

**COPY
RECEIVED**

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

JUN 18 1998

In the Matter of the Applications of)	
	)	Federal Communications Commission
	)	Office of Secretary
The Boeing Company	)	File Nos. 179-SAT-P/LA-97(16) &
	)	90-SAT-AMEND-98
)	
Celsat, Inc.	)	File Nos. 26/27/28-DSS-P/LA-97 &
	)	88-SAT-AMEND-98
)	
Constellation Communications, Inc.	)	File No. 181-SAT-P/LA-97(46)
)	
Globalstar, L.P.	)	File Nos. 182-SATP/LA-97(64) &
	)	183 - 186-SATP/LA-97
)	
ICO Services Limited	)	File No. 188-SAT-LOI-97
)	
Inmarsat	)	File No. 190-SAT-LOI-97(4)
)	
Iridium, L.L.C.	)	File No. 187-SAT-P/LA-97(96)
)	
Mobile Communications Holdings, Inc.	)	File No. 180-SAT-P/LA-97(26)
)	
TMI Communications and Co., L.P.	)	File No. 189-SAT-LOI-97

**CONSOLIDATED REPLY OF
THE BOEING COMPANY**

Peter D. Sloane
Office of the Group Counsel
Information, Space & Defense
Systems Group
The Boeing Company
P.O. Box 3999, M/S 84-10
Seattle, Washington 98124-2499
(253) 773-2570

Joseph P. Markoski
Herbert E. Marks
David A. Nall
Bruce A. Olcott
Squire, Sanders & Dempsey L.L.P.
1201 Pennsylvania Avenue, N.W.
P.O. Box 407
Washington, D.C. 20044-0407
(202) 626-6600

Its Attorneys

June 18, 1998

TABLE OF CONTENTS

I.	INTRODUCTION & SUMMARY	2
II.	NO PARTY HAS PROVIDED A LEGITIMATE BASIS FOR EXCLUDING BOEING'S SATELLITE-BASED AERONAUTICAL COMMUNICATION AND NAVIGATION SERVICE FROM THE 2 GHz MSS BAND.	3
III.	NO PARTY HAS QUESTIONED THE FACT THAT PROMPT ADOPTION OF FINANCIAL QUALIFICATION RULES WOULD GREATLY ACCELERATE THE 2 GHz MSS PROCEEDING.....	5
IV.	IN PROPOSING FINANCIAL QUALIFICATION RULES, THE COMMISSION IS JUSTIFIED IN REQUIRING 2 GHz MSS APPLICANTS THAT HOLD UNBUILT BIG LEO AUTHORIZATIONS TO DEMONSTRATE SUFFICIENT FINANCING TO CONSTRUCT BOTH SYSTEMS	10
V.	INMARSAT'S REPLY COMMENTS PROVIDE FURTHER JUSTIFICATION FOR DISMISSING ITS LOI AS INCOMPLETE AND REQUIRING INMARSAT TO OPERATE WITHIN ITS EXISTING MSS SPECTRUM HOLDINGS.....	11
VI.	THE COMMISSION SHOULD DISMISS TMI'S LOI BECAUSE OF ITS FAILURE TO COMPLY WITH THE COMMISSION'S FILING RULES, ITS APPARENT FAILURE TO APPLY FOR A CANADIAN SPACE STATION AUTHORIZATION, AND ITS ACCESS TO SIGNIFICANT MSS SPECTRUM IN THE L-BAND.....	17
VII.	THE COMMISSION SHOULD CONDITION ANY AUTHORIZATION ISSUED TO ICO ON COMPLIANCE WITH CERTAIN PRO-COMPETITIVE REQUIREMENTS.....	21
VIII.	SPECTRUM-SHARING NEGOTIATIONS ARE UNLIKELY TO SUCCEED UNLESS THE COMMISSION REQUIRES VARIOUS APPLICANTS TO COMPLY WITH ITS TECHNICAL DISCLOSURE RULES FOR SATELLITE SYSTEM APPLICANTS.....	23
IX.	THE COMMISSION SHOULD RESERVE GLOBALLY ALLOCATED 2 GHz SPECTRUM FOR MSS SYSTEMS PROVIDING GLOBAL SERVICES.....	25
X.	CONCLUSION	27

RECEIVED

JUN 18 1998

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

Federal Communications Commission
Office of Secretary

In the Matter of the Applications of)	
)	
The Boeing Company	)	File Nos. 179-SAT-P/LA-97(16) &
	)	90-SAT-AMEND-98
)	
Celsat, Inc.	)	File Nos. 26/27/28-DSS-P/LA-97 &
	)	88-SAT-AMEND-98
)	
Constellation Communications, Inc.	)	File No. 181-SAT-P/LA-97(46)
)	
Globalstar, L.P.	)	File Nos. 182-SATP/LA-97(64) &
	)	183 - 186-SAT/P/LA-97
)	
ICO Services Limited	)	File No. 188-SAT-LOI-97
)	
Inmarsat	)	File No. 190-SAT-LOI-97(4)
)	
Iridium, L.L.C.	)	File No. 187-SAT-P/LA-97(96)
)	
Mobile Communications Holdings, Inc.	)	File No. 180-SAT-P/LA-97(26)
)	
TMI Communications and Co., L.P.	)	File No. 189-SAT-LOI-97

**CONSOLIDATED REPLY OF
THE BOEING COMPANY**

The Boeing Company ("Boeing"), by its attorneys and pursuant to Section 25.154(d) of the Commission's Rules, 47 C.F.R. § 25.154(d), hereby files its consolidated reply to the various oppositions and responsive comments filed on June 3, 1998 in the above-captioned proceeding.¹ Boeing is an applicant for FCC authorization

¹ See *Reply Comments of AMSC Subsidiary Corp.*, FCC File Nos. 179-SAT-P/LA-97 (16), 90-SAT-AMEND-98, *et al.* (June 3, 1998) ("AMSC"); *Consolidated Replies and Oppositions of Celsat America, Inc.*, FCC Report No. SPB-119, *et al.* (June 3, 1998)

(continued . . .)

to launch and operate a Mobile-Satellite Service ("MSS") system in the 2 GHz band for the purpose of providing satellite-based worldwide infrastructure for aeronautical communication and navigation services.² For the reasons described herein Boeing urges the Commission to promptly grant Boeing's application.

I. INTRODUCTION & SUMMARY

Throughout this proceeding, Boeing has emphasized the substantial public interest benefits that can be achieved by prompt authorization of Boeing's aeronautical communication and navigation service. Existing air traffic management facilities are facing increasing difficulty in handling the dramatic growth in global air traffic.

