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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 Holdings, Inc.	)	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, Limited Partnership	)	DA 01-1638
	)	File No. 189-SAT-LOI-97 *et al.*

To: The Commission

OPPOSITION OF MOBILE COMMUNICATIONS HOLDINGS, INC.
TO APPLICATION FOR REVIEW

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August 30, 2001

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EXECUTIVE SUMMARY

The Application for Review ("Application") filed by AT&T Wireless Services, Inc., Verizon Wireless, and Cingular Wireless LLC (collectively, the "Wireless Providers") should be summarily dismissed by the Federal Communications Commission ("Commission"). The Wireless Providers lack standing to file such an application. Moreover, even if the Wireless Providers did have standing, the Application should be denied on its merits. The Wireless Providers' primary arguments in support of their request for the Commission to vacate the 2 GHz Mobile-Satellite Service ("MSS") licensing orders either have been rendered moot by Commission action subsequent to the filing of the Application or are inconsistent with prior Commission decisions.

The Wireless Providers never participated formally in any aspect of the Commission's proceedings that culminated in the 2 GHz MSS licensing orders. As a result, in order to have standing under Section 1.115(a) of the Commission's rules, the Wireless Providers must demonstrate that they had a good reason for not participating and that they suffered direct injury from the licensing orders. In fact, they offer no explanation for their lack of participation and do not allege any injury. The only nexus that the Wireless Providers claim to the licensing orders is their desire for the 2 GHz MSS band to be reallocated entirely for advanced terrestrial services.

Even if the Commission finds that the Wireless Providers have standing, the Commission also should deny the Application on its merits. As an initial matter, the Wireless Providers effectively are attacking the 2 GHz MSS spectrum allocation, rather than the Bureau's licensing orders. The spectrum allocation occurred over four years ago and the opportunity to judicially or administratively challenge the proceeding has long since expired. Given the years of resources and effort expended by the Commission and the applicants to establish the 2 GHz MSS

allocation, the Commission should not sanction such an attack by the Wireless Providers at this late date.

In addition, the Wireless Providers argue that the International Bureau ("Bureau") practiced unreasoned decision-making by failing to defer issuance of the licensing orders until after the Commission acted on a petition for rulemaking filed by the Cellular Telecommunications and Internet Association, which petition sought reallocation of the 2 GHz band for terrestrial service. The Commission rendered this argument moot by denying the petition soon after the Wireless Providers filed their Application.

Moreover, the Wireless Providers argue that the Bureau failed to consider the financial ability of the 2 GHz MSS applicants. They largely base this argument on the statements of a single licensee. The Commission expressly refrained from adopting financial qualifications for 2 GHz applicants and instead chose to prevent spectrum warehousing through strict implementation milestones. By doing so, the Commission clearly instructed the Bureau not to consider the financial ability of the 2 GHz MSS applicants when issuing licensing orders. Thus, the Wireless Providers' argument that the Bureau should have withheld eight 2 GHz MSS licenses due to the statements of a single licensee and in abrogation of the Commission's mandate is specious and unfounded.

Based on the foregoing, the Commission should summarily dismiss or deny the Application.

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To: The Commission

OPPOSITION OF MOBILE COMMUNICATIONS HOLDINGS, INC.
TO APPLICATION FOR REVIEW

Mobile Communications Holdings, Inc. ("MCHI"), by its attorneys, hereby submits this Opposition, pursuant to Section 1.115(d) of the rules of the Federal Communications Commission ("Commission"), to the Application for Review ("Application") filed by AT&T Wireless Service, Inc, Cellco Partnership, d/b/a Verizon Wireless, and Cingular Wireless LLC (collectively, the "Wireless Providers") on August 16, 2001. The Application seeks Commission review of the 2 GHz Mobile-Satellite Service ("MSS") space station licensing orders ("Licensing

Orders") issued by the International Bureau ("Bureau") to 2 GHz MSS applicants on July 17, 2001, including the licensing order granting MCHI a 2 GHz MSS space station license.[1]

MCHI requests the Commission to dismiss the Application because the Wireless Providers do not have the standing that is required under the Commission's rules for the filing of the Application. Even if the Wireless Providers had standing, however, the Application still should be denied on its merits. The Wireless Providers assert four arguments in support of their request for the Commission to vacate the Licensing Orders, one of which is specific to a particular licensee and thus is not addressed herein. As further explained below, each of the Commission's arguments is either mooted by Commission action subsequent to the filing of the Application or is directly contrary to Commission precedent.

