
Before the
Federal Communications Commission
Washington, DC 20554

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

To: The Commission

COMMENTS IN RESPONSE TO PETITIONS FOR RECONSIDERATION

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SUMMARY

The Commission should grant CTIA's petition to reconsider the arbitrary retention of 40 MHz of spectrum for MSS in the 2 GHz band. The *Third Report and Order* fails to justify why 40 MHz is now necessary to sustain the remaining four (possibly three) MSS licensees, and why 7 MHz is no longer sufficient for each licensee to commence service. This omission is particularly glaring because the FCC originally found that 5 MHz was sufficient to commence service. While some MSS proponents contend more spectrum is needed to sustain possible long-term growth of an operating system, they do not contest the FCC's original finding that 7 MHz is more than adequate to commence operations.

Indeed, the order fails to explain why the FCC's original approach – waiting until all milestones have been satisfied and systems are operational before addressing long-term needs – should be abandoned. Given that (i) the 2 GHz MSS licensees received their spectrum for free, (ii) one half of those licensees failed to meet their initial milestone, and (iii) another licensee's compliance is still under review, the premature allocation of more than 7 MHz to the remaining licensees was unreasoned. Awarding more than 7 MHz per licensee prior to system completion and the commencement of service also disregards the FCC's concurrent decision to afford MSS licensees ATC rights, which are claimed by MSS proponents to permit more efficient spectrum use and may obviate prior projections of long-term MSS spectrum needs.

Accordingly, consistent with its responsibility to ensure that spectrum is being used efficiently, the Commission should limit on reconsideration the remaining MSS licensees to their initial 7 MHz allocation. The remainder of the spectrum should be reallocated for more immediate uses to be determined by the market at auction, rather than permitted to lie fallow.

The Commission should deny the petitions filed by ICO, SIA and TMI. These satellite petitioners contend that the *Third Report and Order* failed to justify how the purported benefits of MSS could be provided in less than 70 MHz. This argument makes no sense because the order actually provides remaining licensees with more spectrum than the 7 MHz each was originally allocated. Even when limited to 7 MHz, they have exactly the amount of spectrum that they always had – plus the ATC authority they sought in order to offer all of the claimed public interest benefits touted in their filings. The Commission thus properly reduced the 70 MHz allocation. MSS licensees have not met their milestone obligations, additional unallocated spectrum was not being used and, on balance, competing CMRS needs (currently more than 145 million domestic subscribers and growing) warranted the reallocation.

The satellite petitioners also allege that the FCC failed to justify its reallocation of the 1990-2000 MHz band to terrestrial wireless services, noting that the reallocation is inconsistent with the global MSS allocation for that spectrum. The FCC, however, had ample record support for its action. It recognized the importance of global harmonization where possible, but found that the reallocation was necessary to ensure adequate interference protection to existing PCS operations and their subscribers.

The satellite petitioners acknowledge the interference issue, but claim that the emission limits placed on MSS/ATC operations in the *ATC Order* obviate the need for a guard band between MSS and existing PCS operations. The record showed, and the *ATC Order* and the

Third Report and Order so found, that both a guard band *and* emission limits were necessary to protect PCS operations. Indeed, the wireless carriers demonstrated the need for up to 20 MHz as a guard band in addition to an emission limit of -80 dBm. As a result of the FCC balancing, and desire to preserve some of the global allocation, the FCC set the ATC emission limits at -40 dBm, making the 10 MHz guard band at 1990-2000 MHz that much more important. The *Report and Order* thus fully justified its reallocation decision, and the satellite petitions should be denied.

