

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

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of:)
)
ICO SERVICES LIMITED) RM No. 9328
)
Petition for Expedited Rule Making To)
Establish Eligibility Requirements for the)
2 GHz Mobile Satellite Service)

To the Commission:

REPLY COMMENTS OF ICO SERVICES LIMITED

ICO Services Limited ("ICO Services"),¹ hereby replies to the comments filed in response to ICO's July 17, 1998 Petition for Expedited Rule Making to Establish Eligibility Requirements for the 2 GHz Mobile Satellite Service ("Petition"). In the Petition, ICO urged the Commission immediately to initiate a bifurcated service rule proceeding, with shortened comment periods, that will lead to the prompt conditional licensing of qualified new entrants seeking to provide mobile satellite service ("MSS") at 2 GHz in the United States. Predictably, those commenters that are already licensed to provide MSS in the United States oppose ICO's petition because ICO's proposal would result in additional competition in the market for MSS. As ICO explained in its Petition, however, such competition is in the public interest, and should not be stifled by

¹ ICO Services Limited, a company established under the laws of England and Wales, is a wholly owned subsidiary of ICO Global Communications (Holdings) Limited, which is the ultimate parent of a wholly owned group of companies (referred to herein collectively

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incumbent licensees' efforts to delay the introduction of additional competition in the U.S. MSS market.

I. COMMENTERS SUPPORT ICO'S PROPOSED BIFURCATED PROCEDURE

In its Petition, ICO urged the Commission, among other things, expeditiously to adopt legal, technical and financial eligibility requirements for 2 GHz MSS.² As discussed more fully below, a majority of commenters agree that service rules are needed -- quickly -- for 2 GHz MSS.

A. There Is Strong Support For Expedited Adoption Of 2 GHz Service Rules

A majority of commenters agree with ICO's request that the Commission expeditiously adopt service rules for 2 GHz MSS.³ A number of commenters also agree with ICO's proposal that the Big LEO service rules be used as a template for 2 GHz MSS service rules.⁴ Celsat America, Inc., North American GSM Alliance LLC and ICO USA Service Group further agree with the bifurcated procedure proposed by ICO.⁵

as "ICO") that is developing a satellite system for the provision of global mobile satellite service.

² See ICO Petition for Expedited Rule Making to Establish Eligibility Requirements for the 2 GHz Mobile Satellite Service at 6-8 ("ICO Petition").

³ See Comments of TMI Communications and Company, Limited Partnership at 1; Comments of Celsat America, Inc. at 1 ("Celsat Comments"); Comments of Iridium, LLC at 2-3 ("Iridium Comments"); Comments of the ICO USA Service Group at 2-3 ("Service Group Comments"); Comments of Globalstar, L.P. at 1 ("Globalstar Comments"); Comments of North American GSM Alliance LLC at 2 ("GSM Alliance Comments").

⁴ See, e.g., Globalstar Comments at 1; GSM Alliance Comments at 2; Service Group Comments at 5.

⁵ See Celsat Comments at 1; Service Group Comments at 4-6; GSM Alliance Comments at 1-3.

Some commenters, while agreeing for the need for 2 GHz service rules, oppose the bifurcated procedure proposed by ICO.⁶ Predictably, these commenters include Big LEO licensees that seek 2 GHz spectrum in order to modify or expand MSS systems they are developing at 1.6/2.4 GHz. Their 1.6/2.4 GHz MSS systems, however, remain in the nascent stages of development.⁷ Thus, these entities oppose the expeditious licensing of new MSS entrants at 2 GHz because it is in their self interest to retard the 2 GHz licensing process for as long as possible. The likelihood that existing MSS licensees would be motivated to negotiate with all due speed a band plan with new competitors is remote at best.

The wide disparity in development and commercial readiness of existing licensees' second generation systems supports ICO's request that the Commission focus on initial eligibility rules and allow service rules and band planning negotiations to begin at a later time. Any other approach risks delays in introducing new competition in the U.S. MSS market.

