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MAY 4 1998

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

Federal Communications Commission  
Office of Secretary

In re applications, amendments and letters of intent of	)	
	)	
Celsat, Inc.	)	File No. 26/27/28-DSS-P/LA-97
	)	88-SAT-AMEND-98
	)	
The Boeing Company	)	File No. 179-SAT-P/LA-97(16)
	)	90-SAT-AMEND-98
	)	
Constellation Communications, Inc.	)	File No. 180-SAT-P/LA-97(26)
	)	
Globalstar, L.P.	)	File Nos. 182-SAT-P/LA-97(64)
	)	and 183 through 186-SAT-P/LA-97
	)	
Iridium, LLC	)	File No. 187-SAT-P/LA-97(96)
	)	
ICO Services Limited	)	File No. 188-SAT-LOI-97
	)	
TMI Communications and Company, L.P.	)	File No. 189-SAT-LOI-97
	)	
Inmarsat Horizons	)	File No. 190-SAT-LOI-97

PETITIONS TO DENY AND COMMENTS OF  
MOBILE COMMUNICATIONS HOLDINGS, INC.

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## SUMMARY

This proceeding involves applications or letters of intent ("LOI") regarding nine satellite systems to be operated in the 2 GHz band recently allocated for the Mobile Satellite Service. The applicants consist of the previously licensed "Big LEO" systems, which seek to augment or expand their presently-licensed systems, and a variety of other entrants, both foreign and domestic. The proposals range from global, nongeostationary orbit ("NGSO") systems (including both low earth orbit and medium earth orbit systems) to non-global geostationary orbit ("GSO") systems.

The central issues in this proceeding relate to how many of the qualified applicants can be accommodated in the allocated spectrum, and what changes (if any) in system proposals will be required to facilitate sharing. The Commission should confirm that the subject allocation is available only for truly global systems, with a priority for NGSO proposals from applicants seeking to augment those systems previously licensed in the first Big LEO processing round. During that proceeding, the FCC recognized that additional spectrum should be made available for Big LEO expansion.

Moreover, to facilitate sharing and the accommodation of as many systems as possible, it is essential that the Commission establish a negotiated rulemaking within which all qualified applicants can pursue the critical technical discussions that will be necessary to the success of this proceeding. The issues involved include coordination among GSO and

NGSO systems, among systems using different access techniques, among satellite and terrestrial systems, and among systems proposing a wide variety of service offerings.

With respect to the individual applicants, Celsat's application is defective on its face and should be denied. Celsat proposes a non-global system while requesting an excessive amount of spectrum to support that system.

Likewise, TMI's letter of intent ("LOI") should be denied. TMI proposes a non-global system, and does so without any demonstration regarding its qualifications or that it has received an appropriate system license from another administration.

Inmarsat's proposal is similarly defective and should be denied. Inmarsat proposes to use GSO satellites, and is unable to identify a specific band for its operations. Inmarsat has not filed a license application with any administration, nor can it even identify the corporate entity (or ownership thereof) of its hypothetical licensee. Finally, Inmarsat's current status as an intergovernmental organization ("IGO") -- and as the holder of a significant equity stake in ICO -- raises a host of unresolved competitive questions, which may be compounded depending upon the ultimate identity of the licensee.

Consideration of ICO's LOI should at a minimum be deferred. ICO remains an Inmarsat IGO affiliate. Thus, its status -- and the public interest in its entry into the U.S. market -- will remain unclear until the Inmarsat reorganization/privatization process is completed.

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**PETITIONS TO DENY AND COMMENTS OF  
MOBILE COMMUNICATIONS HOLDINGS, INC.**

Mobile Communications Holdings, Inc. ("MCHI"), by its attorneys, and pursuant to Section 25.154 of the Rules of the Federal Communications Commission (the "FCC" or "Commission"), 47 C.F.R. § 25.154 (1997), hereby submits these Petitions to Deny and Comments with respect to the above-captioned applications, amendments and letters of intent ("LOIs") seeking FCC authorization to provide various satellite services in the United States using the 2 GHz band (1990-2025 MHz and 2165-2200 MHz).<sup>1/</sup>

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<sup>1/</sup> See Public Notice, Satellite Applications and Letters of Intent Accepted for  
(continued...)

