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BEFORE THE

Federal Communications Commission

WASHINGTON, D.C.

In the Matter of	
Flexibility for Delivery of Communications by Mobile Satellite Service Providers in the 2 GHz Band, the L-Band, and the 1.6/2.4 GHz Band	IB Docket No. 01-185
Amendment of Section 2.106 of the Commission's Rules to Allocate Spectrum at 2 GHz for Use by the Mobile Satellite Service	ET Docket No. 95-18

COMMENTS OF LORAL SPACE & COMMUNICATIONS LTD.

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COMMENTS OF LORAL SPACE & COMMUNICATIONS LTD.

Loral Space & Communications Ltd. ("Loral") offers the following comments in response to the Notice of Proposed Rulemaking in the above-captioned proceeding.[1]

I. INTRODUCTION AND SUMMARY

Loral is a founding partner and the largest equity owner in Globalstar, L.P., a provider of mobile satellite personal communications services. The Globalstar system, composed of 48 low-earth-orbit ("LEO") satellites and a global network of ground stations, provides customers in 100 countries on six continents with fixed-phone and hand-held mobile satellite phone services, data

[1] Flexibility for Delivery of Communications by Mobile Satellite Service Providers in the 2 GHz Band, the L-Band, and the 1.6/2.4 GHz Band, Amendment of Section 2.106 of the Commission's Rules to Allocate Spectrum at 2 GHz for Use by the Mobile Satellite Service, IB Dkt. No. 01-185 & ET Dkt. No. 95-18, *Notice of Proposed Rulemaking,* FCC 01-225 (rel. Aug. 17, 2001) ("Notice").

transmission, messaging, facsimile and position location services. Globalstar, L.P., also recently was authorized to operate an MSS system in the 2 GHz band.[2]

In the Notice, the Commission asks whether MSS operators should be given additional flexibility by, among other things, allowing them to provide ancillary terrestrial services via their allotted satellite spectrum.

As petitioners have stated, to bolster the viability of MSS systems, the Commission should adopt flexible use policies similar to those adopted for other services. This policy should apply not only for 2 GHz and L-band licensees, but for Big LEO operators as well. The Commission can do so without reauthorizing MSS spectrum licensees, because adding additional flexibility to MSS licenses by permitting terrestrial operations does not implicate the licensing requirements of the Communications Act of 1934, as amended ("Communications Act"). In this proceeding, and in any future proceedings adopting rules and policies dealing with MSS systems, the Commission should continue to consider the benefits such systems offer in providing voice and data services and public safety applications to underserved areas both nationally and globally. In addition, MSS can play a unique and crucial public safety role by providing a critical alternative for communications when traditional landline and terrestrial wireless systems are not functioning or are overwhelmed.

II. MSS SYSTEMS PROVIDE ENORMOUS BENEFITS THAT SHOULD BE ENCOURAGED BY THE POLICIES THE COMMISSION ADOPTS IN THIS PROCEEDING.

Sparsely populated and underdeveloped areas in the United States and the rest of the world may never be served by wireline or terrestrial wireless services because of the economic

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[2] *See* Application of Globalstar, L.P., For Authority to Launch and Operate a Mobile-Satellite Service System in the 2 GHz Band, File Nos. 183/184/185/186-SAT-P/LA-97; 182-SAT-P/LA-97(64), *Order and Authorization,* DA 01-1634 (rel. July 17, 2001).

constraints associated with bringing these services to such areas. Potential customers in such areas are deprived of voice and data services, and more importantly, public safety applications, that customers in more developed areas take for granted. The Commission has recently noted that an even greater divide exists in the area of advanced services.[3]

The Commission has long recognized the value of MSS in alleviating this disparity. Its proceedings repeatedly describe the "enormous potential benefits these systems offer, and the public interest in their timely deployment[.]"[4] The new and expanded regional and global services these systems offer

> will enhance competition in mobile satellite and terrestrial communications services, and complement wireless service offerings through expanded geographic coverage. 2 GHz MSS systems will thereby promote development of regional and global communications to unserved communities in the United States, . . . including rural and Native American areas, as well as worldwide.[5]

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[3] *See* High-Speed Services for Internet Access, Industry Analysis Division, Common Carrier Bureau, Federal Communications Commission, at 4 (rel. Aug. 1, 2001) (noting that "high-speed subscribers are reported to be present in 97% of the most densely populated zip codes and in 45% of zip codes with the lowest population densities").