B. ICO's Petition Is Not Premature

Two commenters -- Constellation Communications, Inc. ("Constellation") and Mobile Communications Holdings, Inc. ("MCHI") -- oppose all aspects of ICO's Petition, arguing that ICO's request is "premature."⁸ The reason cited by Constellation and MCHI in support of their allegation, however, is entirely without merit. Both

⁶ See, e.g., Globalstar Comments at 6-9; Iridium Comments at 8-13.

⁷ Although the Big LEO licensees seek authorization for 232 new satellites at 2 GHz, they have yet to substantially utilize the 146 satellites currently licensed to them at 1.6/2.4 GHz.

⁸ Opposition of Constellation Communications, Inc. at 2 ("Constellation Opposition"); Opposition of Mobile Communications Holdings, Inc. to Petition for Expedited Rulemaking of ICO Services Limited at 3-5 ("MCHI Opposition").

Constellation and MCHI argue that the Commission cannot initiate an expedited rule making concerning 2 GHz service rules because the Commission has not yet finally resolved issues in the Commission's 2 GHz allocation proceeding.⁹ To the extent that Constellation and MCHI are referring to that portion of the 2 GHz allocation proceeding that is on reconsideration,¹⁰ their argument makes no sense. ICO, in its Petition, merely seeks a rule making proceeding to establish service rules. ICO does not ask the Commission to address any of the issues involved in the reconsideration of the 2 GHz allocation order.

To the extent that Constellation and MCHI are referring to that portion of the 2 GHz proceeding that involves consideration of the pending 2 GHz license applications,¹¹ their argument is unpersuasive. Essentially, they argue that ICO's Petition is premature because the Commission eventually will address these issues in the context of reviewing the applications. The Commission would not and does not, however, address these issues as part of its application review process. Thus, ICO's Petition is not "premature." ICO simply is urging the Commission to expedite the process of adopting eligibility rules and to conditionally license qualified new entrants so that customers in the United States can enjoy 2 GHz MSS service as quickly as possible. As noted above, as Big LEO licensees

⁹ Constellation Opposition at 2; MCHI Opposition at 3-5.

¹⁰ *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).

¹¹ ICO uses the words "application" and "applicant" herein to refer both to U.S. licensed systems' requests for assignment of spectrum and to letters of intent for non-U.S. licensed systems seeking access to 2 GHz spectrum in the United States, unless the context indicates otherwise. ICO further uses the word "license," and variations thereof, herein to include an authorization issued to an entity that filed a letter of intent, unless the context indicates otherwise.

whose 1.6/2.4 GHz systems are in only the nascent stages of development, Constellation and MCHI have every incentive to delay the 2 GHz licensing process.¹²

A few commenters assert that ICO's Petition is premature because the Commission must complete a band plan before it adopts eligibility requirements.¹³ This simply is not the case. In licensing Ka-band satellite systems, the International Bureau issued licenses before the Commission adopted service rules. The Bureau simply conditioned those licenses on compliance with all subsequently adopted service rules.¹⁴

ICO's request that the Commission expeditiously commence a rule making proceeding to adopt legal, technical and financial requirements for 2 GHz MSS, therefore, is timely and should be granted.

II. GRANT OF ICO'S PETITION WOULD SERVE THE PUBLIC INTEREST BY PROMOTING COMPETITION IN THE MSS MARKET

Some of the commenters argue that ICO's Petition is contrary to the public interest. As described below, however, these commenters either misunderstand, or misrepresent, the nature of ICO's request.

A. Brief Restatement Of ICO's Petition

Because ICO's Petition has been mischaracterized by opponents, ICO briefly reiterates its request. Specifically, ICO urges the Commission to adopt, on an expedited basis, initial eligibility rules for entities seeking to provide MSS at 2 GHz in the United

¹² Constellation, for example, only recently submitted a letter asserting that it has satisfied the first construction milestone set forth in its 1.6/2.4 GHz authorization order. See Letter from Robert A. Mazer, Counsel to Constellation Communications, Inc., to Ms. Magalie Roman Salas, Federal Communications Commission (July 2, 1998).

