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

In the Matter of	)	
	)	
Amendment of Section 2.106 of the	)	**ET Docket No. 95-18**
Commission's Rules to Allocate	)	
Spectrum at 2 GHz for Use	)	
by the Mobile-Satellite Service	)	

To: The Commission

REPLY TO OPPOSITION TO PETITION FOR CLARIFICATION

Pursuant to Section 1.429 of the Federal Communications Commission's (Commission) Rules, UTC, The Telecommunications Association (UTC), hereby replies to the Opposition of ICO Services Limited (ICO) to the *Petition for Clarification* (*Petition*), filed by UTC on January 19, 1999, in response to the Commission's *Memorandum Opinion and Order* (*MO&O*) in the above-referenced docket. UTC strongly objects to ICO's characterization of the Commission's established rules and notes that UTC's clarification is supported by parties representing both the incumbent microwave and MSS industries.

UTC's *Petition* urged the Commission to confirm the obligation of MSS licensees to avoid interference with incumbent licensees. UTC noted that several statements in the *MO&O* could lead to misunderstandings regarding an emerging technology licensee's obligation to protect incumbent operations from interference and to relocate incumbents with which it interferes before the interference takes place. UTC pointed out that Section 101.69 of the Commission's Rules

provides that fixed microwave operations in the emerging technology bands remain co-primary until they are relocated from the band; co-primary status confers on licensees protection from interference from later-licensed systems. Finally, UTC noted that to permit new licensees to begin to cause interference before relocating incumbents would defeat the purpose of the FCC's 2 GHz relocation framework, and would run contrary to the concept of co-primary licensing.

UTC's proposed clarification is supported by parties representing both incumbent microwave users and MSS licensees. The Association of American Railroads (AAR) agrees with UTC that the Commission must clarify that the relocation obligations are triggered by predicted interference based on established interference standards, not on levels of actual interference. Allowing MSS operators to wait until actual interference disrupts incumbent systems "would be, *prima facie*, contrary to the public interest."[1] Iridium LLC (Iridium), a 2 GHz MSS applicant, also agrees with UTC. "Iridium shares UTC's concern that interference between MSS operations and 2 GHz incumbents' operations (whether BAS or FS) must be avoided and agrees that the Commission should be clear about the parties' respective responsibilities to do so."[2]

ICO opposes UTC's *Petition*, ignoring the clear meaning of the FCC's co-primary licensing rules and relying instead on a skewed view of the obligation of incumbent licensees. According to ICO, "relocation is mandated only after: (1) a frequency coordination process does not result in an agreed upon MSS interference to the FS system; and (2) <u>the potentially affected</u>

[1] Comments of the Association of American Railroads, ET Docket No. 95-18, at p. 2 (filed February 22, 1999).
[2] Comments of Iridium LLC, ET Docket 95-18, at p. 2 (filed February 22, 1999).

FS licensee can unambiguously demonstrate that harmful interference to its installation cannot be prevented or avoided."[3] ICO's interpretation of the Commission's rules is disturbing and untenable. ICO appears to be espousing a view that incumbents bear the primary responsibility for proving interference. However, the FCC's coordination policies and common sense state otherwise. The proper coordination of new systems requires that applicants demonstrate that their systems will not interfere with incumbent systems; otherwise, the Commission's frequency coordination and co-primary licensing rules would be of little value. As UTC pointed out in its *Petition*, Section 101.69 of the Commission's Rules provides that fixed microwave operations in the emerging technology bands remain co-primary until they are relocated from the band.[4] Co-primary status confers on licensees protection from interference from later-licensed systems, and it is the new applicant that must unambiguously demonstrate that its installation will not cause interference to the previously-licensed co-primary incumbent system.

Moreover, ICO's interpretation of the obligation of incumbent licensees runs contrary to the Commission's acknowledgement in the *MO&O* that "MSS cannot begin operations until its spectrum is cleared of all FS licensees who would receive harmful interference from MSS …"[5] The clear implication of this statement is that the new licensees must demonstrate that they will not interfere with incumbents before they can begin operations; if they cannot make this demonstration, they may not begin operations. Clearly, the Commission did not envision that

[3] ICO Response to Petition for Clarification, ET Docket No. 95-18, at p. 4 (filed February 22, 1999) [footnote omitted; emphasis added].
[4] UTC's *Petition* at p. 4.
[5] *MO&O* at ¶27 [quoting the *First Report and Order*, ET Docket No. 95-18].

MSS applicants could begin operations merely based on the absence of a showing of interference from incumbents.

WHEREFORE, THE PREMISES CONSIDERED, UTC requests the Federal Communications Commission to take action in accordance with the views expressed in UTC's *Petition*.

Respectfully submitted,

UTC

By: _____

Jeffrey L. Sheldon
Thomas E. Goode

UTC
1140 Connecticut Avenue, NW
Suite 1140
Washington, D.C. 20036

(202) 872-0030

Dated: March 4, 1999

CERTIFICATE OF SERVICE

I, Steve Johnson, do hereby certify that I have caused to be sent, this 4th day of March, 1999, by first class mail, postage prepaid, copies of the foregoing to the following:

Cheryl A. Tritt
Morrison & Forester, LLP
200 Pennsylvania Avenue, NW
Washington, DC 20006
Counsel for ICO Global Communications

Francis D.R. Coleman
Director Regulatory Affairs
ICO Global Communications – North America
1101 Connecticut Ave., NW
Suite 500
Washington, DC 20036

Patricia A. Mahnoney, Assistant General Counsel
Audrey Allison, Counsel
Iridium LLC
1575 Eye Street, NW
Washington, DC 20005

Thomas Keller
John Kneuer
Verner, Liipfert, Bernhard, McPherson and Hand, Chartered
901 15th Street, NW
Suite 700
Washington, DC 20005
Counsel for Association of American Railroads

_____
Steve Johnson