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To: The Commission

COMMENTS IN RESPONSE TO PETITIONS FOR RECONSIDERATION

Pursuant to Section 1.429(f) of the Commission's rules, 47 C.F.R. § 1.429(f), AT&T Wireless Services, Inc., Cingular Wireless LLC and Verizon Wireless (jointly, the "Carriers") hereby submit these comments in response to petitions filed on April 14, 2003, seeking reconsideration of the Commission's *Third Report and Order* in this proceeding.¹ For the

¹ See *Amendment of the Commission's Rules to Allocate Spectrum Below 3 GHz to Support the Introduction of New Advanced Wireless Services, Including Third Generation Systems*, ET Docket No. 00-258 *et al.*, *Third Report and Order, Third Notice of Proposed Rulemaking and Second Memorandum Opinion and Order*, 18 F.C.C.R. 2223 (2003) ("*Third Report and Order*" or "*Third NPRM*," as appropriate), *summarized*, 68 Fed. Reg. 12015 (Mar. 13, 2003).

reasons set forth below, the Carriers support the petition for reconsideration filed by the Cellular Telecommunications & Internet Association (“CTIA”), and oppose the petitions filed by ICO Global Communications (Holdings) Limited (“ICO”), the Satellite Industry Association (“SIA”), and TMI Communications and Company, LP and TerreStar Networks Inc. (“TMI”) (collectively, the “Satellite Petitioners”).²

DISCUSSION

I. THE CARRIERS SUPPORT CTIA’S PETITION TO RECONSIDER THE ARBITRARY RETENTION OF 40 MHz OF SPECTRUM FOR THE REMAINING 2 GHz MSS LICENSEES

The Carriers agree with CTIA that the Commission should return to its original decision that the current MSS licensees receive no more than the 7 MHz of bandwidth they were initially assigned.³ The *Third Report and Order* changes that original decision and instead arbitrarily awards 10 MHz to each of the current four licensees – which will presumably rise to 13.33 MHz per licensee if Boeing is deemed to have not satisfied its initial milestone – before the licensees have satisfied all of their milestones and demonstrated a legitimate need for additional spectrum.⁴ This is contrary to the Commission’s decision in the *2 GHz MSS Order* initially to provide each applicant with 7 MHz of spectrum – more than the 5 MHz found sufficient to commence operations.⁵

² See CTIA, Petition for Reconsideration, ET Docket No. 00-258 *et al.* (filed April 14, 2003) (“CTIA Petition”); ICO, Petition for Reconsideration, ET Docket No. 00-258 *et al.* (filed April 14, 2003) (“ICO Petition”); SIA, Petition for Reconsideration, ET Docket No. 00-258 *et al.* (filed April 14, 2003) (“SIA Petition”); TMI, Petition for Reconsideration, ET Docket No. 00-258 *et al.* (filed April 14, 2003) (“TMI Petition”).

³ CTIA Petition at 2.

⁴ See *Third Report and Order* at ¶ 32.

⁵ See *Service Rules for the Mobile Satellite Service in the 2 GHz Band*, IB Docket No. 99-81, *Report and Order*, 15 F.C.C.R. 16127, 16138-39 (2000) (“*2 GHz MSS Order*”). Because one of the original nine 2 GHz MSS applicants did not proceed to licensing, the *2 GHz MSS Order*

The Commission offers no technical or public interest justification why 40 MHz is now necessary to sustain the remaining MSS licensees, and why 7 MHz is no longer sufficient for each remaining licensee to commence service. This omission is particularly glaring given its original finding that 5 MHz was sufficient to commence service. The current order doubles this amount without even acknowledging the original finding. Instead, the order cites only to comments by Globalstar, L.P. (“Globalstar”), ICO, The Boeing Company (“Boeing”) and Celsat America, Inc. (“Celsat”),⁶ but these commenters merely alleged that more spectrum was needed to sustain the expected *long-term growth* of an *operating* system.⁷ They do not support changing the Commission’s original finding that 7 MHz is more than adequate to *commence* MSS operations.⁸

also contemplated that each licensee would receive an additional 0.76 MHz pro rata share (0.38 MHz x 2) in addition to the 7 MHz. *See 2 GHz MSS Order*, 15 F.C.C.R. at 16139. The 2 GHz MSS licensing orders, however, declined to implement this portion of the *2 GHz MSS Order* in light of new proposals for use of the 2 GHz band. *See, e.g., ICO Services Limited*, 16 F.C.C.R. 13762, 13765-66 (IB 2001) (“*ICO Licensing Order*”), *app. rev. denied*, 18 F.C.C.R. 1405 (2003), *appeal pending sub nom. AT&T Wireless Services, Inc., et al. v. FCC*, No. 03-1042 (D.C. Cir. filed Feb. 26, 2002).

