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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of Applications/LOIs of

ICO Services Limited

The Boeing Company

Celsat America, Inc.

Constellation Communication

Holdings, Inc.

Globalstar, L.P.

Iridium LLC

Mobile Communications Holdings, Inc.

TMI Communications and Company,

Limited Partnership

To: The Commission

OPPOSITION OF CELSAT AMERICA, INC.
TO APPLICATION FOR REVIEW

Celsat America, Inc.

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August 31, 2001

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Celsat America, Inc. ("Celsat") strongly opposes the Application for Review filed by AT&T Wireless Services, Inc., Celco Partnership, d/b/a Verizon Wireless, and Cingular Wireless LLC (collectively, the "Terrestrial Interests") to the 2 GHz MSS licenses issued to Celsat and seven other proponents of 2 GHz mobile satellite service ("MSS") systems. Celsat demonstrates herein that (1) the Application for Review is – at best – a late-filed petition for reconsideration of the Commission's 2 GHz MSS Licensing Order released in August of 2000; (2) the Terrestrial Interests lack standing to challenge the Bureau's July 2001 licensing decisions; and (3) the Application for Review is otherwise meritless. Accordingly, the Commission should dismiss the Application for Review.

First, although presented with numerous opportunities to participate in the proceedings below, the Terrestrial Interests never filed a single petition to deny or informal objection to Celsat's license application. Nor did they file any petition for reconsideration of either the Commission's 1997 order allocating spectrum for 2 GHz MSS or the Commission's 2 GHz MSS Licensing Order issued just over a year ago. The Terrestrial Interests are now engaging in an eleventh hour crusade to undo the Commission's efforts over the past decade based on the collateral effects of a single ill-considered *ex parte* filing by New ICO. Celsat clarified that the New ICO *ex parte* filing did not speak for all of the applicants. Celsat also confirmed then, as it does now, that it stands ready to provide 2 GHz MSS based on a unique satellite-based architecture that will allow Celsat to provide low-cost service to all Americans, including those in rural and underserved areas. The Terrestrial Interests have presented no new evidence to challenge the Commission's conclusions made last year concerning the public interest benefits of

Summary

2 GHz MSS. Consequently, the Application for Review is – at best – a late-filed petition for reconsideration.

Second, the Terrestrial Interests lack standing to seek an Application for Review because they cannot demonstrate that they will suffer any direct, palpable injury as a result of the Bureau's actions. The Terrestrial Interests have not applied for – let alone received – any 2 GHz MSS spectrum, and any interest they may have in such spectrum is purely speculative. As a result, they do not have standing to file an Application for Review of the Bureau's decisions in this case.

Third, if the Commission proceeds to consider the merits of the Application for Review – notwithstanding the Terrestrial Interests' lack of standing – the Commission should conclude that the Application for Review is meritless. The Bureau did not err when it issued the 2 GHz MSS licenses. On the contrary, it properly reasoned that the Commission's determinations in August 2000 that 2 GHz MSS is in the public interest are as valid now as ever. The Bureau also relied on the voluminous record and other important public interest factors in issuing the 2 GHz MSS licenses. Furthermore, as to Celsat, the record reflects that there were no substantial and material questions of fact requiring a hearing prior to issuance of Celsat's license. In sum, the Application for Review fails to succeed on the merits.

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of Applications/LOIs of

ICO Services Limited

DA 01-1635
File No. 188-SAT-LOI-97 *et al.*

The Boeing Company

DA 01-1631
File No. 179-SAT-P/LA-97(16) *et al.*

Celsat America, Inc.

DA 01-1632
File No. 26/27/28-DSS-P-94 *et al.*

Constellation Communication

DA 01-1633
File No. 181-SAT-P/LA-97(46) *et al.*

Globalstar, L.P.

DA 01-1634
File No. 183/184/185/186-SAT-P/LA-97 *et al.*

Iridium LLC

DA 01-1636
File No. 187-SAT-P/LA-97(96) *et al.*

Mobile Communications Holdings, Inc.