(. . . continued)

("Celsat"); *Consolidated Opposition and Reply Comments of Constellation Communications, Inc.*, FCC File Nos. 26/27/28-DSS-P/LA-97, 88-SAT-AMEND-98, *et al.* (June 3, 1998) ("Constellation"); *Reply to Comments of Globalstar, L.P.*, FCC File Nos. 182-SAT-P/LA-97(64), 183-186-SAT-P/LA-97 (June 3, 1998) ("Globalstar"); *Consolidated Reply Comments of ICO Services Limited*, FCC File Nos. 179-SAT-P/LA-97 (16), 90-SAT-AMEND-98, *et al.* (June 3, 1998) ("ICO"); *Reply Comments of Inmarsat*, FCC File No. 190-SAT-LOI-97(4) (June 3, 1998) ("Inmarsat"); *Consolidated Response and Opposition to Petition to Hold in Abeyance of Iridium LLC*, FCC File No. 187-SAT-P/LA-97(96) (June 3, 1998) ("Iridium"); *Consolidated Reply Comments of Mobile Communications Holdings, Inc.*, FCC File Nos. 26/27/28-DSS-P/LA-97, 88-SAT-AMEND-98, *et al.* (June 3, 1998) ("MCHP"); *Reply Comments of North American GSM Alliance LLC*, FCC File Nos. 26/27/28-DSS-P/LA-97, 88-SAT-AMEND-98, *et al.* (June 3, 1998) ("GSM Alliance"); *Comments of TMI and Opposition to Petitions to Deny or to Hold in Abeyance*, FCC File No. 189-SAT-LOI-97 (June 3, 1998) ("TMP").

² Boeing's application seeks authority to launch and operate a non-geosynchronous ("NGSO") satellite system operating in a portion of the 2 GHz band in the Mobile Satellite Service ("MSS") and in the 1565.42-1585.42 MHz band in the Aeronautical Radionavigation-Satellite Service. Boeing's application also requests authority to operate feeder links using 109 MHz of paired spectrum in the Ku-band (11.591-11.7 GHz for downlinks and 14.391-14.5 GHz uplinks). *See Application for Authority to Construct, Launch and Operate a Non-Geosynchronous Satellite System in the 2 GHz Mobile-Satellite Service and the Aeronautical Radionavigation-Satellite Service*, FCC File No. 179-SAT-P/LA-97(16), 90-SAT-AMEND-98 (Sept. 26, 1997).

Boeing's 2 GHz MSS system can mitigate this problem by providing a satellite-based infrastructure capable of providing state-of-the-art communication and navigation services to every region of the world. No party has disputed the need for Boeing's system. Thus, the Commission should approve Boeing's application on a priority basis.

The Commission should also expedite the 2 GHz MSS proceeding by immediately releasing a notice of proposed rule making ("NPRM") proposing financial qualification rules for 2 GHz MSS applicants. Prompt adoption of financial qualification rules is warranted in light of the substantial delays that have occurred in completing recent satellite proceedings.

The Commission should also dismiss the Letters of Intent ("LOI") of Inmarsat and TMI for their substantial non-compliance with the Commission's filing rules, their access to alternative MSS spectrum, and, in the case of Inmarsat, the competitive concerns raised by its status as an intergovernmental organization ("IGO"). The Commission should also condition any authorization issued to ICO on compliance with certain pro-competitive operating requirements. Finally, the Commission should require applicants that failed to provide technical details about their proposals for hybrid satellite systems to immediately comply with the Commission's technical disclosure requirements.

II. NO PARTY HAS PROVIDED A LEGITIMATE BASIS FOR EXCLUDING BOEING'S SATELLITE-BASED AERONAUTICAL COMMUNICATION AND NAVIGATION SERVICE FROM THE 2 GHz MSS BAND.

Boeing has disclosed an abundance of detail about its proposal to provide Aeronautical Mobile-Satellite Route Services ("AMS(R)S") in the 2 GHz MSS band. Boeing can ensure the availability and reliability of safety-of-life transmissions without

interfering with the operations of other 2 GHz MSS systems. This can be done using a variety of means, such as through band division at 2 GHz or as a part of a CDMA spectrum-sharing arrangement.

Domestic and international rules permit the provision of aeronautical communication services in the 2 GHz MSS band. While the ITU restricts the provision of aeronautical mobile-satellite services (“AMSS”) in some MSS bands,³ no such restriction exists at 2 GHz. Additionally, the European Telecommunications Standards Institute (“ETSI”) recently agreed on technical standards for terminals used to provide AMSS at 2 GHz.⁴

No party has raised legitimate technical concerns about Boeing’s aeronautical communication and navigation service. While some parties have suggested that Boeing’s system should be relegated to the upper L-band,⁵ any question about the lack of available spectrum in that band was put to rest by the comments of AMSC. AMSC observed that

³ See *ITU International Table of Frequency Allocations* (WRC-97) (prohibiting AMSS operations in MSS spectrum at 608-614 MHz and 12.5-14.25 GHz).

⁴ See *Satellite Earth Stations and Systems (SES); Aircraft Earth Stations (AES) Operating under the Aeronautical Mobile Satellite Service (AMSS)/Mobile Satellite Service (MSS)*, European Telecommunications Standards Institute, DEN/SES-00023 v.1.1.1, at 9 (March 31, 1998). The European Telecommunications Standards Institute (“ETSI”) is a non-profit organization with 457 members from 33 countries, representing administrations, network operators, manufacturers, service providers, and users. ETSI produces voluntary standards, some of which are adopted by the European Commission as the technical base for Directives or Regulations.

⁵ See, e.g., *ICO* at 5-6

the L-band “is already extremely congested” and the aggregate demand of new L-band MSS systems “far exceeds the current supply.”⁶

Thus, in light of the undisputed public interest need for Boeing’s aeronautical communication and navigation service, the Commission should grant Boeing’s 2 GHz MSS application on a priority basis.⁷ The Commission’s statutory public interest mandate provides legal justification for granting Boeing’s application on an expedited basis. Furthermore, providing expedited treatment for Boeing will not interfere with the licensing of other 2 GHz MSS systems because Boeing has requested only a modest portion of the 2 GHz MSS band to fulfill the global needs of the aviation industry.

III. NO PARTY HAS QUESTIONED THE FACT THAT PROMPT ADOPTION OF FINANCIAL QUALIFICATION RULES WOULD GREATLY ACCELERATE THE 2 GHz MSS PROCEEDING.

In addition to providing priority treatment for Boeing’s application, the Commission should promptly adopt financial qualification rules for 2 GHz MSS applicants. As Boeing explained in its previous comments, the prompt adoption of financial qualification rules would greatly accelerate this proceeding, a fact that no party has disputed.

Justification for the prompt adoption of financial qualification rules can be found in the recently concluded Big LEO proceeding. While the Big LEO proceeding was initiated in 1990, with an application cut-off in 1991, financial qualification rules were

⁶ *AMSC* at 2. Furthermore, as Boeing has previously noted, current use of the upper L-band makes it inappropriate for a non-geosynchronous satellite system.

⁷ In considering Boeing’s 2 GHz MSS application, the Commission should disregard Celsat’s unsupported claim that Boeing is an affiliate of MCHI. *See Celsat* at 4 & n.9. Boeing has not developed an affiliate relationship with MCHI.

not adopted until 1994, following an unsuccessful negotiated rule making. Pursuant to the financial qualification rules, Big LEO applicants were given up to two additional years to make their financial showings. As a result, the licensing of Big LEO systems dragged out until July 1, 1997 – seven years after the proceeding began.

A far better approach would be to adopt financial qualification rules early in a proceeding and require all applicants⁸ to prepare and submit financial showings concurrently with a rule making on technical and service rules. Spectrum-sharing negotiations could then be limited to those applicants that are financially qualified, giving all participants significant incentive to reach consensus quickly.⁹

No party has directly opposed the adoption of financial qualification rules in this proceeding. In fact, ICO suggests that in order to adopt such rules quickly, the Commission should use the same financial and reporting requirements utilized in the Big LEO proceeding.¹⁰ Boeing is willing to consider this idea, although Boeing believes the rules utilized in the Big LEO proceeding are amenable to improvement.¹¹

⁸ In an apparent attempt at humor, Iridium questioned in its opposition whether Boeing intended to be exempt from the financial qualification rules that are adopted in this proceeding. See *Iridium* at 8 n.19. Boeing sees no reason why it should be exempt from the rules and welcomes the opportunity to comply with them.