⁶ *See Third Report and Order* at ¶ 32 & n.93 (citing Boeing Comments to the *Further Notice* at 3-6; Globalstar Comments to the *Further Notice* at 4-6; ICO Comments to the *Further Notice* at 15-16; Celsat Reply Comments to the *Further Notice* at 7-8).

⁷ *See* Boeing Reply Comments in ET Docket No. 00-258 at 4 n.6 (Nov. 8, 2001) (seeking access to approximately 8 MHz in each direction “to meet *expected demand* for its services”) (emphasis added); Globalstar Comments in ET Docket No. 00-258 at 6 (Oct. 22, 2001) (seeking access to 10-15 MHz in each direction “to ensure that each *operational* system will be able to provide a robust service menu”) (emphasis added); ICO Comments in ET Docket No. 00-258 at 15-16 (Oct. 22, 2001) (noting capacity requirements of 15 x 2 MHz “to permit economically viable MSS *operations*” and ensure sufficient spectrum “for system expansion and *long-term, commercial viability*”) (emphasis added); Celsat Reply Comments in ET Docket No. 00-258 at 7-8 & n.25 (Nov. 8, 2001) (requesting 25 MHz of spectrum in each direction for its “fully mature” MSS system).

⁸ In the L-Band context, the FCC stated that spectrum needs during MSS coordination negotiations could only be justified based on MSS operations without an ancillary terrestrial component (“ATC”). *See Flexibility for the Delivery of Communications by Mobile Satellite-Service Providers*, IB Docket No. 01-185, *Report and Order*, 18 F.C.C.R. 1962, ¶ 186 (2003)

Moreover, the order fails to explain why its original approach to addressing long-term spectrum needs for MSS licensees needs to be abandoned.⁹ In the *2 GHz MSS Order*, the Commission recognized the *potential* future MSS spectrum needs by stating that it would revisit the use of abandoned spectrum once the milestones were met and systems were operational, *i.e.*, once there was a proven need for more spectrum.¹⁰ The Commission offers no explanation why this prior finding should be abandoned in favor of giving away additional spectrum now for an unproven service. *One half* of the 2 GHz MSS licensees failed to meet their initial milestone; another licensee's compliance is still under review. The fact that MSS licensees received their spectrum for free is a critical reason why they should be held to their original allocation until their milestones have been satisfied. Otherwise, absent strict milestone compliance, the Commission cannot ensure that additional spectrum is truly needed and will be put to use.¹¹ Thus, the decision to eliminate the requirement to complete system construction and commence operations before allocating additional spectrum beyond 7 MHz to remaining licensees was unreasoned.¹²

(“*ATC Order*”). Likewise, potential ATC demand should not be taken into account in deciding how much MSS spectrum to allocate to 2 GHz MSS licensees.

⁹ *Cf. Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 57 (1983) (“[A]n agency changing its course must supply a reasoned analysis. . .”).

¹⁰ *See 2 GHz MSS Order*, 15 F.C.C.R. at 16139. The Commission also reserved a segment of expansion spectrum for use after licensing by licensees meeting certain unserved area criteria. *See id.* at 16138, 16146-47.

¹¹ This need does not exist in the case of auctioned spectrum, because the cost of spectrum purchased at auction precludes acquiring it for speculative or anticompetitive purposes with no intent to put it to use.