DA 01-1637
File No. 180-SAT-P/LA-97(26) *et al.*

TMI Communications and Company,

DA 01-1638
File No. 189-SAT-LOI-97 *et al.*

Limited Partnership

To: The Commission

**OPPOSITION OF CELSAT AMERICA, INC.
TO APPLICATION FOR REVIEW**

Celsat America, Inc. ("Celsat"), pursuant to Section 1.115(b) of the Commission's rules,

hereby opposes the Application for Review filed on August 16, 2001 by AT&T Wireless

Services, Inc., Celco Partnership, d/b/a Verizon Wireless, and Cingular Wireless LLC

(collectively, the "Terrestrial Interests"). The Application for Review asks the Commission to

See Amendment of Section 2.106 of the Commission's Rules to Allocate Spectrum at 2 GHz for Use by the Mobile-Satellite Service, 12 FCC Rcd 7388 (1997) ("2 GHz MSS Allocation Order"), recon., Memorandum Opinion and Order and Third Notice of Proposed Rule Making and Order, 13 FCC Rcd 23949 (1998).

The orders were issued on July 17, 2001 by the Chief of the International Bureau ("Bureau") and, for certain licensees, the Acting Chief of the Office of Engineering and Technology ("OET"). See Boeing Co., DA 01-1631 (IB July 17, 2001); Celsat America, Inc., DA 01-1632 (IB July 17, 2001) ("Celsat Order"); Constellation Communications Holdings, Inc., DA 01-1633 (IB & OET July 17, 2001) ("Constellation Order"); ICO Globalstar, L.P., DA 01-1634 (IB & OET July 17, 2001) ("Globalstar Order"); ICO Services Limited, DA 01-1635 (IB & OET July 17, 2001) ("ICO Order"); Iridium LLC, DA 01-1636 (IB July 17, 2001) ("Iridium Order"); Mobile Communications Holdings, Inc., DA 01-1637 (IB & OET July 17, 2001) ("MCHI Order"); TMI Communications and Co., Limited Partnership, DA 01-1638 (IB July 17, 2001) ("TMI Order") (collectively, the "2 GHz MSS Licenses"). References herein to action by the Bureau shall also refer to the joint action with the OET, as applicable. In addition, references to "applicants" herein shall refer to filers of either 2 GHz MSS applications or letters of intent.

In 1997, the Commission allocated 70 MHz of spectrum in the 2 GHz band for MSS,² and last year, on August 25, 2000, the Commission issued the licensing and service rules for 2 GHz concerning the Celsat license application (or any of the amendments thereto).

April 4, 1994. The Terrestrial Interests never filed a single petition to deny or informal objection relating to 2 GHz MSS on February 6, 1992, and submitted its Master System Application on first appeared at the Commission in the summer of 1991, filed its Petition for Rulemaking fact-finding and negotiations relating to the benefits and implementation of 2 GHz MSS. Celsat The issuance of the 2 GHz MSS licenses represents the culmination of nearly ten years of

I. THE APPLICATION FOR REVIEW IS - AT BEST - A LATE-FILED PETITION FOR RECONSIDERATION OF THE COMMISSION'S 2 GHz MSS LICENSING ORDER AND SHOULD BE DISMISSED

vacate and remand the 2 GHz MSS licenses recently released by the International Bureau.¹ For the reasons set forth below, the Commission should dismiss or deny the Application for Review.

Iridium filed for bankruptcy protection on August 13, 1999 and ICO Services, Inc. filed for bankruptcy protection on August 27, 1999. See John Schwartz, "Iridium Files for Chapter 11; Phone System to Keep Working," Wash. Post, Aug. 14, 1999, at E01; Andrew Pollack, "Two Weeks Later, ICO Follows Iridium into Bankruptcy Court," N.Y. Times, Aug. 28, 1999, at C1.

Id. at 16128 ¶ 1.

Establishment of Policies and Service Rules for the Mobile Satellite Service in the 2GHz Band, IB Docket No. 99-81, Report and Order, 15 FCC Rcd 16127, 16146 ¶ 34 (2000) ("2 GHz MSS Licensing Order").

The August 2000 2 GHz MSS Licensing Order reasonably concluded that 2 GHz MSS systems will "promote development of regional and global communications to unserved communities in the United States, its territories and possessions, including rural and Native American areas, as well as worldwide."⁴ The Commission made this laudable determination regarding the public interest benefits of 2 GHz MSS almost exactly one year ago. At that time, the difficulties facing some of the low earth orbit MSS providers were widely known.⁵

Now, at the very end of this decade-long regulatory process – having wholly failed to participate in no less than three separate Commission proceedings – the Terrestrial Interests seek to undermine the Commission's well-reasoned conclusions concerning the public interest benefits of MSS at 2 GHz by raising arguments that the Commission has already considered and rejected on numerous occasions. The Commission should not permit its procedures to be undermined – nor its resources wasted – by such a grossly late-filed pleading.

