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AT&T

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May 1, 2000

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Magalie Roman Salas, Secretary
Federal Communications Commission
The Portals, 12th Street Lobby
445 12th St., S.W., Counter TW-A325
Washington, DC 20554

Re: Written *Ex Parte* Submission
IB Docket No. 99-81
ET Docket No. 95-18
RM-9328

Dear Ms. Salas:

AT&T Wireless Services, Inc. ("AWS") submits this letter in response to the March 31, 2000 *ex parte* letter submitted by ICO Global Communications ("ICO") in the above-captioned docket. As a PCS provider who continues to participate in the relocation procedures developed in the *Emerging Technologies* proceeding, and as a holder of 2 GHz fixed microwave licenses, AWS has a significant interest in this issue. Based on AWS' experience relocating microwave licensees in the PCS bands, and on the numerous FCC decisions reaffirming the fundamental policies underlying the relocation process, we urge the FCC to reject ICO's latest attempt to derail this proceeding, and move expeditiously to finalize its relocation/compensation rules for the 2 GHz band.

As a carrier that has relocated hundreds of incumbent microwave facilities in the PCS bands, AWS knows first-hand that the current relocation process works well. Without it, PCS networks would not be as widely deployed as they are today. Yet ICO persists, year after year, in trying to change the rules in ways that would undermine the fair and appropriate process the FCC has developed. ICO has shown no compelling reason to depart from these successful practices other than to repeat endlessly their assertion that relocation "as is" would cost too much or be too difficult. ICO's March 31 *ex parte* letter adds nothing to the debate and serves only to delay needlessly a process that has already dragged on for years. *See Ex Parte* Submission of Celsat America, Inc. filed April 20, 2000 (attached).

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Having recognized the unquestionable success of current relocation/compensation procedures, the FCC has repeatedly and rightly reaffirmed its initial determinations. *See Ex Parte* Submission of BellSouth Corp. filed February 9, 2000 (attached). Despite the Commission's consistent refusals to retreat from its findings and policy, ICO continues to waste the Commission's time with yet another attempt to undermine the process and avoid paying their rightful costs to relocate existing 2GHz license holders. AWS believes that further debate on these issues would be fruitless; parties would simply rehash old arguments without any meaningful contribution to the public interest.

Therefore, AWS urges the Commission to uphold its original and reaffirmed decisions on relocation/compensation policy and ensure that incumbent licensees are treated fairly and consistently. We hope the Commission will act expeditiously to bring this too-long-debated matter to a prompt close.

In accordance with section 1.1206(b) of the Commission's rules, two copies of this letter are being submitted for each docket noted above.

Sincerely,

David P. Wye

Attachments

cc: Ari Fitzgerald
Adam Krinsky
Mark Schneider
Peter Tenhula
Bryan Tramont
Dale Hatfield
Julius Knapp
Sean White
Don Abelson
Howard Griboff
Tom Sugrue
Tom Stanley

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April 20, 2000

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VIA HAND DELIVERY

Magalie Roman Salas, Secretary
Federal Communications Commission
The Portals, 12th Street Lobby
445 12th St., SW, Counter TW-A325
Washington, DC 20554

Re: Written *Ex Parte* Submission
IB Docket No. 99-81
ET Docket No. 95-18
RM-9328

Dear Ms. Salas:

Celsat America, Inc. ("Celsat"), by undersigned counsel, submits this letter in response to the March 31, 2000 *ex parte* letter submitted by Cheryl Tritt on behalf of ICO Global Communications in the above-referenced dockets. The March 31 Letter offers yet another iteration by ICO of its views on how the Commission should deal with the relocation of incumbents in the 2 GHz mobile satellite service proceeding. ICO has been attacking and re-attacking the Commission's proposed rules concerning relocation of 2 GHz incumbents literally for years now. The Commission should not permit ICO to slow down the 2 GHz proceeding any longer and should simply move forward to finalize its relocation rules as soon as possible.

The March 31 Letter (rather ironically) purports to be concerned with providing service as expeditiously as possible to Indians living on tribal lands and other individuals living in unserved and underserved areas. By now it is clear that the most expeditious way for the Commission to ensure that individuals living in underserved areas obtain the benefits of 2 GHz MSS technology is to complete the 2 GHz MSS proceeding so that companies like Celsat can begin providing service. Celsat has stated on numerous occasions beginning as early as June of 1998[1] that **Celsat will offer its service for eight cents per minute including long distance**, a price that no other 2 GHz MSS provider can even approach. Moreover, as Celsat argued at length in its comments

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[1] See *Consolidated Replies and Oppositions of Celsat America, Inc.*, June 3, 1998, filed in response to Commission Report No. SPB-119.