¹² Indeed, even MSS proponents seeking access to additional spectrum that is abandoned predicated such access upon a licensee's prior satisfaction of its milestones. *See, e.g.*, Boeing Comments in ET Docket No. 00-258 at 6-7 (Oct. 22, 2001) (“[T]he Commission should make clear that [abandoned] spectrum must first be made available to the remaining 2 GHz MSS licensees *that have met their milestones . . .*”) (emphasis added); TMI Comments in ET Docket

This premature allocation of additional spectrum also disregards the Commission's concurrent decision to afford MSS licensees ATC rights.¹³ The *ATC Order* is premised upon the belief that ATC will permit MSS licensees to use their spectrum more efficiently,¹⁴ which may obviate prior projections of long-term spectrum needs. In fact, ICO specifically stated in this proceeding that reallocating MSS expansion spectrum to other uses "may be tenable if the Commission authorizes ATC for 2 GHz MSS systems."¹⁵ ICO explained:

If the Commission authorizes ATC, . . . 2 GHz MSS operators will have flexibility to use spectrum more efficiently. *ATC use therefore may alleviate the need for the full amount of spectrum that is currently set aside for spectrum expansion.*¹⁶

The Commission's award of more spectrum than that necessary to commence operations is flatly at odds with its authorization of MSS ATC, given record evidence that the availability of ATC may moot the need for additional long-term spectrum in the first instance. Rather, the Commission should have retained the original 7 MHz allocation per licensee until the milestones and the ATC criteria have been satisfied and ATC has been implemented. Only on that future

No. 00-258 at 7 (Oct. 22, 2001) ("A *pro rata* share [of abandoned 2 GHz spectrum] should be offered to remaining operators (*which have met their milestones*) as a means to ensure that viable systems will develop.") (emphasis added); *see also* Constellation Communications Holdings, Inc. ("Constellation") Reply Comments in ET Docket No. 00-258 at 8 (Nov. 8, 2001) ("A regulatory structure that provides for the pro rata assignment of . . . spectrum among the 2 GHz MSS systems that are actually financed *and implemented* will result in the most practical utilization of the 2 GHz MSS bands.") (emphasis added).

¹³ *See ATC Order, supra* note 8.

¹⁴ *See, e.g., ATC Order* at ¶ 1 (permitting MSS ATC should "increase the efficiency of spectrum use through MSS network integration and terrestrial reuse and permit better coverage in areas that MSS providers could not otherwise serve"), ¶ 18 ("We find that MSS licensees may achieve greater efficiencies in their use of assigned spectrum through MSS ATC . . ."), ¶ 20 (ATC will afford MSS operators "the ability to provide more and better services to both existing and potentially new subscribers *with the same amount of spectrum*") (emphasis added).

¹⁵ ICO Comments in ET Docket No. 00-258 at 29 (Oct. 22, 2001).

¹⁶ *Id.* (emphasis added).

date could there be any possible factual basis upon which to determine whether more spectrum is warranted for MSS.

Furthermore, recent events render moot the claimed need for long-term expansion spectrum by at least two of the commenters relied upon by the Commission, Globalstar and ICO, and the needs of a third, Boeing, are in question. First, Globalstar is one of the licensees that failed to meet its initial milestone, and as a result its 2 GHz authorization was rendered null and void.¹⁷ Second, ICO recently announced its intention to acquire Globalstar's remaining assets in bankruptcy. Those assets include an operating system and spectrum rights in the Big LEO bands.¹⁸ Given ICO's statements that ATC alleviates the need for 2 GHz MSS expansion spectrum, coupled with the spectrum it expects to receive from Globalstar in the Big LEO bands upon FCC approval, ICO's professed need for additional spectrum appears to be more than satisfied. A third entity claiming the need for additional spectrum is Boeing. Its compliance with the July 17, 2001 initial milestone remains under review by the Commission.¹⁹

In any event, other options exist to address long-term MSS spectrum needs *should they be demonstrated to exist following system completion and the approved introduction of ATC service*. As a threshold matter, the FCC concluded that 5 MHz was sufficient to commence service. Thus, limiting the remaining licensees to their original 7 MHz allocation already provides 2 MHz of spectrum for growth purposes. Should that spectrum still not be enough, even with ATC, the Commission has left open the possibility of allocating spectrum that may

¹⁷ See *Globalstar, L.P., Memorandum Opinion and Order*, 18 F.C.C.R. 1249 (IB 2003), *app. rev. pending*.

