CTIA
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Cellular Telecommunications & Internet Association

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June 15, 2001

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

***Re*: *Ex Parte* Presentation**
CC Docket No. 99-81

Dear Ms. Salas:

On June 15, 2001, the Cellular Telecommunications & Internet Association ("CTIA") represented by Diane Cornell, Vice President for Regulatory Policy, and Christopher Guttman-McCabe, Director for Regulatory Policy, along with Douglas Brandon, AT&T Wireless, Luisa Lancetti, Sprint PCS, and Don Brittingham, Verizon Wireless, met with Commissioner Tristani and her Senior Legal Advisor, Adam Krinsky. The parties discussed issues related to Mobile Satellite Services spectrum in the 2 GHz band. In particular, the parties discussed the attached presentation.

Pursuant to Section 1.1206 of the Commission's Rules, an original and one copy of this letter is being filed with your office. If you have any questions concerning this submission, please contact the undersigned.

Sincerely,

Christopher Guttman-McCabe

Attachment(s)

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CELLULAR TELECOMMUNICATIONS AND INTERNET ASSOCIATION

Petition for Rulemaking on the 2 GHz MSS Spectrum

Presentation to the
Federal Communications Commission
June 15, 2001

BACKGROUND

- Multiple bankruptcy filings and low subscriber figures for operational MSS providers have raised viability concerns.
- New ICO's filing highlighted the fact that some applicants may not be viable in the 2 GHz band without a terrestrial component.

CTIA PETITION

- CTIA's petition for the FCC to revisit its 2 GHz allocation requests a common sense reaction to changed circumstances since the original allocation order in 1997.
- New ICO's filing vividly details the marketplace realities:
  - "The ability of the MSS industry to deliver public interest benefits is in dire jeopardy."
  - "The MSS sector has been decimated by a string of failures."
  - MSS's limitations have "been a crippling impediment for the industry and a terrible waste of available spectrum."
  - "The ATC concept . . . will allow the 2 GHz MSS . . . to become a viable enterprise."

CTIA's PETITION REQUESTED:

- Reallocating MSS spectrum for more efficient uses in the 2 GHz Band.
- Withholding the grant of the 2 GHz licenses to the existing applicants pending resolution of CTIA's petition.
- Denying a private reallocation of the MSS spectrum for terrestrial use (i.e., the New ICO proposal).

REALLOCATION

- The Commission should reallocate the 2 GHz MSS spectrum if it can be demonstrated that its intended use is not likely to materialize.
- If the FCC knows that MSS applicant business plans are not financially sound before licensing, it should not wait three and one-half years after licensing the MSS carriers (by its own rules) before reclaiming this spectrum.
- The potential for underutilization of MSS spectrum is particularly troubling in light of the intensifying demand for spectrum necessary to provide advanced mobile services.

NEW ICO's REQUEST FOR TERRESTRIAL FLEXIBILITY RAISES BROAD POLICY ISSUES

- New ICO's "Ancillary Terrestrial Component" looks more like CMRS than an "ancillary" service.
- New ICO's proposal would result in similarly situated services being regulated in very dissimilar ways.
  - Granting New ICO's request would raise significant policy and equity concerns by enabling MSS applicants to use spectrum they obtained for free to compete directly with CMRS providers who had to pay for their spectrum at auction.

NEW ICO's REQUEST FOR TERRESTRIAL FLEXIBILITY RAISES BROAD POLICY ISSUES

- New ICO's request amounts to a reallocation decision and rewriting of service rules.
- Neither the Commission's rules nor the statute addresses "ancillary services."
- The Commission should not act on New ICO's request for flexibility to provide terrestrial service without a full record on this topic.

NEW ICO's REQUEST FOR TERRESTRIAL FLEXIBILITY RAISES BROAD POLICY ISSUES

- MSS applicants should have viable business plans <u>without</u> a terrestrial component.
- No terrestrial service component was considered when companies applied to provide MSS.
  - More companies may have applied to provide MSS in the 2 GHz band if the provision of terrestrial service had been contemplated in the service rules.
  - Additional companies may be interested in providing services in this band if a terrestrial component is added to the MSS service rules.

CONCLUSION

- The Commission should:
  - Initiate a rulemaking to consider reallocation of 2 GHz MSS spectrum.
  - Suspend licensing pending consideration of a reallocation proceeding.
  - Develop a full and fair record regarding flexible use of the 2 GHz MSS spectrum.
  - Treat <u>similarly</u> situated services <u>similarly</u>.