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on the wireless bureau's proceeding concerning service on tribal lands,[2] while virtually all satellite systems can provide ubiquitous service on tribal lands **only those companies that can provide satellite service affordably will make telecommunications services on tribal lands a reality.** Celsat stands ready to eliminate the barriers to provision of satellite-delivered telecommunications services on tribal lands but it can only do so if the Commission resolves the endless, self-serving bickering by applicants over the precise formulation of the Commission's relocation rules and completes the 2 GHz proceeding.

In accordance with section 1.1206(b) of the Commission's rules, two copies of this letter are being submitted for each docket noted above. Please direct any questions concerning this matter to the undersigned.

Very truly yours,

Brian Weimer

cc: Chairman William Kennard
Commissioner Harold Furchtgott-Roth
Commissioner Susan Ness
Commissioner Michael Powell
Commissioner Gloria Tristani
Ari Fitzgerald
Adam Krinsky
Mark Schneider
Peter Tenhula
Bryan Tramont

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[2] See *Comments of Celsat America, Inc.* in WT Docket No. 99-266, dated November 9, 1999.

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FEB - 9 2000
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

February 9, 2000

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, SW, Room TW-A325
Washington, DC 20554

RE: 2GHz MSS Proceeding
ET Docket No. 95-18 and IB Docket No. 99-81
EX PARTE

Dear Ms. Salas:

This is to inform you that on February 8, 2000, David Richards and Ben Almond of BellSouth Corporation met in separate meetings with Bryan Tramont of Commissioner Tristani's office; Peter Tenhula of Commissioner Powell's office; and Mark Schneider of Commissioner Ness's office concerning the above-referenced proceedings.

The attached document was used for discussion purposes. Please associate this notification and accompanying material with the referenced docket proceedings.

If there are any questions concerning this matter, please contact the undersigned.

Sincerely,

Ben Almond /a.p

Ben G. Almond
Vice President-Federal Regulatory

Attachment

Cc: Bryan Tramont
Peter Tenhula
Mark Schneider

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2 GHz MSS Proceedings
ET Docket No. 95-18 &
IB Docket No. 99-81

No 2 GHz MSS Applicant Has Demonstrated Any Reason Why The Commission Should Overturn Its Public Interest Determination, in *MO&O and Third NPRM*, at ¶26, That:

> The scale of the contemplated relocation does not affect the goals of providing for the fair and equitable sharing of 2 GHz spectrum, preventing disruption to incumbent operations and minimizing the economic impact on incumbent licensees.

FCC Policies on Relocation of Incumbent 2 GHz Microwave Licensees Have Been Determined and Reaffirmed

> 2 GHz MSS licensees must pay for Fixed Service ("FS") incumbents to relocate (See Note 1)
>
> The MSS industry's assaults are too late and without merit.

2 GHz MSS Applicants *Again* Ask That The Established *Emerging Technologies* Policies Be Reconsidered And Gutted. They Advance *No* Substantive Reason For Eviscerating Those Policies.

> The Commission, on reconsideration, refused to change its established policy. (See Note 2)

The Commission Has Already Determined That The Substantial Cost Associated With FS Relocation Does Not Warrant A Change In Its Established *Emerging Technologies* Policies. (See Note 3)

The 2 GHz MSS Industry Acts As If The Commission Is Revisiting Its Relocation Policies For Emerging Technologies. To The Contrary, The Only Issues Unresolved In The *Third NPRM* In ET Docket No. 95-18 Address Implementation Not The Underlying Policies. (See Note 4)

The Commission Should Reject Again ICO's Old Argument Made In Its January 19, 2000 *Ex Parte*.

> **Argument**: Relocation costs will drive up the cost of ICO's service
>
> **Answer**: The Commission rejected this argument at ¶26 of the *MO&O and Third NPRM*. Furthermore, the Commission lacks the statutory authority to aid licensees in achieving their business plans.

ICO's "New" Arguments Do Not Warrant Reconsideration Again Of Established *Emerging Technologies* Policies.

Argument: Relocation costs will increase if ICO provides data transmission capabilities.

Answer: According to ICO, data will limit further its ability to share spectrum with FS incumbents, thereby increasing its relocation costs. BellSouth is convinced, and Industry Canada agrees, (See Note 5) that the operational realities will demonstrate that no spectrum sharing is feasible. Regardless, it is ICO's business plan that must take this into consideration. The Commission has determined that the public interest requires reimbursement for relocation.

Arguments: Industry Canada's approach is fairer and less onerous that the FCC's. Other countries will impose relocation costs on 2 GHz MSS.