MSS applications.
licensing decision which paved the way for issuing licenses to each of the then-pending 2 GHz Commission's 1997 decision allocating the 2 GHz MSS spectrum or the Commission's 2000 MSS.³ The Terrestrial Interests failed to file comments or petitions for reconsideration of the

Notwithstanding these isolated difficulties within the satellite sector, however, the Commission reasonably concluded – based on the record before it at that time – that the public interest would be served by licensing the 2 GHz MSS systems. In short, the issue of whether 2 GHz MSS systems should or should not be licensed was considered over the course of many years and was finally concluded in August of 2000.

After completion of the licensing proceeding last year – but before the issuance of the 2 GHz MSS licenses this July – New ICO Global Communications (Holdings) Ltd. (“New ICO”) filed an *ex parte* letter in which it asked the Commission to modify the 2 GHz MSS service rules to permit terrestrial operations by 2 GHz MSS operators in their assigned spectrum to augment their service signals.⁶ New ICO filed its *ex parte* letter without consulting Celsat or, to Celsat’s knowledge, any other 2 GHz MSS applicant. The New ICO Ex Parte contained numerous ill-considered assertions concerning the need for an “ancillary terrestrial component” to augment satellite services for MSS providers.

In order to set the record straight concerning the rhetoric contained in the New ICO Ex Parte, Celsat filed an *ex parte* letter clarifying that New ICO did not speak for all of the 2 GHz applicants and that New ICO’s assessment of the need for a terrestrial component was

⁶ See Ex Parte Filing of New ICO, filed March 8, 2001 in IB Docket No. 99-81 (“New ICO Ex Parte”). As the Terrestrial Interests point out, a similar proposal for terrestrial base station operations was filed by Motient Service Inc., an L-band MSS licensee. See Application for Review at 3-4, 10 (citing Motient Service Inc. and Mobile Satellite Ventures Subsidiary LLC, Application for Assignment of Licenses and for Authority to Launch and Operate a Next-Generation Mobile Satellite Service System, at iii (filed Mar. 1, 2001)).

12 See id. at 2.

11 Id. at 1.

10 See Ex Parte Filing of AT&T Wireless Services, Cingular Wireless, LLC, Sprint PCS, and Verizon Wireless, filed June 13, 2001 in IB Docket No. 99-81.

9 See Ex Parte Filing of The Boeing Company filed May 24, 2001 in IB Docket No. 99-81, at 2; Ex Parte Filing of Globalstar, L.P. filed July 2, 2001 in IB Docket No. 99-81, at 2 ("Globalstar July 2 Ex Parte") (stating that "[a]lthough New ICO appears to believe that ancillary terrestrial service is essential to its MSS business plan, Globalstar does not").

8 See id. at 2.

7 See Ex Parte Filing of Celsat America, Inc. filed June 25, 2001 in IB Docket No. 99-81 ("Celsat June 25 Ex Parte").

requirements."¹² As noted above, however, the Commission had already considered arguments Commission must consider whether reallocation of this spectrum better suits the public Parte – claimed that "MSS is no longer viable as a satellite service [and therefore] the Interests – parroting many of the unsupported comments made by New ICO in the New ICO Ex Parte demonstrated that "MSS services as applied for may not be viable."¹¹ The Terrestrial applicants.¹⁰ The Terrestrial Interests erroneously claimed that the filing of the New ICO Ex Parte the Commission on June 13, 2001, urging it to refrain from licensing the 2 GHz MSS opportunity, the Terrestrial Interests (together with Sprint PCS) submitted an *ex parte* letter to Nevertheless, apparently believing that the New ICO Ex Parte had created a strategic relying on an ancillary terrestrial component for their satellite systems.⁹ and The Boeing Company submitted letters to the Commission confirming that they were not reaching all Americans using a geostationary earth orbit satellite system.⁸ Similarly, Globalstar misplaced.⁷ Celsat also reaffirmed its commitment to providing low-cost service capable of

