if the Commission permits a broader group of applicants to pursue their applications for the 2 GHz Spectrum, a negotiated rulemaking should be employed by the Commission to realize the efficiencies that can be gained through sharing among applicants. Such a process is appropriate in this case because the Commission has deferred "action on technical parameters and licensing issues"²⁵ until after the applicants are identified. Numerous issues have been identified in the comments that can be resolved through a negotiated rulemaking.

First and foremost, a negotiated rulemaking is an appropriate forum to address sharing and compatibility issues taking into account the technical system characteristics of each global MSS applicant, such as the satellite radiated power, power flux densities on the ground, uplink power levels, and other technical issues. The Commission

²³ See Amendment of the Commission's Rules to Establish Rules and Policies Pertaining to a mobile Satellite Service in the 1610-1626.5/2483.5-2500 MHz Frequency Bands, Notice of Proposed Rulemaking, 9 FCC Rcd 1094 (1994), ¶ 44 ("While auctions may appear advantageous for the reasons noted above, the approach might have unintended consequences internationally. In particular, other countries may also look to our lead in imposing licensing costs on MSS. . . . Given the number of countries that may be served by LEO systems, these costs may be considerable. Indeed, they may effectively preclude a U.S.-owned systems from serving other countries.")

²⁴ If the Commission decides to assign authorizations for the use of 2 GHz Spectrum only to Big LEO licensees proposing to provide global MSS, as MCHI requests, MCHI is confident that the three eligible applicants, MCHI, Iridium, and Globalstar will be able to develop independently a spectrum sharing plan and thus the initiation of a negotiated rulemaking will be unnecessary.

recognized in the 2 GHz Allocation Order that it would have to address whether the 2 GHz Spectrum can be allocated to both GSO and NGSO satellites; whether CDMA or TDMA access techniques will be permitted and whether the techniques can be used simultaneously in the same spectrum; what power limits will be necessary to avoid interference in adjacent bands; and various feeder link spectrum issues.²⁶ In addition, many of the comments raise technical issues which can be addressed in a negotiated rulemaking proceeding. For instance, Globalstar's proposed use of NGSO and GSO satellites and its intention to use CDMA, TDMA, and FDMA digital transmission techniques was opposed by Boeing Company, Hughes, and PanAmSat Corporation.²⁷ Boeing Company and Constellation challenged Iridium to demonstrate how its proposed hybrid CDMA/TDMA system can share spectrum with either CDMA or TDMA/FDMA systems.²⁸ Absent priority grant to the Big LEO licensees, a negotiated rulemaking process will provide the best forum for consideration of these technical and sharing issues.

If necessary to resolve the applications' mutual exclusivity, the Commission also may decide to address feeder link interference issues in the same or in a separate negotiated rulemaking proceeding. Numerous parties attacked Celsat's feeder link proposals claiming that the spectrum requested by Celsat is already fully allocated or that

²⁵ 2 GHz Allocation Order, ¶ 1.

²⁶ 2 GHz Allocation Order, ¶ 51.

²⁷ Petition to Hold in Abeyance against Globalstar, L.P., 10-11;

²⁸ Petition to Hold in Abeyance against Iridium, L.L.C., 10; Comments of Constellation Communications, Inc., 24-25.

Celsat's feeder links will cause adjacent interference.²⁹ Bell Atlantic also raised feeder link interference issues against Iridium, TMI, and Inmarsat Horizon; TIA raised feeder link interference issues against TMI; and Constellation raised such issues against Globalstar and ICO.³⁰ Like the technical issues described above, feeder link issues are obvious candidates for exploration and possible resolution in a negotiated rulemaking process should the Commission not grant priority access to the 2 GHz Spectrum to Big LEO licensees proposing global MSS satellite systems.

III. MCHI IS FULLY QUALIFIED TO HOLD A LICENSE TO PROVIDE MSS IN THE 2 GHZ SPECTRUM

There were no petitions to deny or other objections filed against MCHI's application seeking Commission authorization to provide MSS using the 2 GHz Spectrum. Several commenters, however, raised questions about certain aspects of MCHI's application.³¹ None of the issues identified by the commenters raises a material issue concerning MCHI's qualifications to hold a license in the 2 GHz Spectrum.