I. THE COMMISSION SHOULD DISMISS SUMMARILY THE APPLICATION BECAUSE THE WIRELESS PROVIDERS LACK STANDING

The Commission should summarily dismiss the Application because the Wireless Providers lack standing to file the Application under Section 1.115(a) of the Commission's rules.[2] Section 1.115(a) requires any "person filing an application for review who has not previously participated in the proceeding" to meet a two-part test. Such person must "show . . . good reason why it was not possible for him to participate in the earlier stages of the proceeding," and must "describe . . . with particularity the manner in which he is aggrieved by the action taken." The Wireless Providers, which were not parties to the Commission 2 GHz MSS proceedings that culminated in the Licensing Orders, did not and cannot satisfy either prong of the two-part test provided by Section 1.115(a). In fact, nowhere in the Application do

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[1] Application of Mobile Communications Holdings, Inc., Order and Authorization, DA 01-1637 (rel. July 17, 2001) (FCC File No. 180-SAT-P/LA-97(26); IBFS Nos. SAT-LOA-19970926-00150, SAT-AMD-200001103-00157) ("MCHI License").

[2] See 47 C.F.R. § 1.115(a) ("Any application for review which fails to make an adequate showing . . . [with respect to the two-part Section 1.115(a) standing test] will be dismissed.").

the Wireless Providers even assert that they have the standing required to properly file the Application.

A. The Wireless Providers Were Not Parties to Any of the Commission Proceedings Culminating in the Issuance of the Licensing Orders And Thus Must Affirmatively Demonstrate Standing

The Wireless Providers have never formally participated in the Commission's 2 GHz MSS allocation or spectrum assignment proceedings. Most significantly, the Wireless Providers did not file comments on, or petitions to deny, any of the 2 GHz MSS applications filed by the 2 GHz licensees in 1997 or the conforming amendments filed in 2000. The Wireless Providers also did not formally participate in any of the Commission proceedings leading to the issuance of the Licensing Orders. The Wireless Providers did not file comments in response to the 1995 notice of proposed rulemaking ("NPRM") in which the Commission proposed to allocate spectrum in the 2 GHz band for MSS, and did not seek reconsideration of the resulting 1997 order establishing the 2 GHz MSS allocation.[3] Further, the Wireless Providers did not file comments in response to the Commission's 1999 NPRM proposing service and spectrum assignment rules for the 2 GHz MSS band and did not seek reconsideration of the resulting 2000 order.[4]

[3] Amendment of Section 2.106 of the Commission's Rules to Allocate Spectrum at 2 GHz for Use by the Mobile-Satellite Service, ET Docket No. 95-18, Notice of Proposed Rulemaking, 10 FCC Rcd 3230 (1995) (proposing the 2 GHz MSS allocation), further proceeding, First Report and Order and Further Notice of Proposed Rulemaking, 12 FCC Rcd 7388 (1997) (allocating a portion of the 2 GHz band for MSS).

[4] Establishment of Policies and Service Rules for the Mobile Satellite Service in the 2 GHz Band, IB Docket No. 99-81, Notice of Proposed Rulemaking, 14 FCC Rcd 4843 (1999) (proposing 2 GHz MSS service rules and several alternative spectrum assignment methods), further proceeding, Report and Order, 15 FCC Rcd 16127 (2000) (promulgating 2 GHz MSS service and spectrum assignment rules) ("2 GHz R&O").

Because the Wireless Providers are not parties to the Commission proceeding resulting in the Licensing Orders,[5] in order to obtain standing to file an Application for Review of a Licensing Order, the Wireless Providers are required to demonstrate both that they have a good reason for not participating in the licensing proceeding and that they are aggrieved by the Licensing Orders. Each prong of the two-part standing test imposed by Section 1.115(a) of the Commission's rules provides a separate and independently sufficient grounds for dismissal of the Application. The Wireless Providers failed to satisfy either prong of the standing test, and therefore the Commission should summarily dismiss the Application.