[4] The Establishment of Policies and Service Rules for the Mobile Satellite Service in the 2 GHz Band, IB Dkt. No. 99-81, *Report and Order*, 15 FCC Rcd. 16127, ¶ 2 (2000) ("*2 GHz Order*"). *See* 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, CC Dkt. No. 92-166, *Report and Order,* 9 FCC Rcd. 5936, ¶ 3 (1994) ("*Big LEO Order*") ("In addition to enhancing the competitive market for mobile telecommunication services in areas served by terrestrial mobile services, this new mobile satellite service will offer Americans in rural areas that are not otherwise linked to the communications infrastructure immediate access to a feature-rich communications network. . . . Big LEO systems may prove to be a critical component in the development of the global information highway.").

[5] *2 GHz Order* ¶ 1. *See also Big LEO Order* ¶ 1 ("This new mobile satellite service . . . has the potential to provide not only a variety of new services to users in the United States, but to provide integrated communication services to all parts of the world, including those that are now grossly underserved."). It is the availability of MSS systems in remote areas of the United States and throughout the world that has attracted support for MSS from prominent statesmen. *See* Letter from Nelson Mandela to the Honorable Colin Powell, June 9, 2001, available in IB Dkt. No. 99-81; Letter from Sen. Ted Stephens to FCC Chairman Michael K. Powell, Mar. 29, 2001, IB Dkt. No. 99-81.

Unlike terrestrial mobile communications services, MSS is terrain- and distance-insensitive and need not rely on the stability of earth-bound transmitters. As such, it can reach inaccessible or low-density areas that could not ordinarily be served by terrestrial systems.[6] Due to MSS systems' nationwide coverage, MSS can offer instantaneous deployment to low-population density areas that may not have generated sufficient revenues to attract a terrestrial supplier. MSS systems are already an integral part of the global infrastructure for disaster relief, search and rescue missions, maritime safety, military operations and other safety applications, and their role in light of recent events is likely to grow larger.[7] In sum, MSS offers a unique opportunity to provide critical telecommunications services which are in the public interest.

The Commission's policies and rules concerning MSS, therefore, have consistently reflected the importance of this service, and have focused on promoting the continued rollout and viability of the service.[8] The Commission has before it in this proceeding a number of options that will ensure that these interests continue to be met. Given the enormous potential of MSS systems, allowing flexibility in the delivery of communications via MSS would best serve the interests the Commission has repeatedly emphasized.[9] Without this added flexibility, some of

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[6] *See* Aeronautical Radio, Inc. v. FCC, 928 F.2d 428, 433 (D.C. Cir. 1991).

[7] *See, e.g.*, *Big LEO Order* ¶ 3 ("Big LEO systems can . . . provide those countries that have not been able to develop a nationwide communication service an 'instant' global and national telecommunication infrastructure. This network can be used to provide both basic and emergency communications to their entire populations."). *See also* Jennifer Davies, *Satellite Phone Companies Rebounding,* SAN DIEGO UNION-TRIBUNE C1, Sept. 29, 2001; Dick Kelsey, *Satellite Phone Interest Renewed After Attack Rescue Use,* WASHTECH.COM, Sept. 25, 2001.

[8] *Big LEO Order* ¶ 5 ("The Big LEO proposals before us represent an opportunity for the United States to continue its leadership role in promoting global development through enhanced communication infrastructures and services. We intend to license these systems as quickly as possible so that this opportunity is not lost.").

[9] *2 GHz Order* ¶ 1 (Commission states its 2 GHz policies and rules were "designed to . . . encourage utilization of 2 GHz spectrum for delivery of benefits of MSS to all U.S. consumers

the licensed MSS networks may not come to fruition, while other MSS operators may not attain the subscriber levels that will allow them to continue to develop and to offer the kind of service and support to underserved areas in the United States and globally that make MSS an integral part of the communications infrastructure. The Commission therefore should take action to ensure the service's continued development.