¹³ Constellation Comments at 2-3; Globalstar Comments at 6-8; Iridium Comments at 3-6.

¹⁴ See, e.g., *Teledesic Corporation*, 12 FCC Rcd 3154, 3169 (Int'l Bur., 1997).

States. Those rules would limit eligibility for licensing in the initial licensing phase to new entrants, and would require those applicants to satisfy certain other requirements. Any new non-geostationary (“NGSO”) entrant that satisfies the relevant eligibility requirements should be licensed conditionally to operate in at least the entire common global 2 GHz MSS spectrum, subject to final 2 GHz MSS service rules, including a band plan adopted by the Commission, or intersystem coordination approach. Any new geostationary (“GSO”) entrant that satisfies the relevant eligibility requirements should be licensed conditionally to operate in a portion of the 2 GHz spectrum allocated only in Region 2 (with minor exception in the downlink).

B. ICO Does Not Seek To Exclude Applicants

Three Big LEO licensees -- Constellation, Iridium, Inc. (“Iridium”) and Globalstar, L.P. (“Globalstar”) -- oppose ICO’s request for a bifurcated proceeding, alleging that ICO is seeking to exclude Big LEO licensees from becoming 2 GHz MSS licensees.¹⁵ Their allegation is false. By its Petition, ICO seeks only to have the Commission initially license qualified new entrants that satisfy eligibility requirements adopted pursuant to an expedited rulemaking proceeding and *defer* the licensing of other qualified applicants. As ICO specifically stated in its Petition: “Because already licensed applicants are not new entrants and therefore do not increase competition in the market for MSS, the Commission should defer consideration of their 2 GHz applications to a later date.”¹⁶

¹⁵ See Constellation Opposition at 3-4; Globalstar Comments at 3-4; Iridium Comments at 7.

¹⁶ ICO Petition 5.

Iridium's further assertion that ICO intends to "lay a claim to the entire 70 megahertz of 2 GHz MSS spectrum, thereby compelling other applicants to negotiate with it for access to the band"¹⁷ also is incorrect. As described above, under ICO's proposal, *any* new NGSO entrant that satisfies the initial eligibility requirements would be allowed *conditional* access to at least the entire common global 2 GHz MSS spectrum.¹⁸ Any new GSO entrant that satisfies the relevant eligibility requirements would be allowed conditional access to a portion of the 2 GHz spectrum allocated to MSS only in Region 2 (with minor exception in the downlink).¹⁹ Thus, more than one operator initially may be conditionally licensed and, further, all such conditionally licensed operators would be subject to any final band plan adopted by the Commission or intersystem coordination approach.

As ICO explained in its Petition, conditionally licensing new entrants and deferring already licensed applicants to a later date would serve the public interest by allowing new entrants to bring additional competition to the MSS market.²⁰ This additional competition should not be delayed by Big LEO licensees that have not yet begun substantially to utilize previously granted spectrum at 1.6/2.4 GHz and that are seeking access to 2 GHz spectrum to modify or expand as yet unbuilt and/or nascent systems in other spectrum.

¹⁷ Iridium Comments at 13.

¹⁸ See ICO Petition at 9 and Attachment A.

¹⁹ *Id.*

²⁰ ICO Petition at 4-5.

