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March 30, 1998

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**Via Hand Delivery**

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, N.W. - Room 222
Washington, D.C. 20554


RECEIVED

MAR 30 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY


Re: **EX PARTE**
ET Docket No. 95-18

Dear Ms. Salas:

Francis Coleman, Director of Regulatory Affairs, North America of ICO Global Communications ("ICO") and the undersigned met March 27, 1998 with Paul Misener, senior legal advisor to Commissioner Harold W. Furchtgott-Roth and Dale Hatfield, chief technologist, Office of Plans and Policy, to discuss ICO's comments in the above-captioned proceeding.

ICO updated the staff on its progress toward construction of its mobile satellite system and otherwise restricted its discussion to the arguments presented in its comments filed in the above-captioned proceeding and the attached briefing paper.

Two copies of this letter have been submitted to the Secretary of the Commission for inclusion in the public record, as required by Section 1.1206(b)(2) of the Commission's rules.

Very truly yours,

Cheryl A Tritt

Cheryl A. Tritt
Counsel for ICO Global Communications

Attachment
cc: Paul Misener
Dale Hatfield

dc-110861

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# ICO GLOBAL COMMUNICATIONS

## BRIEFING PAPER

## 2 GHz MOBILE SATELLITE SERVICE PROCEEDING AND IMPACT ON ACCESS TO U.S. MARKET

### INTRODUCTION TO ICO

- Created in 1995 as a private independent spin off from Inmarsat to offer MSS services on a global basis.

- ICO today is commercially independent and market driven.

- Commercial milestones are being met.

  -- 12-satellite mid-earth orbiting system under construction by Hughes and launch services under prime contracts to Hughes with total contract value to that company of $2.4 billion.

  -- Launch vehicles include U.S. Delta and Atlas rockets.

  -- First satellite on schedule to be launched end of '98

  -- Commercial service initiated by Q3 2000

### GENERAL REGULATORY ENVIRONMENT OVERVIEW

### INTERNATIONAL

- The U.S. government enlisted the assistance of ICO's predecessor Inmarsat at '92 WARC to seek an allocation of global spectrum at 1.6 and 2 GHz for use by U.S. MSS operators. In return, the U.S. assured Inmarsat that its MSS system would have access to the U.S. as long as it filed for 2 GHz spectrum rather than the 1.6/2.4 GHz bands. Several U.S. companies had filed license applications at that time for low earth orbiting ("Big LEO") MSS systems in the 1.6/2.4 GHz frequency bands.

- Successful WTO/GBT negotiations will result in most WTO countries opening markets to MSS operators. ICO worked side by side with the U.S. government and U.S. companies to ensure successful adoption globally of competitive market entry policies for satellite services.

- ICO's "home country," as applied in the WTO Basic Telecom Agreement, is the United Kingdom, which is licensing ICO's space segment and has undertaken a rigorous process of "due diligence" (DTI process).

- ICO service providers are seeking licenses in more than 50 countries around the world. ICO has an investor profile that reflects international investment with a strong component of investment from U.S. companies.

- ICO experience so far in obtaining licenses outside the U.S. in 2 GHz frequency ranges.

**UNITED STATES**

- Pursuant to WTO commitments FCC will presume MSS applicants from WTO countries do not present a high risk to competition in the U.S. market.

- Following successful adoption by the '92 WARC of MSS allocations in the 1.6/2.4 GHz and 2 GHz bands, the Commission allocated the full 1.6/2.4 GHz spectrum in the U.S. for MSS in December 1993. Despite Glonass interference issues, there was no suggestion of relocation cost requirements in the band. The Commission waited until March 1997 to allocate 70 MHz in the 2 GHz band for MSS.

- Following FCC opening of the initial processing round for 2 GHz MSS applicants in September 1997, ICO filed Letter of Intent to serve U.S. market. Still awaiting public notice and comment period to begin.

- Two of ICO's primary competitors, Iridium and Globalstar have been licensed to serve the United States since 1995 and expect to begin operations in 1998/99.

- ICO Needs Regulatory Clearance Without Further Delay

  -- Before ICO and its service distributors can serve the U.S. market - the FCC must:

  (a) resolve assignment and relocation policies at 2 GHz.

  (b) place strict limitations on issuance and renewals of fixed licenses in the 2165-2200 MHz band subject to a condition that the licenses convert to secondary status as of January 1, 2000.

  (c) conclude expeditiously the initial license processing round.

(d) seek comment on and conclude a service rule proceeding that likely will include a band sharing plan, among other critical issues, for the 2 GHz band.

(e) implement the 1997 Budget Reconciliation Act that requires 15 MHz of spectrum to be auctioned from a frequency band (1990-2110 MHz) that includes the MSS uplink bands, and 40 Mz of spectrum between 2210-2150 MHz by year 2002. It is not necessary to allocate 15 MHz from MSS uplink band.

**OVERVIEW OF 2 GHz PROCEEDING**

- Although both 1.6/2.4 GHz frequencies and 2 GHz frequencies for MSS were allocated at WARC-92, 2 GHz proceeding to make domestic allocation was not initiated until January 1995.

