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March 31, 2000

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By Messenger

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, S.W., TW-A325
Washington, D.C. 20554

Re: EX PARTE
ET Docket No. 99-81
ET Docket No. 95-18; RM-9328

Dear Ms. Salas:

As ICO has advised the Commission on several occasions, mobile satellite services ("MSS") technology is uniquely suited to the unserved and underserved areas that are central to ICO's business plan. Because potential customers in these areas, including residents of Indian tribal lands, now lack affordable, high-quality telephone service, the public interest requires that the Commission and the industry do everything possible to expedite deployment of this service.

For this reason, ICO proposes the attached, streamlined rules to govern the negotiation process for the relocation of 2 GHz primary, fixed microwave incumbents. The proposed rules ensure that negotiations for relocations that must be completed in time for imminent 2 GHz system launches will provide (1) a fair outcome for all parties, (2) certainty for all parties, and (3) expeditious resolution of issues.

The proposed rules for 2 GHz MSS relocation eliminate the voluntary negotiation period set out in the *Emerging Technologies* rules, impose substantive standards during the mandatory negotiation period rather than deferring those standards to a later period, and provide for liquidated per-link settlements in the event of deadlocked negotiations.

This procedural proposal is not intended to displace the need to ensure that any relocation costs do not unduly increase the cost of MSS service and the rates that MSS operators will charge their customers. ICO reiterates that the ability of the ICO system

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to provide affordable service to unserved and underserved areas of the United States depends entirely upon the costs that ICO incurs to provide that service.¹ Those costs, in turn, will be needlessly high if 2 GHz MSS operators must pay terrestrial 2 GHz incumbents relocation costs that drastically exceed the amounts needed to make those incumbents whole.

As ICO has pointed out, MSS operators - unlike the licensees of Personal Communication Service ("PCS") - cannot spread relocation costs among a large customer base or avoid an excessive relocation cost burden by choosing not to serve certain areas. Accordingly, ICO has urged - and continues to urge - the Commission not to impose relocation cost obligations on MSS systems or, in the alternative, to calculate the cost of replacing incumbents' equipment according to that equipment's remaining useful life.

If you have questions or we can provide further information, please do not hesitate to contact the undersigned.

Respectfully submitted,



Cheryl A. Tritt
Counsel for ICO Global Communications

Attachment

cc: Service List

¹ See Letter from R. Gerard Salemme and Cheryl A. Tritt to Chairman William E. Kennard (March 2, 2000); letter from R. Gerard Salemme and Cheryl A. Tritt to Magalie Roman Salas (March 7, 2000).

PROPOSED 2 GHz RELOCATION RULES

Explanation of Proposed Rules

The rules affecting relocation of terrestrial 2 GHz incumbents must ensure that new satellite services operating in those bands are not unduly delayed or excessively burdened by relocation negotiations and resulting costs, given that each entrant must execute relocations on a national scale, within a limited period of time. In order to promote the timely deployment of these new services, the negotiation rules should be streamlined and should include a substantive relocation standard that mandates expenditure only for the actual and direct costs of an equivalent replacement system at the incumbent's level of fixed microwave radio system usage at the time of relocation.¹

As important, the negotiation rules should be technology neutral. MSS licensees should be permitted to provide non-radio replacement facilities so long as they meet the comparable facilities standards set forth in Section 101. Technology neutral rules will help ensure that scarce spectrum resources are utilized in the most efficient and economic manner.

As a procedural matter, the existing Emerging Technologies rules should be revised, insofar as they affect mobile satellite service ("MSS") in the 2 GHz frequency bands, to eliminate the voluntary negotiation period. Also, substantive standards concerning the content of relocation agreements should be imposed during the mandatory period, rather than deferred to the involuntary stage.² At the same time, the 12 month "trial period" in the present involuntary stage, during which an incumbent may decide to accept or reject a replacement system, should be eliminated. The incumbent should take possession of the replacement system at the conclusion of successful system testing at the completion of installation. Should subsequent testing reveal deficiencies, they will be resolved by both parties.

In the event the parties, having negotiated in good faith, do not reach a negotiated relocation agreement during the mandatory period, a flat rate payment will satisfy the MSS licensee's relocation obligations.

Proposed Rules

§ 101. — Mandatory Negotiations. —

- (a) The MSS licensee may at any time initiate a mandatory negotiation period of two years' duration. Participants in mandatory negotiations are required to negotiate in good faith, and each party must provide information to the other that is reasonably necessary to

¹ The rules should allow the satellite entrant to make a choice between offering a cash settlement or replacement in kind.

