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JUN - 3 1998

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

Federal Communications Commission
Office of Secretary

In the Matter of)	
)	
The 2 GHz Band Mobile)	
Satellite Service Applications and)	
Letters of Intent of)	
)	
The Boeing Company,	)	File Nos. 179-SAT-P/LA-97(16)
	)	90-SAT-AMEND-98
)	
Celsat, Inc. and Celsat	)	File Nos. 26/27/28-DSS-P/LA-97
America, Inc.,	)	88-SAT-AMEND-98
)	
Constellation Communications, Inc.,	)	File No. 181-SAT-P/LA-97(46)
)	
Globalstar, L.P.,	)	File Nos. 182-SAT-P/LA-97(64)
	)	183-186-SAT-P/LA-97
)	
ICO Services Limited,	)	File No. 188-SAT-LCI-97
)	
Inmarsat Horizons,	)	File No. 190-SAT-LOI-97(4)
)	
Iridium LLC,	)	File No. 187-SAT-P/LA-97(96)
)	
Mobile Communications Holdings, Inc., and	)	File No. 180-SAT-P/LA-97(26)
)	
TMI Communications and Company,	)	File No. 189-SAT-LOI-97
Limited Partnership)	

CONSOLIDATED REPLY COMMENTS OF ICO SERVICES LIMITED

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CONSOLIDATED REPLY COMMENTS OF ICO SERVICES LIMITED

ICO Services Limited ("ICO") hereby submits its consolidated reply to the comments on the applications of The Boeing Company ("Boeing"), Celsat, Inc. and Celsat America, Inc. ("Celsat"), Constellation Communications, Inc. ("CCI"), Globalstar, L. P. ("Globalstar"), Iridium LLC ("Iridium") and Mobile Communications Holdings, Inc. ("MCHI") for authority to construct,

launch and operate nongeostationary (“NGSO”) and geostationary (“GSO”) mobile satellite systems in the 2 GHz frequency band. ICO also submits its consolidated reply to the comments on the letters of intent of Inmarsat and TMI Communications and Company, Limited Partnership (“TMI”) to operate non-U.S. licensed space stations to provide mobile satellite service (“MSS”) to and within the United States, using frequencies in the 2 GHz MSS band, and replies in support of ICO’s Letter of Intent to operate non-U.S. licensed space stations to provide mobile satellite service to and within the United States.¹

SUMMARY

The comments in this proceeding generally confirm ICO’s view, expressed in its consolidated comments, that many of the pending requests for access to 2 GHz MSS spectrum are premature. As a number of commenters point out, simultaneous authorization of all of the applicant systems will not promote new competition in the MSS market and will result in warehousing of spectrum. Accordingly, the Commission should initiate an expedited proceeding in which basic eligibility rules for 2 GHz MSS operators can be adopted promptly. New entrants that comply with these eligibility requirements can be granted access to 2 GHz spectrum, subject to compliance with a spectrum band plan and detailed technical rules to be developed in the second phase of the rulemaking proceeding. Those applications from systems that will result only in expansion of previously authorized Big LEO systems, are not well defined, or do not comply with the basic eligibility requirements should be deferred to a subsequent processing round. Consistent with this approach, ICO’s system, which already has complied with stringent due

¹ In these reply comments ICO will use the word “application” and “applicant” to refer both to U.S.-licensed systems’ requests for assignment of spectrum and to letters of intent from non-U.S.
(Fn Cont’d)

diligence requirements under the administration of the United Kingdom and does not presently have access to MSS spectrum in the United States, should be authorized in this first phase of the proceeding. Contrary to the views of some commenters, ICO's authorization should be free of conditions that are not imposed upon U.S.-licensed systems. Imposition upon ICO of discriminatory constraints will violate WTO principles and harm, rather than promote, competition in the U.S. satellite market.

I. THE COMMENTS CONFIRM THAT THE COMMISSION SHOULD AUTHORIZE ONLY QUALIFIED NEW ENTRANTS AT THIS TIME

A number of the comments in this proceeding lend support to ICO's recommendation that authorizations in this first processing round should be limited to well defined, new entrant systems that comply with basic eligibility requirements adopted pursuant to an expedited proceeding. Notably, Celsat and Boeing agree that the Commission should seek to increase the total number of MSS systems serving the United States, and Celsat points out that this goal is best served by giving qualified new entrants priority over existing Big LEO licensees.² Similarly, Boeing urges that 2 GHz financial qualification rules should be adopted promptly, and Iridium recommends that the Commission impose financial requirements to deny the application of Constellation.³

Not all commenters agree that applicants for 2 GHz MSS spectrum should comply with basic eligibility requirements. Notably, MCHI suggests that financial qualification requirements

licensed systems seeking access to 2 GHz spectrum in the United States, unless the context indicates otherwise.