¹⁸ See, e.g., *ICO to Acquire Majority Interest in Globalstar*, *Wireless Week*, Apr. 28, 2003; *ICO Saves Competitor Globalstar from Bankruptcy with Investment*, *Communications Daily*, Apr. 29, 2003.

¹⁹ See *Public Notice*, Rep. No. SAT-00135, DA 03-386 (rel. Feb. 10, 2003).

become available if 2 GHz MSS licensees miss future milestones. Such spectrum is a potential source of more MSS spectrum if, in the future, there is a demonstrated need. Finally, additional spectrum for MSS exists in other bands, including the L-Band and the Big LEO band.²⁰ Serious questions about the viability of 2 GHz MSS were left unresolved in the FCC's licensing decisions, as highlighted by the recent failure of half of the licensees to satisfy their first milestone. Those questions must be answered before more spectrum is allocated to individual licensees in this service. Awarding more spectrum now is clearly arbitrary.

The Commission stated that it has an ongoing responsibility "to ensure that the [2 GHz MSS] spectrum is used efficiently and effectively."²¹ It should do so here by limiting the remaining MSS licensees to their initial 7 MHz allocation. The remainder of the spectrum should be reallocated for more immediate uses to be determined by the market at auction, rather than permitted to lie fallow.²² In the face of recent MSS failures, the Commission cannot justify expanding individual allocations beyond 7 MHz until licensees have met all of their milestones, satisfied the ATC criteria, and implemented ATC into their systems. At that time true needs for additional spectrum can be assessed.

²⁰ See *Third Report and Order* at ¶ 31 n.92.

²¹ See *Third Report and Order* at ¶ 29.

²² See CTIA Petition at 2, 4. If 7 MHz is retained for each of the current 4 licensees, 12 MHz is left for reallocation to other uses (40 MHz – (4 x 7) MHz = 12 MHz). If Boeing's 2 GHz MSS license is declared null and void, 19 MHz would become available for reallocation (40 MHz – (3 x 7 MHz) = 19 MHz).

II. THE CARRIERS OPPOSE THE PETITIONS FOR RECONSIDERATION FILED BY ICO, TMI AND SIA

A. The Commission Fully Justified Retaining Less than the Original 70 MHz MSS Allocation

ICO first asserts that the *Third Report and Order* fails to explain why the MSS allocation should be reduced and how the public interest benefits of MSS can be provided in less than 70 MHz of spectrum.²³ In a related vein, TMI claims that the order has “unfairly compromised” the opportunity for MSS to be “tested in the marketplace.”²⁴ These arguments are frankly astonishing because the order as adopted actually provides ICO and the other remaining licensees with *more* spectrum than the 7 MHz each was originally allocated – in fact, double the 5 MHz the Commission determined they needed initially – *and* the companion *ATC Order* permits the provision of ATC once certain gating criteria are satisfied. As noted above, current MSS licensees stand to receive 10 MHz, with the possibility of 13.33 MHz if Boeing is deemed not to have satisfied its milestone. The Carriers have demonstrated why each remaining licensee should receive no more than the 7 MHz that was originally allocated, but even at that level, they have exactly the amount of spectrum that they always had – plus the ATC authority they sought in order to offer all of the claimed public interest benefits they have touted in their filings.

²³ See ICO Petition at 1-3. ICO and TMI also assert that the FCC should reconsider its decision not to retain all 70 MHz for MSS until pending challenges to the nullification orders are resolved. See ICO Petition at 8-10; TMI Petition at 2. As a preliminary matter, only 16 MHz of the 30 MHz of reallocated spectrum is the subject of the pending nullification proceedings, see *Third Report and Order* at ¶ 32, and thus there is no ground upon which to hold up the reallocation of the remaining 14 MHz. Moreover, resolution by the Bureau of the challenges to the nullification orders (which do relate to the 16 MHz marked for reallocation), and subsequent reconsideration to the full Commission and any appeals, could take years to resolve. ICO and TMI would thus have the Commission tie up this spectrum to lie unused for years. This is directly contrary to the Commission’s obligation to “ensure that the spectrum is being *used* efficiently and effectively,” in this case by the immediate reallocation to terrestrial wireless services, including AWS, “to support continuing growth of fixed and mobile services.” See *id.* at ¶¶ 29 (emphasis added), 31.