² The Emerging Technologies rules establish three stages of relocation agreement negotiations. The first stage - that of voluntary negotiations - is "not defined by any parameters." 47 C.F.R. § 107.71. The second stage - that of mandatory negotiations - may be invoked by the ET licensee upon the expiration of the voluntary negotiation period. *Id.* § 101.73. The third phase - that of involuntary negotiations - may be initiated by the ET licensee at the close of the voluntary and mandatory periods. *Id.* §101.75(3). Only in this final phase is the calculation of negotiated relocation costs constrained by substantive standards

facilitate the relocation process. Mandatory negotiations shall be conducted within the framework of the following rules:

- (1) MSS licensees are required to assume the actual costs to relocate only the specific microwave links which pose an interference problem. The incumbent licensee is required to accept relocation, provided that the MSS licensee:
 - (i) Assumes direct and actual relocation costs, including all applicable engineering, equipment, site and FCC fees. MSS licensees are not required to pay incumbent licensees for internal resources devoted to the relocation process. MSS licensees are not required to pay for transaction costs incurred by incumbent licensees during the mandatory period;
 - (ii) Completes all activities necessary for implementing the replacement facilities, including engineering and cost analysis of the relocation procedure and, if radio facilities are used, identifying and obtaining, on the incumbents' behalf, new microwave frequencies and frequency coordination; and
 - (iii) Provides the replacement system and tests it for comparability with the 2 GHz system.
- (b) **Comparable Facilities.** The replacement system provided to an incumbent during a mandatory relocation must be equivalent to the existing system with respect to the following three factors:
 - (1) **Throughput.** Communications throughput is the amount of information transferred within a system in a given amount of time. If analog facilities are being replaced with analog, the MSS licensee is required to provide the incumbent licensee with an equivalent number of 4 kHz voice channels. If digital facilities are being replaced with digital, the MSS licensee must provide the incumbent licensee with equivalent data loading bits per second (bps). MSS licensees must provide incumbent licensees with enough throughput to satisfy the incumbent licensee's system use at the time of relocation, not match the total capacity of the incumbent system. The MSS licensee is not required to assume the added cost of provision of throughput in excess of the incumbent licensee's system use at the time of relocation.
 - (2) **Reliability.** System reliability is the degree to which information is transferred accurately within a system. MSS licensees must provide incumbent licensees with reliability equal to the overall reliability of their system. For digital data systems, reliability is measured by the percent of time the bit error rate (BER) exceeds a desired value, and for analog or digital voice transmissions, it is measured by the percent of time that audio signal quality meets and established threshold. If an analog voice system is replaced with a digital voice system, only the resulting frequency response, harmonic distortion, signal-to-noise ratio and its reliability will be considered in determining comparable reliability.

- (3) **Operating Costs.** Operating costs are the cost to operate and maintain the incumbent system. MSS licensees must compensate incumbent licensees for any increased operating costs associated with the replacement facilities (*e.g.*, additional rental payments, increased utility fees) for five years after relocation. MSS licensees may satisfy this obligation by making a lump-sum payment based on present value using current interest rates.
- (c) The incumbent licensee is not required to relocate until the alternative facilities are available to it for a reasonable time to make adjustments, determine comparability and ensure a seamless handoff, but in no event may relocation occur later than thirty days after successful system testing at the completion of installation. If the FMS licensee has retained its 2 GHz authorization during the testing period, it must return the license to the Commission no later than thirty days after successful system testing at the completion of installation. All decommissioned radio frequency equipment becomes the property of the MSS licensee.
- (d) The MSS licensee may install alternative comparable facilities, including non-radio facilities that meet the requirements set forth in (b)(1)(2)(3), *supra*.

Section 101. — Public safety licensees. —

- (a) If comparable analog facilities no longer may be obtained, and the throughput of the lowest-capacity digital system available exceeds the throughput required to satisfy the incumbent licensee's system use at the time of relocation, the MSS licensee will provide the incumbent licensee with the lowest-capacity comparable digital system available.
- (b) In order for public safety licensees to qualify under subsection (a), the department head responsible for system oversight must certify to the MSS licensee requesting relocation that:
- (1) The agency is a Police Licensee, a Fire Licensee, or an Emergency Medical Licensee as defined in § 90.7 of this chapter, or meets the eligibility requirements of § 90.20(a)(2) of this chapter, except for § 90.20(a)(2)(ii) of this chapter, or that it is a licensee of other Part 101 facilities licensed on a primary basis under the eligibility requirements of Part 90, Subpart B of this chapter; and
 - (2) The majority of communications carried on the facilities at issue involve safety of life and property.
- (c) A public safety licensee must provide certification within thirty (30) days of a request from a MSS licensee, or the MSS licensee may presume that special treatment is inapplicable. If a public safety licensee falsely certifies to an MSS licensee that it qualifies for the extended time periods, this licensee will be in violation of the Commission's rules and will subject to appropriate penalties.

Section 101. — Involuntary relocation procedures. —

- (a) If no agreement is reached during the mandatory negotiation period, an MSS licensee may initiate involuntary relocation procedures under the Commission's rules.

- (b) If the Commission determines that the MSS licensee has not offered a comparable system as defined in Section 101.____(b)(1)(2)(3) herein, the FMS incumbent is entitled to a liquidated amount of up to \$250,000 per link, plus applicable tower costs of up to \$150,000. If the Commission determines that an FMS licensee has rejected an offer of comparable facilities, the FMS licensee is entitled to a liquidated amount of \$25,000. All decommissioned radio frequency equipment becomes the property of the MSS licensee.

CERTIFICATE OF SERVICE

I, James S. Bucholz, do hereby certify that copies of the foregoing **LETTER** were hand delivered, on this 31st day of March, 2000, to the following:

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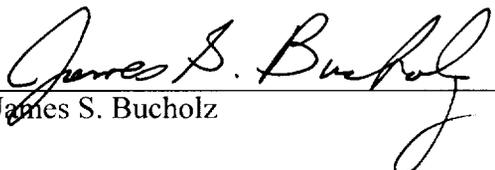
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