⁹ Additionally, prompt adoption of financial qualification rules may permit the Commission to avoid addressing the controversial issue of restricting incumbent MSS operators from the 2 GHz MSS proceeding.

¹⁰ See *ICO* at 10-11; see also *TMI* at 3 (arguing that the Commission should defer any action on its LOI until appropriate rules have been adopted for 2 GHz MSS).

¹¹ For example, the use of a two-stage financial showing deadline (pursuant to which applicants can demonstrate their financial qualifications in either one year or two years) may be inappropriate in this proceeding due to the additional delay it could create. Additionally, as discussed *infra*, incumbent Big LEO licensees should be required to

(continued . . .)

Globalstar argues that no precedent exists for holding applications in abeyance while financial qualification rules are adopted early in a proceeding.¹² Boeing has never suggested, however, that it is proposing an old idea, only a better one. Furthermore, substantial precedent does exist for requiring satellite system applicants to demonstrate financial eligibility in their initial applications.¹³ Thus, requiring 2 GHz MSS applicants to submit financial showings early in this proceeding would be consistent with Commission policy.

Celsat calls for delay in adopting financial qualification rules, however, arguing that such rules may be unnecessary if the Commission can find ways to avoid mutual exclusivity.¹⁴ Celsat's apparent belief that mutual exclusivity can be avoided is hardly credible in light of Celsat's request for exclusive control of 50 MHz of spectrum, a request Celsat acknowledged would give it "tremendous" capacity when "measured against any other MSS proposal."¹⁵

(. . . continued)

demonstrate assets or committed financing that is separate and apart from funding necessary to construct and operate their previously licensed Big LEO system.

¹² See *Globalstar* at 9.

¹³ See 47 C.F.R. § 25.140(b) (1997) (requiring applicants in the fixed satellite service to include financial showings in their initial applications).

¹⁴ See *Celsat* at 20.

¹⁵ See *Master System Application of Celsat, Inc. for a GEO Satellite-Based MSS Space/Ground Hybrid Personal Communications Service*, File Nos. 26/27/28-DSS-P/LA-97, 88-SAT-AMEND-98 at 33-34 (April 8, 1994) ("*Celsat Application*"). Celsat claims in its opposition that its Master System Application does not include the quoted phrases. *Celsat* at 5 n.13. In fact, the quoted language does exist at pages 33-34 (rather than one page later as Boeing inadvertently indicated in its petition to deny).

Furthermore, in arguing that financial qualification rules may not be needed, Celsat overlooks a major reason why the Commission employs such rules in satellite proceedings. The Commission enforces financial qualification rules, even in proceedings where mutual exclusivity does not exist, because of repeated findings that financially unqualified licensees often fail to construct their systems.¹⁶ Thus, since the public interest would be served by the eventual adoption of financial qualification rules in this proceeding, Boeing believes that it is clearly in the public interest to adopt such rules sooner rather than later.¹⁷

Other parties, such as Iridium, support the adoption of financial qualification rules,¹⁸ but apparently not on an expedited basis.¹⁹ Instead, Iridium, along with the

¹⁶ *Mobile Satellite Service in the 1610-1626.5/2483.5-2500 MHz Frequency Bands*, 9 FCC Rcd 5936, 5948-49 (1994) (“*Big LEO Order*”); *see also* *ICO* at 4 (arguing that even if mutual exclusivity does not exist, financial qualification rules are important to prevent spectrum from lying fallow).

¹⁷ Financial qualification rules are important even in proceedings in which the Commission attaches construction milestones to system licenses. This is because milestones serve only to mark deadlines, rather than force unqualified applicants to construct their systems. Thus, as the Commission has repeatedly discovered in prior proceedings, valuable spectrum can lie fallow for many years while a financially unqualified licensee uses its milestone period to attempt to secure financing and then resists license revocation after the milestones have expired.

¹⁸ *See Iridium* at 8.

¹⁹ Iridium suggests that Boeing’s request for prompt adoption of financial qualification rules constitutes an untimely petition for reconsideration of the Commission’s 2 GHz MSS Allocation Order. *See id.* at 7. The Commission never considered the issue of financial qualification rules in the Allocation proceeding, however, but instead expressly stated in the NPRM that it was deferring such issues. *See Allocation of Spectrum at 2 GHz for Use by the Mobile-Satellite Service*, Notice of Proposed Rule Making, 10 FCC Rcd 3230, 3233 (1995) (“*2 GHz MSS NPRM*”). Furthermore, the Commission did not defer such issues indefinitely, but indicated that it would consider the means available to avoid mutual exclusivity “after we have accepted applications for licensing.” *2 GHz Mobile-Satellite Service*, First Report and Order and Further Notice of Proposed Rule

(continued . . .)

remaining Big LEO licensees, seems to favor a far more deliberative approach. Constellation calls for a process of “vetting” in which applicants are “prodded and tested” using “a variety of administrative actions.”²⁰ Globalstar and MCHI also argue that financial qualification rules should be considered, if at all, only as a part of a rule making addressing other issues.²¹

The Commission should question the motives of those Big LEO licensees supporting a “go slow” approach. Prompt authorization of 2 GHz MSS systems will hasten the day that additional competition is injected into the global MSS market. In contrast, while the Big LEO licensees desire expansion spectrum, they probably will not be harmed if its issuance is held up for a few years. Thus, the Commission should conclude that prompt adoption of financial qualification rules will serve the public interest by expediting the provision of crucially needed services to the public.

(. . . continued)

Making, 12 FCC Rcd 7388, 7411 (1997) (“2 GHz MSS Allocation Order”); see also Public Notice, “Clarification and Corrections to Public Notice 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,” 12 FCC Rcd 12050 (1997) (“Aug. 13th Public Notice”) (noting that parties “submitting applications or letters of intent for services not currently covered under our rules need not file information to demonstrate financial qualifications *at this time*”) (emphasis added). Applications have been accepted and spectrum demand clearly exceeds the supply. Thus, now is the appropriate time to consider the adoption of financial qualification rules.

²⁰ See *Constellation* at 5.

²¹ *Globalstar* at 9; *MCHI* at 8-9.

IV. IN PROPOSING FINANCIAL QUALIFICATION RULES, THE COMMISSION IS JUSTIFIED IN REQUIRING 2 GHz MSS APPLICANTS THAT HOLD UNBUILT BIG LEO AUTHORIZATIONS TO DEMONSTRATE SUFFICIENT FINANCING TO CONSTRUCT BOTH SYSTEMS.

In arguing for prompt adoption of financial rules, Boeing also urged the Commission to require incumbent licensees to demonstrate assets or committed financing that is separate and apart from funding necessary to construct and operate their previously licensed Big LEO systems. Globalstar argued against such an approach, noting that the Commission declined to require licensees to earmark specific funds for satellite construction in the Big LEO proceeding.²²

Globalstar's comparison with the Big LEO proceeding is inappropriate because none of the Big LEO applicants held previously issued authorizations for unbuilt satellite systems and, in some cases, were relying on the financial qualifications of their parent companies. A better example is the Fixed Satellite Service ("FSS") where applicants are barred from requesting additional assignments until their previously assigned satellites "are essentially filled" and they have no more than two unused orbital locations from previous authorizations.²³ While Boeing does not believe that a similar prohibition should be imposed on Big LEO licensees, the Commission should not overlook an applicant's unbuilt authorizations when assessing its financial qualifications.