III. THE COMMISSION SHOULD PROVIDE MSS OPERATIONS FLEXIBILITY TO PROVIDE TERRESTRIAL SERVICES IN ADDITION TO SATELLITE SERVICES.

The Notice seeks comment on proposals to bring flexibility to the delivery of communications by MSS providers.[10] In particular, the Notice considers permitting "ancillary" terrestrial operations by existing MSS licensees, based on the proposals of two MSS licensees, New ICO Global Communications (Holdings) Ltd. ("New ICO") and Motient Services Inc. ("Motient").[11] Consistent with recent spectrum policy pronouncements, the Commission should permit New ICO and Motient to implement their proposals, subject to appropriate interference protections. In so doing, the Commission should not adopt an approach to terrestrial operations

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nationwide."). Breck Blalock, deputy chief of FCC International Bureau's Planning and Negotiation Division, has stated, "[m]obile satellite communications have the potential to deliver broadband communications to rural, unserved and underserved areas, but only if the systems are robust enough to deliver quality services at reasonable prices." *See* FCC Eyes Use of MSS Spectrum for Terrestrial Operations, 20 FCC REPORT No. 17, Aug. 24, 2001. *See also Big LEO Order* ¶ 5 ("The United States has led the world in developing and implementing satellite technology. We expect many of the economic, cultural and other gains we have seen in the fixed-satellite industry to be reflected in the new mobile satellite industry.").

[10] Notice ¶ 1.

[11] *See Ex Parte* letter from Lawrence H. Williams and Suzanne Hutchings, New ICO Global Communications (Holdings) Ltd., to Chairman Michael K. Powell, Federal Communications Commission, IB Dkt. No. 99-81 (March 8, 2001) ("New ICO Petition"); Application of Motient Services Inc. and Mobile Satellite Ventures Subsidiary LLC for Assignment of Licenses and Authority to Launch and Operate a Next-Generation Mobile Satellite Service System, File No. SAT-ASG-20010302-00017 (dated Jan. 16, 2001).

by MSS operators that is too narrow, discouraging other MSS operators from developing innovative proposals for terrestrial use of MSS spectrum. The potential long-term benefits of MSS warrant adoption of flexible use policies similar to those adopted for other services, such as the recent adoption of a mobile allocation for ITFS/MMDS licensees operating in the 2500–2690 MHz band.[12] Moreover, the benefits of permitting terrestrial operations by existing MSS licensees should apply equally to Big LEO MSS providers, and 2 GHz and L-band MSS providers.

A. Authorizing Terrestrial Operations in Conjunction With MSS Networks Would Promote the Commission's Flexible Use Policies.

The flexible use policies addressed in the Notice are not unique to MSS. The Notice asks whether authorizing terrestrial operations in conjunction with MSS networks would be consistent with the Commission's general policy goal of granting licensees "technical, operational, and service flexibility."[13] Indeed, permitting terrestrial operations in these bands would be in furtherance of spectrum management policies designed to promote flexibility. By promoting flexibility, the Commission will ensure that spectrum is put to its highest and best use.[14] So long

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[12] Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support Introduction of New Advanced Wireless Services, Including Third Generation Wireless Systems, Amendment of the U.S. Table of Frequency Allocations to Designate the 2500–2520/2670–2690 MHz Frequency Bands for the Mobile-Satellite Service, ET Dkt. No. 00-258, *First Report and Order and Mem. Op. and Order*, FCC 01-256, ¶ 19 (rel. Sept. 24, 2001) ("*ITFS/MMDS Order*").

[13] Notice ¶ 25.