²⁹ See Comments of Lockheed Martin Corporation, Telecommunications Industry Association (Fixed Point-to-Point Section, Wireless Division); Hughes Communications Galaxy, Inc.; Lockheed Martin Corporation; Bell Atlantic; PanAmSat Corporation; and GE American Communications, Inc.

³⁰ Comments of Constellation Communications, Inc., 22 (requesting the Commission to require Globalstar to use its Big LEO feeder link frequencies for its proposed 2 GHz satellite system; arguing that ICO should be required to coordinate its use of C-band frequency with Constellation).

³¹ As further discussed *infra*, Iridium requested the Commission to dismiss MCHI's 2 GHz application "if [MCHI's] 2 GHz application is treated as a modification application." Consolidated Comments and Petition to Deny of Iridium, LLC, 11 n.24. MCHI's application to provide global MSS in the 2 GHz Spectrum is not an application to modify its existing authorization to provide MSS.

A. The Technical Concerns Raised by Constellation About MCHI's Proposed 2 GHz MSS Satellite System are Unwarranted and Inappropriate at this Stage of the Application Process.

Each of the issues raised by Constellation concerning MCHI's application either is unwarranted or inappropriate at this stage of the Commission's review of the Applications.³² Constellation notes that MCHI proposed to operate its Earth-to-space feeder link over 300 MHz of Ku-band spectrum even though only 200 MHz is currently allocated domestically and internationally for NGSO MSS feeder links. As an initial matter, the Commission stated clearly in its 2 GHz Allocation Order that it "will address feeder link spectrum in proceedings addressing those bands."³³ Thus, Constellation's concerns are more appropriately addressed by the Commission in the context of a Ku-band proceeding rather than in the instant proceeding.³⁴ Given the distinct and somewhat unrelated technical and international allocation considerations posed by feeder link requests, the licenses issued by the FCC to certain Big LEO applicants did not include

³² Comments of Constellation Communications, Inc., 25.

³³ 2 GHz Allocation Order, ¶ 51.

³⁴ In noting that feeder link allocation issues will be addressed in future processing rounds, the Commission referred specifically to the Ku-band:

[T]he proposed feeder link frequencies have not yet been allocated domestically for this purpose. Use of these bands for feeder links may be subject to domestic rulemaking as well as appropriate implementation of actions taken at World Radiocommunication Conferences. Some feeder link frequencies are in bands that are already under consideration in connection with current processing rounds. . . . Other proposed feeder link frequencies, *such as those in the Ku-Band*, may be considered in future processing rounds. *This Public Notice is not intended to establish a processing round or to establish a cut-off date with respect to such frequencies.*

Satellite Applications and Letters of Intent Accepted for Filing in the 2 GHz Band, *Public Notice*, Report No. SPB-119 (March 19, 1998) (emphasis added).

feeder link authorizations because spectrum had not yet been allocated for MSS feeder links. Similar treatment may need to be accorded the MSS applicants for the 2 GHz Spectrum in order to enable such applicants to proceed with construction plans without the delays associated with efforts to resolve the complex feeder link issues.³⁵ It is very possible, given the demand for global MSS systems, that additional spectrum for feeder links will need to be made available globally and domestically.³⁶ It would be premature for the Commission to get bogged down on this issue at this time.

In any event, the issues raised with respect to MCHI's feeder link request are minor relative to the outstanding issues regarding many of the other applicants' feeder link requests. Whereas certain applicants propose to use spectrum for feeder links that the applicants have not yet been assigned or that is currently assigned to other services,

³⁵ MCHI intends to work to establish arrangements and procedures to seek United States support for future allocation of an additional 100 MHz. However, MCHI will be able to operate its proposed ELLIPSO 2G system using the 200 MHz it has already been conditionally authorized to use for feeder links in the event that the Commission is ultimately unable to allocate the full 300 MHz that MCHI seeks for feeder link use. Although a lack of access to the additional 100 MHz of spectrum that MCHI seeks will have a severe economic impact on MCHI's proposal, the Commission need not condition its authorization for MCHI to utilize the 2 GHz Spectrum on ultimate allocation of the full 300 MHz of feeder link spectrum requested by MCHI.