Admittedly, in the past the Commission has avoided requiring detailed disclosures about the spending plans of applicants, concluding instead that existing assets can be used

²² See *Globalstar* at 9.

²³ 47 C.F.R. § 25.140(f) (1997).

as evidence of an applicant's ability to collateralize loans for satellite construction.²⁴ In this case, however, the Commission should acknowledge that financial institutions are unlikely to allow Big LEO licensees to use the same assets to concurrently collateralize two different satellite systems. Accordingly, the Commission should include unbuilt authorizations in its assessment of financial qualifications. This can best be done by requiring incumbent licensees to demonstrate assets or committed financing that is separate and apart from funding necessary to construct and operate their previously licensed Big LEO systems.

V. INMARSAT'S REPLY COMMENTS PROVIDE FURTHER JUSTIFICATION FOR DISMISSING ITS LOI AS INCOMPLETE AND REQUIRING INMARSAT TO OPERATE WITHIN ITS EXISTING MSS SPECTRUM HOLDINGS.

In petitioning to deny Inmarsat's LOI, Boeing catalogued Inmarsat's numerous failures to comply with the Commission's basic filing requirements.²⁵ Because of these failures, the Commission should dismiss Inmarsat's LOI and refuse to consider Inmarsat's late-filed technical submission. While dismissing a LOI may be politically unpopular, it is important in order to protect the integrity of the Commission's regulatory authority over satellite systems serving the United States.

The importance of denying Inmarsat's LOI was underscored by Inmarsat's reply comments. Rather than explaining its non-compliance, Inmarsat indicated that it believes

²⁴ See, e.g., *Big LEO Order*, 9 FCC Rcd at 5950.

²⁵ See also *Constellation* at 6 (urging the Commission to immediately determine whether Inmarsat has provided sufficient information for its LOI to be acceptable for filing).

“it has fully satisfied the Commission’s information requirements.”²⁶ Specifically, Inmarsat claims that it supplied “a substantial amount of technical information” in its five-page LOI.²⁷ The speciousness of this argument is evidenced by the additional ten pages of technical information that Inmarsat was required to disclose to the Commission in February 1998.²⁸ Furthermore, Inmarsat’s failure to comply with the Commission’s rules cannot be justified by a lack of awareness. “[W]ell-established precedent” exists that a party “who either ignores or fails to understand the Commission’s clear and valid requirements for an application assumes a risk that its application will not be accepted for filing.”²⁹

In arguing against dismissal, Inmarsat highlighted the fact that the 2 GHz MSS proceeding is the first satellite application processing round in which the Commission has considered LOIs filed by non-U.S. entities.³⁰ Inmarsat seems to believe that the occasion merits lax enforcement of the Commission’s rules, while Boeing believes that the Commission should apply its rules equally to all parties, U.S. and non-U.S. alike.

²⁶ *Inmarsat* at 6.

²⁷ *Id.* at 4.

²⁸ See Letter from Don Kennedy, Director, International Regulatory Affairs, Inmarsat, to Tom Tycz, Chief, Satellite and Radiocommunications Division, FCC, Feb. 6, 1998 (“*Supplemental Inmarsat Filing*”).

²⁹ *Direct Broadcast Satellite Service*, 88 FCC 2d 100, 106 (1981) (“*DBS Order*”), *recon. denied*, 89 FCC 2d 177, 191 (1982) (“*DBS Reconsideration Order*”) (citing *Ranger v. FCC*, 294 F.2d 240, 242 (D.C. Cir. 1961)).

³⁰ See *Inmarsat* at 5.

Equal enforcement is warranted because, even though participation by non-U.S. systems is new, the Commission's cut-off deadline filing rules are not. Since at least the early 1980s, the Commission has mandated strict adherence with its satellite system filing requirements,³¹ dismissing filings that are incomplete³² and rarely permitting curative amendments.³³

Strict enforcement is warranted because the Commission's cut-off rules "serve important public purposes, including fairness among applicants and expedition in the dispatch of the Commission's business."³⁴ Considering Inmarsat's late-filed submission would be inequitable not only to other applicants, but "it would also be unfair to those who did not file applications because they were not yet prepared to submit fully formulated proposals."³⁵

³¹ See, e.g., *New Space Stations in the Domestic Fixed-Satellite Service*, 93 FCC 2d 1260, 1261-62 (1983) (placing satellite system applicants on notice that applications will be "thoroughly scrutinized to insure that they strictly adhere to the information requirements"); *DBS Reconsideration Order*, 89 FCC 2d 191 ("[t]he Commission's cutoff rule is central to its application processing function and is rarely waived").

³² See, e.g., *DBS Order*, 88 FCC 2d at 111 (dismissing six applications "principally" for failing to provide sufficient technical information); see also *LEOSAT Corp.*, 8 FCC Rcd 668 (1993) (refusing to reinstate dismissed satellite application for failing to include an FCC form 155 in its application).

³³ *DBS Order*, 88 FCC 2d at 107 ("curative amendments submitted after the cutoff date generally have not justified reinstatement of an application that was not substantially complete as of the original date of filing"); see also *PanAmSat Licensee Corp.*, 11 FCC Rcd 5627, 5630 (1996) ("*PanAmSat*") (quoting *Florida Institute of Technology v. FCC*, 952 F.2d 549, 550 (D.C. Cir. 1992)) ("the Commission waives deadlines only 'in extreme cases involving extraordinary circumstances'").

³⁴ *PanAmSat*, 11 FCC Rcd at 5630 (quoting *Green County Mobilephone, Inc.*, 98 FCC 2d 593, 600 (1984)).

³⁵ *DBS Order*, 88 FCC 2d at 110.

Strict adherence to cut-off rules also promotes the Commission's policy of "encourag[ing] the rapid introduction of new services [b]y providing an incentive for applicants to formulate and submit their proposals expeditiously."³⁶ In contrast, Commission consideration of late-filed information inevitably results in delay³⁷ – a concern that is not just hypothetical. Boeing understands that the Commission's request for additional technical information from Inmarsat is one of the factors that postponed the issuance of a public notice seeking comment in this proceeding. Furthermore, Inmarsat's late-filed information may result in additional delay because the filing arguably should be subject to a second public notice. This is because Inmarsat's late-filed information was not mentioned in the first public notice, it was not served on the other applicants, and it apparently was not placed in the International Bureau public reference room until two months after it was filed (18 days after Inmarsat's LOI was placed on public notice).

Finally, strict adherence to the Commission's cut-off rules may also result in the eventual authorization of more qualified and committed 2 GHz MSS applicants. As the Commission observed in a substantially similar case involving the direct broadcast satellite service ("DBS"), "[t]hose applicants who have completed detailed proposals in a timely fashion have already made a substantial investment in DBS service. Through their efforts to plan their DBS proposals, they have demonstrated their readiness and their willingness to proceed with their proposals."³⁸ The Commission's findings about DBS

³⁶ *Id.* at 108.

