

**ORIGINAL**

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554**

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		

**RECEIVED**  
**OCT 28 1998**  
 FEDERAL COMMUNICATIONS COMMISSION  
 OFFICE OF GENERAL COUNSEL

**RESPONSE TO SURREPLY**

Iridium LLC ("Iridium") hereby respectfully submits its response to the Surreply Comments of ICO Services Limited ("Surreply") filed on October 13, 1998, in the above-captioned proceeding. Given the concerns repeatedly and publicly expressed by ICO Services over the length of time it is taking for the Commission to process the 2 GHz applications, Iridium was surprised to receive the ICO Services Surreply and accompanying motion for leave to file, which were filed more than one month after the Reply Comments of Iridium to which the ICO Services Surreply responds. Notwithstanding the procedural defects of the ICO Surreply and motion, Iridium herein responds to ICO Services and demonstrates that the Reply Comments of Iridium LLC were not misleading or inaccurate.

**Preliminary Statement**

At the outset it should be noted that, contrary to the Surreply of ICO Services Limited ("ICO Services"), Iridium did not raise the issue of whether ICO Services would be deemed a "new entrant" for the first time in its Reply Comments (although there would have been nothing

No. of Copies rec'd 024  
 List ABCDE FB

wrong in doing so). Iridium first raised the issue in its Comments.<sup>1/</sup> Moreover, the apparent outrage expressed by ICO Services against Iridium's Reply Comments is puzzling, given ICO Services' attempt in its Surreply to modify its above-captioned Petition to include an affiliation standard as part of its proposed new entrant policy, after all comments and reply comments on the ICO Services Petition have been submitted.

It appears that the Surreply and Motion, filed more than one month after Iridium filed its Reply Comments, may not really be directed at Iridium's Reply Comments.<sup>2/</sup> Instead, they may simply be the convenient pretext for ICO Services to attempt to revise its Petition to include a proposal (a definition of "affiliate" that ICO Services thinks its investors can meet) that was not included in the Petition when it was reviewed by the other commenting parties. That is the only plausible explanation for ICO Services's surreal filings and the untenable allegations contained therein.

### **Iridium's Reply Comments Were Not Misleading or Inaccurate**

In its Surreply, ICO Services accuses Iridium of making misleading statements concerning ICO Services's approval of an affiliation standard in its new entrant policy. That is nonsense. Iridium did not claim in its Reply Comments that ICO Services was proposing the

---

<sup>1/</sup> See Comments of Iridium LLC at 9 & n.16. ICO Services accuses Iridium of raising new matters in a reply pleading (apparently confusing rules and precedent relating to three pleading cycle proceedings with rules governing comments and reply comments).

<sup>2/</sup> ICO Services did not itself even file Comments in support of its above-captioned Petition. In its Surreply, ICO Services is actually replying (or surreplying) to Reply Comments that were filed by Iridium in direct response to the Comments filed in the above-referenced proceeding by ICO USA Service Group (IUSG), a consortium of investors in the 2 GHz satellite system planned by ICO Services, and the North American GSM Alliance LLC (GSM Alliance).

Little LEO affiliate definition. Indeed, Iridium’s point was that ICO Services had not proposed **any** affiliate definition and that therefore its new entrant policy did not have any standard by which to assess whether an entity with other interests was truly a new entrant that would enhance competition:

“IUSG obviously endorses the new entrant proposal, contending that it will enhance competition. However, it is clear that ICO’s artful definition of “new entrant” may include ICO but does not enhance competition because it ignores affiliates of the applicant or other interests that could or should be attributable to the applicant.”

Iridium Reply Comments at 10.

Iridium also pointed out that the “majority of commenting parties joined Iridium in squarely opposing any new entrant preference for access to the 2 GHz band” and that “[e]ven the GSM Alliance, which generally supported the concept, would not have the Commission adopt the ‘new entrant’ definition advocated by ICO.” *Id.* at 9. Iridium noted further that: “[t]he GSM Alliance contends that the new entrant definition should incorporate a reasonable affiliation or attribution standard.” *Id.* at 9 n. 27.