[14] *See* Gregory L. Rosston & Jeffrey S. Steinberg, *Using Market-Based Spectrum Policy to Promote the Public Interest*, 50 FED. COMM. L.J. 87, 99 (1997) ("In order for competition to bring consumers the highest valued services in the most efficient manner, we believe competing users of spectrum need flexibility to respond to market forces and demands. This flexibility includes the freedom to determine how they will use spectrum . . . ."). *See* Principles for Reallocation of Spectrum to Encourage the Development of Telecommunications Technologies for the New Millennium, *Policy Statement*, 14 FCC Rcd. 19868, ¶ 9 (1999) ("*Spectrum Management Policy Statement*").

as measures are in place to protect other operators from harmful interference, MSS operators should be permitted to incorporate terrestrial facilities into their networks.

The Notice recognizes that "[f]lexibility has been the Commission's favored approach to spectrum management and licensing in recent years."[15] In particular, the Commission increasingly has embraced the notion of "service flexibility," which has been defined as "the freedom to use spectrum for services of [the licensee/users'] choosing."[16] Recently, the Commission added a mobile allocation to the 2500–2690 MHz band to provide flexibility to incumbent ITFS/MMDS licensees.[17] The Commission found that "adding a mobile allocation to the 2500–2690 MHz band will further promote the public interest by providing an additional option to service providers in that band."[18] The Commission recognized that this addition would increase options for incumbents to deploy spectrum to its highest-valued use.[19]

Similarly, the FCC has provided licensees with service flexibility in other services, such as CMRS.[20] As the Commission noted in November 2000 in its Policy Statement on promoting

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15 Notice ¶ 2; *see also* Rosston & Steinberg, *supra* note 14, at 90.

16 Rosston & Steinberg, *supra* note 14, at 99.

17 *ITFS/MMDS Order* ¶ 19.

18 *Id.* ¶ 20.

19 *Id.* ¶ 25.

20 Amendment of the Commission's Rules to Permit Flexible Service Offerings in the Commercial Radio Mobile Services, WT Dkt. No. 96-6, *First Report and Order and Further Notice of Proposed Rulemaking*, 11 FCC Rcd. 8965, ¶ 22 (1996) (concluding that "licensees should have maximum flexibility to provide fixed or mobile services or combinations of the two over spectrum allocated for CMRS services, including PCS, cellular, and SMR services"); *see also* Amendment of Part 95 of the Commission's Rules to Allow Interactive Video and Data Service Licensees to Provide Mobile Service to Subscribers, WT Dkt. No. 95-47, *Report and Order*, 11 FCC Rcd. 6610, ¶ 9 (1996) (adopting rules to give IVDS licensees the option of providing fixed services, fixed services with an ancillary mobile component, or fully mobile services).

secondary markets for radio spectrum, "[l]icensees/users should have flexibility in determining the services to be provided and the technology used for operation consistent with other policies and rules governing the service."[21] The Commission's adoption of a flexible approach to spectrum management supports, where consistent with U.S. international obligations, adding a terrestrial allocation to MSS spectrum.

B. Providing For Flexible Use Of MSS Is Consistent With Section 303(y) Of The Act.

The Notice also asks whether providing for flexible use of MSS spectrum to permit terrestrial operations is consistent with the elements of Section 303(y) of the Act.[22] Section 303(y) authorizes the Commission to allocate spectrum to provide flexibility of use if "(1) such use is consistent with international agreements to which the United States is a party; and (2) the Commission finds, after notice and an opportunity to for public comment, that—(A) such an allocation would be in the public interest; (B) such use would not deter investment in communications services and systems, or technology development; and (C) such use would not result in harmful interference among users."[23]

Internationally, the 2 GHz band is allocated to MSS on a co-primary basis with fixed and mobile services.[24] Similarly, the band allocated for Big LEO operations in the space-to-earth direction is allocated internationally to MSS on a co-primary basis with fixed and mobile

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[21] Principles for Promoting the Efficient Use of Spectrum By Encouraging the Development of Secondary Markets, *Policy Statement*, 15 FCC Rcd. 24178, ¶ 20 (2000); *see Spectrum Management Policy Statement* at ¶ 9 ("Flexible allocations may result in more efficient spectrum markets.").

[22] Notice ¶ 25.

[23] 47 U.S.C. § 303(y).