MCHI was licensed by the FCC in July 1997 to construct, launch and operate a global "Big LEO" satellite system comprised of 16 non-geostationary ("non-GSO") satellites in elliptical and equatorial low earth orbits ("LEO") (the "ELLIPSO" system), for the provision of voice, data, paging/messaging and other narrowband communications services on a global basis.<sup>2/</sup> MCHI is moving forward with implementation of the ELLIPSO system, and expects to begin providing commercial service in 2001. MCHI has also filed an application, to be considered in the same processing round as the above-captioned applications, for authority to launch and operate a second generation satellite system consisting of 26 non-GSO, elliptical and circular orbit LEO satellites (the "ELLIPSO 2G" system) operating in the 2 GHz band for the provision of voice and data communication services in conjunction with the ELLIPSO system.<sup>3/</sup>

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<sup>1/</sup> (...continued)

Filing in the 2 GHz Band, Report No. SPB-119 (Mar. 19, 1998) ("2 GHz Filing Notice"). Applications, amendments and LOIs were filed by Celsat, Inc. ("Celsat"), the Boeing Company ("Boeing"), MCHI, Constellation Communications, Inc. ("Constellation"), Globalstar, L.P. ("Globalstar"), Iridium, L.L.C. ("Iridium"), ICO Services Limited ("ICO"), TMI Communications and Company, L.P. ("TMI"), and Inmarsat Horizons ("Inmarsat").

<sup>2/</sup> In re Application of Mobile Communications Holdings, Inc., for Authority to Construct, Launch, and Operate an Elliptical Low Earth Orbit Mobile Satellite System, Order and Authorization, DA 97-1367 (July 1, 1997) (Int'l Bureau) ("ELLIPSO Authorization").

<sup>3/</sup> Application of Mobile Communications Holdings, Inc., for Authority to Launch, and Operate an Elliptical Low Earth Orbit Mobile Satellite System in the 2 GHz Band, File No. 180-SAT-P/LA-97(26) (filed Sept. 26, 1997) ("ELLIPSO 2G Application").

The ELLIPSO systems will provide high-quality, low-cost communication services to people in unserved areas all over the world. Employing a unique, proprietary constellation of inclined elliptical, and elliptical and circular equatorial orbits, these systems will enable MCHI to market mobile and fixed communications services at highly competitive and fully affordable rates. MCHI anticipates that these services will be in high demand, particularly in developing nations where the establishment of terrestrial communications infrastructure is economically unfeasible, and in remote and rural sections of industrialized nations not served by advanced networks.

Because the ELLIPSO 2G Application proposes the use of portions of the 2 GHz band that are also requested for use in the above-captioned filings, MCHI is an interested party with respect to the Commission's processing of these applications.

## **I. BACKGROUND**

In March 1997, the Commission allocated 70 MHz of spectrum in the 2 GHz band for use by the Mobile Satellite Service ("MSS").<sup>4/</sup> Stating that the allocation would enable providers to offer services in underserved and remote areas where PCS, cellular and other mobile services are unavailable, the Commission allocated the 2 GHz band in order to conform U.S. designations with international allocations adopted at the 1995 World Radiocommunication Conference. The Commission decided to defer establishing technical

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<sup>4/</sup> 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 10446 (1997) ("2 GHz Allocation Order").

standards and licensing rules for MSS operations in the 2 GHz band until it had received applications for such services.

The FCC's International Bureau subsequently invited interested parties to seek FCC authorization to provide satellite services in the 2 GHz band by filing, on or before September 26, 1997, amendments to existing applications, new applications for authority to launch and operate U.S. licensed systems, or letters of intent to use non-U.S. licensed space stations to provide MSS in the United States.<sup>5/</sup> In accordance with the Cut-Off Notice, ten companies, including MCHI, filed documents with the Commission requesting authority to operate a variety of satellite systems in the 2 GHz band. On March 19, 1998, the Commission found nine of the applications, including the ELLIPSO 2G Application, acceptable for filing in the first processing round of applications for services in the 2 GHz band.<sup>6/</sup>

Of the nine accepted filings, four are new applications filed by companies previously licensed by the Commission to operate global Big LEO systems -- MCHI, Constellation, Iridium and Globalstar. These four applicants all propose to establish new,

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<sup>5/</sup> Public Notice, Cut-Off Established for Additional Space Station Applications, Letters of Intent, and Amendments to Pending Applications in the 2 GHz Frequency Band, Report No. SPB-88 (July 22, 1997), Erratum (July 30, 1997) ("Cut-Off Notice"); Public Notice, Extension of Cut-off Dates For Applications, Letters of Intent, and Amendments to Applications in the 2 GHz and 36-51.4 GHz Frequency Bands, Report No. SPB-99 (Sept. 4, 1997).

