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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:

SURREPLY COMMENTS OF ICO SERVICES LIMITED

ICO Services Limited¹ hereby responds to the reply comments filed by Iridium, LLC ("Iridium") on September 11, 1998 in the above captioned proceeding.² In its reply comments, Iridium asserts, for the first time, that ICO would not be deemed a new entrant to the MSS market because it is an affiliate of Inmarsat, COMSAT and Hughes under the affiliation standard proposed in the Little LEO proceeding. For the reasons set forth below, Iridium's assertion is patently misleading.

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 ("ICO Global"), which is the ultimate parent of a wholly owned group of companies (referred to herein collectively as "ICO") that is developing a satellite system for the provision of global mobile satellite service.

² Because the formal comment period for this proceeding ended with the reply comment round, ICO is filing contemporaneously with these surreply comments a motion for leave to file such comments.

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ICO IS NOT AN AFFILIATE OF INMARSAT, COMSAT OR HUGHES

In its reply comments, Iridium asserts that “under the Little LEO new entrant policy of which ICO Services appears to approve, ICO would be deemed to hold an affiliation with at least three entities holding substantial MSS interests in the United States: Hughes Electronics; Inmarsat; and COMSAT.”³ By this statement, Iridium implies that ICO would have the Commission adopt the affiliation standard that the Commission proposed, but never adopted, in the Little LEO proceeding. That implication, however, is patently wrong.

ICO never suggested -- and does not believe -- that the Commission should adopt the affiliation standard it proposed in the Little LEO proceeding. Indeed, ICO’s proposed definition of new entrant, set forth in Attachment A of ICO’s petition for expedited rule making, did not even include the term “affiliate.”⁴ Thus, Iridium’s statement concerning ICO’s affiliation status is entirely misleading.

The purpose of the new entrant requirement, as ICO previously explained, would be to allow the initial licensing of entities that will bring new competition to the MSS market.⁵ To the extent that ICO’s proposed definition of new entrant would fail to achieve this result by allowing affiliates of existing MSS licensees to be licensed initially, the Commission should amend the definition to incorporate the term “affiliate.” The

³ Reply Comments of Iridium, LLC at 11 (“Iridium Reply Comments”).

⁴ ICO defined new entrants as “those entities, both applicants and filers, seeking access to 2 GHz MSS frequencies that are not already authorized in the United States at the time of their filing to access other spectrum allocated to MSS.” ICO Petition for Expedited Rule Making to Establish Eligibility Requirements for the 2 GHz Mobile Satellite Service, Attachment A at 1

⁵ *See id.* at 5-6.

Commission should not, however, further adopt the definition of “affiliate” proposed -- but never adopted -- in the Little LEO proceeding. Rather, the Commission should define “affiliate” in the same manner that Congress defined the term in the Communications Act of 1934, as amended (the “Communications Act”). Specifically, the Communications Act states that “[t]he term ‘affiliate’ means a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person.”⁶ The Communications Act goes on to state that “[f]or purposes of this paragraph, the term ‘own’ means to own an equity interest (or the equivalent thereof) of more than 10 percent.”⁷ To the extent that the Commission decides to incorporate the term “affiliate” into the definition of new entrant, there simply is no reason for it to define “affiliate” in a manner that is inconsistent with the definition adopted by Congress.⁸

If the Commission were to include the term “affiliate” in a new entrant definition for purposes of 2 GHz MSS rules, and were to adopt the definition of “affiliate” contained in the Communications Act, ICO would not be deemed an affiliate of Inmarsat, COMSAT or Hughes. Hughes currently possesses an approximately 2.38 percent equity stake in ICO. That figure is well below the more-than-10-percent threshold contained in

⁶ 47 U.S.C. § 153(1).

