

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

<i>In the Matter of</i>)	
)	
Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, including Third Generation Wireless System)	ET Docket No. 00-258
)	
The Establishment of Policies and Services Rules for the Mobile-Satellite Service in the 2 GHz Band)	IB Docket No. 99-81
)	
Amendment of the U.S. Table of Frequency Allocations to Designate the 2500-2520/2670- 2690 MHz Frequency Bands for the Mobile- Satellite Service)	RM-9911
)	
Petition for Rule Making of the Wireless Information Networks Forum Concerning the Unlicensed Personal Communication Service)	RM-9498
)	
Petition for Rule Making of UTStarcom, Inc., Concerning the Unlicensed Personal Communications Service)	RM-10024
)	

**ICO GLOBAL COMMUNICATIONS
OPPOSITION TO CELSAT PETITION FOR RECONSIDERATION**

ICO Global Communications (Holdings) Limited hereby opposes Celsat's petition for reconsideration, ostensibly of the *Third Report and Order*.¹ Celsat's petition urges the Commission to "reconsider its decision . . . not to require paired Selected Assignments and

¹ Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, including Third Generation Wireless System, *Third Report and Order, Third Notice of Proposed Rulemaking and Second Memorandum Opinion and Order*, FCC 03-16 (rel. Feb. 10, 2003), 68 Fed. Reg. 11986 (Mar. 13, 2003) (the "*Third Report and Order*").

instead mandate that all 2 GHz MSS licensees must choose their Selected Assignments such that they are the same integer multiple from the edge of the uplink and downlink bands.”² ICO disagrees with Celsat’s view of how Selected Assignments should be chosen, and also disagrees with Celsat’s apparent view that the *Third Report and Order* made any “decision” on this matter that could be the subject of “reconsideration.” ICO therefore urges the Commission either to dismiss or deny the petition.

The Commissioners who adopted the *Third Report and Order*, as well as many of the staffers who worked on it, could be excused for having little idea what “decision” in the *Third Report and Order* Celsat is challenging. That is because the rule to which Celsat objects was actually adopted in the *MSS Service Rules Order* of August 2000.³ The Commission had determined that it would attempt to accommodate all 2 GHz MSS applicants by licensing all of them and allowing them to choose their own blocs of spectrum (called “Selected Assignments”) in the order in which they launch their satellites.⁴ Furthermore, the Commission decided in the *MSS Service Rules Order* that “Selected Assignments” could be chosen independently of each other in the uplink and downlink bands; *i.e.*, a licensee’s choice of Selected Assignment in the downlink is independent of that licensee’s choice in the uplink.⁵ This “independent selection” rule was intended to facilitate early deployment strategies that would minimize the financial burden of relocating incumbent terrestrial users.⁶

² Celsat Petition for Reconsideration (filed April 14, 2003), at 5.

³ Establishment of Policies and Service Rules for the Mobile Satellite Service in the 2 GHz Band, *Report and Order*, 15 F.C.C. Rcd. 16127 (2000) (the “*MSS Service Rules Order*”).

⁴ *MSS Service Rules Order*, 15 F.C.C. Rcd. at 16138 ¶ 16.

⁵ *MSS Service Rules Order*, 15 F.C.C. Rcd. at 16141 ¶ 23.

⁶ *MSS Service Rules Order*, 15 F.C.C. Rcd. at 16141 ¶ 23. The potential savings in relocation costs stems from the fact that BAS incumbents in the uplink bands were to be relocated in phases, with the bottom of the uplink band being cleared first; and that FS incumbents in the

Celsat argues that the basis for the independent selection policy has been removed because MSS operators who wish to deploy ancillary terrestrial components (“ATCs”) with their networks will need to clear all terrestrial incumbents from their spectrum rather than co-existing with any terrestrial users.⁷ However, this does not change the fact that the number of incumbents to be cleared and the cost of doing so will vary from spectrum bloc to spectrum bloc. Furthermore, implementing ATCs is at the discretion of the MSS provider and at least one of the 2 GHz MSS operators has indicated that it has no intention of doing so.⁸ Hence, Celsat’s main factual premise – the basis upon which Celsat believes the Commission should have reversed the independent selection rule in the *Third Report and Order* – is mistaken.

Celsat also appears to believe that handsets will be more complicated, and presumably more expensive, if independent selection is allowed.⁹ Given that MSS networks are required to operate over at least 70% of the allocated frequencies, and that many MSS networks will need to accommodate conflicting frequency assignments in different countries, ICO disagrees that this will necessarily be a significant factor in handset cost. On the contrary, ICO has already designed handsets that will tune over a range of 30 megahertz in the downlink and 30 megahertz in the uplink, and believes independent selection can be accommodated at negligible cost. Thus, neither one of Celsat’s arguments for reversing the policy is persuasive.