² Comments of Celsat America, Inc. at 2-10 ("Celsat Comments"); Petition to Hold [Constellation Communications Inc. Application] in Abeyance of the Boeing Company at 2-3 ("Boeing Comments on Constellation Application").

³ Petition to Hold [TMI Communications and Company] in Abeyance of the Boeing Company at 11-13 ("Boeing Comments on TMI Application"); Consolidated Comments and Petition to Deny of Iridium LLC at 4 ("Iridium Comments").

generally are unnecessary, and that such requirements are particularly unnecessary if the Commission finds that all applicants can be accommodated within the available spectrum.⁴ As the Commission has made clear in the past, however, strict financial qualification standards are not simply a means of winnowing mutually exclusive applicants; they also are an important means of assuring that valuable radiofrequency spectrum will be used rather than warehoused.⁵ This concern applies equally, whether or not applicants in a processing round are found to be mutually exclusive. Accordingly, basic eligibility requirements should be imposed as a means of screening premature applications.

A number of commenters also confirm that the Commission should promote the efficient and timely use -- rather than indefinite sidelining -- of scarce 2 GHz MSS resources.⁶ Other commenters agree that the Commission should defer authorization of proposed systems that lack technical definition or present questions of operational feasibility.⁷

⁴ Petitions to Deny and Comments of Mobile Communications Holdings, Inc. at 15 ("Comments of MCHI"). MCHI also suggests that Big LEO applicants, which already are authorized access to MSS spectrum, should be given priority over new entrants in 2 GHz spectrum assignments. *Id.* at 8. This anticompetitive proposal should be rejected as contrary to the Commission's past determination that spectrum should be assigned in ways that expand the number of choices available to U.S. consumers. *Amendment of Part 25 of the Commission's Rules to Establish Rules and Policies Pertaining to the Second Processing Round of the Non-Voice, Non-Geostationary Mobile Satellite Service*, 11 FCC Rcd 19841, 19846 (1996).

⁵ *Amendment of Part 25 of the Commission's Rules to Establish Rules and Policies Pertaining to the Second Processing Round of the Non-Voice, Non-Geostationary Mobile Satellite Service*, 10 CR 1, 4 (1997); *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*, 9 FCC Rcd 5936, 5949-50 (1994).

⁶ Iridium Comments at 3-4; Petition to Hold [Globalstar, L.P. Application] in Abeyance of the Boeing Company at 4-5 (Boeing Comments on Globalstar Application); Celsat Comments at 3.

⁷ Comments of Constellation Communications, Inc. at 12-14 ("Constellation Comments"); at 14-15 Boeing Comments on TMI Application; Boeing Comments on Globalstar Application at 10-11.

II. THE COMMENTS AGREE THAT SEVERAL APPLICATIONS ARE PREMATURE

In addition to the concurrence of several commenters with the principle that immediate consideration should be limited to well defined, fully qualified new entrants, a number of commenters agree with ICO that this principle requires the Commission to defer its consideration of several of the pending applications.

A. Celsat, Constellation And ARINC Confirm That Authorization Of Boeing's Proposed System Is More Appropriate In The L Band Than In The 2 GHz MSS Band

ICO's comments point out that Boeing's proposed Aeronautical Telecommunication Network ("ATN") and Traffic Information Service ("TIS") systems are not commercial services of the kind for which 2 GHz MSS spectrum was allocated, but are aeronautical safety services for which the aviation community likely would demand preemptive protection.⁸ The comments of Celsat and Constellation make the same observation and urge the Commission not to authorize Boeing's proposed services for operation in the 2 GHz MSS band.⁹ More significantly, Aeronautical Radio, Inc. ("ARINC") expressly confirms ICO's prediction that authorization of Boeing's services will result in a demand for preemptive treatment.¹⁰ In its comments, ARINC asks the Commission to "adopt requirements for mobile satellite systems in the 2 GHz MSS band to afford priority access and real-time preemptive capabilities for AMS(R)S communications . . .