³⁷ As the Commission has observed, "the more applications the [Commission] staff must review, especially if they have been substantially amended, the longer introduction of service will be delayed." *DBS Reconsideration Order*, 89 FCC 2d at 192.

³⁸ *DBS Order*, 88 FCC 2d at 108.

applicants are fully applicable to 2 GHz MSS applicants. Thus, the Commission should promote the public interest by dismissing Inmarsat's LOI as unacceptable for filing.

In further defense of its LOI, Inmarsat appears to claim that the Commission's filing rules are not fully applicable to non-U.S. systems. For example, Inmarsat makes the unsupported assertion that the Commission no longer authorizes non-U.S. systems "to operate on specific frequencies or in particular orbital locations" when serving the U.S.³⁹ Instead, Inmarsat claims that the Commission apparently takes a hands-off approach and resolves mutual exclusive situations "by requiring U.S.-licensed space stations to modify their operations as necessary."⁴⁰ Inmarsat's approach would make domestic spectrum sharing largely unmanageable by shifting the entire domestic process to the lengthy and cumbersome ITU coordination procedure. Inmarsat's position also conflicts with the Commission's recent conclusion that in order to fulfill its statutory public interest mandate, non-U.S. operators must be required to demonstrate compliance with the same technical, legal and financial requirements applicable to U.S. operators.⁴¹

Inmarsat presents other novel interpretations of the Commission's rules. For example, Inmarsat argues that the Commission should not address concerns about its LOI

³⁹ See *Inmarsat* at 4.

⁴⁰ *Id.*

⁴¹ See *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, 24100 (1997) ("*DISCO II Order*"). As the Commission recognized in the original NPRM, without such rules in place, non-U.S. systems "would distort our competitive policies, disadvantage U.S. satellite operators and service providers, and jeopardize our spectrum management policies." *Regulatory Policies Governing Domestic Fixed Satellites and Separate International Satellite Systems*, 11 FCC Rcd 18178, 18196 (1996) ("*DISCO II NPRM*").

until a license application is filed for earth stations operating with Inmarsat's system.⁴² In reality, the Commission concluded that non-U.S. systems can seek entry to the U.S. by filing either a LOI or an earth station application.⁴³ Inmarsat chose to prosecute its proposal through the filing of a LOI. Thus, the Commission must consider Inmarsat's qualifications in this context.

As a final argument against denial of its LOI, Inmarsat points out that a major goal in the 2 GHz MSS proceeding is the creation of a competitive market for MSS in the United States.⁴⁴ Boeing and numerous other parties have presented substantial evidence, however, that authorizing Inmarsat's entry would harm competition.⁴⁵ Inmarsat, by its own admission, already controls 27 MHz of MSS spectrum in North America.⁴⁶ (Inmarsat conspicuously failed to disclose, however, its spectrum holdings in the rest of the world.) Additionally, Inmarsat is an IGO, the anticompetitive advantages of which are likely to be largely retained following its eventual privatization. Thus, the Commission should promote competition in MSS by denying Inmarsat's LOI. The Commission should also place other non-U.S. operators on notice that the United States'

⁴² *Inmarsat* at 9.

⁴³ *See DISCO II Order*, 12 FCC Rcd at 24173.

⁴⁴ *Inmarsat* at 5.

⁴⁵ *See, e.g., ICO* at 6 (indicating that Inmarsat's LOI should be deferred until Congress addresses legislative developments applicable to Inmarsat's access to the U.S. market); *MCHI* at 21 (arguing that Inmarsat's LOI should be dismissed because Inmarsat's proposal is speculative, because Inmarsat is an intergovernmental organization, and because it has not applied for a space station license from another country).

⁴⁶ *See Inmarsat* at 8.

new open entry policy does not authorize non-U.S. systems to flaunt the Commission's basic filing and operating requirements.

VI. THE COMMISSION SHOULD DISMISS TMI'S LOI BECAUSE OF ITS FAILURE TO COMPLY WITH THE COMMISSION'S FILING RULES, ITS APPARENT FAILURE TO APPLY FOR A CANADIAN SPACE STATION AUTHORIZATION, AND ITS ACCESS TO SIGNIFICANT MSS SPECTRUM IN THE L-BAND.

Several parties in this proceeding filed petitions to deny TMI's LOI, in part for failing to comply with the Commission's filing rules, particularly the rules adopted in the DISCO II proceeding.⁴⁷ TMI opposed these petitions on several grounds. First, TMI indicated that it does not believe that the Commission can lawfully require non-U.S. operators to comply with the same stringent legal and financial qualification requirements applicable to U.S. operators.⁴⁸ The Commission thoroughly considered this question during its lengthy DISCO II proceeding, however, and concluded that such disclosures are necessary to protect the public interest.⁴⁹ TMI actively participated in the proceeding and therefore should be aware of the Commission's decision.⁵⁰

⁴⁷ See, e.g., *Constellation* at 6 (urging the Commission to immediately determine whether TMI has provided sufficient information for its LOI to be acceptable for filing); *MCHI* at 18-20 (arguing that TMI's LOI should be dismissed in part because TMI expressly declined to provide the FCC with information about its technical and legal qualifications).

⁴⁸ See *TMI* at 3-4.

⁴⁹ See *DISCO II Order*, 12 FCC Rcd at 24100.

⁵⁰ See, e.g., *Ex Parte Notice of TMI Communications and Co.*, FCC 96-111 (Nov. 5, 1997); *Reply Comments of TMI Communications and Co.*, FCC 96-111 (Sept. 5, 1997); *Supplemental Comments of TMI Communications and Co.*, FCC 96-111 (Aug. 21, 1997); *Ex Parte Notice of TMI Communications and Co.*, FCC 96-111 (Feb. 26, 1997); *Ex Parte Notice of TMI Communications and Co.*, FCC 96-111 (Dec. 20, 1996); *Reply Comments*
(continued . . .)

Second, TMI argued that it was under no obligation to comply with the Commission's DISCO II rules because they did not come into effect until February 9, 1998,⁵¹ more than four months after the 2 GHz MSS filing deadline. While the DISCO II rules may not have been in effect, Section 25.114 of the Commission's rules clearly was in effect, including Section 25.114(b)(19), which requires parties to file evidence of their legal qualifications. Any question about whether TMI was required to comply with Section 25.114 was put to rest by each of three public notices that clearly stated that non-U.S. entities were obligated to provide the information required by Section 25.114.⁵² TMI cannot claim a lack of knowledge about these requirements. As discussed in the previous section, Commission precedent is clear that a party "who either ignores or fails to understand the Commission's clear and valid requirements for an application assumes a risk that its application will not be accepted for filing."⁵³

Furthermore, if TMI truly did believe that it was not required to comply with the Commission's new rules for non-U.S. satellite systems, Boeing questions why TMI also failed to comply with the Commission's *old rules* for non-U.S. systems. Under the pre-

(. . . continued)

of TMI Communications and Co., FCC 96-111 (Aug. 16, 1996); *Comments of TMI Communications and Co.*, FCC 96-111 (Aug. 16, 1996).

⁵¹ See *TMI* at 5-6.

⁵² See *Aug. 13th Public Notice*, 12 FCC Rcd at 12050; Public Notice, "Cut-off Established for Additional Space Station Applications, Letters of Intent, and Amendments to Pending Applications in the 2 GHz Frequency Band," 12 FCC Rcd 10446, 10446 (1997); Public Notice, "International Bureau Announces Anticipated Procedures For Foreign Satellites to be Considered in Processing Rounds," 12 FCC Rcd 5010, 5010 (1997) ("April 16th Public Notice").

