

May 17, 2002

Via Electronic Filing

Mr. Paul Margie
Legal Advisor to Commissioner Michael Copps
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: **EX PARTE**
ET Docket No. 95-18; IB Docket 01-185

Dear Mr. Margie:

Pursuant to our discussion on May 15, 2002, and in the interest of expediting the Commission's decision-making process, ICO wishes to provide a summary (attached) of key issues in MSS flexibility proceeding.

In accordance with section 1.1206(b) of the Commission's rules, I am submitting an electronic copy of this letter and attachment. If you have any questions concerning this matter, please do not hesitate to contact me.

Very truly yours,

/s/ Suzanne Hutchings
Suzanne Hutchings
ICO Global Communications (Holdings) Ltd.

cc: Paul Margie

Attachment

Summary of Key Technical Issues

- The root technical fact at the bottom of the entire proceeding is that MSS signals are not powerful enough to penetrate buildings and urban canyons. This makes the service unattractive to people – even target MSS markets like rural residents and trucking firms – who spend any significant amount of time in a city.
 - **ATC proponents want the flexibility to use ancillary terrestrial facilities to make the MSS network available in urban areas.**
- Dual-band roaming arrangements (in which the MSS handset switches to the terrestrial CMRS network in urban areas) are no substitute for actual urban availability of the MSS network.
 - Today's Globalstar is a dual-band roaming offering, which clearly did not work from an economic perspective (*i.e.*, they went bankrupt).
 - Roaming onto another carrier's network does not permit the offering of advanced applications requiring a common platform; indeed, it often fails to support even simple applications like voicemail and SMS.
- There is broad agreement that independent satellite and terrestrial services cannot use the same frequencies at the same time.¹ There is equally broad agreement that the two services can easily co-exist in separate bands, as is already done today.
 - **The key technical questions are whether there is middle ground that allows limited sharing without segmentation, and if so, whether it works for independent operators or only for an integrated service provider.**
- The ATC proponents have described a “dynamic resource management system” (or “DRMS”) that would allow an MSS operator to make limited terrestrial re-use of the MSS frequencies by, for example, operating the ATC for a given area only on channels that are not in use by the satellite at that particular place and time.
 - Some terrestrial interests have expressed skepticism that DRMS can be done, but ICO has already built a resource management system for its satellite component that could be expanded to make DRMS work.
 - At least some terrestrial interests concede that DRMS is feasible for ATC, but doubt whether it is worth the effort.² And *if* it works, these

¹ For example, the recent Telcordia report states, “The conclusion is clear: for any significant terrestrial deployment, the terrestrial system must operate in spectrum separate from that used by the MSS system, with guard bands and out-of-band emission requirements . . .” (p. 2); and that permitting terrestrial systems in the MSS spectrum with no coordination of interference “does not seem to be workable as a practical matter” (p. 11). CTIA likewise states that “most of the terrestrial and satellite traffic will need to be supported on separate non-overlapping frequencies.” CTIA March 22 Comments at 3.

² See Telcordia study at 11-12.

terrestrial interests have argued it can be done by two independent operators as easily as by an integrated one.

- ATC proponents deny that two independent operators can do this, not because it is technically impossible but rather because of the stark conflict of economic interests inherent in any system that dynamically decreases the capacity on one network in order to increase it on another.
- For example, an integrated operator can use admission control to deny access to the ATC portion of the network when permitting additional ATC users would degrade the satellite portion of the network. No independent terrestrial operator would ever allow the satellite licensee to exercise this level of control.

Summary of Key Policy Issues

- The central issue is what MSS operators are allowed to do with spectrum *already assigned to them* – should they have the flexibility to use ancillary terrestrial facilities or not?
 - There is broad agreement that the MSS spectrum is currently underutilized. ATC proponents are asking for *flexibility* in the way they use the *spectrum already assigned to them*, so that they can improve MSS offerings and use the spectrum more intensively.
 - Terrestrial interests want to pull the plug on MSS and re-allocate the underutilized spectrum for additional urban terrestrial mobile service, even though they currently have no band plan for this spectrum and are fighting to delay other auctions.
 - Re-allocating more than 5 or 10 MHz of MSS spectrum in the 2 GHz band would likely kill off the 2 GHz MSS systems licensed just last year before they have even had a chance.
 - Re-allocation would also reverse more than ten years of U.S. efforts to secure this spectrum internationally for service to rural, remote, and developing regions.

- Terrestrial interests have not explained how rural Americans are supposed to receive service without a robust MSS industry. The CMRS buildout requirements do not require coverage for rural America, so the CMRS industry has largely failed to provide it.

- Terrestrial interests say there should be an auction, but no auction is necessary and holding a gratuitous auction for the “flexible use” rights would not be in the public interest.
 - No auction is necessary because MSS operators are already licensed for the spectrum in question, and the only question is what the rules will allow them to do. The normal function of an auction – choosing among qualified applicants – is not involved here.
 - Terrestrial incumbents seek an auction solely as a means of blocking satellite providers, who would at most be only marginal competitors, from maintaining access to spectrum.

- Similarly, the fact that MSS licenses were not auctioned is no reason to depart from the trend toward flexible spectrum use.
 - If it were, it would be impossible for the Commission to grant greater flexibility in the vast majority of cases.
 - ICO has already spent over \$3 billion on MSS, despite the lack of an auction.

- ATC proponents want the flexibility issue decided as soon as possible, and see no reason to wait for spectrum allocation decisions in other dockets, such as the 3G docket and the 800 MHz docket.

- Terrestrial interests have tried to delay the flexibility question at almost every turn.
- Terrestrial claims that this decision will create a “far-reaching precedent” are specious. The Commission has already approved flexible use on many occasions, yet it continues to make this decision one band at a time.
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Unless the Commission plans to reallocate every single hertz of MSS spectrum in the L band, the 1.6/2.4 GHz band, and the 2 GHz band, there will still be a flexibility question to decide regardless of what happens in the 3G proceeding, the 800 MHz proceeding, etc.