Iridium also demonstrated that ICO Services, which meets its own definition of “new entrant,” could never be viewed as a new entrant under a definition that included an attribution standard. It was in this context that Iridium noted, in reply to the GSM Alliance Comments:

“For example, **under the Little LEO affiliation standard cited by the GSM Alliance**, ICO would not qualify as a new MSS entrant in the United States. There, the Commission defined an affiliate of an MSS licensee as (1) an entity that directly or indirectly controls or influences a licensee; (2) an entity that is directly or indirectly controlled or influenced by a licensee; or (3) an entity that is directly or indirectly controlled or influenced by a third party or parties that also has the power to control or influence a licensee.”

*Id.* at 10-11 (emphasis added).

Iridium continued: “[t]hus, 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.” *Id.* That ICO Services “appears to approve” of “the Little LEO new entrant policy” is evident in the statements of ICO Services in its own above-captioned Petition for Expedited Rule Making in support of its proposal for a new entrant policy:

“The Commission previously has recognized that limiting a processing round to qualified new entrants can serve the public interest. **Specifically in the second Little LEO processing round the Commission proposed to exclude licensees from the first processing round from participating in the second processing round in order to open the Little LEO service market to new entrants.**”

ICO Services Petition at 5 (emphasis added). ICO Services specifically cited and quoted from the very same Little LEO order cited by GSM Alliance and Iridium.

Thus, it is misleading of ICO Services now to suggest or imply that Iridium has misstated or mischaracterized ICO Services’s approval of the new entrant policy that was proposed but never adopted in the Little LEO proceeding. What Iridium said was precisely correct. In advocating a new entrant policy for the 2 GHz applicants, ICO Services very clearly appeared to indicate to the Commission its approval of what the Commission proposed in the Little LEO proceeding, but it also ignored the affiliation standard proposed as part of that policy, as Iridium and the GSM Alliance both pointed out.

In responding to Iridium’s claim that ICO Services would not meet the definition of a new entrant, ICO Services also takes issue with both the appropriate affiliation test and the various ownership interests of its investors. Here, too, ICO Services’s Surreply is misleading. While ICO Services now proposes that the Commission should define the term “affiliate” “in the

same manner that Congress defined the term in the Communications Act of 1934, as amended,” ICO Services ignores the fact that there are several different definitions of the term “affiliate” in the Communications Act<sup>3/</sup> and a plethora of widely divergent definitions in the Commission’s rules.<sup>4/</sup> Obviously the term “affiliate” may be and is defined differently by the Commission depending on the purpose and the context in which it is used. Under many, if not most, of these definitions, ICO Services would not be considered a “new entrant.” The Commission certainly is not limited to the one definition ICO Services found that it likes.

Moreover, under any test, the relevant ownership of ICO Services is not just what it is today but what it was on the cut-off date for applications in this processing round: September 26, 1997. On that date, INMARSAT had a 15% voting interest in the parent of ICO Services, according to the ICO Services Letter of Intent, and Hughes reportedly had a more substantial stake in the parent of ICO Services, as well, including an ownership level that would meet several of the definitions of affiliate in the Commission’s rules.<sup>5/</sup> The fact that ICO Services wants the Commission to consider only its current ownership further underscores the fundamental unfairness to other applicants of proposing an eligibility standard that would be

---

<sup>3/</sup> See, e.g., 47 U.S.C. §§153, 273, 274.

<sup>4/</sup> See, e.g., 47 C.F.R. §§24.413, 24.709(8), 63.08(c), 1.2110.