concerning the viability of MSS systems and had correctly concluded in the 2 GHz MSS Licensing Order that MSS at 2 GHz would serve the public interest. Moreover, the Bureau expressly rejected the Terrestrial Interests' attempt to defer 2 GHz MSS licensing in the 2 GHz MSS Licenses, basing its reasoning on the very same conclusions the Commission had reached in August of 2000.¹³ In short, the Commission correctly concluded in August of 2000 that each of the 2 GHz MSS applications then-pending should be licensed based upon its public interest determination at that time and properly concluded that nothing in the record as of July 2000 undermined that determination. Accordingly, given the Terrestrial Interests' failure to challenge the Commission's conclusions in the 2 GHz MSS Licensing Order, the Application for Review amounts to – at best – a grossly late-filed petition for reconsideration of that order and, therefore, should be dismissed.¹⁴

¹³ See ICO Order at para. 29.

¹⁴ See Family Media, Inc., 2 FCC Rcd 2540 at para. 15 (1987) (dismissing application for review that "appear[ed] to be more like a late-filed petition for reconsideration" of a Commission action that changed certain policies). The Terrestrial Interests also baldly assert that the Bureau "erroneously employed the 'construction milestone' policy." Application for Review at 14. The Terrestrial Interests go so far as to claim that the construction milestone policy was not designed to grant "sham licenses" in order to give licensees "years to refine their sham system designs" and seek milestone extensions "when the sham is exposed." Id. The Terrestrial Interests, however, provide no evidence of whatsoever of any "shams". Even if the Terrestrial Interests could present evidence of "shams", the proper proceeding in which to raise such issues was the 2 GHz MSS licensing proceeding, which was concluded in August of 2000.

**II. THE TERRESTRIAL INTERESTS FAILED TO PARTICIPATE IN THE 2 GHZ
MSS APPLICATION PROCEEDINGS AND LACK STANDING TO
CHALLENGE THE 2 GHZ MSS LICENSES**

The Commission's rules clearly require that "[a]ny person filing an application for review who has not previously participated in the proceeding shall include with his application a statement describing with particularity the manner in which he is aggrieved by the action taken and showing good reason why it was not possible for him to participate in the earlier stages of the proceeding."¹⁵ As noted above, the Terrestrial Interests failed to file either petitions to deny or informal objections against the CelSat license application or the license applications of any other 2 GHz MSS applicant.¹⁶ Notwithstanding the Terrestrial Interests' failure to participate in the 2 GHz MSS license application proceedings, the Application for Review is wholly devoid of any showing as to why the Terrestrial Interests were unable to participate. The Commission's rules are once again quite clear: "Any application for review which fails to make an adequate showing [concerning the inability of the applicant to participate in the prior proceedings] will be dismissed."¹⁷ Accordingly, the Commission should dismiss the Application for Review without reaching its merits.

Even if the Terrestrial Interests had participated below, they could not show that they are "aggrieved" for purposes of Section 1.115(a) of the Commission's rules. To demonstrate "aggrievement," the Terrestrial Interests must show that they will suffer substantial and

15 47 C.F.R. § 1.115(a).

16 See appendices to the 2 GHz MSS Licenses.

17 See 47 C.F.R. § 1.115(a).

18 See WINV, Inc., 14 FCC Rcd 2032, 2033 ¶ 3 (1998) ("In order to show that a party is 'aggrieved' by an action taken pursuant to delegated authority, as required by 47 C.F.R. § 1.115(a), an applicant for review must demonstrate an actual or threatened injury to itself as a direct result of the challenged action.") (citing Hanford FM Radio, 11 FCC Rcd 8509, 8511 (1996); Clarke Broadcasting Corp., 11 FCC Rcd 3057 (1996)); see also WINV, Inc., 14 FCC Rcd at 2033 ¶ 3 n.6 (noting that to have standing a petitioner to deny must show that grant of the subject application "will probably result in a substantial, immediate and direct injury") (quoting Federated Publications, Inc., 2 FCC Rcd 627, 628 (1966)).

19 See Application for Review at 9 n.22 ("The Wireless Carriers are not suggesting that no MSS allocation is warranted, or that no MSS system is in the public interest; rather, given the serious viability issues raised since the 2 GHz MSS Order was adopted, and the spectrum shortages in other services, prudent spectrum planning required thorough review of the allocation as a whole *prior* to grant of the MSS applications.") (emphasis in original).

