

MORRISON & FOERSTER LLP

SAN FRANCISCO
LOS ANGELES
PALO ALTO
WALNUT CREEK
SACRAMENTO
ORANGE COUNTY
SAN DIEGO
DENVER

ATTORNEYS AT LAW

2000 PENNSYLVANIA AVENUE, NW
WASHINGTON, D.C. 20006-1888
TELEPHONE (202) 887-1500
TELEFACSIMILE (202) 887-0763

NEW YORK
BUENOS AIRES
LONDON
BRUSSELS
BEIJING
HONG KONG
SINGAPORE
TOKYO

April 19, 2000

Writer's Direct Contact
(202) 887-1510
ctritt@mofocom

By Electronic Filing

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

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

Dear Ms. Salas:

The attached letter was delivered today, by hand delivery, to Chairman Kennard and Commissioners Ness, Tristani, Furchtgott-Roth and Powell. Copies were also delivered, by hand or first-class mail, to those on the attached service list.

Pursuant to Section 1.49(f)(1) of the Commission's rules, one electronic copy of this letter is being submitted via the Commission's Electronic Comment Filing System for inclusion in the record in each of the above-captioned proceedings.

Respectfully submitted,

/S/ Cheryl A. Tritt
Cheryl A. Tritt
Counsel for ICO Global Communications

Attachment Letter to Commissioner William E. Kennard *et al.*

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(202) 887-1510
ctritt@mofo.com

By Hand Delivery

Chairman William E. Kennard
Commissioner Susan Ness
Commissioner Gloria Tristani
Commissioner Harold W. Furchtgott-Roth
Commissioner Michael K. Powell
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

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

Dear Mr. Chairman and Commissioners:

ICO Global Communications ("ICO") opposes the *ex parte* request of Final Analysis Communications Services Inc. ("Final Analysis") to prolong the 2 GHz mobile satellite service ("MSS") rulemaking proceedings in order to protect Final Analysis from competition.¹ The Final Analysis request is based upon two premises that have no support in the record or in the policies, rules and orders of the Commission: first, that ICO will provide primarily data communications and probably will "abandon the voice market"; and second, that provision of substantial data services by a 2 GHz MSS system violates a Commission policy to confine 2 GHz MSS services to voice applications. Neither of these premises is true, and the second is flatly contradicted by

¹ *Ex parte* letter from Aileen A. Pisciotta and Randall W. Sifers, Counsel to Final Analysis Inc., to Chairman William E. Kennard et al., Federal Communications Commission (March 29, 2000) ("Final Analysis Letter").

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the very FCC decisions that Final Analysis cites in support of its request. Accordingly, the Commission should reject Final Analysis's extraordinary demands.²

I. ICO Will Provide Both Voice and Data Services

The Final Analysis Letter states that ICO will offer a "primarily data service" and "probably intends to completely abandon the voice market."³ Nothing in ICO's statements to the Commission justifies these extreme conclusions. Notably, in its *ex parte* letter of March 2, 2000, ICO advised the Commission only that it will offer " a broader range of services and technological applications, " including "a set of high-quality wireless data applications . . ." ⁴ At no time has ICO suggested that it will "abandon" voice services, which remain central to its objective of providing affordable service to unserved and underserved areas of the United States. Neither has ICO suggested that its services will be "primarily data." In fact, the relative volumes of voice and non-voice services that ICO provides will be dictated by the needs of its customers - not by an *a priori* plan contrived in advance of marketplace experience. Accordingly, there is no basis for Final Analysis's claim that ICO's service will be based primarily or exclusively on non-voice applications.

II. The Commission Has Not Attempted to Prescribe The Services That 2 GHz MSS Systems Will Provide

Even if ICO proposed to offer services that consist primarily or exclusively of data applications, that decision would violate no policy, rule or articulated goal of the Commission. Contrary to Final Analysis's claim, the FCC never announced that Big

² This letter will not make a detailed response to Final Analysis's unwarranted and intemperate claim that authorizing ICO to use 2 GHz MSS spectrum amounts to a "wholesale give-away of spectrum to . . . a foreign-licensed system in bankruptcy" to the detriment of a company (Final Analysis) that has spent "tens of millions dollars" in designing and constructing its system. Final Analysis Letter at 5. The Commission does not, of course, "give away spectrum," but authorizes those uses of spectrum, subject to service rules, that it finds will best serve the public interest. And ICO is not simply a "foreign licensed system in bankruptcy," but a company that has expended over \$3 billion to develop a fleet of 12 satellites, obtain pre-paid launch vehicles and design and build 10 major gateway sites. With the addition of its recent \$1.2 billion financing package from Craig McCaw and his affiliated companies, ICO's commitment to the MSS service market compares more than favorably to that of Final Analysis or any other operator.

