

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

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Policy Branch
International Bureau

In the Matter of)

Use of Returned Spectrum in the)
2 GHz Mobile Satellite Service)
Frequency Bands)

Inmarsat Global Limited, Petition for)
Declaratory Ruling to Provide Mobile)
Satellite Service to the United States)
Using the 2 GHz and Extended Ku-Bands)

IB Docket Nos. 05-220 and 05-221

FCC File Nos. SAT-PPL-20050926-00184,
SAT-PDR-20050926-00184,
SAT-AMD-20051116-00221

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Federal Communications Commission
Office of Secretary

**REPLY OF TMI AND TERRESTAR TO
COMMENTS OF CTIA AND T-MOBILE**

INTRODUCTION

On December 9, 2005, after four rounds of comments in two distinct proceedings, the Commission issued an Order modifying the spectrum assignments of TMI Communications and Company Limited Partnership and TerreStar Networks Inc. ("TMI/TerreStar")¹ and ICO Satellite Services ("ICO") to provide each licensee 10 MHz of spectrum (in both directions) in the 2 GHz Mobile Satellite Service ("MSS") band.² The *Order* provided TMI/TerreStar and ICO with the resources necessary to bring next-generation mobile communications services to the American public, including the homeland security and emergency response communities and the residents of rural areas.

¹ TerreStar, an American company based in Reston, Virginia, is the prospective assignee of TMI's 2 GHz MSS authorization and, pursuant to an agreement with TMI, has contracted with Space Systems/Loral Inc. for a satellite that will operate in this band.

² *Use of Returned Spectrum in the 2 GHz Mobile Satellite Service Frequency Bands*, Order, IB Docket Nos. 05-220 and 05-221, FCC 05-204 (rel. Dec. 9, 2005) (the "*Order*").

Not surprisingly, Inmarsat and Globalstar, two providers of traditional mobile satellite service who will face increased competition from the advanced services that TMI/TerreStar will provide, filed petitions for reconsideration.³ CTIA and T-Mobile, representing the terrestrial wireless industry, filed “comments” in support of the Inmarsat and Globalstar Petitions.⁴ The comments merely rehash the arguments that the Commission properly rejected in its *Order*: (1) that TMI/TerreStar and ICO were, for unspecified reasons, obligated to provide a showing of “need” for spectrum in the 2 GHz MSS band; and (2) that the Commission was obligated to assign spectrum to the parties who could pay the most for it, not the parties who would use the spectrum best to serve the public interest.⁵ As the Commission recognized, these arguments are baseless and should be rejected.

³ Petition of Globalstar for Reconsideration, IB Docket Nos. 05-220 & 05-221 (filed Jan. 9, 2006) (“Globalstar Petition”); Consolidated Petition for Reconsideration of Inmarsat Ventures Ltd. & Inmarsat Global Ltd., IB Docket Nos. 05-220 & 05-221 (filed Jan. 9, 2006) (“Inmarsat Petition”). Inmarsat and Globalstar are collectively referred to as the “Petitioners.” TMI/TerreStar and ICO have filed oppositions to these petitions. See Consol. Opp. of TMI and TerreStar to Petitions for Recon., IB Docket Nos. 05-220 & 05-221, File Nos. SAT-PPL-20050926-00184, SAT-PDR-20050926-00184 & SAT-AMD-20051116-00221 (filed Feb. 16, 2006) (“TMI/TerreStar Opposition”); New ICO Satellite Servs., G.P., Opposition to Petition for Recon., IB Docket Nos. 05-220 & 05-221, File Nos. SAT-PPL-20050926-00184, SAT-PDR-20050926-00184 & SAT-AMD-20051116-00221 (filed Feb. 16, 2006) (“ICO Opposition”).

⁴ Comments of CTIA - The Wireless Ass’n In Support of the Petitions for Reconsideration, IB Docket Nos. 05-220 & 05-221 (filed Feb. 16, 2006) (“CTIA Comments”); Comments of T-Mobile USA, Inc., IB Docket Nos. 05-220 & 221, File Nos. SAT-PPL-20050926-00184, SAT-PDR-20050926-00184 & SAT-AMD-20051116-00221 (filed Feb. 16, 2006) (“T-Mobile Comments”). Of course, CTIA and T-Mobile failed to file petitions for reconsideration of their own, and many of the arguments they make -- notably, that spectrum should be taken from MSS and given to CMRS -- cannot now be raised. The questionable procedural status of the CTIA and T-Mobile Comments is highlighted by the fact that, while the terrestrial carriers have argued consistently that spectrum should be taken from MSS and allocated to their cellular and PCS businesses, the Petitions that they support raise only the question of whether spectrum should have been assigned to other MSS operators and not terrestrial carriers.

