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May 25, 2001

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Ms. Magalie Roman Salas  
Secretary  
Federal Communications Commission  
The Portals  
445 12<sup>th</sup> Street, S.W., TW-A325  
Washington, D.C. 20554

Re: **EX PARTE**  
IB Docket No. 99-81 (2 GHz MSS Service Rules)

Dear Ms. Salas:

ICO Services Ltd. ("ICO") urges the Commission to dismiss immediately the petition for rulemaking, filed by the Cellular Telecommunications & Internet Association ("CTIA") on May 18, 2001. CTIA seeks to reverse arbitrarily a 10-year effort by the Commission and others to ensure that adequate spectrum at 2 GHz is available to provide mobile satellite service ("MSS") to rural and unserved markets throughout the globe. CTIA's petition must be rejected as an unsupportable spectrum grab that totally disregards U.S. international commitments and the larger public interest.

It is essential that the Commission immediately license the eight 2 GHz MSS systems, whose applications have been pending for almost four years. ICO plans to launch another satellite on June 19, 2001, and has an urgent need, along with other 2 GHz MSS operators, for the Commission to demonstrate its intention to stay the course for the 2 GHz MSS systems and to honor its stated commitment to issue licenses by June 2001.

The U.S. government, joined by the Commission, led the initiative for an international allocation of global MSS at 2 GHz beginning at the 1992 World Administrative Radio Conference ("WARC"). It has taken almost 10 years for the Commission to allocate spectrum domestically and implement service rules for 2 GHz MSS, in part because, after WARC 92 allocated the 2 GHz band to MSS worldwide, the Commission reversed course and reallocated a portion of that spectrum to terrestrial personal communications services. Since WARC-92, the U.S. has participated in three

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additional World Radio Conferences, attempting to obtain harmonization with the rest of the world and finally obtaining partial, though not complete, success. In adopting its domestic MSS allocation, the Commission affirmed its commitment to honoring international MSS allocations and stated that “any 2 GHz MSS allocation should be as consistent as possible with the WARC-92 and WRC-95 allocations.”<sup>1</sup> The Commission must ensure that its tremendous efforts to make 2 GHz spectrum available to global MSS operators to serve underserved and unserved areas around the globe are not lost.

Equally important, the Commission must not renege on its international commitments and jeopardize its credibility in world fora by denying 2 GHz MSS operators the opportunity to prove their systems. Any such premature, unilateral action would be construed by the international community as evidencing a lack of good faith by the U.S. in following through on a well-considered, internationally agreed-upon spectrum plan. Moreover, there is mounting evidence that terrestrial wireless carriers’ seemingly insatiable appetite for spectrum is overstated, certainly in the near term.<sup>2</sup>

The Commission already has in place a reasoned, workable regime for allocating and licensing spectrum in the 2 GHz band that, with some modifications,<sup>3</sup> will give 2 GHz MSS operators a fair opportunity to prove their systems and business plans. If the MSS operators, however, fail after being afforded this opportunity, the Commission’s 2 GHz rules now in place would ensure the prompt return of the spectrum. In assessing

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<sup>1</sup> *Amendment of Section 2.106 of the Commission’s Rules to Allocate Spectrum at 2 GHz for Use by the Mobile-Satellite Service*, First Report and Order, 12 FCC Rcd 7388, 7395 (1997).

<sup>2</sup> See, e.g., *3G Squeezed by Other Wireless Systems*, Newsbytes (May 21, 2001) (report by Merrill Lynch finds that “technical challenge of building a next-generation cellular network is proving difficult for even the most advanced wireless carriers”), at <http://www.newsbytes.com/news/01/165960.html>; *Only Three Companies Apply for Belgium’s 3G Licenses*, Telecommunications Report (Feb. 12, 2001) (reporting “scant interest” in 3G licenses in Belgium); *South Korea Delays 3G Plans Because of Investment Concerns*, Telecommunications Report (Mar. 5, 2001) (delay in South Korean plans to deploy 3G services); *Singapore government Reduces Bid Fees for April 3G Auction*, Telecommunications Report (Mar. 12, 2001) (Singapore government officials acknowledge “weak market” for 3G services); *Japan Plan on Wireless to Be Delayed*, The New York Times (Apr. 25, 2001) (Japan’s NTT DoCoMo is delaying launch of 3G services); *Disappointing Wireless Auction*, The New York Times (Mar. 24, 2001) (revenues from Australia’s auction of 3G licenses fall below government’s expectations).