³⁶ See Motorola Satellite Communications, Inc., Order and Authorization, 11 FCC Rcd 13952 (1996), ¶ 3 ("The Commission did not designate any spectrum for Big LEO feeder links, however, because it had not yet determined which frequencies should be allocated for that purpose. . . . The Commission noted in this regard that international allocation of spectrum for MSS feeder links was on the agenda for the World Radio Conference . . . and said that it contemplated granting unconditional Big LEO feeder-link assignments once sufficient spectrum had been made available. The Commission also said that in the interim it would permit qualified applicants to construct satellites capable of operating with particular feeder-link frequencies at the applicants' own risk.").

MCHI already has received conditional authorization from the Commission to use the majority of the spectrum it seeks in its pending application for MSS feeder links.³⁷

In addition, Constellation argues that MCHI's intention to phase in its combined Big LEO and 2 GHz satellites to avoid any beam couplings within MCHI's system will "require further analysis and coordination with respect to other systems, and, in particular, with respect to [Constellation's] 1.6/2.4 GHz system."³⁸ Also, Constellation complains that MCHI did not address in its application how "it will manage traffic in the equatorial design with respect to establishing aggregate power flux density and areal equivalent isotropically radiated power density levels for sharing the bands with other CDMA systems."³⁹ Both of these technical coordination issues demonstrate the need for the Commission to implement a negotiated rulemaking to most efficiently allocate the 2 GHz Spectrum.⁴⁰ Although MCHI fully expects to address both of these issues to the satisfaction of the Commission, MCHI cannot respond such questions until the Commission makes available additional information regarding how the 2 GHz Spectrum ultimately will be shared or apportioned among the applicants.

³⁷ See *Mobile Communications Holdings, Inc., Order and Authorization*, 12 FCC Rcd 9663 (1997), ¶ 33 ("We therefore grant MCHI a conditional authorization for space-to-earth feeder-link transmission in the 6875-7075 MHz band.").

³⁸ Comments of Constellation Communications, Inc., 25.

³⁹ Comments of Constellation Communications, Inc., 25.

⁴⁰ See *supra* Section I. C.

B. Iridium's Charge That MCHI is not Financially Qualified to Provide MSS in the 2 GHz Spectrum is Simply Incorrect.

In a footnote in its discussion of the reasons for denial of Constellation's application, Iridium complains that MCHI "has been found to be financially unqualified."⁴¹ The FCC has not established any financial qualifications requirements for applicants for the 2 GHz Spectrum and Iridium's claim is simply incorrect and irrelevant at this stage.⁴² In fact, in establishing a deadline for filing applications for the 2 GHz Spectrum, the FCC clearly stated that its "rules do not yet require financial information for . . . mobile-satellite service [other than fixed-satellite service, Little LEO satellite service, and Big LEO satellite service]."⁴³ When the FCC establishes financial qualifications requirements for applicants for the 2 GHz Spectrum, MCHI intends to meet such requirements. Consideration of MCHI's financial qualifications or those of any other applicant, including Iridium, prior to such time would be premature and inappropriate.

⁴¹ Consolidated Comments and Petition to Deny of Iridium, LLC, 11 n.24.

⁴² Iridium argues that MCHI's 2 GHz application is an application to amend MCHI's Big LEO authorization and thus that MCHI must satisfy the Big LEO financial qualifications requirements. This premise is incorrect. As noted previously, MCHI's 2 GHz application is not an application to amend its Big LEO authorization. See supra note 31.

⁴³ Clarifications and Corrections to Public Notices Report Nos. SPB-88 and SPB-89 Establishing Deadlines for Applications, Letters of Intent, and Amendments to Applications in the 2 GHz and 36-51.4 GHz Frequency Bands, Public Notice, 12 FCC Rcd 12050 (1997) (requiring applicants to satisfy the disclosure requirements provided by 47 C.F.R. § 25.114); see also 47 C.F.R. § 25.114 (13) (requiring fixed-satellite space station applicants, non-voice, non-geostationary mobile-satellite service applicants, and 1.6/2.4 GHz mobile-satellite service applicants to provide financial qualification information.)