⁷ *Id.*

⁸ Indeed, adoption of the definition of “affiliate” contained in the Communications Act properly would ensure that Iridium would not qualify as a new entrant. Iridium notes in its reply comments that “Iridium LLC [the 2 GHz applicant] is not licensed to access any MSS spectrum in the United States.” Iridium Reply Comments at 10. Motorola Satellite Communications, Inc., a wholly owned subsidiary of Motorola, Inc. (“Motorola”), is licensed to provide MSS at 1.6/2.4 GHz. Motorola is an approximately 20 percent shareholder of Iridium.

the Communication Act's definition of "affiliate."⁹ COMSAT currently possesses an approximately 1.56 percent equity interest in ICO, a figure also well below the more-than-10-percent threshold.

Inmarsat's investment in ICO, while larger than that of either COMSAT or Hughes, also fails to render ICO an affiliate of Inmarsat under the Communications Act's definition of "affiliate." In July of this year, ICO Global completed an initial public offering ("IPO") of 20,000,000 shares. As a result of the IPO, Inmarsat's ownership interest in ICO currently is 9.49 percent.¹⁰ Although ICO had its origins as an Inmarsat project, today, however, ICO is a private, commercial entity that is constitutionally, managerially and operationally entirely independent from Inmarsat. Although some Inmarsat signatories are investors in ICO, they invest outside of their signatory roles. ICO, therefore, is not an "affiliate" of Inmarsat as that term is defined in the Communications Act. Iridium's claim that ICO would not be a new entrant because of its relationships with Hughes, COMSAT and Inmarsat¹¹ is thus baseless.¹²

⁹ Iridium states that Hughes "has other extensive links to ICO," noting that Hughes has a contract to construct, launch, and initially operate ICO's satellites and TT&C facilities, and is considering being an ICO service provider. Iridium Reply Comments at 11 and n.31. These normal business dealings, however, in no way make ICO an affiliate of Hughes.

¹⁰ ICO will file shortly an *ex parte* letter in the *DISCO II* proceeding informing the Commission of this fact. Moreover, post-IPO, Inmarsat no longer has the ability to appoint any member of ICO's board of directors.

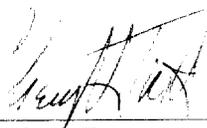
¹¹ See Iridium Reply Comments at 10-12.

¹² Indeed, Iridium's claim would be baseless even under the definition of affiliate proposed in the Little LEO proceeding. Hughes and COMSAT each possess a less than five percent interest in ICO, and Inmarsat is not authorized to offer MSS directly in the United States.

CONCLUSION

Contrary to what Iridium would have the Commission believe by its misleading and inaccurate statements, ICO would be a new entrant to the MSS market in the United States. Because the competition represented by new entrants such as ICO would benefit U.S. consumers, the Commission should grant promptly ICO's petition for expedited rule making to establish eligibility requirements for 2 GHz MSS.

Respectfully submitted,



Francis D.R. Coleman
Director Regulatory Affairs - North America
ICO Global Communications
1101 Connecticut Avenue, N. W.
Suite 250
Washington, D.C. 20036

Cheryl A. Tritt
Susan H. Crandall
Morrison & Foerster LLP
2000 Pennsylvania Avenue, N.W.
Washington, D.C. 20006-1888
(202) 887-1500

Attorneys for ICO Services Limited

October 13, 1998

Certificate of Service

I, James S. Bucholz, do hereby certify that the foregoing SURREPLY COMMENTS OF ICO SERVICES LIMITED were delivered, via hand delivery, on this 13th day of October, 1998, to the following:

Chairman William E. Kennard
Federal Communications Commission
1919 M Street, N.W., Room 814
Washington, D.C. 20554

Christopher J. Wright
General Counsel
Federal Communications Commission
1919 M Street, N.W., Room 614
Washington, D.C. 20554

Commissioner Susan Ness
Federal Communications Commission
1919 M Street, N.W., Room 832
Washington, D.C. 20554

Regina Keeney
Chief
International Bureau
Federal Communications Commission
2000 M Street, N.W., Suite 800
Washington, D.C. 20554

Commissioner Harold Furchtgott-Roth
Federal Communications Commission
1919 M Street, N.W., Room 802
Washington, D.C. 20554

James R. Ball
Associate Bureau Chief
International Bureau
Federal Communications Commission
2000 M Street, N.W., Suite 800
Washington, D.C. 20554