³ *Id.* at pp. 2, 3.

⁴ *Ex parte* letter from R. Gerard Salemme, Eagle River Investments LLC, and Cheryl A. Tritt, Counsel to ICO Global Communications, to Magalie Roman Salas *et al.*, Federal Communications Commission (March 2, 2000).

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LEO or 2 GHz MSS spectrum would be assigned primarily for voice rather than data services, while NVNG MSS systems would "focus on non-voice (data) communications . . ."⁵ Instead, the Commission has followed its consistent policy that the marketplace - not regulation - will best decide how assigned frequencies may serve the public interest.⁶

In fact, the best response to the Final Analysis claims can be found in the very FCC decisions that Final Analysis cites to support them. Notably, in its 1994 *Big LEO Order*, the Commission pointed out that "Big LEO service can offer an almost limitless number of services, including ubiquitous voice and data mobile services, position location services, search and rescue communications, disaster management communications, environmental monitoring, paging services, facsimile transmission services, cargo tracking, and industrial monitoring and control."⁷ The Commission also rejected the notion, advanced in the Final Analysis Letter, of a bright line between anticipated Big LEO and Little LEO services - stating, in fact, that Big LEO services "will be tailored to provide resellers with a wide variety of options, ranging from position determination and data messaging services, *such as those provided by the NVNG MSS proponents*, to global telephony."⁸

⁵ Final Analysis Letter at 3.

⁶ See, e.g., *Establishment of Policies and Service Rules for the Mobile Satellite Service in the 2 GHz Band*, 14 FCC Rcd 4843, 4848 (1999) (stating that "we have traditionally sought to . . . allow consumer choice to determine the success of individual service offerings, technologies and competitors"); see also *Amendment to the Commission's Regulatory Policies Governing Domestic Fixed Satellites and Separate International Satellite Systems and DBSC Petition for Declaratory Rulemaking Regarding the use of Transponders to Provide International DBS Service*, 11 FCC Rcd 2429, 2433 (1996) ("we believe that satellite operators should be permitted to use their facilities in the manner they deem most efficient, based on market forces, with no specific service requirements").

⁷ *Amendment of The Commission's Rules to Establish Rules and Policies Pertaining to a Mobile Satellite Service in the 1610-1626.5/2483.5-2500 MHz Frequency Bands*, 9 FCC Rcd 5936, 5940 (1994) ("Big LEO Order").

⁸ *Id.* at 6003 (emphasis added). Final Analysis's use of the Commission's decisions is highly selective and misleading. For example, Final Analysis quotes the Commission as finding that "the public interest would be served if LEO systems provided efficient and ubiquitous voice service to users throughout the United States." Final Analysis Letter at n.7, quoting *Big LEO Order* at 5947. Final Analysis declines, however, to quote the Commission's observation, only three sentences removed from the quoted language, that "[o]ur expectation is that LEO system operators will have market incentives to offer more than merely voice services . . ." *Id.* at 5948.

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In proposing rules to govern MSS systems at 2 GHz, the Commission took a similarly market-driven approach to the choice of technologies and services that system operators might provide.⁹ Notably, the Commission referred repeatedly to 2 GHz MSS systems as providing "regional and global voice, data and messaging services . . ."¹⁰ And the Commission made clear that in making rules and setting policies for the 2 GHz MSS service, it would "allow consumer choice to determine the success of individual service offerings, technologies, and competitors."¹¹ Nowhere has the Commission suggested that MSS systems operating at 2 GHz will be confined to any particular service or mix of services.