IV. THE APPLICATIONS AND LETTERS OF INTENT OF UNQUALIFIED APPLICANTS SHOULD BE IMMEDIATELY DISMISSED OR DEFERRED TO EXPEDITE THE SPECTRUM ASSIGNMENT PROCESS

In its Comments, MCHI requested the Commission to dismiss or defer consideration of the applications of Celsat and Constellation, and the letters of intent ("LOI") of TMI, Inmarsat, and ICO because each of the filings has at least one significant defect.⁴⁴ Having now reviewed the initial comments of these parties as well as the comments and petitions of other applicants and interested parties, MCHI hereby renews its request for immediate dismissal or deferral of these applications. Each of these applications is substantially flawed and should not be considered by the Commission in the instant processing round. The public interest supports expeditious Commission review of the remaining applicants.⁴⁵ The defective applications should not prevent

⁴⁴ Comments of Mobile Communications Holdings, Inc., 15-24.

⁴⁵ The Commission noted in its order allocating spectrum for Big LEO satellite systems that "the public interest" requires the Commission to ensure "prompt initiation of this new satellite service." Amendment of the Commission's Rules to Establish Rules and Policies Pertaining to a Mobile Satellite Service in the 1610-1626.5/2483.5-2500 MHz Frequency Bands, Report and Order, 9 FCC Rcd 5936 (1994), ¶ 38; see also Mobile Communications Holdings, Inc., Order and Authorization, 12 FCC Rcd 9663 (1997), ¶ 25 (holding that it is the Commission's goal to "foster[] developments affording consumers the widest feasible range of choices in service available *at the earliest possible date.*") (emphasis added). See also Amendment of the Commission's Rules to Establish Rules and Policies Pertaining to a mobile Satellite Service in the 1610-1626.5/2483.5-2500 MHz Frequency Bands, Notice of Proposed Rulemaking, 9 FCC Rcd 1094 (1994), ¶ 40 ("The United States will not be able to participate effectively in [international] negotiations, and will have difficulty securing sufficient spectrum for U.S. systems, if it cannot present a definitive U.S. proposal in a timely manner."). Given the demand for MSS anticipated by the Commission and the Commission's expectation that Big LEO systems will be unable to fulfill this demand, the public interest requires the Commission to enable successful applicants to begin providing MSS over the 2 GHz spectrum as soon as possible.

prompt Commission consideration of the other applications to provide MSS services using the 2 GHz Spectrum.

A. Celsat's Application Should Be Dismissed Because it Does Not Propose Global Coverage, Requires an Excessive Amount of the Available Spectrum, and is Interference Prone.

In their comments, MCHI, Iridium, and Boeing each oppose Celsat's application.⁴⁶ Celsat's request for approximately 70 percent of the total available 2 GHz Spectrum to provide regional, rather than global, MSS service represents extreme overreaching by Celsat and should not be considered by the Commission. In addition, six commenters complained that Celsat's proposed satellite will cause interference in other bands in which the commenters hold an interest.⁴⁷ The deficiencies in Celsat's application raised by MCHI have been corroborated and endorsed by at least eight other commenters.

⁴⁶ Comments of Mobile Communications Holdings, Inc., 16 (Granting Celsat exclusive authority to utilize the majority of the spectrum available for the MSS in this band would almost certainly preclude use of the subject band for expansion of the global Big LEO systems—a result contrary to the Commission's stated purpose in allocating spectrum in the 2 GHz band for MSS, and clearly contrary to the public interest."); Consolidated Comments and Petition to Deny of Iridium LLC, 9 ("Neither [Celsat's or TMI's] system proposals is global in nature; they are regional GSO proposals. Accordingly, in light of the large number of MSS global system proposals in this processing round, Iridium hereby requests that Commission exclude [sic] Celsat's and TMI's proposals from consideration for spectrum assignments in the 1990-2010 MHz band."); Petition to Deny or Hold in Abeyance of the Boeing Company [against Celsat, Inc.], 3-5 (Because of the substantial public interest benefits that can result from global satellite systems, the Commission should deny the application of Celsat, which, without adequate explanation, requests exclusive use of 50 MHz of 2 GHz spectrum (about 70% of the total spectrum available) to construct a regional-only operation.")