⁸ Consolidated Comments of ICO Services Limited at 17-18 ("ICO Comments").

⁹ In addition, Celsat correctly points out that Boeing's application presents a risk of warehousing of spectrum. As Celsat notes, even if the Commission approves Boeing's application and Boeing is otherwise prepared to offer service, deployment of Boeing's system "would require the consent of every air traffic control agency in all the countries with airlines flying to and from the U.S." Celsat Comments at 7-8. If such ubiquitous consent is delayed or refused, any spectrum assigned to Boeing will remain idle.

¹⁰ ICO Comments at 17; Comments of Aeronautical Radio, Inc. at 3-4 ("ARINC Comments").

[including] the need for adequate frequency safeguards to Boeing's proposed AMS(R)S/aeronautical radionavigation MEO satellite systems."¹¹

On this record, the Commission should not authorize the proposed Boeing services to operate in the 2 GHz MSS band, and should at most consider those services for operation elsewhere in the 1-3 GHz spectrum -- for example, in the upper L-band at 1545-1555 MHz and 1646.5 MHz-1656.5 MHz, where footnotes to the U.S. and International Tables of Frequency Allocations require priority access with real-time preemptive capability. In the alternative, the Commission should defer a decision on Boeing's application until this issue is addressed within the International Telecommunication Union and a subsequent FCC proceeding.

B. A Number Of Comments Recommend Denial Or Deferral Of Inmarsat's Authorization

ICO's comments point out that Inmarsat's ability to provide MSS service to the U.S. market, and the manner in which that service will be provided, may depend upon legislative developments in the United States Congress.¹² Accordingly, ICO asks that Inmarsat's request be deferred.¹³ If the present uncertainty concerning Inmarsat's access to the U.S. market is resolved and Inmarsat's proposed use of 2 GHz spectrum otherwise qualifies for approval, Inmarsat's request for access then can be approved.¹⁴

Iridium correctly points out that consideration of Inmarsat's request is complicated, not only by the uncertain impact of pending legislation, but by the lack of detail concerning Inmarsat's

¹¹ ARINC Comments at 6 .

¹² ICO Comments at 12-13.

¹³ *Id.*

¹⁴ *Id.*

proposed privatization.¹⁵ Similarly, Constellation notes that Inmarsat has not provided an FCC Form 312 or any of the technical information required by §25.114 of the Commission's rules, and has failed even to confirm that the Inmarsat Horizons satellite will use the 2 GHz MSS band.¹⁶ On these facts, the Commission should defer the Inmarsat request for access to 2 GHz MSS spectrum in the United States to a later processing round.

C. Boeing And Constellation Agree That Proponents Of "Hybrid" Systems Should Justify Those System Designs Or Make An Election Between The Alternative Approaches

A number of applicants propose systems that will use more than one multiple access technology or will combine satellites in geostationary orbits with satellites in nongeostationary orbits. ICO's comments urged that proponents of these hybrid systems should be required to refine their applications, either by electing among alternative system designs or offering technical justification for combining different approaches within systems.¹⁷ A number of comments express similar concerns and request that the Commission not approve these applications in their present form.

Notably, ICO's comments point out that the proposed systems of Boeing, Iridium, Globalstar and Celsat, which will utilize both CDMA and TDMA methods of modulation and multiple access, are technically immature and inherently inefficient.¹⁸ Accordingly, ICO has urged the Commission to require those applicants to amend their applications now or, in the alternative,

¹⁵ Iridium Comments at 16.

¹⁶ Constellation Comments at 23-24.

¹⁷ ICO Comments at 15-18.

¹⁸ *Id.* at 15-16.

to explain more fully the operational characteristics of any hybrid system they propose to deploy and the impact of those systems on spectrum use and inter-system sharing.¹⁹

Constellation's comments express similar concern about "the lack of detail on how the use of both TDMA and CDMA on the same system would affect inter-system coordination and the Commission's frequency assignment process."²⁰ In particular, Constellation points out that if the Commission authorizes the use of both multiple access techniques in a single system, the Commission must determine a range of complex questions, including whether the 2 GHz band will be split between TDMA and CDMA techniques, or whether bands within 2 GHz will be assigned to systems or groups of systems within which CDMA and TDMA approaches somehow will coexist. Constellation's comments show that the impact of proposed "hybrid" TDMA/CDMA systems is a threshold question that must be clarified before the Commission can even begin to consider a band plan for 2 GHz MSS spectrum.