⁵³ *DBS Order*, 88 FCC 2d at 106.

DISCO II satellite rules, a Canadian MSS operator seeking access to the U.S. market was required to demonstrate (in order to provide U.S. domestic service) that existing U.S. domestic satellite capacity was inadequate to satisfy demand for MSS⁵⁴ and (for international service to the U.S.) that U.S.-licensed satellite systems had reciprocal access to the Canadian market.⁵⁵

It is highly unlikely that TMI could have satisfied either requirement. More importantly, TMI failed to try. Thus, TMI seems to protest excessively in arguing that it was under no obligation to comply with the market access rules adopted in the DISCO II proceeding. In reality, the DISCO II rules enabled TMI to participate in this proceeding. TMI should not be permitted to pick and choose among the Commission's rules as it sees fit.

TMI's LOI was also challenged on grounds that TMI did not meet the Commission's LOI filing requirements because TMI did not demonstrate that it has applied for a space station license from another country.⁵⁶ Specifically, Commission

⁵⁴ See *DISCO II NPRM*, 11 FCC Rcd at 18181-82 (citing Letter from Bertram Rein, Deputy Assistant Secretary of Bureau of Economic and Business Affairs, U.S. Department of State, to Kenneth Williamson, Minister of Embassy of Canada (Nov. 7, 1972); Letter from Thomas Tycz, Chief, Satellite and Radiocommunication Division, F.C.C. International Bureau, to Teresa Baer, Attorney, Latham & Watkins (Feb. 13, 1996) (confirming verbal grant of special temporary authority for Hughes Communications Galaxy, Inc. to lease capacity from a Brazilian satellite to provide domestic U.S. service)).

⁵⁵ See *id.* (citing *Vision Accomplished, Inc.*, 11 FCC Rcd 3716 (1995); *IDB Worldcom Services, Inc., et al.*, 10 FCC Rcd 7278 (Int'l Bur. 1995); *AT&T et al.*, 8 FCC Rcd 2668 (Int'l Fac. Div'n 1993); *IDB Communications Group, Inc., et al.*, 6 FCC Rcd 2932 (Com. Car. Bur. 1991)).

⁵⁶ See *Comments of Mobile Communications Holdings, Inc.*, FCC File No. 189-SAT-LOI-97, at 17-20 (May 4, 1998).

rules require that a non-U.S. applicant must submit, “as part of its application to the Commission, proof that it is pursuing a license from a foreign administration”⁵⁷ along with a description of the foreign licensing process.⁵⁸ Not only did TMI fail to comply with these requirements in its initial application, but it has also failed to comply with them in its subsequent pleadings. Instead, TMI dismisses its non-compliance, stating simply that no basis exists for concluding that TMI will not be licensed in Canada.⁵⁹ An expectation of the eventual receipt of a license, however, is not sufficient to satisfy the Commission’s rules.

Finally, Boeing urged the Commission to deny TMI’s LOI because of TMI’s anticipated access to MSS spectrum in the L-band. Specifically, TMI recently announced plans to provide MSS service in the United States using portions of the spectrum licensed to AMSC.⁶⁰ TMI did not dispute this fact in its opposition. Thus, in light of TMI’s

⁵⁷ *DISCO II Order*, 12 FCC Rcd at 24178.

⁵⁸ See *April 16th Public Notice*, 12 FCC Rcd at 5010. (indicating that the International Bureau intends to require non-U.S. applicants to file, “as an exhibit to their filings, a description of the space station authorization process used by the relevant coordinating Administration and the status of that process”).

⁵⁹ See *TMI* at 7.

⁶⁰ Specifically, TMI announced that it will use its MSAT-1 satellite to provide MSS services to the U.S. in portions of 68 MHz (1626.5-1660.5 MHz and 1525-1559 MHz) of U.S. allocated MSS spectrum. See News Release, “*New Mobile Satellite Communications Player Launches North American Service*,” Feb. 18, 1998, available on Internet at <http://www.msat.tmi.ca/whatsnew/newsreleases/98-01.html> (“*TMI News Release*”); Letter from Gregory C. Staple, Counsel for SatCom Systems, Inc., to International Bureau, Federal Communications Commission, at 2 (Jan. 9, 1998) (requesting Special Temporary Authority (“STA”) to test new MSS service in the 1626.5-1660.5 MHz and 1525-1559 MHz bands); see also Letter from Steve B. Sharkey, Chief, Satellite Engineering Branch, Satellite and Radiocommunications Division, International Bureau, to Gregory C. Staple, Counsel for SatCom Systems, Inc. (Feb. 10, 1998) (granting STA request).

access to alternative MSS spectrum, the Commission should promote competition by denying TMI's LOI.

VII. THE COMMISSION SHOULD CONDITION ANY AUTHORIZATION ISSUED TO ICO ON COMPLIANCE WITH CERTAIN PRO-COMPETITIVE REQUIREMENTS.

In Boeing's comments in this proceeding, Boeing requested that the Commission place pro-competitive conditions on any authorization granted to ICO to operate in the United States in the 2 GHz band. Specifically, Boeing requested that the Commission prohibit ICO from entering into *de jure* or *de facto* exclusive arrangements or special concessions with foreign telecommunications operators or governments for the provision of MSS.⁶¹ Boeing also urged the Commission to condition the use of ICO's MSS authorization on an obligation to refrain, on a continuing basis, from using its IGO affiliate status to inhibit the ability of other 2 GHz MSS systems to participate on an equal footing in international markets.

Other parties have also raised concerns about the anticompetitive potential of ICO in the global marketplace. ICO responded to these concerns with a number of arguments. First, ICO argues that authorization of its system will not result in market concentration or restrict output in the U.S. MSS market in light of the four Big LEO operators already authorized to operate in the U.S.⁶² The MSS industry is inherently global, however, and as a result the "U.S. market" includes both "domestic calls" originating and terminating in the U.S. and "international calls" that *either* originate *or* terminate in the U.S. It is in

⁶¹ The Commission should also condition any authorization issued to ICO on refraining from entering into a merger or expanded affiliation with Inmarsat.

⁶² See *ICO* at 13, 15.

this second area that the Commission has found the most risk for anticompetitive behavior.⁶³ For example, if ICO can block access to important foreign markets – either through exclusive operating agreements, preclusive foreign regulations, or pre-existing spectrum coordination agreements – ICO could use this market power to raise prices and limit output in the U.S. satellite market.

ICO also claims that it cannot discriminate against other MSS operators because it does not control any essential facilities.⁶⁴ For MSS operators, however, foreign landing rights and spectrum coordination agreements are at least as essential as monopoly wireline networks and international cable landing stations. Thus, the question of whether ICO controls essential facilities is one that deserves close examination by the Commission.

ICO further argues that no likelihood exists that its investors, many of which are Inmarsat signatories, will discriminate against ICO's competitors.⁶⁵ As evidence, ICO argues that its Big LEO competitors have done at least as well as ICO in securing access to foreign markets.⁶⁶ Iridium appears to dispute this claim, however, noting that just a

⁶³ See *Foreign Participation in the U.S. Telecommunications Market*, 12 FCC Rcd 7847, 7858-59 (1997) (“[o]ur regulatory policies have long addressed the ability of carriers to abuse their market power on the foreign end of U.S. international routes by engaging in discriminatory and exclusionary behavior to the detriment of U.S. consumers”); see also *Market Entry and Regulation of Foreign-Affiliated Entities*, 11 FCC Rcd 3873 (1995).