[24] Notice ¶ 7. However, the Region 2 allocations vary slightly from those of other regions. *Id.*

services.[25] Therefore, adding a mobile allocation domestically in these bands is consistent with international agreements to which the U.S. is a party.[26] Furthermore, the public interest would be served because a flexible allocation allows licensees to make the most efficient use of spectrum, while adding a mobile allocation would not deter investment in communications services and systems, or technology development. In fact, as concluded in the *ITFS/MMDS Order*, flexible service allocations are more likely to spur new technology developments and investment.[27] In this case, the public interest is served by ensuring the continued provision of MSS everywhere and the potential provision of additional terrestrial services in urban markets. Finally, introduction of terrestrial uses by MSS operators need not cause harmful interference to other users because the Commission may require terrestrial services to be provided on a non-interference basis as to MSS and to meet existing interference protection requirements for MSS as to other services.[28]

C. Big LEO MSS Operators Should Also Be Afforded Flexibility To Provide Terrestrial Services.

The Notice also seeks comment on whether the general approach discussed above for 2 GHz and L-band MSS should be adopted for Big LEO MSS.[29] It seeks comment on the

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[25] 47 C.F.R. § 2.106.

[26] The spectrum allocated for Big LEO operations in the earth-to-space direction is not allocated internationally for mobile services. 47 C.F.R. § 2.106. However, the ITU permits signatory nations to adopt nonconforming allocations so long as harmful interference is not caused to conforming services. *See* Aeronautical Radio, Inc., 928 F.2d at 444.

[27] *ITFS/MMDS Order* ¶ 24.

[28] According to ICO's proposal, ATC can be implemented without harmful interference to other users of the MSS band or users of adjacent bands under the Commission's existing interference rules. *New ICO Petition* at 15.

[29] *See* Notice ¶ 79.

applicability of each element of the proposed approach as it might be applied to Big LEO MSS providers.[30] On the condition that other operators are protected from harmful interference, the Commission should authorize Big LEO licensees to provide terrestrial services. There is no basis, either in policy or fact, to distinguish between these services for these purposes. MSS competitors should not be treated disparately simply because they utilize different spectrum bands.[31]

IV. THE COMMISSION CAN PROVIDE FOR FLEXIBLE USE WITHOUT REAUTHORIZING EXISTING MSS LICENSEES.

A. Permitting Terrestrial Uses of MSS Spectrum Is Not Inconsistent With Section 309(j) Of The Communications Act.

Adding additional flexibility to MSS licenses by permitting terrestrial operations does not implicate the competitive bidding requirements of Section 309(j) of the Communications Act. Under Section 309(j)(1), the Commission is required to grant licenses by competitive bidding only if there are mutually exclusive applications for initial licenses. Nothing requested herein requires the grant of initial licenses, nor does it create a situation where mutually exclusive valid applications would be accepted for filing. Rather, the Commission's tentative conclusion in the Notice is entirely consistent with the plain meaning of the statute:

> [If it were] to permit provision of terrestrial services in the 2 GHz and L band spectrum, but limit such authority only to MSS operators providing such service on an ancillary basis, [its] obligation to use competitive bidding under Section 309(j) would not appear to be implicated, in part because terrestrial rights would be linked to pre-existing MSS authorizations and operations. Under such

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30 *See id.* ¶ 80.

31 Harmonization of rules for like services is an important component of the Commission's spectrum flexibility policies. "Harmonization provides regulatory neutrality to help establish a level playing field across technologies and thereby foster more effective competition." *Spectrum Management Policy Statement* ¶ 9.

circumstances there would not be mutually exclusive applications triggering the competitive bidding provisions of Section 309(j).[32]

While the plain language of Section 309 should be the end of the matter, several comments filed in response to the New ICO and Motient applications seemingly confuse both the circumstances which require the use of competitive bidding and the policy justifications underlying auctions.[33] Section 309(j) is only applicable when the Commission issues initial authorizations. Moreover, as explained above, Section 303(y) permits the FCC to authorize flexible allocations, without issuing new authorizations or revoking existing licenses.[34] Thus, any contention that Section 309(j) requires an auction of MSS licenses simply because the Commission has added a flexible use to the authorization is clearly misplaced.