⁵ T-Mobile also repeats claims made by the Petitioners that the Commission failed to consider what they call “realistic alternatives,” and that it did not consider the supposed relationship between TMI/TerreStar and Motient. T-Mobile Comments at 7, 9. TMI/TerreStar has amply explained in its opposition why these fall-back arguments fail, TMI/TerreStar Opposition at 12-13 & 15-18, and it sees no need to repeat these explanations here.

I. THE COMMISSION WAS NOT REQUIRED TO PREMISE ITS SPECTRUM MANAGEMENT DECISION ON SHOWINGS OF NEED.

CTIA and T-Mobile raise again the notion that the 2 GHz MSS licensees are obligated to provide some unspecified showing of “need” for access to the MSS spectrum at issue in these proceedings. The Commission properly rejected the “need showing” argument in its *Order* when it wrote, “Given the rapidly changing satellite technology and the time needed to construct and launch a satellite, any [need] assessment is likely to be obsolete by the time the satellite is ready to provide service.”⁶ The Commission concluded that, “given the innovative designs and unique markets targeted by each satellite operator, any proceedings to quantify specific requirements would be lengthy and inherently subjective.”⁷

CTIA is mistaken in arguing that there is a “need showing” requirement arising from the *Big LEO* proceeding.⁸ Although, in that case, the Commission requested more detailed information from Iridium concerning its planned use of that spectrum, that requirement was unique to the deficiencies in Iridium’s showing, and not, as CTIA would have it, the establishment of a precedent for a need showing in all cases. Even if the Iridium requirement is deemed to have some value as a precedent, the D.C. Circuit has been clear that, in section 316 proceedings, the FCC has broad authority to change its policies and interpretations of law, so long as it provides a reasoned explanation, as it has done here, and does not run afoul of the Supreme Court’s standard for statutory interpretation.⁹ The Commission is empowered – and, indeed, expected – to collect the information that it believes is necessary and appropriate to make the decision.

⁶ *Order* at ¶ 40.

⁷ *Id.*

⁸ CTIA Comments at 5.

⁹ *Rainbow Broadcasting Co. v. FCC*, 949 F.2d 405, 408 (D.C. Cir. 1991).

Just as the Commission in the *Big LEO* proceeding was entitled to request more information where it felt that it was necessary because of concrete and specific concerns about the viability of Iridium's system design, the FCC has complete discretion not to request such information in this proceeding, in which the Commission has no such concerns. Under Section 316, the relevant question was whether modified spectrum reservations for TMI/TerreStar and ICO were in the public interest. For the reasons discussed exhaustively in the *Order*, and in TMI/TerreStar's and ICO's oppositions to the Petitions, the Commission properly concluded that they were. No new reasons have been presented by T-Mobile or CTIA for revisiting that public interest judgment now.

II. THE COMMISSION ASSIGNED 2 GHZ MSS SPECTRUM IN A MANNER THAT BEST SERVED THE PUBLIC INTEREST.

Again ignoring the public interest considerations that guide the Commission, CTIA and T-Mobile emphasized that their industry can afford to pay more than TMI/TerreStar and ICO for the spectrum at issue in these proceedings. The Commission's licensing decisions, however, are not to be guided by the revenue implications of those decisions, but by the public interest.¹⁰

In its *Order*, the Commission concluded that assignment of frequencies to TMI/TerreStar and ICO would serve the public interest better than any alternative it had before it.¹¹ The Commission's public interest determination was based on a variety of factors, each of

¹⁰ 47 U.S.C. § 309(j)(7)(a) (when making allocation decisions, the Commission is precluded from "bas[ing] a finding of public interest, convenience, and necessity on the expectation of Federal revenues from the use of competitive bidding"). See also *Order* at ¶ 62; TMI/TerreStar Second Reply Comments at 16-17.

¹¹ *Order* at ¶ 26 (citing Reply Comments of SkyTerra Communications, Inc., IB Docket No. 05-221, at 9-10 (filed Aug. 15, 2005)) ("[W]e find that increasing ICO's and TMI's spectrum assignments to 10 megahertz in each direction would further the public interest by better enabling them to provide crucial communications services during times of national emergencies, and to offer rural broadband services. In addition, we find that increasing ICO's and TMI's spectrum assignments is in the public interest because ICO and TMI will be able to bring the

which was discussed at length in the *Order*. In particular, however, the FCC determined that assignment to TMI/TerreStar and ICO would best serve the Commission's public safety, rural broadband, and competition goals.