⁶⁴ *ICO* at 13.

⁶⁵ *Id.*

⁶⁶ See *id.* at 13-14.

few months prior to its initiation of service, a “vast number” of markets remain closed to its system.⁶⁷

Finally, ICO claims that the Commission cannot deny or defer action on its LOI because no party has satisfied the threshold test of the DISCO II Order. As outlined above, however, the various commenters have presented considerable evidence directly relevant to the threshold test. The “very high risks to competition” test can be met through a showing that an application “has market power and could use that power to raise prices and limit output in the U.S. satellite market.” ICO’s affiliation with an IGO, its substantial equity relationship with Inmarsat signatories, and its preexisting spectrum coordination arrangements all support a finding of substantial market power that could be used for anticompetitive purposes. Accordingly, the Commission should complete its long-pending investigation into ICO’s anticompetitive potential prior to authorizing ICO to operate in the U.S. market. Additionally, the Commission should condition any authorization issued to ICO on compliance with the basic pro-competitive requirements described in Boeing’s initial comments.

VIII. SPECTRUM-SHARING NEGOTIATIONS ARE UNLIKELY TO SUCCEED UNLESS THE COMMISSION REQUIRES VARIOUS APPLICANTS TO COMPLY WITH ITS TECHNICAL DISCLOSURE RULES FOR SATELLITE SYSTEM APPLICANTS.

The Commission’s filing rules require satellite system applicants to provide technical information about their proposed systems that is “complete in all pertinent

⁶⁷ *Consolidated Comments and Petitions to Deny of Iridium LLC*, FCC File No. 179-SAT-P/LA-97(16), 90-SAT-AMEND-98, *et al.*, at 3 (May 4, 1998).

details.”⁶⁸ Despite this fact, Celsat, Globalstar and Iridium have declined to disclose information about their plans to use multiple access methods and/or hybrid constellation designs in their 2 GHz MSS systems. Such refusal arguably amounts to a violation of the Commission’s filing rules and warrants dismissal of the affected applications. Furthermore, without such information available it appears impossible for 2 GHz MSS applicants to negotiate a spectrum-sharing arrangement in this proceeding.

Pursuant to the Commission’s rules, Boeing disclosed in its original application considerable details about its system design, including its precise spectrum requirements for various access technologies. In contrast, Globalstar resisted disclosing information about its hybrid CDMA/TDMA/FDMA-GSO/NGSO 2 GHz MSS system, indicating that concerns about its compatibility with other systems should only be addressed during a rule making or spectrum-sharing negotiation.⁶⁹ Iridium also declined to provide further details about its hybrid proposal, except to state that its use of CDMA and TDMA would be segregated into “discrete sub-bands.”⁷⁰ Finally, Celsat suggested that it has yet to decide how much spectrum it plans to use for CDMA versus TDMA transmissions, indicating that it hopes to “let the market decide which access method to use.”⁷¹

What Celsat, Globalstar and Iridium fail to acknowledge is that little benefit can be achieved by initiating a rule making or sharing negotiation until the details of each

⁶⁸ 47 C.F.R. § 25.114(b) (1997).

⁶⁹ See *Globalstar* at 7-8.

⁷⁰ *Iridium* at 11.

⁷¹ See *Celsat* at 9-10 (further arguing that disclosure will not be necessary if Celsat’s request for exclusive use of 70% of the available spectrum is granted).

proposed system is made available for study by other applicants. Without details, no party can propose solutions to spectrum-sharing conflicts because no party can be certain about the types of conflicts that exist. Instead, spectrum-sharing negotiations would be forced to address hypothetical sharing scenarios, greatly delaying resolution in this proceeding.⁷² Thus, since disclosure of technical information is required by the Commission's rules, Celsat, Globalstar and Iridium should be directed to promptly release details about their proposed systems.

IX. THE COMMISSION SHOULD RESERVE GLOBALLY ALLOCATED 2 GHz SPECTRUM FOR MSS SYSTEMS PROVIDING GLOBAL SERVICES.

As the Commission has concluded in prior proceedings, substantial public interest benefits can be achieved by requiring non-geosynchronous satellite systems to provide global services.⁷³ Celsat argued against a global coverage requirement for 2 GHz MSS, however, claiming that the Commission envisioned the construction of regional-only systems when it issued the 2 GHz MSS Allocation Order.⁷⁴ Celsat rests its claim on the fact that the Commission issued the Allocation Order despite its unsuccessful efforts to align the global 2 GHz MSS allocation.⁷⁵ In reality, the Commission continued its efforts

⁷² Of course, as Boeing has suggested previously, prompt completion of the 2 GHz MSS proceeding may not be the primary goal of every applicant.

⁷³ See, e.g., *Rules for Local Multipoint Distribution Service and Fixed Satellite Services*, 12 FCC Rcd 22310, 22323 (1997) (acknowledging the public interest benefits of a global coverage requirement for the non-geosynchronous fixed satellite service); *Big LEO Order*, 9 FCC Rcd at 5947-48 (acknowledging the public interest benefits of a global coverage requirement for Big LEO licensees).

⁷⁴ See *Celsat* at 7-8.

⁷⁵ See *id.* at 8.

to bring the global 2 GHz MSS allocation into alignment even after the Allocation Order was issued, arguing for global alignment seven months later at WRC-97.

Furthermore, the fact that the U.S. allocation for MSS at 2 GHz includes 15 MHz (5 MHz downlink and 10 MHz uplink) that is not allocated worldwide in no way justifies Celsat's request for 50 MHz of exclusive spectrum, much less TMI's request to operate across the entire 2 GHz MSS band. Admittedly, U.S. MSS operators are apparently experiencing difficulty in gaining access to the European market.⁷⁶ Market entry difficulties, however, do not justify permanently balkanizing the global MSS market through the authorization of regional-only MSS systems in globally allocated spectrum.

The North American GSM Alliance, which apparently anticipates a business arrangement with Celsat, argues that a global coverage requirement is unnecessary because not all potential MSS subscribers are "globetrotting executives."⁷⁷ This argument ignores the fact that most potential MSS users do not reside in North America either, but are instead in underserved regions in other parts of the world. Many of these markets may never gain the pro-competitive choice of multiple 2 GHz MSS providers if the U.S. partitions off a significant share of the globally allocated spectrum for the benefit

⁷⁶ Boeing concurs with Iridium in its concern about the European 2 GHz band segmentation plan, which effectively bars access for most 2 GHz MSS systems to Europe until at least 2005. See *Consolidated Comments and Petition to Deny of Iridium LLC*, FCC File Nos. 179-SAT-P/LA-97(16), et al., at 5-6 (May 4, 1998). Boeing urges the Commission to continue a dialogue with the Conference of European Postal and Telecommunications Administrations ("CEPT") in an effort to increase global market access for MSS systems.