When Congress directed the Commission to use competitive bidding for initial authorizations, it did so after finding that neither comparative hearings nor lotteries had been serving the public interest.[35] They were "time consuming" processes that had "caus[ed] technological progress and the delivery of services to suffer."[36] Auctions are a means of efficiently issuing initial authorizations among competing applications to ensure that Commission procedures are not delaying the provision of service. Suggesting, as some

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32 Notice ¶ 39.

33 *See* Application of Motient Services Inc. and Mobile Satellite Ventures Subsidiary LLC for Assignment of Licenses and For Authority to Launch and Operate a Next-Generation Mobile Satellite Service System, File No. SAT-ASG-20010302-00017, *Opposition of Verizon Wireless* at 4–6 (filed Apr. 18, 2001) (arguing that Section 309(j) is a "clear mandate" and that "Motient's request, if granted, would provide an unfair competitive advantage to Motient")("*Verizon Opposition*"); *Opposition of Cingular Wireless* at 9–10 (filed Apr. 18, 2001) (arguing that the "Commission should not give Motient what amounts to a free 3G license").

34 *See ITFS/MMDS Order* ¶ 24.

35 H.R. Rep. No. 103-111, at 248 (1993).

36 *Id.*

commenters do, that MSS licenses should be revoked and auctioned runs counter to the streamlining goals of 309(j). Furthermore, notwithstanding appearances to the contrary, auctions were not intended to raise revenues for the federal government,[37] and, importantly, they are not intended to somehow level playing fields between competitors.

In opposing Motient's application, Verizon contends that "Motient's request, if granted, would provide an unfair competitive advantage to Motient," because Verizon along with other CMRS carriers has had to pay for PCS licenses.[38] This argument, especially from an incumbent cellular provider like Verizon, is baseless and has been rejected by the Commission in other inquiries.[39] As an initial matter, while Verizon and others have purchased licenses from the FCC to provide PCS, many CMRS carriers, including Verizon, also received free cellular licenses used to provide competitive terrestrial-based services. Under Verizon's argument, the Commission should have revoked all cellular licenses and then auctioned them along with PCS licenses to ensure that new PCS operators such as Sprint PCS were not at a competitive disadvantage when competing against incumbents who had received free licenses. This, of course, was not the course of action the Commission followed. In fact, revoking and auctioning cellular licenses would have delayed, not advanced, the provision of competitive mobile services. Similarly, the Commission's primary concern with respect to spectrum policy should be to adopt a flexible regulatory approach that ensures that spectrum quickly is put to its highest and best use, without regard as to who may be providing the service.

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[37] *See* 47 U.S.C. § 309(j)(7) (prohibiting the Commission from considering the expectation of revenues from auctions when making its public interest determinations).

[38] *Verizon Opposition* at 5.

[39] *See infra* nn. 40-41 (rejecting wireless carriers' argument that flexible allocations amount to a windfall).

Moreover, in the *ITFS/MMDS Order*, the Commission recently rejected a similar argument raised by AT&T Wireless. As explained above, the Commission recently added a mobile allocation to the ITFS and MMDS services which had previously been limited to fixed communications. In that order, the Commission did not revoke and auction existing licenses. Rather, it expressly rejected AT&T's claim that adding a mobile allocation would "necessarily result in a 'windfall' to incumbent ITFS/MMDS licensees."[40] As Commissioner Abernathy further explained in her separate statement, the Commission's public interest analysis under Section 303(y) "must be broader than those of any one set of licensees; [its] interests must encompass the totality of the 'public' interest."[41] In this instance, the totality of the public interest is best served by permitting MSS operators the flexibility to offer terrestrial service, regardless of the claims of "one set of licensees" that certain carriers may have a competitive advantage. The Commission's primary concern should be in the promotion of consumer welfare through maximizing spectrum use, not the promotion of any one group of providers. As explained, consumers nationwide, but most especially rural consumers, will benefit by the addition of flexibility to MSS allocations.