- In March 1997 the FCC allocated 70 MHz of spectrum to MSS operations to serve the United States. [1990-2025 MHz uplink - 2165-2200 MHz downlink]. The allocation rulemaking was initiated in January 1995.

- FCC also applied its domestic terrestrial PCS policy in the international 2 GHz MSS band, ruling that MSS operators must pay relocation expenses of incumbents in both the uplink and downlink bands. Uplink band is used for broadcast auxiliary services (BAS), primarily electronic news gathering. The downlink band has some 10,000 microwave links used by both common and private carriers, including public safety providers.

- March 1997 FCC order also allocated 20 MHz of adjacent spectrum [2110-2130 MHz] to BAS to accommodate, in part, for the loss of 35 MHz of spectrum in the MSS uplink but without consideration of BAS actual spectrum utilization and the impact of digital technology.

- FCC initiated a further rulemaking to determine how the relocation process will be administered.

- A coalition of 2 GHz MSS providers and/or investors have sought reconsideration of the March 1997 order, arguing that:

  -- relocation payments should not be required for global satellite services because, among other things, they will invite other countries to follow suit, creating foreign barriers to entry worldwide for MSS satellite operators, including U.S. operators.

  -- BAS does not require the additional 20 MHz of spectrum at 2110-2130 MHz and with digital technology can operate in the remaining 85 MHz or less of spectrum [2025-2110].

-- SIA filed supporting letter.

- In July 1997 Congress passed the Budget Reconciliation Act which subjects to auctions the additional 20 MHz of spectrum allocated to BAS at 2110-2130 MHz and 15 MHz in the 1990-2110 MHz band, which includes the MSS uplink band.

**RELOCATION PAYMENT REQUIREMENTS WILL HINDER THE DEVELOPMENT OF GLOBAL MSS**

- Represents dramatic departure from traditional international band clearing process, *i.e.,* mitigate effects of any required incumbent moves by allowing sufficient time to amortize equipment and move to alternate frequency bands.

- Inconsistent with U.S. recognition that ripple effect of international auctions is harmful.

- U.S. break with precedent establishes an incentive for other countries, seeking to bolster decreasing revenues from settlement payments, and from state-owned operators that face increasing national and international competition, to invoke "copy-cat" relocation policies. Other countries could be encouraged to demand relocation payments in lieu of exploring sharing where feasible.

- U.S. failure to oppose relocation payment policy or to limit it to carefully defined hardship cases strips it of the ability to challenge the imposition of relocation payments on U.S. operators in other countries.

- Imposition of relocation requirements in multiple countries will slow dramatically the global MSS licensing process and could undermine the financial viability of MSS systems, due to increased costs.

- Relocation policy initially targetted at terrestrial, domestic services that operate in well-defined service areas with fewer incumbents, as opposed to MSS that generally can serve the entire continental United States and thus would be responsible for relocating much greater numbers of incumbents at significantly higher costs. Multiplication of this requirement worldwide has severe implications for project financing and service costs. Moreover, it has a harmful effect on ICO's ability to compete with comparable systems licensed in the 1.6/2.4 GHz bands.

## ICO PROPOSAL FOR A SPEEDY RESOLUTION OF OUTSTANDING 2 GHz ISSUES

- The FCC should publicly announce and expeditiously implement a timetable and approach to licensing the 2 GHz band that creates commercial fairness and certainty in a manner similar to that afforded Big LEOs.

- FCC should declare that its spectrum management policies will not require reimbursement by global satellite providers for relocation of incumbent users.

- In the alternative, the FCC should permit relocation repayments only under the most limited and exigent of "hardship" circumstances, carefully defined so as to not invite expansive interpretation in non U.S. markets.

  -- Technology exists today to permit BAS providers to operate 7 channels in 70 MHz of spectrum. The video business is converting to digital and BAS providers therefore will eventually use digital technology as a result of a number of intervening events unrelated to the advent of MSS operations in the United States. MSS providers should not be required to reimburse costs that would have been incurred in any event.

  -- NuComm study.

  -- Sharing between MSS and fixed users in the downlink is possible, at least for a limited period.

  -- Fixed users have been on notice since 1992 that their spectrum would be used by MSS providers. The FCC should establish a sunset in the year 2005 after which MSS providers are not required to reimburse fixed users whose equipment will have been fully depreciated by that date.

- Strict limitations on issuance and renewals of fixed licenses in the 2165-2200 MHz band subject to a condition that the licenses convert to secondary status as of January 1, 2000.

- The use of best efforts to avoid the payment of relocation costs by global MSS providers is consistent with the FCC's approach of avoiding spectrum auctions for satellite providers. Although the FCC maintains the authority to order spectrum auctions in the case of mutual exclusivity, it has assiduously avoided such auctions by using best efforts to assist satellite providers to avoid mutual exclusivity. The same best efforts should be brought to bear on the 2 GHz proceeding.