<sup>6/</sup> 2 GHz Filing Notice. The tenth application, filed by PCSAT, was withdrawn.

global LEO<sup>2/</sup> systems to provide expanded capacity for their licensed Big LEO systems and additional services. Constellation proposes to establish the "Constellation-II" network of 46 LEO satellites to provide high-speed digital transmission services, including Internet access and multimedia services. Globalstar's "GS-2" system will use 64 LEO satellites to provide voice and data communications for mobile and fixed user terminals. Iridium seeks authority to construct a network of 96 LEO satellites called "MACROCELL," for the provision of voice and data communications.

Of the remaining five filings, three are LOIs seeking authorization to provide services in the United States using non-U.S. licensed satellite systems. TMI proposes to operate one GSO satellite for the provision of regional voice and data communication services, and states that it will seek a license for that satellite from Canada. Inmarsat desires to operate the "Horizons" system, a four-satellite GSO network offering multimedia communications around the world, and states that it (or some yet-to-be-defined or -established affiliate) will seek a system license from the United Kingdom. ICO, which holds a license from the United Kingdom, plans to launch a global system of 12 medium earth orbit ("MEO") satellites for voice, fax and data applications. One of the remaining two applicants, Celsat seeks authority to construct and launch one GSO satellite for the provision of regional communication services, while the other, Boeing, requests permission to operate a global network of 16 MEO satellites for the provision of air traffic navigation and global positioning system-related services.

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<sup>2/</sup> Globalstar proposes a hybrid system of LEO and geostationary ("GSO") satellites.

All of these 2 GHz filings request the use of overlapping portions of the 2 GHz band. Seven companies request authority to use the full 70 MHz of available bandwidth (35 MHz uplink and 35 MHz downlink), while Boeing and Celsat propose only partial use of the spectrum. The applicants also propose to utilize other frequency bands for feeder links and, in some cases, inter-satellite links. In the Cut-Off Notice, the FCC invited interested parties to file comments or petitions regarding these filings, including comments on the applicants' requests for feeder link and inter-satellite link spectrum.

## II. GENERAL COMMENTS

As discussed above, nine applicants have proposed to use the 2 GHz band to operate systems employing substantially differing orbital configurations and technologies, and proposing varying scopes of geographic coverage. In order to promote the most efficient use of this band, and to help eliminate or resolve any problem of mutual exclusivity, it is imperative that the Commission devise fundamental rules and policies with respect to how the band should be used, what limitations are to be placed on varying uses, and how best to ensure that the largest number of viable compatible systems obtain access to the band.

### A. Global Coverage

Given the strong interest in this band for GSO and LEO systems offering both regional and global coverage, the Commission must determine in this proceeding whether the public interest would be served by limiting the use of the spectrum to systems proposing to offer global coverage. In the 2 GHz Allocation Order, the Commission stated that the 2 GHz allocation "will allow the United States to participate in global MSS systems and

realize the benefits to consumers of such systems."<sup>8/</sup> The Commission also decided that it would not restrict the use of the 2 GHz band exclusively to either LEO or GSO constellations, because "[e]ither system can provide global coverage."<sup>9/</sup> MCHI submits that, in accordance with the Commission's recognition of the importance of this band to global MSS, the Commission should limit the use of the 2 GHz band to global networks.

In establishing rules for Big LEO service, the Commission emphasized the importance to the welfare of Americans of the deployment of a global information infrastructure, and consequently made global coverage a prerequisite for obtaining a Big LEO license.<sup>10/</sup> According to the Commission, "the inherently global nature of LEO systems offers 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."<sup>11/</sup> Similarly, MCHI believes that promoting the expansion of available bandwidth for global networks by limiting the use of the 2 GHz band to world-wide systems will "preserve the opportunity for the United

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<sup>8/</sup> 2 GHz Allocation Order at ¶ 14 (emphasis added).

<sup>9/</sup> Id. at ¶ 51.

<sup>10/</sup> Amendment of the Commission's Rules to Establish Rules and Policies to Pertain to a Mobile Satellite Service in the 1610-1626.5/2483.5-2500 MHz Frequency Bands, Report and Order, 9 FCC Rcd 5936 (1994) ("Big LEO Order").

<sup>11/</sup> Id. at 5944.