Similarly, Boeing notes the difficulties posed by the use of CDMA and TDMA in the same system and urges the Commission at least to require disclosure of the percentage of proposed capacity that applicants will use for each access technique.²¹ Boeing's comments support ICO's view that the Commission cannot proceed with the spectrum assignment process for these hybrid systems until it knows the extent and impact of proposals to combine both multiple access methods in a single system.

¹⁹ *Id.*

²⁰ Constellation Comments at 13.

²¹ *See* Boeing Comments on TMI Application at 14-15; Boeing Comments on Globalstar Application at 10-11.

In addition to the potential difficulties posed by proposals to combine CDMA and TDMA multiple access technologies, Globalstar's application includes a proposal to use both GSO and NGSO satellites, and also suggests an alternative system architecture that uses only NGSO satellites to provide services that utilize both 2 GHz and 1.6/2.4 GHz MSS bands. As ICO pointed out in its comments, this proposal presents far more complex inter-system interference and coordination problems than a single GSO or NGSO system, and Globalstar should be required, in a subsequent processing round, to elect and fully define the proposed alternative system that it will deploy.²²

The comments of Boeing and Constellation underscore and amplify ICO's concern. As both commenters point out, a hybrid GSO/NGSO system not only increases inter-system coordination problems substantially, but also may "require an amount of spectrum equivalent to that needed for two systems."²³ Accordingly, Boeing urges the Commission to require Globalstar to specify the spectrum requirements of its proposed system, and Constellation requests that Globalstar "be required to demonstrate that such a system architecture uses no more spectrum than a 2 GHz MSS system using only NGSO satellites."²⁴ ICO concurs in these requests, and again urges the Commission to defer consideration of Globalstar's proposed system to a subsequent processing round.

²² ICO Comments at 16.

²³ Constellation Comments at 22; *see also* Boeing Comments on Globalstar Application at 11.

²⁴ Constellation Comments at 22.

D. The Commission Should Develop Eligibility Rules For MSS Systems Using 2 GHz Spectrum On An Expedited Basis

Taken together, the comments in this proceeding offer substantial support for ICO's view that favorable consideration of all pending applications at this time will result in spectrum warehousing, authorization of unqualified systems and needless difficulty in formulating a 2 GHz MSS band plan.²⁵ Accordingly, authorization of qualified new entrant systems should not be delayed while the Commission develops detailed service rules, including a band plan, to accommodate applicants that may never use their assigned spectrum to provide service. The public interest will be better served by prompt authorization of qualified systems that will bring new competition to the U.S. satellite marketplace.

Authorization of qualified, new entrant systems can be expedited without prejudice to the rights of any interested parties. The Commission first should conduct an expedited proceeding for the limited purpose of adopting legal and financial eligibility requirements. In order to simplify this expedited proceeding, the Commission might propose that the existing, Big LEO financial and reporting requirements simply be extended to 2 GHz MSS applicants.²⁶ Specifically, the Commission can propose that applicants seeking access to 2 GHz spectrum in the United States comply with the financial requirements of 47 C.F.R. §25.143(b)(3) and the reporting requirements

²⁵ Other comments, not discussed here in detail, also support ICO's observation that a number of applications are premature. For example, Iridium concurs in ICO's view that Constellation and MCHI are financially unqualified to provide MSS service in the United States, *see* Iridium Comments at 11-12 & n.24, and Constellation agrees with ICO's suggestion that the Commission review TMI's usage of its existing spectrum before considering TMI's request for access to the 2 GHz MSS band. Constellation Comments at 26-27.

²⁶ The service rules for Big LEO systems are not all appropriate for MSS operations at 2 GHz, and those rules should not simply be extended to 2 GHz MSS systems. Instead, as suggested here, the Commission should develop detailed technical rules for 2 GHz MSS in a follow-on proceeding.

of 47 C.F.R. §25.143(e). Commenters opposing the Commission's proposal would have the burden of showing that these Big LEO rules, which the Commission found after notice and comment to be appropriate for MSS operations at 1.6/2.4 GHz, are somehow unsuitable for MSS operations at 2 GHz.²⁷ It should not be difficult for the Commission to expedite proceedings confined to this narrow question.