⁴⁷ See Comments of Telecommunications Industry Association (Fixed Point-to-Point Section, Wireless Division); Hughes Communications Galaxy, Inc.; Lockheed Martin Corporation; Bell Atlantic; PanAmSat Corporation; and GE American Communications, Inc.

Because Celsat fails to meet the Commission's most basic goal for its 2 GHz allocation—the provision of global MSS service, the Commission should dismiss or defer action on Celsat's application rather than needlessly expending its limited time and scarce resources to address the very complex technical interference problems presented by Celsat's application.

B. TMI's LOI Should Be Dismissed Because TMI's Proposed MSS Satellite Will Not Offer Global MSS, TMI has not Applied for a Foreign Space Station License, and TMI Failed to Demonstrate its Qualifications to Hold a Commission Authorization to Access the 2 GHz Spectrum.

As MCHI noted in its Comments,⁴⁸ TMI's application should be dismissed or deferred for three reasons, each of which is independently sufficient to warrant such Commission action. First, TMI seeks Commission authorization to use 2 GHz Spectrum for the operation of a regional MSS satellite system. As discussed previously, the Commission has indicated its intention only to authorize the use of this spectrum for MSS satellite systems achieving global coverage. In addition, because allocation of the 2 GHz Spectrum to regional-only MSS systems necessarily reduces the number of global MSS satellite systems that can be authorized to use the 2 GHz Spectrum, the public interest requires the Commission to reserve the 2 GHz Spectrum for MSS satellite systems operating worldwide. Iridium⁴⁹ and Boeing⁵⁰ also requested the Commission to dismiss

⁴⁸ Comments of Mobile Communications Holdings, Inc., 17-20.

⁴⁹ Consolidated Comments and Petition to Deny of Iridium LLC, 9 (“Neither of these systems proposals is global in nature; they are regional GSO proposals. Accordingly, in light of the large number of MSS global system proposals in this processing round, Iridium hereby requests that Commission exclude Celsat's and TMI's proposals from consideration for spectrum assignments in the 1990-2010 MHz band”).

TMI's application for this reason and MCHI endorses Iridium's and Boeing's position with respect to TMI's application.

Second, TMI has not applied for a foreign space station license which is a prerequisite to the acceptance by the Commission of a LOI from TMI. According to the Commission's DISCO II Order, the Commission will allow the filing of a LOI in place of an applications for a Commission authorization only from companies that have space station license applications pending before foreign governments. Nowhere in its application does TMI claim to have such a pending application.

Third, TMI's application fails to establish TMI's qualifications to hold a Commission authorization to domestically utilize the 2 GHz Spectrum⁵¹ and thus TMI's application should be dismissed.⁵² Although the Commission's Disco II Order makes clear that the Commission will review applications by a foreign company seeking

⁵⁰ Petition to Deny or Hold in Abeyance of the Boeing Company, 5-7 ("Because of the substantial public interest benefits that can result from the provision of global satellite services, the Commission should reject TMI's proposal to operate a regional-only system serving North and South America.").

⁵¹ See Amendment of the Commission's Regulatory Policies to Allow Non-U.S. Licensed Space Stations to Provide Domestic and International Satellite Service in the United States, Report and Order, 12 FCC Rcd (1997), ¶ 154-57 ("[W]e require U.S. satellite applicants to demonstrate their legal, financial, and technical qualifications to hold a license before we will grant such applications. . . . We conclude that it is necessary to apply these same considerations to requests to serve the United States using foreign-licensed satellites.") ("Disco II Order"); Cut-off Established for Additional Space Station Applications, Letters of Intent, and Amendments to Pending Applications in the 2 GHz Frequency Band, Public Notice, 12 FCC Rcd 10446 (1997) ("Each conforming amendment, new application, or letter of intent must include a concrete, comprehensive proposal for its proposed system, describing in detail all pertinent technical, operational, and ownership aspects of the system and its ability to proceed expeditiously with construction and launch.").

Commission authorization to provide satellite services in the United States if the foreign company is pursuing but has not yet been granted a foreign license,⁵³ the Commission should not grant an authorization to such a company absent an independent showing by that company that it is qualified to hold a space station license and that the company is pursuing such a license from a foreign government. TMI provides the Commission with neither. TMI does not appear to have applied for a foreign space station license for an MSS satellite operating in the 2 GHz Spectrum and declines to provide the Commission with information about its qualifications.⁵⁴ Thus, no government agency, foreign or domestic has been given an opportunity to review TMI's qualifications. Absent such a review, TMI should not be allocated scarce 2 GHz Spectrum by the Commission.