States to continue its leadership role in promoting global development through an enhanced global information infrastructure." <sup>12/</sup>

In short, the Commission should restrict use of the 2 GHz band to global systems, consistent with the intention of the 2 GHz Allocation Order. At the very least, MCHI submits that the Commission should grant some form of processing priority to global systems. Allowing an entity to operate in the United States on a regional basis may preclude another entity from using the same spectrum to provide global services. "In view of [its] interest in furthering the creation of the global information infrastructure," <sup>13/</sup> and in order to help address mutual exclusivity in a manner consistent with the public interest, the Commission should accommodate the needs of global networks before addressing proposals for limited coverage.

#### **B. Big LEO Expansion**

Not only should the Commission limit the use of the 2 GHz band to global systems, but the Commission should, at a minimum, give priority to the licensed Big LEO systems, whose need for additional spectrum is compelling. Future demand for Big LEO voice services cannot be met by only the existing Big LEO allocation. According to an April 1998 market study by Arthur Anderson, commissioned by MCHI, the MSS market by 2005 is projected to exceed 60 million subscribers. <sup>14/</sup> To meet this demand, the Big LEO systems

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<sup>12/</sup> Id. at 5970.

<sup>13/</sup> Big LEO Order at 5947.

<sup>14/</sup> In this regard, the Commission should consider limiting the use of the 2 GHz

(continued...)

will require additional capacity and the necessary spectrum to support that capacity in the near term. Within the relevant time frame, the 2 GHz band is the only spectrum likely to be available to support Big LEO expansion.

The Commission has already acknowledged that the 33 MHz of spectrum presently allocated to Big LEO systems will be inadequate to meet projected demands for global MSS.<sup>15/</sup> When it granted MCHI's application for a Big LEO license, the Commission contemplated that the 2 GHz band would be available for the expected expansion of the Big LEO systems.<sup>16/</sup>

All of the Big LEO licensees have made and will make substantial investments in system design and development in the expectation that additional spectrum will be available as the subscriber market develops. Due to the relatively short life of the LEO satellites (5-7 years), licensees will be facing design decisions in the very near future for second generation systems -- which, in the case of MCHI, will include both the present bands (1.6/2.5 GHz) and the 2 GHz band. The 2 GHz band is the only band that would be suitable for Big LEO expansion and available within the relevant time frame. The public interest would clearly be served by facilitating use of this spectrum by licensed Big LEO systems.

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<sup>14/</sup> (...continued)

spectrum to LEO systems offering narrowband voice and data services.

<sup>15/</sup> Public Notice, Report No. SPB-95 (Aug. 13, 1997).

<sup>16/</sup> ELLIPSO Authorization at ¶ 24.

By providing licensed Big LEO operators with a definitive framework within which to plan the overall implementation of second and future generations of their systems, designation of the 2 GHz band for global expansion would provide the regulatory certainty needed to finalize system design and meet future demand. Given the projected increase in demand for Big LEO services, the availability and designation of spectrum to accommodate the expansion of such systems will ensure that operators are able to deploy initial and expanded networks, and to satisfy the expected demand for such services.

**C. Band Sharing / Segmentation Among Qualified Users**

A central issue in this proceeding is how to accommodate the maximum possible number of users in the 2 GHz band. Prior to considering the possibility of auctions or other means of addressing mutual exclusivity, the Commission must consider whether all or many of the proposed global systems can coexist in the 2 GHz band. In assessing how many users can be accommodated, the Commission must determine the types of systems to be deployed, and the minimum bandwidth for each system that will allow spectrum sharing and reuse, prevent the loss of channel capacity, and still allow for the deployment of economically viable networks. In addition, the Commission will need to consider what system modifications (and related rules) may be necessary to facilitate sharing. An underlying issue is what minimal spectrum is needed to support each applicant's capacity needs.

Determining the feasibility of band sharing will require a rigorous assessment of technical compatibility issues. The Commission, working closely with the applicants, must examine the question of compatibility, for example, among LEO or MEO and GSO

systems, among CDMA and TDMA systems, and among satellite and terrestrial users. The Commission must also consider whether specific portions of the bands are more heavily encumbered. MCHI believes that a negotiated rulemaking process will provide the best forum for consideration of the relevant technical and sharing issues. Based on a preliminary analysis, MCHI believes that a sharing approach can be developed that accommodates all of the systems. However, a definitive analysis will require detailed technical information about each system's configuration and sharing ability.