20 See WINV, Inc., 14 FCC Rcd at 2033 ¶ 3 (quoting Matter of Warren Ache, 9 FCC Rcd 2464, 2467 (1993) (citations omitted))

18 As immediate, actual or threatened harm as a direct consequence of the Bureau's actions.¹⁸ As reflected in the Application for Review, the Terrestrial Interests are a group of terrestrial wireless companies whose goal by filing the Application for Review appears to be primarily to make an eleventh hour attempt to reallocate a portion of the 2 GHz MSS spectrum for their own speculative terrestrial uses.¹⁹ The Terrestrial Interests neither hold authorizations in the 2 GHz MSS bands nor have applications pending to provide service in the 2 GHz MSS spectrum. Nor is it certain that the Terrestrial Interests will ever apply for – let alone receive – any such spectrum which, in fact, may not ever be allocated for terrestrial uses in the first place. Accordingly, the alleged deleterious effects to be suffered by the Terrestrial Interests by the Bureau's issuance of the 2 GHz MSS Licenses are indirect and speculative at best.

In addition to "aggravement," the Terrestrial Interests must show that there is a "causal link between the claimed injury and the challenged action."²⁰ A causal link is demonstrated by

establishing "(1) that the injury can be traced to the challenged action; and (2) that the injury would be prevented or redressed by the relief requested."²¹ Given that the Terrestrial Interests' ostensible purpose in challenging the Bureau's actions is to gain more spectrum for terrestrial wireless services, any alleged injury to the Terrestrial Interests is not fairly traceable to the issuance of the 2 GHz MSS Licenses and, thus, fails to meet this rigorous requirement. On the contrary, the issuance of the 2 GHz MSS Licenses in the particular manner adopted by the Bureau created substantial *benefits* for the Terrestrial Interests. Specifically, the Bureau decided to temporarily reduce the initial spectrum assignment to 2 GHz MSS operators from 3.88 MHz to 3.5 MHz in each direction, thereby making some portion of the 2 GHz band potentially available to the Terrestrial Interests.²² Moreover, the Bureau expressly issued the 2 GHz MSS Licenses in this manner in order to permit the Commission to consider two new proposals for the use of 2 GHz MSS bands for ancillary terrestrial operations and advanced communications services, respectively.²³ Each of these two proceedings will permit the Terrestrial Interests to raise the

21 See Warren Ache, 9 FCC Rcd at 2467 (citing Lawrence N. Brandt, 3 FCC Rcd 4082 (1988); Duke Power Co. v. Carolina Env. Study Group, Inc., 438 U.S. 59 (1978)).

22 See, e.g., ICO Order at para. 8; Celsat Order at para. 8.

23 See, e.g., ICO Order at para. 8; Celsat Order at para. 8 (citing New ICO Ex Parte; Petition for Rulemaking of the Cellular Telecommunications & Internet Association (filed May 18, 2001) (CTIA Petition)). The Commission has issued notices in connection with these proposals. See Flexibility for Delivery of Communications by Mobile Satellite Service Providers in the 2 GHz Band, the L-Band, and the 1.6/2.4 GHz Band, Notice of Proposed Rulemaking, IB Docket No. 01-185, ET Docket No. 95-18, FCC 01-225 (rel. Aug. 17, 2001) ("MSS Flexibility Rulemaking"); Amendment of Part 2 of the Commission's Rules to Allocate Spectrum, Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, Including Third Generation Wireless Systems, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, ET Docket No. 00-258 et al., FCC 01-224 (rel. Aug. 20, 2001) ("Advanced Services Rulemaking").