New entrant applicants that meet these threshold requirements then can be authorized access to 2 GHz MSS spectrum in the United States,²⁸ subject to compliance with a spectrum band plan and detailed technical rules to be developed in the second phase of this proceeding. Applicants that do not meet the basic eligibility requirements in this first processing round can be deferred for consideration in the follow-on processing round.

III. ICO'S REQUEST FOR ACCESS TO 2 GHZ SPECTRUM SHOULD NOT BE DENIED, DEFERRED OR MADE SUBJECT TO DISCRIMINATORY CONDITIONS

Iridium and other commenters propose that ICO, a fully prepared and qualified MSS operator that will bring new competition to the U.S. satellite marketplace, should be denied participation in this processing round in favor of Iridium and other existing, Big LEO licensees; or that, if ICO enters the MSS market in the United States, it should do so subject to conditions that are not imposed upon U.S. licensees.²⁹ These proposals are contrary to the commitments of the

²⁷ ICO already has complied with the stringent due diligence requirements of the United Kingdom, represented by the U.K. Department of Trade and Industry and its Radiocommunications Agency.

²⁸ Prior to development of a final band plan and detailed service rules, the Commission should authorize qualified new entrants approved in this first processing round to access the entire 2 GHz MSS allocation. These system operators then can arrive at an interim plan for their use of the spectrum and submit that plan to the Commission for approval.

²⁹ Iridium Comments at 19-30; Boeing Comments on ICO Letter of Intent at 5-8; Comments of MCHI at 23-24.

United States in the WTO Basic Telecom Agreement, will not serve the public interest and must be denied.

A. There Is No Basis For Denial Or Deferral Of ICO's Request For Access To U.S. 2 GHz MSS Spectrum

The Commission has made it clear that in considering spectrum access requests from IGO affiliates,³⁰ it will apply the same standard that the Commission applies to requests to operate satellites licensed by WTO member countries. Specifically, the Commission will apply a presumption in favor of entry that can be overcome only "in the exceptional case in which an application would pose a very high risk to competition in the U.S. satellite market. . . ."³¹

Contrary to the argument made in Iridium's comments, this test is not satisfied by a simple recitation of an applicant's ownership structure, governance arrangements or speculation about the applicant's ability to engage in cross-subsidization with another entity.³² The "very high risk to competition" test is met only where an opponent shows that granting an application will result in "market concentration, discrimination, below average variable cost pricing, monopoly supply of service. . . or where the applicant has market power and could use that power to raise prices and limit output in the U.S. satellite market."³³ Contrary to Iridium's claims, the investment and

³⁰ ICO continues to disagree with the Commission's adoption of a definition of "IGO affiliate" that was not proposed or subject to comment from interested parties. *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*, 12 FCC Rcd 24094, 24154 n. 283 (1997). ("DISCO II Report and Order").

³¹ *Id.*

³² Iridium Comments at 19-26.

³³ DISCO II Report and Order at 24113. Unless this standard is made extremely exacting, both in substance and in the rigorousness of the burden of proof required, the resulting delay, denial or conditioning of applications on competitive grounds will abrogate the commitment of the United States in the WTO Basic Telecom Agreement. *Id.* at 24103.

operational structure of ICO do not present a risk of any of these varieties of anticompetitive behavior.

First, there is no risk that ICO's entry into the U.S. MSS market will result in market concentration. Of the nine entities requesting access to U.S. 2 GHz MSS spectrum, four are Big LEO operators seeking to expand systems already authorized. Any risk of concentration in this market is posed primarily by those applicants, who will use 2 GHz spectrum to expand their systems and further exploit their existing first-mover advantage. Against this background, authorization of ICO, a new entrant lacking previous access to MSS spectrum resources, will reduce rather than increase concentration in the MSS marketplace.

Second, there is no risk that authorization of ICO will result in discrimination against any other MSS operator. ICO does not control access to any essential facility. Contrary to Iridium's claim, the fact that Inmarsat and Inmarsat signatories have invested in ICO, raises no likelihood that those signatories will discriminate against ICO's competitors in the signatories' home markets.³⁴ Many ICO investors are in countries that are WTO members and are fully bound by the market-opening commitments of the WTO Basic Telecom Agreement. Also, in most of the