B. The Wireless Providers Failed to Offer Good Reason Why They Did Not Participate In the Commission Proceedings Leading to the Licensing Orders

The Application does not contain any explanation as to why the Wireless Providers failed to file petitions to deny the Licensing Orders or to otherwise participate in the Commission's 2 GHz MSS proceedings preceding the Licensing Orders. Thus, the Wireless Providers failed to meet the first prong of the two-part standing test provided by Section 1.115(a). Standing alone, this failure independently warrants dismissal of the Application by the Commission because Section 1.115(a) requires entities filing applications for review to meet both parts of the two-prong standing test.[6]

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[5] Pan American Satellite Corporation Application for Modification of Conditional Authority to Construct a Subregional Western Hemisphere Satellite System, Memorandum Opinion, Order and Authorization, 60 Rad. Reg. 2d 398 (1986) (denying an application for review because the applicant was not a party to the underlying proceeding and failed to meet the two-part test established in 47 C.F.R. § 1.115) ("Pan Am Sat").

[6] Pan Am Sat, ¶ 52 (dismissing an application for review for failure to meet one part of the two-part standing test because an applicant "must meet both [Section 1.115(a)] tests in order to obtain legal standing").

C. The Wireless Providers Did Not Suffer Direct Harm From the Licensing Orders

The Wireless Providers, however, also failed to meet the second part of the standing test. To demonstrate that it is "aggrieved" by an action taken pursuant to delegated authority, an applicant seeking review of the delegated action "must demonstrate an actual or threatened injury to itself as a direct result of the challenged action."[7] The injury must be "likely to be redressed by the requested relief."[8] The Commission expressly has rejected the notion that an entity can be aggrieved by a delegated action in which the entity has no direct economic interest or other nexus, merely because the delegated action is "intertwined" with another proceeding in which the entity does have a direct interest and could suffer an adverse affect.[9]

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[7] Applications of WINV, Inc., (Assignor) and WGUL-FM, Inc., (Assignee) for Renewal and Assignment of License of WINV(AM), Inverness, Florida, Memorandum Opinion and Order, 14 F.C.C.R. 2032, at ¶ 3 (1998) (dismissing an application for review for failure of the applicant to demonstrate a likelihood of direct injury from the challenged delegated action); see also Mobile Relay Associates, Inc. Finder's Preference Request for Station WNMT733 Licensed to Jim Doering at Santiago Peak, California, Memorandum Opinion and Order, 16 FCC Rcd 4320, at ¶ 2 (2001) (dismissing an application for review for failure of the applicant to "allege facts sufficient to show that grant of the application that it opposes would cause petitioner a direct injury"); Application of Lawrence and Nayereh Wrathall d/b/a Hanford FM Radio, Assignor and Rolando Collantes, Assignee, for Assignment of the Construction Permit of Station KGEN-FM, Hanford, California, Memorandum Opinion and Order, 11 FCC Rcd 8509, at ¶ 4 (dismissing an application for review because the applicant failed to identify a direct economic interest implicated by the challenged delegated action).

[8] Applications of KQQK, Inc. for Renewal of License for KQQK(FM), Galveston, Texas, Memorandum Opinion and Order, 1999 WL 865786, at ¶ 4 (rel. Oct. 19, 1999) (dismissing an application for review because the applicant failed to "plead 'injury in fact' fairly traceable to the . . . [delegated action] complained of").

[9] Applications of Clarke Broadcasting Corporation for Extension of Time to Construct and for Modification of Construction Permit for a New FM Station on Channel in Atwater, California, Memorandum Opinion and Order, 11 FCC Rcd 3057, at ¶¶ 4-5 (1996) ("Clarke"). In Clarke, the licensee of a radio station ("challenger") in Market A filed with the Commission an application for review challenging a Mass Media Bureau decision granting another radio station licensee ("licensee") an extension of a construction requirement in an adjacent market--Market B. Both the licensee and the challenger held radio stations in Market A and thus were direct competitors in Market A. The challenger, however, did not hold a radio station license in Market B, in which the licensee held a second radio station license. The licensee had filed an application to upgrade its Market A license and a construction requirement extension request with respect to its Market B station. According to the challenger, the licensee's Market B extension request only was

The Wireless Providers have no direct interest in the Commission's 2 GHz MSS proceedings, and suffered no direct economic harm from the Licensing Orders. They are not MSS licensees or applicants and do not provide MSS services.[10] As a result, the Wireless Providers cannot be aggrieved parties with respect to the Licensing Orders and do not have standing to seek Commission review of the Licensing Orders. The only nexus to the Licensing Orders asserted by the Wireless Providers is that they would have preferred the Commission to reallocate the 2 GHz MSS band for advanced terrestrial services in another pending Commission proceeding.[11] A mere desire for a result that is inconsistent with a delegated action does not amount to a direct injury caused by the delegated action and cannot be a basis for standing.

