

January 17, 2007

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., Room TW-A325  
Washington, D.C. 20554



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(Holdings) Limited**

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Re: TMI Communications and Company, Limited Partnership and  
TerreStar Networks Inc.  
Modification Application (File No. SAT-MOD-20061206-00144)

Dear Ms. Dortch:

New ICO Satellite Services G.P. ("ICO") submits these preliminary comments in response to the above-referenced modification application ("Application") of TMI Communications and Company, Limited Partnership and TerreStar Networks Inc. (collectively, "TMI/TerreStar"). In order to spare the Commission an unnecessary expenditure of scarce resources on an issue it has already decided, and in a spirit of industry cooperation, ICO respectfully submits the following proposal to address TMI/TerreStar's stated concerns.

In its Application, TMI/TerreStar requests that the Commission change its rules to allow TMI/TerreStar to pick certain 2 GHz mobile satellite service ("MSS") frequencies prior to its commencement of operations. The Commission, however, has already ruled that the first 2 GHz MSS operator to commence operations will be the first to select its assigned frequencies ("Selected Assignment").<sup>1</sup> Thus, the Commission already has established the procedure for selecting and assigning 2 GHz MSS frequencies. Based upon publicly available information, including the capital expended to date on our respective satellite programs, ICO believes it will be the first to meet the requirements under that procedure.

The primary justification for TMI/TerreStar's proposed modification of the Commission's rules (and modification of both ICO's and TMI/TerreStar's 2 GHz MSS authorizations) is that TMI/TerreStar needs regulatory certainty regarding its Selected Assignment in order "to timely complete critical engineering tasks, including clearing incumbent point-to-point microwave radio facilities from the MSS downlink band [and] finalizing the design specifications for radio communication chipsets and handsets."<sup>2</sup>

<sup>1</sup> See *Establishment of Policies and Service Rules for the Mobile Satellite Service in the 2 GHz Band*, 15 FCC Rcd 16127 ¶ 16 (2000).

<sup>2</sup> TMI/TerreStar Application, Exh. 2 at 1.

TMI/TerreStar's need to know its exact spectrum assignment is not evident, since the Commission's rules have provided sufficient regulatory certainty for ICO to proceed on a more advanced satellite construction schedule and on its terrestrial network. Nonetheless, ICO will agree to provide that certainty by selecting its specific spectrum designation at this time. The Commission should not, however, allow TMI/TerreStar to jump the line based on its alleged need for regulatory certainty rather than its being first to launch and operate its satellite, as provided under the rules. The regulatory certainty that TMI/TerreStar seeks should only be achieved through a mechanism that would not prejudice ICO's existing rights.

In sum, ICO is fully prepared to cooperate with TMI/TerreStar in its efforts to obtain regulatory certainty, provided that ICO is entitled to choose its Selected Assignment first, consistent with its existing rights under the Commission's rules. ICO urges the Commission to refrain from acting upon TMI/TerreStar's Application and instead allow an opportunity for ICO and TMI/TerreStar to submit a joint proposal for a modification or waiver of the Selected Assignment procedure.

Please direct any questions regarding this submission to the undersigned.

Respectfully submitted,



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Senior Regulatory Counsel

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