³⁴ The two largest Big LEO licensees, Iridium and Globalstar, are themselves supported by major local companies in countries that have traditionally closed telecommunications markets and by investors that provide substantial telecommunications services in countries with large markets (in 1993, in excess of \$60 billion GDP). Comments of ICO Global Communications, *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*, IB Docket No. 96-111, at 29-31 and Exhibit A (July 15, 1996). For example, in China, Iridium China Ltd. is working with Iridium; in Saudi Arabia, Iridium Middle East Corporation includes two of Saudi Arabia's largest companies; and in Pakistan, Globalstar's investor Hasan Associates Ltd. of Pakistan is working with Hyundai/DACOM. Other major Iridium investors include but are not limited to, Korea Mobile Telecom, Nippon Iridium Corporation, Thai Satellite Telecommunications Co., Ltd., and Vebacom GmbH. *Id.* Globalstar's investors include, but are not limited to Alcatel, France Telecom, DACOM and Vodafone. *Id.* at 30.

large countries or groups of countries where ICO will operate, including China, the European Union, Canada, Mexico, India and Russia, the entity that will make the regulatory decisions concerning market access is entirely separate from the operational entities that are ICO investors. Finally, and most telling, the record shows that ICO's Big LEO competitors have fared at least as well as ICO in securing access to domestic markets around the world.³⁵ On this record, any claim that ICO and its investors can engage in effective discrimination against other MSS systems must be dismissed as pure speculation.

Any concern that ICO can engage in below-cost pricing, such as through cross-subsidization, also is misplaced. ICO, at the urging of and in cooperation with the United States Government, has adopted the "Inmarsat Principles," which prohibit cross-subsidization and all other forms of discrimination.³⁶ Iridium offers no evidence that ICO will violate this commitment,

³⁵ The suggestion that Inmarsat Signatories *might* discriminate against ICO's competitors in market access cannot overcome the fact that Iridium and other commenters have pointed to no instance in which such discrimination has occurred. In fact, Edward Staiano, Chairman and Chief Executive Officer of Iridium, was asked in 1997 whether "obtaining licensing and regulatory approval have been more difficult than [Iridium] expected." Mr. Staiano replied that "[n]o one has shut the door on us. In some areas the process has been more cumbersome and it's taken longer, [but] [w]e've also had some very pleasant surprises." *Space News*, Sept. 1-7, 1997.

³⁶ The Inmarsat Principles are set out in the Report of the Tenth (Extraordinary) Session of the Inmarsat Assembly at Annex IV, Views of The Council on the Principles Listed by The Intersessional Work Group Regarding the Formation of the Inmarsat-P affiliate (Dec. 13, 1994) and include commitments to ensure that "[a]s a private United Kingdom company, the [new entity] will have no treaty-based privileges and immunities," will not engage in cross-subsidization with Inmarsat, will have broad and open ownership and "will not seek exclusive authorization to provide services in any country or region." The prohibition on cross-subsidization, in particular, is reinforced by requirements for separate accounting systems, arms-length dealings between Inmarsat and the new entity and a prohibition on the ownership of any operating property in common between Inmarsat and the new entity. The Executive Branch made ICO's adoption of the Inmarsat Principles a condition of Executive Branch approval of COMSAT's contribution to Inmarsat for Inmarsat's investment in ICO. See Letter from Larry Irving, Assistant Secretary for Communications and Information, U.S. Department of Commerce and Vonya B. McCann, United
(Fn Cont'd)

and merely speculates that ICO and Inmarsat may take advantage of a service contract between the two entities to shift costs from ICO to Inmarsat.³⁷ In the absence of solid evidence that Inmarsat has an incentive to charge ICO below-cost rates for the services Inmarsat will perform under the contract, however, this speculation must be dismissed as entirely unfounded.³⁸

Finally, ICO certainly poses no risk that it will achieve monopoly supply of service and control price or restrict output in the U.S. market for satellite services. As noted earlier, ICO is a new entrant that will enter a highly competitive market with a zero market share. If, however implausibly, ICO is at some time shown to possess actual or incipient market power, the United States can take appropriate action under the antitrust laws.

As this discussion shows, Iridium's recitation of ICO's ownership, governance and contractual relationships with Inmarsat fails utterly to demonstrate any risk -- much less a very high risk -- to competition, and cannot rebut the presumption in favor of granting ICO access to the MSS market in the United States.

States Coordinator for International Communications and Information Policy, U.S. Department of State, to Reed Hundt, Chairman, Federal Communications Commission (Dec. 6, 1995).