<sup>5/</sup> Furthermore, while ICO Services glibly and without any support claims that its contractual relationships with its key strategic investor Hughes “in no way make ICO an affiliate of Hughes,” under many definitions of “affiliate” in the Commission’s rules, Hughes would very definitely be considered an affiliate of ICO Services by virtue of these contractual relationships. See, e.g., 47 CFR §§63.08, 1.2110. Hughes controls American Mobile Satellite Corporation (“AMSC”), a licensee of mobile satellite services in the L-Band in the U.S.

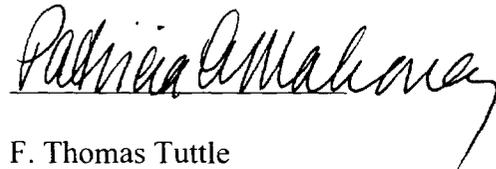
retroactively imposed against them but would not operate to exclude an entity that on the cut-off date also fell within the exclusion.

### **Conclusion**

The ICO Services Petition is an ill-conceived idea obviously contrived so that ICO Services could attempt to clear the field of its competitors and not so that the Commission could enhance competition. There is no way that the new entrant policy ICO Services proposes can be fairly adopted or applied. The Surreply should be recognized for what it is: an attempt to resuscitate the above-captioned ICO Services Petition and yet another example of how ICO Services is disrupting the Commission's work in the 2 GHz proceeding and wasting time and resources of the Commission and other parties while at the same time it complains to the rest of the world that the FCC is slow rolling its application.

Respectfully submitted,

IRIDIUM LLC



F. Thomas Tuttle  
Vice President and General Counsel  
Patricia A. Mahoney  
Assistant General Counsel,  
Regulatory and Trade Policy  
Iridium LLC  
1575 I Street, N.W. - 8th Floor  
Washington, D.C. 20005  
(202) 408-3800

October 28, 1998

## CERTIFICATE OF SERVICE

I, Kenneth E. Claytor, an employee of Iridium, LLC, do hereby certify that on this 28th day of October, 1998, a copy of this "Response to Surreply" was sent, by first class United States Mail, postage prepaid ( \* or by hand delivery), to each of the following:

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

Regina Keeney\*  
Chief  
International Bureau  
Federal Communications Commission  
2000 M Street, N.W., Room 830  
Washington, D.C. 20554

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

James L. Ball\*  
Associate Bureau Chief  
International Bureau  
Federal Communications Commission  
2000 M Street, N.W., Room 820  
Washington, D.C. 20554

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

Mindy Ginsburg\*  
Associate Bureau Chief  
International Bureau  
Federal Communications Commission  
2000 M Street, N.W., Room 8180  
Washington, D.C. 20554

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

Rebecca Arbogast\*  
Senior Legal Advisor  
International Bureau  
Federal Communications Commission  
2000 M Street, N.W., Room 800  
Washington, D.C. 20554

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

Thomas S. Tycz\*  
Chief  
Satellite and Radiocommunications Division  
Federal Communications Commission  
2000 M Street, N.W., Room 811  
Washington, D.C. 20554

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

Cecily Holiday\*  
Deputy Chief, Satellite and  
Radiocommunications Division  
Federal Communications Commission  
2000 M Street, N.W., Room 520  
Washington, D.C. 20554

Cassandra Thomas\*  
Deputy Chief  
Satellite and Radiocommunication Division  
Federal Communications Commission  
2000 M Street, N.W., Room 810  
Washington, D.C. 20554

Fern Jarmulnek\*  
Chief, Satellite Policy Branch  
Federal Communications Commission  
2000 M Street, N.W., Room 518  
Washington, D.C. 20554

Rosalee Chiara\*  
Deputy Chief  
Satellite Policy Branch  
Federal Communications Commission  
2000 M Street, N.W., Room 516  
Washington, D.C. 20554

Linda Haller\*  
Senior Legal Advisor  
Satellite Policy Branch  
Federal Communications Commission  
2000 M Street, N.W., Room 800  
Washington, D.C. 20554