26 Id.

25 See 5 U.S.C. § 706(2)(A).

24 Application for Review at 7.

Application for Review also fails on its merits. The Terrestrial Interests erroneously claim that issuance of the 2 GHz MSS Licenses constituted "unreasonable decisionmaking"²⁴ in violation of Section 706(2)(A) of the Administrative Procedure Act ("APA").²⁵ This provision states that a Commission license may be set aside if it is found to be "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law."²⁶ The Terrestrial Interests claim that, given various questions raised concerning the requirement of an ancillary terrestrial component

notwithstanding the Terrestrial Interests' lack of standing -- it should conclude that the

If the Commission were to consider the merits of the Application for Review --

III. THE BUREAU'S DECISION NOT TO DEFER ISSUING THE 2 GHZ MSS LICENSES WAS SOUNDLY REASONED

the Commission should dismiss the Application for Review without addressing the merits. standing to file the Application for Review. For this reason and for the reasons discussed above, required by Commission rules and precedent under Section 1.115(a) and, therefore, have no "aggravement" nor any causal link between their alleged harms and the Bureau's actions as Application for Review. In sum, the Terrestrial Interests have demonstrated neither initiating proceedings in which to address the very issues raised by the Terrestrial Interests in the some of the spectrum that otherwise would have been allocated to the 2 GHz MSS licensees and Licenses in the manner adopted by the Bureau *benefitted* the Terrestrial Interests by holding back arguments set forth in the Application for Review. Accordingly, the issuance of the 2 GHz MSS

as suggested by the New ICO Ex Parte, the Bureau's decision not to defer issuing the licenses is "at odds with its "best and highest" use spectrum management policy" and that the Bureau was required to defer licensing the 2 GHz MSS applicants "pending a determination of whether the 70 MHz spectrum allocation for 2 GHz MSS remains in the public interest."²⁷ The record in this proceeding provides no support whatsoever for this argument and it should be rejected.

In the 2 GHz MSS Licenses, the Bureau expressly clarified that it would not defer issuing the licenses for several reasons. First, the Bureau noted that the Terrestrial Interests' request to defer licensing was predicated merely on a claim that the New ICO Ex Parte evidenced a "dramatic change" in MSS as originally envisioned and raised "questions as to the overall viability" of MSS.²⁸ The Bureau properly rejected this claim, concluding that the Terrestrial Interests had provided "no credible information to demonstrate that the findings made by the Commission last year that 2 GHz MSS is in the public interest are called into question."²⁹ Furthermore, the Bureau reasoned that "[t]he 2 GHz MSS applicants continue to pursue their proposed systems based upon amended applications consistent with the Commission's 2 GHz MSS Licensing Order."³⁰ Also, recognizing the great effort already expended by the 2 GHz MSS

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Application for Review at 8. Viewed properly, this argument is little more than a late-filed petition for reconsideration of the 2 GHz MSS Allocation Order, which was issued four years ago in 1997.

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See ICO Order at para. 30. In each of the 2 GHz MSS Licenses the Bureau rejected the Terrestrial Interests' challenge to the timing of the licenses for the reasons set forth in the ICO Order. See Celsat Order at para. 22; Constellation Order at para. 24; MCHI Order at para. 25; TMI Order at para. 19; Boeing Order at para. 43; Iridium Order at para. 33; Globalstar Order at para. 47.

29

See ICO Order at para. 31.

30

See id.

See *id.* (citing Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Service, Including Third Generation Wireless Systems, ET Docket No. 00-258, Memorandum Opinion and Order, DA 01-842, at para. 8 (Mass Media Bur., rel. Apr. 4, 2001)).

ICO Order at para. 31.

Furthermore, given the Bureau's reasoned assessment of the continuing validity of the Commission's determination last year that 2 GHz MSS is in the public interest, issuing the 2 GHz MSS Licenses was fully consistent with the Commission's spectrum management policy which requires that "spectrum must be allocated and assigned in a manner that will provide the greatest possible benefit to the American public." Principles of Reallocation of Spectrum to Encourage the Development of Telecommunications Technologies for the New Millennium, Policy Statement, 14 FCC Rcd 19868, 19870 ¶ 7 (1999) ("Spectrum Policy Statement").

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applicants, the Bureau indicated that the applicants who continue to pursue their proposals "should be given the opportunity to succeed or fail in the market on their own merits after expending vast resources over nearly a decade of effort in the ITU and through regulatory proceedings to get this opportunity."³¹ The Bureau further bolstered its decision in reasoning that any delay would be contrary to the public interest "where it would adversely affect the introduction of competition and new services."³² Thus, the Bureau properly concluded that the Commission's public interest rationale supporting the provision of 2 GHz MSS is as strong now as ever.³³