³⁷ Iridium Comments at 25-26. Iridium also suggests that ICO somehow will derive an unfair benefit from the agreement under which Inmarsat will serve as exclusive distributor for some of ICO's aeronautical and maritime services, conditioned upon Inmarsat's compliance with contractual performance requirements. Iridium Comments at 25. The exclusive distributorship arrangement, which was incorporated in ICO's original subscription agreement with Inmarsat and was well known to the United States Government and other interested parties, concerns only a subset of ICO's services and will expire, by its terms, two years after ICO commences service.

³⁸ In any event, the service contract expired in April, 1998 and has been renewed for only one additional year and confined to a limited set of services. Further renewals of the contract are not anticipated when the present renewal period ends in April, 1999.

B. Denial Or Deferral Of ICO's Authorization Would Be Anti-Competitive

As ICO pointed out in its comments, Iridium and other existing Big LEO licensees already have a first mover advantage in the U.S. MSS market that will be reinforced, rather than diminished, by the assignment to those applicants of additional spectrum in this processing round. Only authorization of new entrants such as ICO will bring new competition to the MSS marketplace.

By requesting that ICO's authorization be denied or deferred, Iridium seeks to enhance the marketplace advantage of existing MSS licensees and delay the advent of new competition. This suggestion is contrary to the Commission's pro-competitive policy and must be rejected.

IV. OTHER TECHNICAL ISSUES

The comments also suggest two technical questions that merit a brief response.

First, Constellation urges that ICO's authorization to serve the United States should be conditioned on ICO's "achieving successful coordination of feeder link spectrum with the currently licensed CCI system."³⁹ ICO acknowledges that any system operator's authorization to use 5/7 GHz MSS feeder links should be conditioned on that operator's successful coordination with other NGSO MSS systems in accordance with ITU Resolution 46 procedures. This condition does not apply only to ICO's authorizations, however, but must apply equally to Constellation and any other user of 5/7 GHz MSS feeder links.⁴⁰

Another technical issue is raised by the Wireless Cable Association ("WCA"), which asks the Commission to confirm that any 2 GHz MSS authorizations will be conditioned on those

³⁹ Constellation Comments at 23.

⁴⁰ In this connection, ICO urges the Commission to initiate and conclude a proceeding for domestic allocation of 5/7 GHz spectrum for use in MSS feeder links.

systems' acceptance of interference from all Multipoint Distribution Service ("MDS") stations and Instructional Television Fixed Service ("ITFS") facilities operating in adjacent bands.⁴¹ The Commission should not simply accede to WCA's request, but should investigate whether the Part 21, Subpart K rules for the maximum (permissible) out-of-band power of an MDS transmitter are sufficiently stringent to protect downlink transmissions to MSS user terminals from harmful interference as result of MDS/ITFS transmissions outside the assigned channels for these services. The present out-of-band emission standard, which was effective on November 1, 1991, does not mention protection of the nearby MSS bands. Accordingly, the Commission should not consider WCA's request until that rule is reviewed and clarified or upgraded as needed to protect well-designed MSS user terminals from harmful interference.

Conclusion

The comments in this proceeding confirm that ICO and other qualified new entrants to the MSS market should be authorized expeditiously in this first round of the 2 GHz MSS proceeding. Accordingly, the Commission should take the following actions:

- (1) establish basic eligibility requirements on an expedited basis;
 - (2) give priority in 2 GHz MSS assignments to those applications from new entrants that presently comply with the Commission's eligibility rules;
 - (3) initiate parallel proceedings to examine the use of spectrum already assigned to incumbent Big LEOs and certain other 2 GHz applicants in the 1.6/2.4 and 1.5/1.6 GHz bands, and consider the extent to which those 2 GHz applicants can be accommodated in other spectrum;
- and

⁴¹ Comments of the Wireless Cable Association International, Inc. at 1-2.

(4) consider initiation of a second processing round for all deferred applicants, after the first round is completed, in which new applicants also will be permitted to participate on a "second generation" basis.

ICO's proposed approach will prevent warehousing of spectrum and bring new competition to the U.S. satellite market with a minimum of delay.

Respectfully submitted,

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June 3, 1998

Certificate of Service

I, Kathryn M. Stasko, do hereby certify that the foregoing **CONSOLIDATED REPLY COMMENTS OF ICO SERVICES LIMITED** were delivered, via first class mail, postage prepaid, on this 3rd day of June, 1998, to the following:

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