⁵² Comments of Constellation Communications, Inc., 27 (“TMI’s failure to conform to these [disclosure] requirements should result in its LOI being dismissed. TMI should be treated like any U.S. applicant that failed to provide the requisite information.”).

⁵³ Disco II Order, ¶ 195-96 (“[W]e will require a potential foreign entrant to submit, as part of its application to the Commission [in a satellite processing round], proof that it is pursuing a license from a foreign administration.”).

⁵⁴ In its initial application, TMI states that it is “TMI’s view that the FCC need not review TMI’s basic qualifications in determining whether it is eligible to participate in the current 2 GHz processing round; [TMI’s satellite] will be licensed in Canada and TMI’s basic legal qualifications will be reviewed by Canadian authorities.” TMI Application Transmittal Letter, 3. TMI concludes that it need not disclose the information sought by the Commission under 47 C.F.R. § 25.114(a)-(b). TMI Application Transmittal Letter, 4.

C. Inmarsat Horizons LOI Should Be Dismissed Because of its Speculative Nature and Due to Competitive Concerns Relating to Inmarsat's Status as an IGO and its Anticipated Privatization.

The defects in Inmarsat's LOI were discussed in great detail in the comments of MCHI,⁵⁵ Iridium,⁵⁶ and Boeing.⁵⁷ First, Inmarsat is ambivalent regarding its possible utilization of 2 GHz Spectrum. Inmarsat's application is too speculative for the Commission to allocate scarce spectrum to Inmarsat when other applicants are firmly committed to utilizing the spectrum.⁵⁸ Second, like TMI, Inmarsat has not yet applied for a foreign space station license but, nonetheless, failed to provide the Commission with basic qualification information as required by the Commission's DISCO II Order.⁵⁹

Third, Inmarsat has "unique characteristics as a treaty-based organization that could enable [it] to distort competition."⁶⁰ The Commission is unable to address these issues through the imposition of conditions on a 2 GHz Spectrum authorization to Inmarsat because Inmarsat's ownership structure and its future role in the United States is

⁵⁵ Petitions to Deny and Comments of Mobile Communications Holdings, Inc., 22-23.

⁵⁶ Consolidated Comments and Petition to Deny of Iridium LLC, 12-19.

⁵⁷ Petition to Deny or Hold in Abeyance of the Boeing Company, 3-8. Additionally, Bell Atlantic has claimed that the Inmarsat Horizons proposed feeder links in the U.S. will cause unacceptable interference to terrestrial systems.

⁵⁸ See Inmarsat Transmittal Letter, 1, 3 ("The RFP calls for satellite proposals for a space segment to operate in either the 1.5/1.6 GHz bands or in the 2 GHz bands, so that the Council will have the option of deciding in which bands to implement the system," and "[s]election of frequency bands is planned for end November.").

⁵⁹ See supra notes 51-54 and accompanying text.

⁶⁰ DISCO II Order, ¶ 124 (holding that Inmarsat's immunity from lawsuits, including antitrust lawsuits, provides an unfair competitive advantage).

indeterminate during Inmarsat's pending privatization.⁶¹ Given the speculative nature of Inmarsat's application; Inmarsat's failure to comply with the Commission's Disco II Order; and the uncertainty regarding Inmarsat's future structure and role in the United States, the Commission should immediately dismiss Inmarsat's application so as not to delay its review of qualified applicants seeking 2 GHz Spectrum.

D. ICO's LOI Should Be Dismissed Or Deferred Because of ICO's Potentially Anticompetitive Relationship With Inmarsat, an IGO.