<sup>3</sup> Pursuant to an *ex parte* proposal, filed in this proceeding on March 8, 2001, ICO requested the Commission to allow 2 GHz MSS operators to integrate an ancillary terrestrial component (“ATC”) into their systems.

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the spectrum requirements of the MSS operators and the terrestrial wireless industry, ICO strongly urges the Commission to consider an approach that can both assist the MSS industry in realizing its full potential while also possibly freeing up additional spectrum for other uses. ICO further urges the Commission to build upon the existing 2 GHz regime in addressing this spectrum management issue rather than to abandon arbitrarily a global MSS industry that has a unique capability to serve rural and unserved areas that terrestrial wireless providers cannot serve as effectively or efficiently.

As an initial matter, the Commission should recognize that 2 GHz MSS providers are inherently capable of, and intend to, serve underserved and unserved areas and do not require specific incentives to serve these markets. The Commission then could consider reallocating for other uses the 2 GHz MSS spectrum set aside for unserved areas. The reallocation of the set aside for unserved areas could be accomplished to ensure that only spectrum within the 2 GHz MSS band that has not been allocated to MSS on an international basis is targeted for reallocation.

In addition, the Commission should reemphasize that 2 GHz MSS operators that default on any established milestone for constructing and operating 2 GHz MSS systems will automatically lose their authorizations. Spectrum that would be returned following a default of a milestone condition could be reallocated for other uses, up to a specified limit. If the limit is reached for defaulted spectrum, any remaining spectrum that is returned would be divided among the remaining authorized 2 GHz MSS operators.

If the Commission authorizes 2 GHz MSS systems by the end of June as promised, the authorized systems would be required to comply with the Commission's first milestone by June 2002. In addition, the Commission could adopt any additional milestones it deems necessary or appropriate to ensure timely deployment of MSS systems. If any authorized 2 GHz MSS operator fails to meet the June 2002 or earlier milestones, non-MSS operators would have an early opportunity to seek to obtain the returned spectrum for their own needs. A requirement that defaulted 2 GHz MSS spectrum be returned for reallocation to other uses, however, would be equitable only if authorized system operators were afforded regulatory flexibility in implementing their system design and an adequate opportunity to demonstrate the commercial viability of their systems. Accordingly, the Commission should require the return and reallocation of defaulted 2 GHz MSS spectrum for other uses only if it also permits ATC to be integrated into 2 GHz MSS systems.

In order to implement this balanced approach to accommodate both 2 GHz MSS and other wireless interests, ICO urges the Commission to issue promptly a further notice[s] proposing to permit ATC use in the 2 GHz MSS spectrum and provide other wireless carriers an opportunity to obtain both the 2 GHz MSS set aside for unserved areas and defaulted 2 GHz MSS spectrum under the conditions set forth above. In

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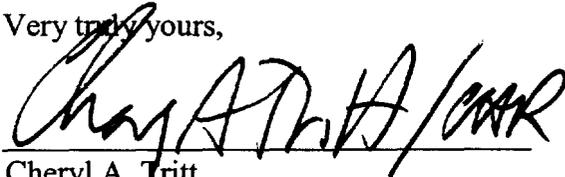
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addition, to provide regulatory certainty and optimal spectrum flexibility, the Commission should clarify that 2 GHz MSS operators are permitted to acquire and aggregate spectrum from other 2 GHz MSS operators through mergers, acquisitions, joint ventures, or other similar transactions.

ICO urges the Commission to include this proposal in any further notice addressing ATC to encourage a full discussion of how 2 GHz MSS and other wireless interests can be accommodated to ensure that all American consumers have access to satellite and other wireless services in a timely fashion.

An original and one copy of this letter have been submitted to the Secretary of the Commission for inclusion in the public record, as required by Section 1.1206(b)(2) of the Commission's Rules.

Very truly yours,

A handwritten signature in black ink, appearing to read "Cheryl A. Tritt", written over a horizontal line.

Cheryl A. Tritt  
Counsel to ICO Services Ltd.

cc: D. Abelson  
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