Among the issues to be considered is whether full band sharing is feasible or whether band segmentation will be required. The Commission must also address sharing and compatibility issues based on the other technical characteristics of each global system proposal. For example, projections and actual requirements with respect to technical system characteristics -- such as satellite radiated power, power flux densities on the ground, uplink power levels, and other technical aspects of each application -- will help to determine the extent to which sharing among users of the 2 GHz band may be achieved. Working together and with the Commission to coordinate these technical aspects of their systems, many or all of the applicants for global systems may be able to share the spectrum, and thus eliminate any problem of mutual exclusivity.

#### D. Sharing with Existing Terrestrial Users

Because the Commission decided in the 2 GHz Allocation Order not to relocate current Fixed Service ("FS") users in the 2165-2200 MHz band,<sup>17/</sup> resolution of mutual exclusivity will require consideration of whether and, if so, to what extent the new satellite applicants can coexist with the FS users. As noted by the Commission in its Further Notice of Proposed Rulemaking in that order, it must determine to what extent FS/MSS sharing is feasible. To the extent that sharing is attainable without diminishing the maximum possible number of global service providers in the band, the Commission should pursue that option, in the interest of promoting the most efficient use of the spectrum.

Moreover, because both the costs of sharing and of relocation will be significant, the Commission must adopt rules for determining how these costs will be allocated between services and among users in each service if relocation is ultimately determined to be the only solution. As stated by the Commission in proposing rules for sharing between MSS and FS systems, new MSS licensees should only be responsible for relocating incumbent FS providers to comparable systems.<sup>18/</sup> To the extent that relocation of a terrestrial incumbent improves that incumbent's network or provides other benefits to the incumbent, such as the replacement of old FS equipment, it would be appropriate to require the incumbent to assume some of the costs of relocation.

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<sup>17/</sup> 2 GHz Allocation Order at ¶ 73.

<sup>18/</sup> Id. at ¶¶ 76-81.

### E. Additional Issues Raised by Applications

Some of the applications before the Commission raise additional issues that should be addressed prior to commencing the processing of applications. One such important issue is that of the requested feeder link spectrum. The applications filed in this processing round propose the use of a variety of spectrum bands for operation of feeder links and, in some cases, inter-satellite links. As noted by the Commission, many of the bands requested have not been allocated domestically, and many of the bands are under consideration in connection with current processing rounds.<sup>19/</sup> Whether these proposed uses are compatible with current uses of these bands, and whether the uses would comport with international and domestic allocations for these bands, are issues that should be addressed by the Commission without delay. The Commission should identify and seek allocation of appropriate frequency bands to accommodate all of the systems ultimately licensed in the 2 GHz band.

Another issue to be considered by the Commission is one raised by ICO in its LOI seeking permission to provide services in the United States using space stations licensed by the United Kingdom. ICO requests that the Commission consider in this processing round only those systems that will commence services by 2002.<sup>20/</sup> It is unclear whether this suggestion is meant to preclude applications that seek authority to establish second generation networks that may commence service after 2002 as a supplement to initial systems that will

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<sup>19/</sup> 2 GHz Filing Notice.

<sup>20/</sup> Letter of Intent of ICO (filed Sept. 26, 1997), at 6.

be placed into operation before 2002. To the extent that ICO is proposing that such applications be denied, its suggestion should be summarily rejected.

While the Commission has an interest in the efficient use of spectrum, and must act to prevent warehousing of this valuable frequency band, ICO's proposal would not achieve that objective. Requiring 2 GHz networks to commence services by 2002 would penalize developers of first generation systems that are focusing on the deployment of these systems during the first years of the new century, but that desire additional spectrum to meet the increased demand for their services, as projected through well-supported analyses. Such a limitation would only benefit ICO, which is relying on the 2 GHz band to deploy its first generation system as soon as practicable. Given the anticipated demand for expanded, enhanced global services, the Commission must attempt to accommodate as many global operations and expansions as will fit into the band.

#### **F. Mutual Exclusivity**

Implementation of the suggestions set forth above should reduce or eliminate any mutual exclusivity that might exist among the proposals. First, by viewing the 2 GHz spectrum as expansion capacity for Big LEO or global systems, and thus excluding or deferring non-global or non Big LEO systems from consideration, the Commission will eliminate several of the pending applications. Second, by eliminating or deferring other applications that raise complex issues related to competition, uncertainty of proposals, or qualification, as discussed in more detail below, the Commission can further reduce the field of contending applicants. Finally, by requiring the remaining applications to work together to address the sharing and compatibility issues discussed above, and by eliminating those

proposals that make sharing difficult or impossible, the Commission should be able to accommodate all remaining applicants in the band.