²⁴ See TMI Petition at 4.

The Commission properly reduced the 70 MHz allocation. MSS licensees have not met their milestone obligations, additional unallocated spectrum was not being used and, on balance, competing CMRS needs warranted the reallocation.²⁵ In TMI's case, it lost its opportunity to be "tested in the marketplace" when it failed to satisfy a material condition on its authorization. The remaining licensees have lost none of the 7 MHz of spectrum assigned to them (for free), and have received the authority they desired to incorporate terrestrial service into their offering (again, for free). If the public interest benefits of MSS exist as its proponents claim, there is no reason why these benefits are in any way impaired by the *Third Report and Order*.

TMI questions whether spectrum needs for Advanced Wireless Services ("AWS") have been adequately justified to support the reallocation.²⁶ As the Commission notes, however, the *Second Report and Order* in this docket found that additional spectrum was necessary to support AWS given the "intensive use of existing commercial wireless spectrum."²⁷ The Commission's reliance on that order to support the additional 30 MHz reallocation here was entirely appropriate, and TMI supplies no new technical or other data showing why it was not. The *Second Report and Order* expressly stated that its findings were "part of a continuing effort to identify and evaluate both the current and future spectrum needs for AWS" that "may well result in the allocation of additional spectrum for commercial use, including the provision of AWS."²⁸

²⁵ See *Third Report and Order* at ¶¶ 28-32.

²⁶ See TMI Petition at 4.

²⁷ See *Third Report and Order* at ¶ 29 & n.87 (citing *Amendment of the Commission's Rules to Allocate Spectrum Below 3 GHz to Support the Introduction of New Advanced Wireless Services, Including Third Generation Systems*, ET Docket No. 00-258, *Second Report and Order*, 17 F.C.C.R. 23193, 23198-201 (2002) ("*Second Report and Order*"), *pets. recon. pending*).

²⁸ *Second Report and Order*, 17 F.C.C.R. at 23218 (emphasis added).

Moreover, the *Third Report and Order* also made new findings that further support reallocation. Specifically, it found that the demand for CMRS spectrum continues to grow, as evidenced by CMRS subscribership in the United States reaching nearly 130 million as of December 2001 compared to less than 100,000 for the two MSS licensees currently competing in the mobile telephony services market in the U.S., Globalstar and Iridium.²⁹ These demand levels for CMRS alone warranted the reallocation. ICO's claim that these numbers became "outdated" the day the *Third Report and Order* and *ATC Order* were released bears some truth but it supports the Commission's decision;³⁰ as of this writing, U.S. CMRS subscribership has since increased to more than 145 million.³¹ By contrast, Globalstar's subscribership has increased only to 85,000, while specific numbers for Iridium could not be located (but are reported to be only in the "tens of thousands").³² Moreover, analysts describing recent MSS subscribership resulting from current geopolitical events have noted that "[a]t best, it's a momentary boost."³³

²⁹ See *Third Report and Order* at ¶¶ 30, 31 n.92; see also *Seventh Annual CMRS Competition Report*, 17 F.C.C.R. 12985, 13026-28 (2002) (identifying Globalstar and Iridium as competitors in the domestic mobile telephony services market). Globalstar was listed as having approximately 76,000 subscribers as of June 2002, and Iridium was noted as having signed a contract for 20,000 government subscribers according to a December 2002 press release. See *Third Report and Order* at ¶ 31 n.92.

³⁰ See ICO Petition at 4. ICO suggests that the ability to provide ATC will influence MSS demand, and therefore reliance on MSS-only statistics is misplaced. As noted above, however, the FCC should not take into account ATC demand in deciding how much spectrum to retain for MSS. See *supra* note 8.