Moreover, if there really are significant economic benefits of choosing Selected Assignments that mirror each other in the uplink and downlink bands, then the Commission can

downlink bands were unevenly distributed, creating the possibility that the least expensive bloc in which to deploy uplinks might not “match up” with the cheapest bloc in which to deploy downlinks.

⁷ Celsat Petition at 4.

⁸ Comments of The Boeing Company, IB Docket No. 01-185 (Oct. 19, 2001).

⁹ Celsat Petition at 3 n.6.

be confident that MSS operators will choose accordingly, without being told to do so by the Commission. On the other hand, if the Commission mandates a paired selection on the mere supposition that it may be cost-effective, the Commission – which pays neither equipment costs nor relocation costs – will be locking MSS operators into a scheme that may well be more expensive in the real world once all the facts are presented empirically rather than rhetorically. The merit of the independent selection policy is that the cost/benefit analysis is left to the individual operators, and they can consider handset cost as just one of the relevant inputs – along with relocation costs and any other inputs with real-world relevance.

There are two respects in which decisions made in the *Third Report and Order* affected the rationale of the independent selection rule, however. The first of these is the decision, which ICO is challenging, to reduce the overall MSS spectrum allocation and to increase the extent to which U.S. uplinks must occur in non-globally harmonized spectrum.¹⁰ The effect of this reallocation decision is to constrain MSS licensees even further in their choice of Selected Assignments, and this constraint is particularly significant for global systems such as ICO. The decreased flexibility afforded by the reduced allocation makes the flexibility afforded by the independent selection rule that much more valuable.¹¹ Accordingly, ICO believes the *Third Report and Order* tended to make independent selection more sensible, not less.

In addition, the *Third Report and Order* opened up the possibility that the Commission may change the 2 GHz relocation plan in the foreseeable future.¹² ICO acknowledges that the

¹⁰ *Third Report and Order* ¶ 35.

¹¹ Indeed, Celsat itself filed comments in this proceeding opposing a change in the process for choosing Selected Assignments on the ground that MSS licensees need “maximum flexibility . . . to provide service until the relocation of incumbents is completed.” Reply Comments of Celsat America, Inc. (filed Nov. 8, 2001) at 9.

¹² *Third Report and Order* ¶ 37.

real basis for the independent selection rule – disparate relocation costs – might well be undercut if the Commission were to make major revisions in its policy for relocation of terrestrial incumbents in the 2 GHz band. Similarly, the need for the rule might be significantly less if the Commission were to restore globally harmonized uplink spectrum at 1990-2000 MHz and instead reallocate non-globally harmonized uplink spectrum at 2015-2025 MHz, as ICO has requested. This makes the timing of Celsat’s petition doubly curious: First, in that it challenges a decision made in the *MSS Service Rules Order* rather than the *Third Report and Order* that it pretends to challenge; and second, in that Celsat could just as easily seek a change in the independent selection rule by petitioning for a rule change later. In other words, April 2003 is too late for arguing that the August 2000 rule was wrong to begin with, and it is too early for arguing that decisions yet to be made will undercut the rule.

In conclusion, Celsat appears to be challenging a decision adopted in the *MSS Service Rules Order*, which is no longer subject to petitions for reconsideration. Moreover, while the *Third Report and Order* actually tended to make the *status quo* on this subject *more* prudent, it may well be that future decisions of the Commission will in fact undercut the reasons for the policy to which Celsat objects. ICO therefore recommends that the Celsat petition be dismissed as procedurally defective, or else denied on the merits on the ground that the *Third Report and Order* did not undercut the basis for the rule. In either event, Celsat will be able to renew its

arguments about the independent selection rule at an appropriate time if and when circumstances truly change in such a way as to make the rule unwise.

Respectfully submitted,

Christopher J. Wright
Mark A. Grannis
HARRIS, WILTSHIRE & GRANNIS LLP
1200 Eighteenth Street, NW
Washington, DC 20036

/s/ Lawrence H. Williams
Lawrence H. Williams
Suzanne Hutchings
ICO GLOBAL COMMUNICATIONS (HOLDINGS) LTD.
1730 Rhode Island Avenue, NW
Suite 100
Washington, DC 20036

May 14, 2003

CERTIFICATE OF SERVICE

I, Kellie J. Rollman, hereby certify that on this 14th day of May 2003, the foregoing Opposition to Celsat Petition for Reconsideration was filed electronically on the FCC's Electronic Comment Filing System and was served via first-class mail, postage pre-paid, on the following:

John C. Quale
Brian D. Weimer
Skadden, Arps, Slate, Meagher & Flom LLP
1440 New York Avenue, NW
Washington, DC 20005-2111

/s/ Kellie J. Rollman
Kellie J. Rollman