⁷⁷ *GSM Alliance* at 4.

of regional-only systems.⁷⁸ The Commission should avoid such an outcome by requiring 2 GHz MSS operators to use globally allocated portions of the 2 GHz MSS band solely for global services.⁷⁹

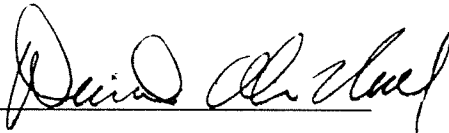
X. CONCLUSION

For the reasons provided above, Boeing requests that the Commission promptly grant its 2 GHz MSS application and undertake those additional actions requested in Boeing's May 4, 1998 pleadings.

Respectfully submitted,

THE BOEING COMPANY

By: _____



Peter D. Sloane
Office of the Group Counsel
Information, Space & Defense
Systems Group
P.O. Box 3999, M/S 84-10
Seattle, Washington 98124-2499
(253) 773-2570

Joseph P. Markoski
Herbert E. Marks
David A. Nall
Bruce A. Olcott
Squire, Sanders & Dempsey L.L.P.
1201 Pennsylvania Avenue, N.W.
P.O. Box 407
Washington, D.C. 20044-0407
(202) 626-6600

Its Attorneys

June 18, 1998

⁷⁸ Boeing is somewhat at a loss, however, in understanding GSM's additional assertion that Boeing presumes that global MSS systems will be U.S.-licensed MSS systems. *See GSM Alliance* at 3. If anything, the opposite appears to be true: a global coverage requirement would increase the likelihood that some MSS systems would be non-U.S. systems.

⁷⁹ In referencing the globally allocated portions of the 2 GHz MSS band, Boeing is referring to the 1990-2010 MHz and 2170-2200 MHz bands.

CERTIFICATE OF SERVICE

I, Anne Rutherford, hereby certify that the attached Consolidated Reply of The Boeing Company was sent on this date by First Class Mail to the following:

John L. Bartlett
Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 20006-2304
Counsel for Aeronautical Radio, Inc.

Thomas J. Keller
Julian L. Shepard
Eric T. Werner
Verner, Liipfert, Bernhard, McPherson
and Hand, Chartered
901 15th Street, N.W., Suite 700
Washington, D.C. 20005-2301
Counsel to Iridium, LLC

James G. Pachulski
Counsel
Bell Atlantic Companies
1320 North Court House Road
Eighth Floor
Arlington, Virginia 22201
(703) 974-2804

Phillip L. Spector
Jeffrey H. Olson
Patrick S. Campbell
Kira A. Merski
Paul, Weiss, Rifkind, Wharton & Garrison
1615 L Street, N.W., Suite 1300
Washington, D.C. 20036
(202) 223-7300
Counsel for Mobile Communications
Holdings, Inc.

Antionette Cook Bush
John C. Quale
Skadden, Arps, Slate, Meagher
And Flom L.L.P.
1440 New York Avenue, N.W.
Washington, D.C. 20005-2111
(202) 371-7000
Counsel for Celsat America, Inc.

Mark A. Grannis
Harris, Wiltshire & Grannis L.L.P.
1200 Eighteenth Street, N.W.
Washington, D.C. 20036
Counsel for North American GSM Alliance
LLC

Robert A. Mazer
Albert Sculdiner
Vinson & Elkins L.L.P.
1455 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-1008
(202) 639-6500
Counsel for Constellation Communications,
Inc.

Phillip L. Spector
Jeffrey H. Olson
Diane C. Gaylor
Paul, Weiss, Rifkind, Wharton & Garrison
1615 L Street, N.W.
Suite 1300
Washington, D.C. 20036
Counsel for Skybridge, LLC

Nils Rydbeck
Vice President Research and Development
Chief Technical Officer
Ericsson Mobile Phones & Terminals
7001 Development Drive
Research Triangle Park, NC 27709

Paul J. Sinderbrand
William W. Huber
Wilkinson, Barker, Knauer & Quinn, L.L.P.
2300 N Street, N.W.
Washington, D.C. 20037-1128
Counsel for Wireless Cable Association
International, Inc.

Leonard R. Raish
Fletcher, Heald & Hildreth, P.L.C.
1300 N. 17th Street, 11th Floor
Rosslyn, VA 22209
Counsel for Fixed Point-to Point
Communications Section,
Wireless Communications Division,
Telecommunications Industry Association

Henry Goldberg
Joseph A. Godles
Mary J. Dent
Goldberg, Godles, Wiener & Wright
1229 Nineteenth Street, N.W.
Washington, D.C. 20036
Counsel for Panamsat Corporation

Peter A. Rohrbach
Karis A. Hastings
Hogan & Hartson L.L.P.
555 Thirteenth Street, N.W.
Washington, D.C. 20004
Counsel for GE American Communications,
Inc.

Gary M. Epstein
John P. Janka
James H. Barker
Latham & Watkins
1001 Pennsylvania Avenue, N.W.
Suite 1300
Washington, D.C. 20004
Counsel for Hughes Electronics Corporation

Cheryl A. Tritt
Charles H. Kennedy
Sheryl J. Lincoln
Morrison & Foerster LLP
2000 Pennsylvania Avenue, N.W.
Washington, D.C. 20006-1888
Counsel for ICO Services Limited

Benjamin J. Griffin
Reed Smith Shaw & McClay
1301 K Street, N.W., East Tower
Suite 1100
Washington, D.C. 20005
Counsel for Primestar Partners, L.P.

Mark A. Grannis
Harris, Wiltshire & Grannis L.L.P.
1200 Eighteen Street, N.W.
Washington, D.C. 20036
Counsel for Teledesic LLC

Marvin Rosenberg
Holland & Knight
2100 Pennsylvania Ave., N.W.
Washington, D.C. 20037
Counsel for United States Satellite
Broadcasting Company, Inc.

Karen E. Watson
Director, Government Relations
Echostar Communications Corporation
1850 M. Street, N.W.
Suite 1070
Washington, D.C. 20036

Gerald Musarra
Senior Director
Commercial Policy & Regulatory Affairs
Space and Strategic Missiles Sector
1725 Jefferson Davis Highway
Suite 403
Arlington, VA 22202
Counsel for Lockheed Martin Corporation

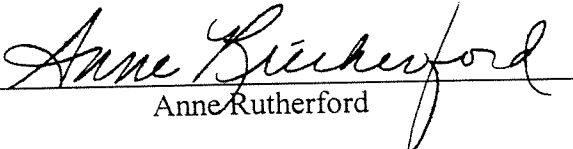
William D. Wallace
Crowell & Moring LLP
1001 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
Counsel for Globalstar, L.P.

Gregory C. Staple
R. Edward Price
Koteen & Naftalin, L.L.P.
1150 Connecticut Avenue, N.W.
Suite 1000
Washington, D.C. 20036
Counsel to TMI Communications & Co. LP

Bruce D. Jacobs
Glenn S. Richards
Stephen J. Berman
Fisher Wayland Cooper
Leader & Zaragoza L.L.P.
2001 Pennsylvania Ave., N.W.
Washington, D.C. 20006
Counsel for AMSC Subsidiary Corporation

Lon C. Levin
Vice President and Regulatory Counsel
10802 Park Ridge Boulevard
Reston, Virginia 20191
Counsel for AMSC Subsidiary Corporation

Kelly Cameron
Powell, Goldstein, Frazer & Murphy
1001 Pennsylvania Ave., N.W.
Six Floor
Washington, D.C. 20004
Counsel for Inmarsat


Anne Rutherford

Dated: June 18, 1998