As these decisions show, ICO's proposal to broaden its range of services with the addition of high-quality data applications violates no policy, rule or order of the Commission. In fact, ICO's proposal is in accord with the Commission's policy of letting the market decide how assigned spectrum can best be used to serve consumers. Accordingly, there is no basis for Final Analysis's claim that ICO has effected a *de facto* change in the Commission's rules, requiring a further comment round and additional delay in these proceedings.

Conclusion

The *ex parte* letter's blatant appeal for protection from competition is inappropriate and wholly inconsistent with the Commission's policies. As the Commission pointed out in another context, "[t]he public interest . . . is the provision of services of value to the . . . public and includes the protection of competition, not

⁹ *Establishment of Polices and Service Rules for the Mobile Satellite Service in the 2 GHz Band*, 14 FCC Rcd 4843 (1999).

¹⁰ *Id.* at 4844-45; *see also id.* at 4848-49.

¹¹ *Id.* at 4848.

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competitors."¹² Accordingly, the demands of Final Analysis for a substantial expansion of this proceeding, with resultant delay in the implementation of new MSS services for U.S. consumers, should be rejected.

Respectfully submitted,

/S/Cheryl A. Tritt
Cheryl A. Tritt
Counsel for ICO Global Communications

¹² *Establishment of Rules and Policies for the Digital Audio Satellite Service in the 2310-2360 MHz Frequency Band*, IB Docket No. 95-91, Report and Order, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 12 FCC Rcd 5754, 5759 (1997).

CERTIFICATE OF SERVICE

I, James S. Bucholz, hereby certify that a true and correct copy of the foregoing **Letter** was delivered by hand or regular mail this 19th day of April 2000, to the individuals on the following list:

Donald Abelson*
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Alex Royblat*
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Thomas Tycz*
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Dale Hatfield*
Federal Communication Commission
445 12th Street, S.W.
Washington, D.C. 20554

Harold Ng, Chief*
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Julius Knapp*
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Christopher J. Wright*
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Rebecca Dorch*
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Anna M. Gomez*
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Sean White*
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Ms. Cassandra Thomas*
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Linda Haller*
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Fern Jarmulnek*
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Ari Fitzgerald*
Federal Communications Commission
Room 8-B201N
445 12th Street, S.W.
Washington, D.C. 20554

Mark Schneider*
Federal Communications Commission
Room 8-B115
445 12th Street, S.W.
Washington, D.C. 20554

Bryan Tramont*
Federal Communications Commission
Room 8-A302B
445 12th Street, S.W.
Washington, D.C. 20554

Peter A. Tenhula*
Federal Communications Commission
Room 8-A204F
445 12th Street, S.W.
Washington, D.C. 20554

Adam Krinsky*
Federal Communications Commission
Room 8-C302
445 12th Street, S.W.
Washington, D.C. 20554

Howard Griboff*
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Christopher Murphy*
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Karl Kensinger*
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Robert A. Mazer, Esq.
Vinson & Elkins
1455 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-1008
Counsel for Leo One Worldwide, Inc.
Counsel for Constellation
Communication Holding, Inc.

Leslie Taylor, Esq.
Leslie Taylor Associates, Inc.
6800 Carlynn Court
Bethesda, MD 20817-4302
Counsel for E-SAT, Inc.

Henry Goldberg, Esq.
Joseph Godles, Esq.
Mary Dent, Esq.
Goldberg, Godles, Wiener & Wright
1229 19th Street, N.W.
Washington, D.C. 20036
Counsel for VITA

Steve Goodman
Halprin, Temple, Goodman & Maher
555 12th Street, N.W.
Suite 950 North
Washington, D.C. 20004
Counsel for ORBCOMM

Geraldine Matise*
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Peter M. Connolly
Koteen & Naftalin, L.L.P.
1150 Connecticut Avenue, N.W.
Washington, D.C. 20036
Counsel for TMI Communications
and
Company, Limited Partnership

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

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

William Wallace
Crowell & Moring
1001 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2505
Counsel for Globalstar, L.P.

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

Kelly Cameron, Esq.
Robert L. Galbreath, Esq.
Powell Goldstein Frazer & Murphy LLP
1001 Pennsylvania Avenue, N.W.
Sixth Floor
Washington, D.C. 20004
Counsel for Inmarsat Ltd.

/S/ James S. Bucholz
James S. Bucholz

*Hand Delivery