Rather than address these well-reasoned conclusions directly, the Terrestrial Interests attempt to obfuscate the issue by suggesting that the New ICO Ex Parte definitively demonstrates a diminished need for 2 GHz MSS spectrum. On June 29, 2001, however, New ICO itself expressly confirmed to the Commission that nothing in the New ICO Ex Parte was intended to

reflect a diminished need for MSS spectrum.³⁴ Celsat and Globalstar likewise rejected any suggestions in the New ICO Ex Parte that 2 GHz MSS will not be viable absent a terrestrial component.³⁵ Moreover, several 2 GHz MSS applicants, including New ICO, have stated that "most applicants believe that a terrestrial component is not necessary for the success of MSS systems."³⁶ Accordingly, contrary to the Terrestrial Interests' claims, the New ICO Ex Parte does not indicate a diminished need for 2 GHz MSS spectrum as the Bureau properly concluded.

As the foregoing demonstrates, the record reflects that the Bureau examined the relevant data and provided rational explanations for its actions in the 2 GHz MSS Licenses. The Bureau's decision not to defer 2 GHz MSS licensing was consistent with the Commission's spectrum management policy and was properly reasoned in accordance with established principles of administrative law under Section 706(2)(A) of the APA.³⁷ In short, the Commission should

³⁴ See Ex Parte Filing of New ICO, The Boeing Company, CCI International NV, Mobile Communications Holdings, Inc. and TMI filed June 29, 2001 in IB Docket No. 99-81, at 2 ("MSS June 29 Ex Parte").

³⁵ See Celsat June 25 Ex Parte at 1-2; Globalstar July 2 Ex Parte at 2.

³⁶ See MSS June 29 Ex Parte at 2.

³⁷ The Terrestrial Interests also erroneously maintain that the Bureau failed to hold a hearing pursuant to Section 309(e) of the Communications Act prior to issuing the 2 GHz MSS Licenses in order to address several alleged "substantial and material questions of fact." See Application for Review at 12-15. The Terrestrial Interests argue that the New ICO Ex Parte "raised significant issues concerning the ability of MSS licensees to provide the service for which spectrum had been allocated." Id. at 13. As noted, however, the record in the 2 GHz MSS proceeding amply demonstrates that this is not true. Accordingly, the Terrestrial Interests' reliance on the New ICO Ex Parte does not offer any "substantial" evidence to raise a sufficient doubt as to the enormous public interest benefits of 2 GHz MSS. Thus, as to Celsat, no hearing was required under Section 309(e) of the Communications Act and the Bureau properly issued the Celsat Order.

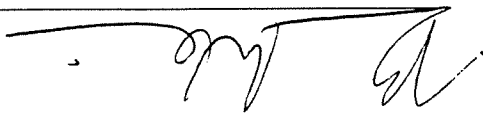
The Commission should also reject as meritless the Terrestrial Interests' exaggerated claim that "the immediate spectrum needs of other sectors of the telecommunications industry are well documented" and that there is evidence of "an immediate need for an additional 200 MHz of spectrum to offer 3G services." Application for Review at 10-11. As noted in the MSS June 29 Ex Parte, there appears to be a weak market worldwide for 3G services, and certain terrestrial operators such as Cingular and Sprint PCS admit that they either have no plans for a 3G rollout or currently have adequate spectrum for the next ten years. See MSS June 29 Ex Parte at 3. Also, Celsat strongly disagrees with the Terrestrial Interests' assertion that the "immediate spectrum needs" call into question whether a full 70 MHz allocation for MSS is warranted. See Application for Review at 11. Regardless, the instant 2 GHz MSS licensing proceedings are not the proper forum for the Terrestrial Interests to raise these concerns. Rather, the Terrestrial Interests are free to raise these issues in the two proceedings recently initiated to address alternative uses for parts of the 2 GHz MSS band: the MSS Flexibility Rulemaking and Advanced Services Rulemaking.

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August 31, 2001

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By: 

CELSAT AMERICA, INC.

Respectfully submitted,

deny the Application for Review.

For the foregoing reasons, Celsat respectfully requests that the Commission dismiss or

IV. CONCLUSION

reject the Terrestrial Interests' claims as meritless.³⁸

CERTIFICATE OF SERVICE

I, Chris Sanerstri, hereby certify that copies of the foregoing Application for Review have

been served this 31st day of August, 2001, by first class United States mail, postage prepaid, on the

following:

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