MCHI strongly believes that such a process of eliminating or deferring some applications, while requiring and assisting the remaining applicants to coordinate their systems, would eliminate mutual exclusivity. Such a process would also be superior to other means of resolving mutual exclusivity. Unlike auctions, a cooperative process will ensure the most efficient use of the spectrum by accommodating as many users as technically feasible.

Moreover, given the immense costs to be borne by operators in establishing global networks, and the possible cost of relocating current users of the 2 GHz band, imposing additional costs through the auctioning of spectrum would add substantially to the cost of these innovative systems and is simply not in the public interest. In addition, because many of the applicants propose global systems, auctions in the United States might lead to auctions elsewhere, thus possibly making it cost-prohibitive to establish global service. Financial qualification rules are also inappropriate in this context, particularly if, for example, all of the applicants can be accommodated. In any event, MCHI anticipates that none of these selection methods will be necessary if the Commission applies the proposals set forth herein.

### **III. PETITIONS TO DENY**

In accordance with the discussion above, MCHI here urges the Commission to dismiss or, at a minimum, defer consideration of four of the applications and letters of intent

filed in this proceeding. Each of the following filings has at least one significant defect that militates in favor of its dismissal or deferral.<sup>21/</sup>

**A. Celsat**

In its amended application, Celsat seeks authority to construct, launch and operate one GSO satellite for the provision of a hybrid satellite/terrestrial mobile communications service. Celsat's proposed GSO system would provide mobile voice, data, and other digital services on a regional basis, and would require exclusive use of 25 MHz of bandwidth in the 1990-2025 MHz band and 25 MHz in the 2165-2200 MHz band.

Celsat's application is defective both because it proposes the operation of a system that would offer only regional services, and because it proposes the utilization of the majority of the spectrum available in the 2 GHz band for the provision of such non-global services. As noted above, priority consideration should be given to those applications that propose global systems, and because Celsat's proposed system would provide only regional service, it should be denied.

Celsat's application is even more problematic in that it requests exclusive use of 50 MHz of the 70 MHz of spectrum allocated for the MSS in the 2 GHz band. 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

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<sup>21/</sup> MCHI emphasizes that its decision not to raise a particular issue with respect to a given application should not be construed as an endorsement of the validity of that application, or a waiver of its right to raise pertinent issues at a later point in this proceeding.

LEO systems -- a result contrary to the Commission's stated purposes in allocating spectrum in the 2 GHz band for MSS, and clearly contrary to the public interest.

Finally, to the extent that Celsat's GSO proposal makes it difficult for Celsat to share spectrum with the LEO or MEO applicants, or requires that a large block of GSO spectrum be set aside, the Commission should avoid such a result by dismissing or deferring Celsat's GSO application, and giving priority to the more efficient (from a sharing perspective) LEO/MEO networks. In so doing, the Commission will also facilitate the use of the 2 GHz band as expansion capacity to meet the projected increased demand for planned Big LEO services, in accordance with the public interest. For these reasons, MCHI respectfully requests that the Commission deny Celsat's application, or at a minimum defer its consideration until after the processing of the applications seeking to provide global coverage using LEO or MEO satellites.

**B. TMI**

TMI proposes to operate one GSO satellite for the provision of voice and data communications services in several regions of North, Central and South America. TMI is in the process of requesting a license from Canada to operate its space station and therefore has filed an LOI with the Commission seeking approval to provide services in the United States. Because TMI's LOI does not establish TMI's qualifications for Commission consideration at this time, and because the system proposed by TMI would offer only regional services, MCHI urges the Commission to reject or defer TMI's request at this time.

An initial problem with TMI's LOI is that it fails to establish TMI's qualifications to provide satellite services in the United States. Under the rules established in

the "DISCO II" proceeding, an applicant proposing to provide service in the United States through a non-U.S. licensed satellite is required to provide the Commission with the same qualification information as an applicant for a U.S. license.<sup>22/</sup> In adopting this rule, the Commission reasoned that such a requirement was necessary to enable the Commission to ensure that service by the non-U.S. licensed satellite would serve the public interest. According to the Commission, "[w]e can only determine whether service by a non-U.S. satellite in the United States is in the public interest if we have before us all the information we require U.S. applicants to provide."<sup>23/</sup>

TMI's request for a waiver of this requirement should be denied because granting such a waiver would be contrary to the Commission's rules and would not otherwise be in accordance with the public interest. Without the excluded information, the Commission simply cannot grant an authorization to TMI, which may very well be an unqualified applicant. TMI's request for a waiver amounts to nothing more than a repetition of the argument that was squarely rejected in the DISCO II Order -- that requiring such information would constitute relicensing. The Commission essentially has already summarily rejected

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<sup>22/</sup> 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 FCC 97-399, at ¶¶ 89-190 ("DISCO II Order").