Commissioner Michael Powell
Federal Communications Commission
1919 M Street, N.W., Room 844
Washington, D.C. 20554

Mindy Ginsburg
Deputy Bureau Chief
International Bureau
Federal Communications Commission
2000 M Street, N.W., Suite 800
Washington, D.C. 20554

Commissioner Gloria Tristani
Federal Communications Commission
1919 M Street, N.W., Room 826
Washington, D.C. 20554

Fern Jarmulnek
Chief, Satellite Policy Branch
Satellite and Radiocommunications Division
International Bureau
Federal Communications Commission
2000 M Street, N.W., Suite 800
Washington, D.C. 20554

Rosalee Chiara
Deputy Chief
Satellite Policy Branch
Satellite and Radiocommunication Division
International Bureau
Federal Communications Commission
2000 M Street, N.W., Suite 800
Washington, D.C. 20554

Tom Tycz
Chief
Satellite and Radiocommunication Division
International Bureau
Federal Communications Commission
2000 M Street, N.W., Suite 800
Washington, D.C. 20554

Karl Kensinger
Special Advisor
Satellite and Radiocommunication Division
International Bureau
Federal Communications Commission
2000 M Street, N.W., Suite 800
Washington, D.C. 20554

Christopher Murphy
Satellite Policy Branch
Satellite and Radiocommunication Division
International Bureau
Federal Communications Commission
2000 M Street, N.W., Suite 800
Washington, D.C. 20554

Mark A. Grannis*
Harris, Wiltshire & Grannis LLP
1200 Eighteenth Street, N.W.
Washington, D.C. 20036
Counsel for North American GSM
Alliance LLC

Norman P. Leventhal*
Leventhal, Senter & Lerman P.L.L.C.
2000 K Street, NW, Suite 600
Washington, D.C. 20006
Counsel for ICO USA Service Group

Linda Haller
Senior Legal Advisor
Satellite Policy Branch
Satellite and Radiocommunication Division
International Bureau
Federal Communications Commission
2000 M Street, N.W., Suite 800
Washington, D.C. 20554

Cassandra Thomas
Deputy Chief
Satellite and Radiocommunications Division
International Bureau
Federal Communications Commission
2000 M Street, N.W., Suite 800
Washington, D.C. 20554

John Martin
Acting Chief
Satellite Engineering Branch
Satellite and Radiocommunication Division
International Bureau
Federal Communications Commission
2000 M Street, N.W., Suite 800
Washington, D.C. 20554

Alexander Royblat
Satellite Engineering Branch
Satellite and Radiocommunication Division
International Bureau
Federal Communications Commission
2000 M Street, N.W., Suite 800
Washington, D.C. 20554

Robert A. Mazer*
Vinson & Elkins LLP
1455 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
Counsel for Constellation
Communications, Inc.

William D. Wallace
Crowell & Moring LLP
1001 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
Counsel for Globalstar, L.P.

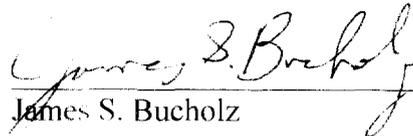
Thomas J. Keller*
Verner, Liipfert, Bernhard, McPherson, and
Hand, Chartered
901 15th Street, N.W., Suite 700
Washington, D.C. 20005-2301
Counsel for Iridium, LLC

Gregory C. Staple*
Koteen & Naftalin
1150 Connecticut Ave., N.W.
Washington, D.C. 20036
Counsel for TMI Communications and
Company, Limited Partnership

International Transcription Service
1231 20th Street, N.W.
Washington, D.C. 20036

Tom Davidson*
Akin, Gump, Strauss, Hauer & Feld, L.L.P.
1333 New Hampshire Ave., NW, Suite 400
Washington, D.C. 20036
Counsel for Mobile Communications
Holdings, Inc.

Antoinette Cook Bush*
Skadden, Arps, Slate, Meagher & Flom LLP
1440 New York Avenue, N.W.
Washington, D.C. 20005-2111
Counsel for Celsat America, Inc.


James S. Bucholz

(*Indicated U.S. Mail)