John Martin\*  
Electronics Engineer  
Federal Communications Commission  
2000 M Street, N.W., Room 507  
Washington, D.C. 20554

Damon Ladson\*  
Deputy Chief  
Planning and Negotiations Division  
Federal Communications Commission  
2000 M Street, N.W., Room 521  
Washington, D.C. 20554

Cheryl A. Tritt, Esquire  
Susan H. Crandall, Esquire  
Morrison & Foerster, LLP  
2000 Pennsylvania Avenue, N.W.  
Washington, D.C. 20006-1886  
*Counsel for ICO Services Limited*

Francis D.R. Coleman  
Director Regulatory Affairs - North America  
ICO Global Communications  
1101 Connecticut Avenue, N.W.  
Suite 550  
Washington, D.C. 20036

Warren Grace  
Director General  
Inmarsat  
99 City Road  
London EC1Y 1AX  
United Kingdom

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

Robert A. Mazer, Esquire  
Albert Shuldiner, Esquire  
Vinson & Elkins, L.L.P.  
1455 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004-1008  
*Counsel for Constellation  
Communications, Inc.*

Joseph P. Markoski, Esquire  
Herbert E. Marks, Esquire  
David A. Nall, Esquire  
Bruce A. Olcott, Esquire  
Squire, Sanders & Dempsey L.L.P.  
P.O. Box 407  
1201 Pennsylvania Avenue, N.W.  
Washington, D.C. 20044-0407  
*Counsel for The Boeing Company*

Peter D. Sloane, Esquire  
Office of the Group Counsel  
Information, Space & Defense  
Systems Group  
The Boeing Company  
P.O. Box 3999, M/S 84-10  
Seattle, WA 98124-2499

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

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

Tom Davidson, Esquire  
Phil Marchesiello, Esquire  
Akin, Gump, Strauss, Hauer  
& Feld, LLP  
1333 New Hampshire Avenue, N.W.  
Suite 400  
Washington, D.C. 20036  
*Counsel for Mobile Communications  
Holdings, Inc.*

International Transcription Service\*  
1231 20th Street, N.W.  
Washington, D.C. 20037

John L. Bartlett, Esquire  
Wiley, Rein & Fielding  
1776 K Street, N.W.  
Washington, D.C. 20006-2304  
*Counsel for Aeronautical Radio, Inc.*

James G. Pachulski, Esquire  
1320 North Court House Road  
Eighth Floor  
Arlington, VA 22201  
*Counsel for Bell Atlantic*

Nils Rydbeck  
Vice President Research &  
Development  
Chief Technical Officer  
Ericsson Mobile Phones & Terminals  
7001 Development Drive  
Research Triangle Park, NC 27709

Denis Couillard, Chairman  
Eric Schimmel, Vice President  
Telecommunications Industry Association  
2500 Wilson Boulevard  
Suite 300  
Arlington, VA 22201

Leonard R. Raish, Esquire  
Fletcher, Heald & Hildreth, P.L.C.  
11th Floor  
1300 N. 17th Street  
Rosslyn, VA 22209  
*Counsel for Telecommunications  
Industry Association*

Robert J. Miller, Esquire  
Emily S. Barbour, Esquire  
Gardere & Wynne, L.L.P.  
1601 Elm Street  
Suite 3000  
Dallas, TX 75201  
*Counsel Telecommunications  
Industry Association*

Peter A. Rohrbach, Esquire  
Karis A. Hastings, Esquire  
Hogan & Hartson L.L.P.  
555 Thirteenth Street, N.W.  
Washington, D.C. 20004  
*Counsel for GE American  
Communications, Inc.*

Philip V. Otero, Esquire  
Senior Vice President and  
General Counsel  
GE American Communications, Inc.  
Four Research Way  
Princeton, NJ 08540