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necessitated to avoid short spacing the licensee's Market B radio station relative to its Market A radio station in the event that the Commission approved the licensee's Market A upgrade application.

The challenger argued that it would receive direct economic harm as a competitor of the licensee in Market A if the Commission granted the upgrade application. The challenger further argued that the licensee's Market B extension request only was filed by the licensee to facilitate its Market A upgrade application. Therefore, concluded the challenger, the Market A upgrade proceeding and the Market B extension request proceeding were sufficiently intertwined for the Commission to find that the challenger had standing in both proceedings as a result of the challenger's status as a direct competitor to the licensee in Market A, even though the challenger did not directly compete with the licensee in Market B. The Commission disagreed holding that to have standing the applicant must have a direct economic interest or other nexus to the challenged delegated action (i.e., the Market B extension) and that an indirect interest through the "intertwined" interrelationship of two separate proceedings (i.e., the Market A upgrade proceeding and the Market B upgrade proceeding) is not sufficient to bestow standing. Id.

[10] Arguably, all telecommunications providers compete with MSS licensees to some extent because MSS licensees provide telecommunications services nationwide. The Commission, however, has held that an entity does not have standing to seek Commission review of a delegated action merely because the action has the potential to cause additional competition to the entity seeking review. See Pan Am Sat, ¶ 52 (denying an application for review because "there is no basis to conclude that significant economic harm" will occur to the applicant merely because the challenged satellite licensing order caused the licensee to be a "potential competitor" of the applicant).

[11] The Commission currently is considering in a separate proceeding whether to reallocate a variety of spectrum bands for advanced terrestrial services. See 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

Further, a direct interest by the Wireless Providers in another proceeding cannot provide the Wireless Providers with standing in the instant proceeding even if the two proceedings were intertwined, which they are not.[12] The Wireless Providers are not directly concerned with, much less directly injured by, the Licensing Orders. Rather, they complain in the Application of an indirect affect of the 2 GHz MSS allocation—a reduction of spectrum potentially available in the immediate future to the Wireless Providers for the provision of terrestrial services. This complaint—an anticipated deprivation of spectrum—cannot be redressed by a reversal of the Licensing Orders and therefore cannot amount to a direct injury. Reversal of the Licensing Orders would not provide the Wireless Providers with any additional spectrum. To obtain such spectrum, the Wireless Providers first would have to convince the Commission to reallocate the 2 GHz MSS band to terrestrial services and then would have to successfully bid on the resulting terrestrial wireless licenses. This hypothetical chain of events is far too speculative to constitute a direct economic injury.

II. THE APPLICATION SHOULD BE DENIED ON ITS MERITS AS MOOT AND INCONSISTENT WITH DIRECT COMMISSION PRECEDENT

Even if the Wireless Providers had standing to file the Application, which they do not, the Application still should be denied on its merits. The Wireless Providers assert four primary arguments in their Application, one of which is not addressed herein because it is specific to another licensee. The other three arguments used by the Wireless Providers to support their request for the Commission to vacate the Licensing Orders are either inconsistent with prior

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Wireless Systems, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, ET Docket Nos. 00-258 & 95-18, IB Docket No. 99-81, RM-9498, RM-10024, FCC 01-224 (rel. Aug. 20, 2001) ("3G NPRM").

[12] See, supra, note 9. Although the Commission proposed to reallocate certain 2 GHz MSS spectrum for terrestrial services in the 3G NPRM, the Commission did not propose to revoke or reduce the spectrum assignments provided to 2 GHz licensees in the Licensing Orders. Thus, the 3G NPRM does not directly implicate the Licensing Orders.

Commission mandates or effectively have been rendered moot by Commission action subsequent to the filing of the Application.

As an initial matter, the Wireless Providers should not be permitted to challenge a general spectrum allocation adopted by the Commission in the context of an application seeking Commission review of a Bureau licensing order. The allocation of the 2 GHz band for MSS occurred over four years ago.[13] The Wireless Providers failed to participate in that proceeding, and their opportunity to administratively or judicially challenge the outcome of the proceeding expired long ago. The Commission cannot permit its spectrum allocations to be challenged anew every time a Bureau licenses a party to access spectrum under the allocation. The Commission would not entertain an application for review filed against a Wireless Bureau licensing order granting a Personal Communications Service ("PCS") license if the primary argument asserted in the application was that the entire PCS spectrum allocation should be reallocated for broadcast television service. Similarly, the Wireless Providers should not be permitted to seek untimely reconsideration of the entire 2 GHz MSS allocation by filing an application seeking Commission reversal of the 2 GHz MSS Licensing Orders.