The notion of a windfall for MSS operators is without factual support and is something the Commission, ultimately, should not consider. Every operator has unique input costs which will affect its ability to provide competitively priced service. While MSS operators may not have paid for their licenses, they are still required to construct, launch, and operate a constellation of MSS satellites in addition to any terrestrial facilities a licensee may need to construct if it decides to offer such services. Clearly these are

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40 *ITFS/MMDS Order* ¶ 27.

41 *Id.* ¶ 32.

input costs the CMRS providers do not have to bear.[42] Furthermore, MSS does not have the luxury of deploying its system in stages and then using revenues from initial operations to fund later development.

Finally, it is disingenuous of certain CMRS providers to oppose the addition of a flexible allocation without the issuance of new authorizations. Many of these same carriers supported adding a flexible use provision to CMRS licenses to permit CMRS carriers to offer fixed services on a co-primary, not ancillary, basis.[43] AT&T's comments in that proceeding are most telling:

> Confirmation that wireless providers have the flexibility to use the allocated spectrum for fixed services will advance the longstanding goal of introducing competition into all aspects of the telecommunications market. It will make wireless services significantly more useful to customers and may potentially open the door to full-fledged wireless local loop.[44]

AT&T Wireless, however, does not further suggest in its comments that this flexible allocation should lead to a re-auction of CMRS spectrum. Similarly, in 1998 when the Commission added increased technical and operational flexibility to ITFS and MMDS operators by permitting licensees to offer two-way communications services, and essentially reallocated the service from a video service to a broadband service, the Commission did not revoke and auction the subject licenses.[45]

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[42] Notably, the construction costs of PCS operators may be as much as four times as high as the cost of constructing a cellular system over a comparable area. The Commission did not, nor should it, consider adding additional input costs to cellular providers or attempt to reduce the input costs of PCS providers, simply to level the competitive playing field.

[43] *See generally* Amendment of the Commission's Rules to Permit Flexible Service Offerings in the Commercial Mobile Radio Services, WT Dkt. No. 96-6, *Comments of AT&T Corp.*, at 3–4 (filed Mar. 1, 1996).

[44] *Id.*

[45] *See* Amendment of Parts 21 and 74 to Enable Multipoint Distribution Service and Instructional Television Fixed Service Licensees to Engage in Fixed Two-Way Transmissions, MM Dkt. No. 97-217, *Report and Order*, 13 FCC Rcd 19112 (1998).

B. Auctioning This Spectrum Is Impermissible Under the ORBIT Act.

Section 647 of the ORBIT Act expressly prohibits the Commission from "assign[ing] by competitive bidding . . . spectrum used for the provision of international or global satellite communications services."[46] Even if used for some terrestrial service, the MSS spectrum is used for global satellite communications services, thus auction of this spectrum is statutorily prohibited.

Moreover, the ORBIT Act does not affect the Commission's ability to grant MSS operators flexibility to offer terrestrial service.[47] The Commission's authority to grant flexibility to licensees is derived from Section 303(y) of the Act. Nothing in the ORBIT Act, or in Section 303(y), should be understood to affect that authority. In addition, flexibility promotes the development and rapid deployment of new technologies, products, and services. Almost by definition, it promotes economic opportunity and ensures that new and innovative technologies are readily accessible, and by permitting changes in service orientation, flexible use policies promote the efficient and intensive use of the spectrum. Thus, flexibility is consistent with both Section 303(y) and the ORBIT Act.

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46 47 U.S.C. § 765(f) (2000).

47 *See* Notice ¶ 40.

V. CONCLUSION

For the foregoing reasons, Loral respectfully requests that the Commission adopt flexible use policies to permit terrestrial operations for 2 GHz licensees, L-band licensees, and Big LEO operators as well.

Respectfully submitted,

LORAL SPACE & COMMUNICATIONS LTD.

Laurence D. Atlas
Vice President, Government Relations

John P. Stern
Deputy General Counsel

1755 Jefferson Davis Highway
Suite 1007
Arlington, VA 22202-3509

October 19, 2001

Attachment A

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