A. Public Safety and Rural Broadband

CTIA and T-Mobile, like the Petitioners, attempt to disparage the submissions made by the public safety entities and rural interests in this proceeding and, by extension, the Commission's reliance on these submissions. For example, in their comments, the emergency response community explained that existing communications services from traditional MSS and terrestrial wireless providers are insufficient to meet today's public safety and homeland security challenges and that a next-generation system like TMI/TerreStar's is necessary to protect our nation effectively. Detailed technical analysis is not necessary to support that conclusion, which emergency response providers are uniquely qualified to make and to which the Commission properly gave due consideration. On the basis of the record in this proceeding, the Commission was fully justified in deciding that the assignment of the available spectrum to TMI/TerreStar and ICO would "bring the spectrum into use more quickly – and thus offer public safety and rural broadband services more quickly – than would be possible if the spectrum were assigned to another party."¹² Indeed, only TMI/TerreStar and ICO – and no other terrestrial or satellite providers – are in a technical and operational position to offer an advanced integrated MSS/ATC system by 2007. Inmarsat, for example, lacks the capability or demonstrated corporate interest to commit to a deployment of MSS-ATC, either on its own or through a partnering arrangement,

spectrum into use more quickly -- and thus offer public safety and rural broadband services more quickly -- than would be possible if the spectrum were assigned to another party.").

¹² *Order* at ¶ 26. As ICO notes in its opposition, even if one of the Petitioners were today granted spectrum in the 2 GHz MSS band, milestone dates would almost certainly be set so that they would not be required to commence service as quickly as TMI/TerreStar and ICO. ICO Opposition at 4-5.

until three or more years after the launch of TMI/TerreStar's system. Any offering by Inmarsat or another provider before that time would be limited to legacy technology that cannot offer the public safety and rural broadband benefits promised by TMI/TerreStar.

B. Competition

Similarly, CTIA and T-Mobile are wrong that the Commission's decision will not foster increased competition in the wireless communications market. CTIA and T-Mobile have done nothing more than repeat the discredited argument that TMI/TerreStar and ICO do not compete against T-Mobile, Globalstar, or Inmarsat, because their handsets will operate on a different frequency.¹³ As the Commission concluded in the *Order*, that argument simply does not withstand scrutiny.¹⁴ Consumers purchase services that are substitutable for each other based on functionality, without regard to the specific technology or frequency used by those services.¹⁵

CONCLUSION

Contrary to CTIA's complaint about the lack of "any spectrum management consideration" underlying the Commission's *Order*, the Commission applied its most appropriate spectrum management principle: the public interest standard. Using that standard, which is also mandated by Section 316, the Commission asked whether the public would be served better by 2 GHz MSS licensees with adequate spectrum resources than it would be served by assignment of the spectrum to other users. After an extensive proceeding characterized by the


¹³ See T-Mobile Comments at 8.

¹⁴ TMI/TerreStar Opposition at 8-9; TMI/TerreStar Second Reply Comments at 9-12.

¹⁵ Supplemental Declaration of Peter Cowhey, TMI/TerreStar Comments, Exhibit C, at 3 ("To consumers, the spectrum band in which an MSS provider operates is irrelevant."); Bruce M. Owen, "Economic Issues Related to the Number of Firms Licensed to Use 2 GHz Spectrum for MSS Services," TMI/TerreStar Second Reply Comments, Exhibit 4, at 2 (explaining that "neither frequency bands nor other regulatory categories are markets," because markets are defined by the similarity of competitors' services to one another, rather than on whether the competitors use the same frequency band). That is manifestly the case, of course, in the Commenters' core mobile service markets where consumers do not distinguish between terrestrial providers using the 800/900 and 1900 MHz bands.

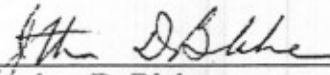
active participation of members of the public who would benefit the most from a high-capacity, ubiquitous, state-of-the-art mobile communications system optimized for homeland security, public safety, and the underserved residents of rural areas, the Commission concluded that redistribution to the 2 GHz MSS licensees would best serve the public interest. That is all that is required of the Commission on both a legal and policy basis.

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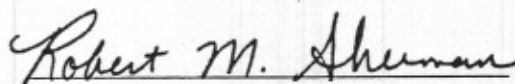
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