<sup>23/</sup> Id. at ¶ 190.

such waiver requests by determining that the information "is necessary to ensure compliance with each of the Commission requirements that . . . will apply to non-U.S. satellites."<sup>24/</sup>

Moreover, because it does not demonstrate that TMI currently holds a license from Canada for operation of its proposed system, or that TMI is qualified to receive a license from Canada in the near term, TMI's application should be either dismissed or deferred for consideration at a later date, to prevent unnecessarily delaying consideration of applications that are ripe for Commission action at this time. Although in the DISCO II Order the Commission indicated that it would accept LOIs filed in response to cut-off notices by non-licensed entities that are in the process of seeking a foreign license,<sup>25/</sup> the Commission should not allow this privilege to delay unduly its consideration of complete requests. Therefore, MCHI urges the Commission to consider first only the following types of applications and LOIs: (i) applicants seeking licenses, (ii) foreign licensed systems, and (iii) applicants for foreign licenses that are well along in the licensing process. Because TMI's LOI does not fall within one of these categories, the Commission should not consider TMI's application at this time.

Additionally, TMI's proposed system would offer only regional services. As discussed above, the spectrum at issue should be reserved for the operation of global systems. MCHI therefore respectfully requests that the Commission dismiss TMI's LOI, or defer its processing until the grant or dismissal of applications for global LEO or MEO

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<sup>24/</sup> Id.

<sup>25/</sup> Id. at 195-96.

networks and LOIs to use foreign-licensed satellites, and until TMI has submitted the required qualification information. In the meantime, the Commission should expeditiously process the remaining applications.

### C. Inmarsat

Inmarsat proposes to operate "Horizons," a four-satellite GSO network providing personal multimedia communications on a global basis. Inmarsat plans to operate its Horizons system in either the 2 GHz band or in the 1.5/1.6 GHz bands, and plans to seek licensing of its system from the United Kingdom at a future date.

MCHI submits that Inmarsat's LOI contains numerous deficiencies and thus should be summarily dismissed. In its LOI, Inmarsat notes only that it may wish to operate Horizons utilizing the 2 GHz spectrum allocated for MSS in the United States, but that it also may instead opt to operate Horizons in the 1.5/1.6 GHz bands. Processing applications filed by applicants who have demonstrated a definite intent to provide service in the 2 GHz band should not be delayed based upon mere speculation by Inmarsat regarding its possible future intentions.

Moreover, Inmarsat's LOI warrants dismissal because Inmarsat does not have a license for operation of its system, nor does it demonstrate that it has filed an application for such a license in the United Kingdom. Under the Commission's rules, in order to be considered with other applicants in a processing round, a foreign applicant must submit with its LOI "proof that it is pursuing a license from a foreign administration."<sup>26/</sup> In its LOI,

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<sup>26/</sup> DISCO II Order at ¶ 196 (emphasis added).

Inmarsat sates: "It is envisioned that . . . the Horizons system will be submitted to [the United Kingdom] licensing procedures."<sup>27/</sup> Inmarsat's speculative future intent to file an application in the U.K. does not constitute "proof" that it is currently pursuing a license in the U.K. Like Celsat and TMI, Inmarsat also proposes to use GSO satellites. To the extent that inefficient spectrum segmentation may be required to accommodate GSO systems along with the larger, more ambitious LEO and MEO proposals, Inmarsat's and others' GSO applications **should** be dismissed or deferred.

Furthermore, as explained by Inmarsat in its LOI, Inmarsat anticipates changing its form of ownership to become a privately-owned entity at some future date and plans to seek a license for operation of the Horizons system once this change has been implemented. Inmarsat admits that the identity and makeup of the entity to be licensed "cannot therefore be determined at present."<sup>28/</sup> This fact creates an even more acute likelihood of undue and unfair delay, as the Commission cannot evaluate whether the relevant entity is qualified to obtain a license, or whether that entity's participation in the U.S. marketplace will serve the public interest, until after Inmarsat resolves its privatization issues. It would be grossly unfair to hold up consideration of applications which are complete and currently ready for consideration while Inmarsat works its way through a reorganization process.