John P. Janka, Esquire  
Latham & Watkins  
1001 Pennsylvania Avenue, N.W.  
Suite 1300  
Washington, D.C. 20004-2505  
*Counsel for Hughes Communications  
Galaxy, Inc.*

Gary M. Epstein, Esquire  
John P. Janka, Esquire  
James H. Barker, Esquire  
Latham & Watkins  
1001 Pennsylvania Avenue, N.W.  
Suite 1300  
Washington, D.C. 20004  
*Counsel for Hughes Electronics  
Corporation*

Gerald Musarra  
Senior Director, Commercial Policy  
& Regulatory Affairs  
Space & Strategic Missiles Sector  
Lockheed Martin Corporation  
1725 Jefferson Davis Highway  
Suite 403  
Arlington, VA 22202-4127

Raymond G. Bender, Esquire  
Carlos M. Nalda, Esquire  
Dow, Lohnes & Albertson, PLLC  
1200 New Hampshire Avenue, N.W.  
Suite 800  
Washington, D.C. 20036  
*Counsel for Lockheed Martin  
Corporation*

Jill Abeshouse Stern, Esquire  
Sr. Vice President and General  
Counsel  
Gerald B. Helman, Esquire  
Vice President, International and  
Governmental Affairs  
Mobile Communications Holdings, Inc.  
Two Lafayette Center  
1133 Twenty-first Street, N.W.  
Washington, D.C. 20036

Philip L. Spector, Esquire  
Jeffrey H. Olson, Esquire  
Patrick S. Campbell, Esquire  
Kira A. Merski, Esquire  
Paul, Weiss, Rifkind, Wharton  
& Garrison  
1615 L Street, N.W.  
Suite 1300  
Washington, D.C. 20036  
*Counsel for Mobile Communications  
Holdings, Inc.*

Philip L. Spector, Esquire  
Jeffrey H. Olson, Esquire  
Diane C. Gaylor  
Paul, Weiss, Rifkind, Wharton  
& Garrison  
1615 L Street, N.W.  
Suite 1300  
Washington, D.C. 20036  
*Counsel for Skybridge L.L.C.*

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

Henry Goldberg, Esquire  
Joseph A. Godles, Esquire  
Mary J. Dent, Esquire  
W. Kenneth Ferree, Esquire  
Goldberg, Godles, Wiener & Wright  
1229 Nineteenth Street, N.W.  
Washington, D.C. 20036  
*Counsel for PanAmSat Corporation*

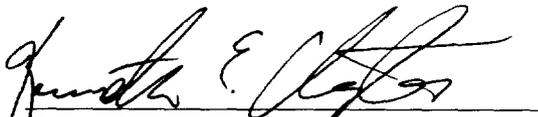
Benjamin J. Griffin, Esquire  
Reed, Smith, Shaw & McClay  
1301 K Street, N.W., East Tower  
Suite 1100  
Washington, D.C. 20005  
*Counsel for Primestar Partners, L.P.*

Marvin Rosenberg, Esquire  
Holland & Knight  
2100 Pennsylvania Avenue, N.W.  
Suite 400  
Washington, D.C. 20037  
*Counsel for United States Satellite  
Broadcasting Company, Inc.*

Karen E. Watson, Esquire  
Director, Government Relations  
EchoStar Communications Corporation  
1850 M Street, N.W.  
Suite 1070  
Washington, D.C. 20036

Paul J. Sinderbrand, Esquire  
William W. Huber, Esquire  
Wilkinson, Barker, Knauer  
& Quinn, LLP  
2300 N Street, N.W.  
Washington, D.C. 20037-1128  
*Counsel for The Wireless Cable  
Association International, Inc.*

Norman P. Leventhal  
Walter P. Jacob  
Philip A. Bonomo  
Leventhal, Senter & Lerman PLLC  
2000 K Street N.W.  
Suite 600  
Washington, D.C. 20006  
*Counsel for ICO USA Service Group*

  
Kenneth E. Claytor