C. The Bifurcated Procedure Proposed By ICO Is Consistent With Both Commission Precedent And The United States' Obligations Under The WTO Agreement

Globalstar argues that the ICO Petition cannot be granted because the bifurcated procedure that ICO proposes “contradicts existing law and policies.”²¹ Globalstar never explains, however -- because it cannot -- how the procedure proposed by ICO is inconsistent with Commission precedent. To the contrary, Globalstar provides support for ICO’s proposed procedure by citing to a Commission proceeding in which a bifurcated procedure similar to that proposed by ICO was utilized in a processing round.²²

Globalstar’s argument appears to be that ICO’s proposed procedure is inconsistent with the Commission’s obligation to treat license applicants on a nondiscriminatory basis.²³ This argument, however, is based upon a misunderstanding of the Commission’s obligation vis-à-vis license applicants. Longstanding Commission precedent establishes that the Commission has the authority to establish eligibility requirements for licenses.²⁴ ICO, in its Petition, simply asks the Commission expeditiously to adopt and employ eligibility requirements to determine which applicants can qualify for conditional licenses. To be sure, some applicants may fail to satisfy the initial eligibility

²¹ Globalstar Comments at 6.

²² *Id.* at 7.

²³ *See id.* at 6.

²⁴ *See, e.g., Establishment of Procedures to Provide a Preference to Applicants Proposing an Allocation for New Services*, 8 FCC Rcd 1659, 1659 (1993) (“It is well-established under the *Storer* line of cases that an agency may limit *Ashbacker* or other statutory hearing rights by rules establishing threshold eligibility standards designed to serve the public interest.”).

requirements. Such a result is fully consistent with, and contemplated by, Commission precedent, however.²⁵

In its comments Globalstar provides precedential support for the bifurcated procedure ICO proposes. Specifically, citing to the 1994 Big LEO service rules order, Globalstar states that “[i]f some applicants do not meet the relevant eligibility requirements, then, the Commission may opt to consider them at a later date.”²⁶ This is exactly what ICO is proposing in its Petition.

In addition to being consistent with Commission precedent, ICO’s proposed procedure also is consistent with the United States’ commitment under the World Trade Organization Agreement on Basic Telecommunications Services (“WTO Agreement”), contrary to the assertion of Iridium.²⁷ Iridium alleges specifically that ICO’s proposed procedure would violate this country’s obligation to accord WTO member countries national treatment by according ICO preferential treatment over other (presumably U.S.-licensed) applicants.²⁸

Iridium misunderstands the national treatment commitment. Under that commitment, the United States may not accord entities from WTO member countries treatment less favorable than treatment accorded U.S. entities. Under ICO’s proposed

²⁵ See, e.g., *Applications of Constellation Communications, Inc., Loral/Qualcomm Partnership, L.P., Mobile Communications Holdings, Inc., Motorola Satellite Communications, Inc., TRW, Inc. For Authority to Construct, Launch, and Operate, Low Earth Orbit Satellite Systems to Provide Mobile Satellite Services in the 1610-1626.5 MHz/2483.5-2500 MHz Bands*, 11 FCC Rcd 18502 (1996) (affirming decisions of the International Bureau deferring consideration of the applications of Constellation and MCHI because the companies had not satisfied the financial eligibility requirements).

²⁶ Globalstar Comments at 7.

²⁷ See Iridium Comments at 3-4.

²⁸ *Id.*

procedure, however, the Commission would not discriminate among applicants. To the contrary, under the proposal, all 2 GHz applicants, both non-U.S. and U.S., would be subject to the same eligibility requirements. The fact that some entities may not be able to satisfy those requirements does not amount to discriminatory treatment.

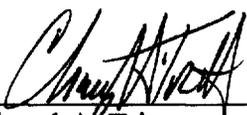
In sum, contrary to the claims of commenters that opposed ICO's Petition, the bifurcated procedure proposed by ICO is non-exclusionary, fully consistent with Commission precedent, and intended to support the United States' commitment under the WTO Agreement. The bifurcated procedure would simply ensure that consumers more quickly benefit from the competition that ICO and others seek to bring to the market for MSS in the United States.

CONCLUSION

For the reasons set forth above, ICO requests that the Commission grant the Petition.

Respectfully submitted,

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September 11, 1998

Certificate of Service

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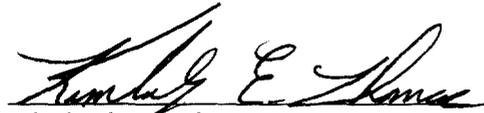
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