A. By Denying the Petition for Rulemaking of the Cellular Telecommunications and Internet Association ("CTIA"), the Commission Mooted the Wireless Providers' request for Deferral of the Licensing Orders Until the Commission Has Acted on the CTIA Petition

The Commission already effectively has rebuked the Wireless Providers' assertion that the 2 GHz MSS spectrum allocation should be reallocated for terrestrial services, thereby rendering the Application's primary argument moot. The Wireless Providers argue that the Bureau should have deferred issuing the Licensing Orders until after the Commission determines whether to reallocate the entire 2 GHz MSS band for terrestrial services.[14] Specifically, the

[13] See, supra, note 3.

[14] Application, at 8.

Wireless Providers request the Commission to vacate the Licensing Orders and instruct the Bureau to hold the matter in abeyance until the Commission acts on a petition for rulemaking filed by CTIA.[15] CTIA's petition seeks reallocation of the 2 GHz MSS band for advanced terrestrial services.[16]

Subsequent to the filing of the Application, the Commission denied CTIA's petition in an NPRM addressing the need for additional terrestrial spectrum ("3G NPRM").[17] The Commission stated:

> We deny . . . CTIA's petition for rulemaking insofar as it requests reallocation of the entire 2 GHz MSS band and a delay in authorizing of 2 GHz MSS systems. The actions we are taking [in this 3G NPRM] better serve the public interest with respect to [the reallocation] issues, and are consistent with the International Bureau's recent action granting 2 GHz MSS authorization.[18]

Thus, the Wireless Providers' request for the Commission to vacate and defer re-issuance of the Licensing Orders has been mooted by Commission action subsequent to the filing of the Application.

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[15] Id.

[16] Petition for Rulemaking of the Cellular Telecommunications & Internet Association (filed May 18, 2000).

[17] 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, ET Docket Nos. 00-258 and 95-18, IB Docket No. 99-81, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, FCC 01-224 (rel. Aug. 20, 2000) ("3G NPRM").

[18] 3G NPRM, at ¶ 23 (emphasis added). The Commission offered a variety of proposals regarding reallocating 2 GHz MSS spectrum that was not assigned to the 2 GHz MSS licensees or that ultimately is reclaimed from the licensees through the voluntary surrender of 2 GHz MSS licenses or the automatic cancellation of such licenses due to the failure by the licensee to satisfy applicable implementation milestones. Id. at ¶¶ 14-36. The Commission, however, did not propose to reduce or revoke the 2 GHz MSS spectrum assignments contained in the Licensing Orders.

B. By Adopting Implementation Milestones in Lieu of Financial Qualifications, the Commission Effectively Ordered the Bureau not to Consider the Financial Ability of Licensees

The Wireless Providers also assert that the Bureau should not have issued the Licensing Orders because of evidence that the MSS industry is not financially viable.[19] The Wireless Providers specifically question the financial ability of certain 2 GHz licensees, including MCHI.[20] They request that the Commission find that the Bureau practiced unreasoned decision-making by failing to thoroughly examine the financial qualifications of the specified licensees. In making such a request, the Wireless Providers willfully ignore the Commission's earlier determinations on the subject of the application of financial qualifications to the 2 GHz applicants. In the Commission's order adopting service rules and licensee qualifications for the 2 GHz MSS band, the Commission expressly declined to adopt financial qualifications.[21]

The Commission stated that its general policy is not to adopt financial qualification rules when all applicants can be accommodated in a given spectrum allocation. The Commission instead chose to promulgate implementation milestones to "ensure timely construction of systems and deployment of service," and to prevent financially distressed companies from warehousing spectrum.[22] The Commission noted that financial qualifications may act as a "barrier to entry, impede innovation, and substitute a flawed method for predicting success for

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[19] Application, at 13.

[20] Id. The Wireless Providers refer to 1998 filings by Iridium LLC ("Iridium") and ICO Services Limited ("ICO"). These filings were made prior to the Commission's adoption of licensee qualification rules for the 2 GHz MSS band in 2000. Iridium's and ICO's comments primarily were aimed at endorsing the adoption of financial qualifications. Neither Iridium nor ICO renewed concerns about MCHI's financial ability after the Commission determined to rely on implementation milestones rather than financial qualifications to prevent the warehousing of spectrum and to ensure quick deployment of service. 2GHz R&O, at ¶ 46.