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<sup>27/</sup> Inmarsat LOI at 4.

<sup>28/</sup> Id. at 3.

Addressing all of these above-mentioned deficiencies in Inmarsat's LOI is even more complicated because of Inmarsat's status as a treaty-based intergovernmental organization ("IGO"). As identified by the Commission, entry by IGOs and IGO-affiliates presents "unique competitive concerns."<sup>29/</sup> Furthermore, the Commission has acknowledged that "IGO's have unique characteristics as treaty-based organizations that could enable them to distort competition."<sup>30/</sup>

According to the Commission, a number of factors must be critically examined to determine whether an application to serve the U.S. market by an IGO-affiliate will create the potential for competitive harm, including "whether the affiliate is structured to prevent practices such as collusive behavior or cross-subsidization, the degree of affiliation between the IGO and its affiliate, and whether the affiliate can directly or indirectly benefit from IGO privileges or immunities."<sup>31/</sup> In addition, the Commission noted that it would consider "the ownership structure of the affiliate, the effect of IGO and other Signatory ownership, and the existence of clearly defined arms-length conditions governing the affiliate-IGO relationship."<sup>32/</sup> Finally, the Commission noted that it was "essential that an IGO not register or coordinate spectrum or orbital locations on behalf of its affiliate."<sup>33/</sup> All of these factors must be established before consideration of Inmarsat's LOI can move forward. Most, if not

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<sup>29/</sup> DISCO II Order at ¶ 107.

<sup>30/</sup> Id. at ¶ 125.

<sup>31/</sup> Id. at ¶ 136.

<sup>32/</sup> Id.

<sup>33/</sup> Id. (emphasis added).

all, of these evaluations cannot be made at this time, however, because Inmarsat has not provided the Commission with the necessary information and because Inmarsat's future ownership is unclear.

Because Inmarsat has failed to establish that it is qualified for consideration in this processing round, and because a great deal of unavailable factual information must be developed and evaluated, Inmarsat's LOI should be dismissed.

#### **D. ICO**

ICO proposes to operate ten to twelve MEO satellites to provide voice, fax and data applications on a world-wide basis. ICO has obtained authority from the United Kingdom to operate its system in the 2 GHz band, and has filed an LOI to cover operations in the United States.

MCHI submits that the Commission should defer consideration of ICO's LOI until the complex competitive concerns raised by ICO's origin and current ownership structure can be thoroughly evaluated. ICO's origins stem from an Inmarsat project that was eventually transferred to a privately-owned company. However, Inmarsat and its signatories continue to own substantial stakes in ICO. As discussed above, Inmarsat's ownership structure is currently in flux. Until decisions regarding Inmarsat's possible privatization have been resolved, a meaningful evaluation of the impact that ICO's proposed participation would have upon the U.S. market cannot be performed.

As recognized by the Commission in its DISCO II Order, moreover, IGOs and IGO-affiliates have special characteristics that could be used unfairly to distort competition.<sup>34/</sup> Because evaluation of ICO's LOI necessitates consideration of Inmarsat's involvement, MCHI respectfully urges the Commission to defer consideration of ICO's LOI until the complicated issues surrounding Inmarsat's future have been resolved. In the meantime, the Commission should act on the remaining applications.

### CONCLUSION

As demonstrated above, the Commission should proceed to implement certain rules and policies to resolve mutual exclusivity and ensure that deployment of the 2 GHz band serves the public interest. The Commission should dismiss or defer processing of the applications of Celsat, TMI, Inmarsat, and ICO, for the reasons set forth above. The Commission should then require the remaining applicants to engage in a negotiated rulemaking, and to coordinate their systems in an attempt to facilitate maximum usage of the 2 GHz band, deferring those proposals that render optimal sharing impossible. Adoption of

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<sup>34/</sup> DISCO II Order at ¶ 107.

these suggestions will almost certainly eliminate any mutual exclusivity, and advance the public interest through rapid implementation of publicly beneficial global services.

Respectfully submitted,  
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CERTIFICATE OF SERVICE

I, Grace G.B. Belmonte, hereby certify that the foregoing Petitions to Deny and Comments of Mobile Communications Holdings, Inc. was sent by First Class mail or hand delivered(\*) this 4th day of May, 1998, to the following:

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