In its initial comments, MCHI urged the FCC to defer consideration of ICO's LOI until the complicated issues concerning competition raised by ICO's origin and current ownership structure can be evaluated.⁶² Similar concerns were expressed in comments filed by Constellation,⁶³ Boeing,⁶⁴ and, in particular, Iridium.⁶⁵ Nevertheless, ICO audaciously argues that the Big LEO licensees should be disqualified from the current processing round for the 2 GHz Spectrum; that ICO should receive preferential treatment in the current round; and that ICO, with its 2 GHz authorization in hand, should then be eligible to compete with the Big LEOs in a second processing round to allocate any

⁶¹ See Inmarsat Application Transmittal Letter, 3 ("The Horizons system will be implemented by Inmarsat, as its next generation system following the restructuring of the organisation. This restructuring is expected to be completed by end-1998."); H.R. 1872, Communications Satellite Competition and Privatization Act of 1997, 105th Cong., 1st Sess., which is now moving toward passage in the House, with another bill pending in the Senate.

⁶² Petition to Deny and Comments of Mobile Communications Holdings, Inc., 20-23.

⁶³ Comments of Constellation Communications, Inc., 22-23.

⁶⁴ Petition to Condition Authorization and Hold in Abeyance of the Boeing Company filed against ICO Services Limited.

⁶⁵ Consolidated Comments and Petition to Deny of Iridium LLC, 19-27.

remaining 2 GHz Spectrum.⁶⁶ As indicated above, the record and Commission pronouncements do not support such treatment. To the contrary, the record establishes the unmet need for MSS Spectrum by the Big LEO licensees which warrants affording them a priority over others for such spectrum.

ICO turns the DISCO II Order on its head in an attempt to justify its position. ICO, which "is subject to authorization by the United Kingdom,"⁶⁷ has not shown that it is independent of, and at arm's length from its Inmarsat parent. For that reason, ICO is infected with the same anticompetitive attributes as Inmarsat and is, accordingly, noncompliant with the DISCO II Order. In its DISCO II Order, the FCC underscored the need to assure that companies like ICO were genuinely independent of their progenitors and did not benefit from their predecessor's anticompetitive advantages. Iridium has persuasively demonstrated that ICO is not independent of Inmarsat by a carefully documented showing of (1) common ownership, (2) substantially interrelated officers and directors, (3) and close contractual ties.⁶⁸ Clear incentives exist for cross-subsidization and collusive anticompetitive conduct between Inmarsat and ICO. Thus, convincing reasons are presented in the first round filings for dismissal or deferral of ICO's LOI. The public interest does not warrant deferral of Commission action on all of the other qualified MSS applicants while the FCC grapples with the time consuming, complicated, and ever changing issues posed by ICO.

⁶⁶ Consolidated Comments of ICO Services Limited, 5.

⁶⁷ Consolidated Comments of ICO Services Limited, 8.

⁶⁸ Consolidated Comments and Petition to Deny of Iridium LLC, 21-27.

In addition, ICO's self-serving suggestion to limit FCC consideration to proposals for MSS systems in the 2 GHz Spectrum who intend to bring their systems into operation by the September 26, 1997 cut-off date is self-serving and should be rejected. Such a proposal would place non-U.S. systems such as ICO's at an advantage vis-a-vis most United States applicants based on an arbitrary standard.

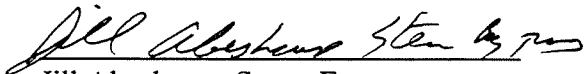
V. CONCLUSION

Based on the recognized need by the Big LEO licensees to augment or expand their presently licensed global systems demonstrated in the comments, the FCC should afford the Big LEO licensees a priority to use the 2 GHz Spectrum. Furthermore, the comments filed in this proceeding establish the public interest rationale to limit use of the 2 GHz Spectrum to MSS systems providing global coverage. For the reasons described in the comments and in these Reply Comments, the Commission should resolve the authorize the Big LEO licensees—MCHI, Iridium, and Globalstar—to expeditiously develop a plan to share the 2 GHz Spectrum. This will eliminate mutual exclusivity among the eligible MSS applicants, facilitate the prompt introduction of global MSS to the public, and assure the most efficient possible use of the spectrum.

In addition, MCHI requests the Commission to dismiss or defer action on the applications of Celsat and Constellation and the LOIs of TMI, Inmarsat, and ICO. In the event that the Commission does not authorize the use of the 2 GHz Spectrum by the Big LEO licensees, MCHI urges the Commission to engage in a negotiated rulemaking among the qualified applicants regarding use of the 2 GHz Spectrum for the provision of MSS.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

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