[21] See 2 GHz R&O, at ¶¶ 46-48.

[22] Id. at ¶¶ 46, 48.

the rigors of the marketplace."[23] Thus, the Commission already has ruled that the financial ability of the 2 GHz applicants should not have been considered by the Bureau when adopting licensing orders. A decision by the Bureau to refrain from licensing certain 2 GHz applicants due to financial considerations would have been contrary to the Commission's dictates.[24]

In addition, the Wireless Providers rely heavily on statements made by New ICO Global Communications (Holdings) Ltd., the parent of ICO. In a filing advocating Commission authorization of terrestrial use of 2 GHz MSS spectrum by the 2 GHz MSS licensees, ICO expressed concern about the financial viability of the MSS industry absent such terrestrial authorization.[25] Such emphasis on the statements of a single licensee is baseless and unwarranted. The Commission clearly should not consider vacating eight Licensing Orders—the culmination of over seven years of Commission and applicant effort, merely because one of the licensees has expressed concern about the economics of the industry in the context of a filing advocating increased spectrum use flexibility.

C. A Commission Proposal in the 3G NPRM Moots the Request in the Application for the Commission to Review a Detail of the Spectrum Assignment Selection Mechanism Adopted by the Bureau

The Wireless Providers requested the Commission to review a detail of the spectrum assignment selection methodology adopted by the Bureau.[26] This request has been rendered

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[23] Id. at ¶ 47.

[24] The Wireless Providers suggest that the 2 GHz licensees will manipulate the implementation milestone process but are not clear as to how. They assert that licensees will spend years "refin[ing] their sham system designs." Application, at 14. Contrary to this assertion, the first implementation milestone is July 17, 2002—less than 11 months away. See, e.g., MCHI License, at ¶ 16.

[25] See Ex parte Letter of New ICO Global Communications (Holdings) Ltd., IB Docket No. 99-81 (dated March 8, 2001).

[26] Application, at 20. The Bureau instructed 2 GHz licensees to select spectrum assignments such that the band edge of the assignment is an integer multiple of 3.88 MHz from the band edge

moot by subsequent Commission action. In the 3G NPRM, the Commission proposed to make conforming changes to the Bureau's spectrum assignment methodology if doing so would facilitate the use or reallocation of any unassigned 2 GHz MSS spectrum ultimately adopted by the Commission.[27] In any event, Commission review of this detail of the Licensing Orders does not in any way warrant vacating the Licensing Orders.

III. CONCLUSION

As fully set forth above, the Wireless Providers Application should be summarily denied. The Wireless Providers do not have the required standing to file the Application. In addition, even if the Wireless Providers did have standing, the Application should be denied on its merits. The arguments asserted by the Wireless Providers to support their request that the Commission vacate the Licensing Orders are inconsistent with past Commission action or have been mooted by subsequent Commission action.

The Commission already has denied the CTIA petition for rulemaking thereby rendering moot the request by the Wireless Providers that the Commission delay issuance of the Licensing Orders until the Commission acts on CTIA's petition. Further, the Commission expressly instructed the Bureau not to consider the financial qualifications of the 2 GHz applicants when issuing Licensing Orders. This Commission mandate directly undercuts the Wireless Providers' claim that the Bureau practiced unreasoned decision-making by failing to consider the financial

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of the 2 GHz MSS band. See, e.g., MCHI License, at ¶ 7. This method of spectrum assignment selection enables the Commission to easily expand the 2 GHz MSS licensees' spectrum assignments from paired 3.5 MHz blocks to paired 3.88 MHz blocks. In the event, however, that the Commission instead decides to reallocate the unassigned spectrum in the 2 GHz MSS band to some other use, this spectrum assignment selection method would inefficiently cause the reallocated spectrum to exist as minute 0.38 MHz blocks of paired spectrum throughout the 2 GHz band.

[27] 3G NPRM, at ¶ 30.

ability of the applicants. Finally, the Commission already has commenced review of the spectrum assignment selection mechanism proposed by the Bureau, thereby mooting the request of the Wireless Providers for such review.

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August 30, 2001

CERTIFICATE OF SERVICE

I, Phillip R. Marchesiello, hereby certify that copies of the foregoing Objection of Mobile Communications Holdings, Inc. to the 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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