Answer: Aside from the obvious inconsistency in the arguments, Industry Canada does not *require* the MSS provider to pay for relocation. It has specified January 1, 2003 (a date that may be extended) as the "earliest mandatory date for fixed frequency assignments that may be subject to displacement." IC SP 1-3 GHz, ¶5.2.4.2, p. 14. The plan does not preclude voluntary relocation. ICO neglects to mention the most significant differentiating factor between IC's situation and the FCC's situation. In Canada, there "are approximately 340 frequency assignments (in-band or adjacent band) that are currently in use in the new MSS spectrum, and that would be affected if all the spectrum were to be used." IC SP 1-3 GHz, ¶5.2.3, p. 13. In the United States, the number of microwave paths that will be affected by 2 GHz MSS implementation is over 13,000. ICO's reliance on the IC's analysis is misplaced and quite misleading.

Argument: ICO also wants to the FCC to apply a "remaining useful life valuation method" to incumbent equipment and a cap of $2300 on compensation for replacement equipment in the uplink bands.

Answer: In Docket 95-157, on April 30, 1996, the Commission adopted the transition rules implementing its *Emerging Technologies* policies. The Commission specifically rejected this argument. Those rules require ET licensees to provide incumbents with "comparable facilities." §§101.71 (Voluntary negotiations), 101.73 (Mandatory negotiations) and 101.75 (Involuntary relocation procedures). (See Note 6.) ICO continues to ask the Commission to assume the role of financial underwriter. The Commission does not have the statutory authority to perform that role and has repeatedly rejected that notion.

Notes:

1. In *Memorandum Opinion and Order and Third Notice of Proposed Rulemaking in ET Docket No. 95-18 ("MO&O and Third NPRM")*, 13 F.C.C.R. 23949 (1998), the Commission, at ¶15, rejected the MSS Coalition's petition for reconsideration seeking relief from the relocation obligation imposed on emerging technologies licensees in the 2 GHz band.

> Our *Emerging Technologies* policies require new service providers in the 2 GHz bands to compensate incumbents who are required to relocate. These policies apply regardless of the nationality, service or technology of the new entrant

2. In the *MO&O and Third NPRM*, at ¶16, the Commission stated:

> We . . . decline to deviate from established policy. Accordingly, we affirm our decision to impose on MSS licensees authorized by this Commission to operate in the 2 GHz emerging technologies band, whether foreign or domestic, the obligation to relocate those licensees with whom they cannot share spectrum to comparable facilities elsewhere in the spectrum.

3. At ¶26, of the *MO&O and Third NPRM*, the Commission stated:

> We recognize that the relocation of FS incumbents nationwide would be a large undertaking, but find that this does not constitute a basis for abandoning our *Emerging Technologies* policies. . . . We find that the scale of the contemplated relocation does not affect the goals of providing for the fair and equitable sharing of 2 GHz spectrum, preventing disruption to incumbent operations and minimizing the economic impact on incumbent licensees.

4. The *MO&O and Third NPRM*, at ¶¶47-48, recounts the history of and reaffirms the Commission's Emerging Technologies policies. The only outstanding issues in the *Third NPRM* are limited to implementation of the relocation rules. Those limited issues are:

1. Application of the sunset rule of §101.79 (¶49)
2. Application of the good faith guidelines of §101.73 (¶49)
3. Ten years or another time period for the sunset date for voluntary negotiations (¶49)
4. The length of the voluntary and mandatory negotiation periods (¶50)
5. The beginning date for the voluntary negotiation period (¶50)
6. Application of the cost reimbursement formula in the *Microwave Cost-Sharing* proceeding or an even division between the initial MSS relocator and a subsequent MSS licensee (¶51)

5. Industry Canada, SP 1-3 GHz, October, 1999, "Amendments to the Microwave Spectrum Utilization Policies in the 1-3 GHz Frequency Range," ("IC SP 1-3 GHz") at ¶5.2.3, p. 13 ("There was general agreement that co-ordination would not be practical for the co-existence of MSS and FS services in the same bands.").

6. In the *First Report and Order and Further Notice of Proposed Rule Making in WT Docket No. 95-157*, 11 F.C.C.R. 8825, at 8844, the Commission stated:

> In the Cost-Sharing Notice, we also sought comment on whether and how depreciation of equipment and facilities should be taken into account, and whether it would be appropriate for a PCS licensee to compensate an incumbent only for the depreciated value of the old equipment. . . . We are persuaded by incumbents, however, that *compensation for the depreciated value of old equipment would not enable them to construct a comparable replacement system without imposing costs on the incumbent, which would be inconsistent with our relocation rules.* We therefore conclude that the depreciated value of old equipment should not be a factor when determining comparability.

(Emphasis added; footnotes omitted.)