³¹ See <<http://www.wow-com.com/>>, visited May 8, 2003.

³² See, e.g., *Satellite Communications Boosted by Iraq Conflict*, Tech Europe, Apr. 11, 2003.

³³ See *id.*

ICO also claims that the comparison of terrestrial versus MSS subscribership is unfair because of the terrestrial headstart and long satellite construction timeframes.³⁴ While 2 GHz MSS is newly licensed, Big LEO licenses have had their licenses for considerably longer and thus afford a fair basis upon which to compare the two services and relative demand levels. Big LEO licensees received their licenses in 1995,³⁵ around the same time PCS got off the ground.³⁶ Eight years later, Iridium emerged from bankruptcy in 2000 and has a small base of subscribers. Globalstar is currently operating out of bankruptcy and has less than 100,000 subscribers. In sum, the comparison is valid and, if anything, the case for additional spectrum for AWS and the reallocation of spectrum away from MSS has become even more compelling since the orders were released.³⁷

³⁴ See ICO Petition at 4.

³⁵ See, e.g., *Motorola Satellite Communications, Inc.*, 10 F.C.C.R. 2268 (IB 1995) (“*Iridium Big LEO Authorization*”); *Loral/Qualcomm Partnership, L.P.*, 10 F.C.C.R. 2333 (IB 1995) (“*Globalstar Big LEO Authorization*”), *erratum*, 10 F.C.C.R. 3926 (IB 1995).

³⁶ Broadband PCS licenses in the A and B blocks were granted on June 23, 1995. Thereafter, licenses in the C, D, E, and F blocks were initially granted in 1996 and 1997. See *Telephone Number Portability*, 14 F.C.C.R. 3092, 3112 n.111 (1999).

³⁷ ICO’s recent characterization of the comments of various wireless carriers in response to the AWS *Third NPRM* as “uninspiring,” and therefore necessitating return of the reallocated 30 MHz to MSS, is simply posturing. See ICO Reply Comments in ET Docket No. 00-258 at 2-4 (Apr. 28, 2003). ICO should not confuse the proposals for what to do with the 30 MHz of relocated spectrum with the need for additional spectrum for terrestrial wireless use, including AWS. Rather, the comments reflect the realities of a reallocation broken into three segments, one of which is only 5 MHz, and another of which is needed as a guard band. For example, prior to the reallocation decision carriers noted the need for up to a 20 MHz guard band between PCS and MSS/ATC. See *infra* Section II.B. The Commission instead reallocated only 10 MHz at 1990-2000 MHz. The comments in response to the *Third NPRM* offered various proposals for making use of the spectrum while ensuring its critical role as a guard band to protect against MSS/ATC interference to existing PCS operations. Should the Commission hold the MSS licensees to 7 MHz as CTIA has recommended, and the Carriers endorse, the additional reclaimed spectrum should be combined with the existing 30 MHz in such a way as to improve the utility of the spectrum for terrestrial wireless services, including AWS.

B. Reallocation of 1990-2000 MHz Was Necessary to Prevent MSS/ATC Interference to Existing PCS Operations

Each of the Satellite Petitioners also contends that the FCC failed to justify its reallocation of the 1990-2000 MHz band to AWS, noting that the reallocation is inconsistent with the global MSS allocation for that spectrum.³⁸ SIA in particular objects to eliminating the 10 MHz globally allocated uplink at 1990-2000 MHz while leaving the non-globally allocated uplink at 2010-2020 MHz in place.³⁹ ICO also opposes this particular reallocation because it had made its MSS selected assignment, at its own risk, in part of the reallocated spectrum.⁴⁰

As the order makes abundantly clear, however, the FCC did not make the decision to reallocate the spectrum lightly. It recognized the importance of global harmonization where possible, but found that the reallocation was necessary to ensure adequate interference protection to existing PCS operations and their subscribers from ATC operations:

While we recognize that global harmonization is an important resource, we share CTIA's concerns regarding potential interference to existing PCS operations at 1930-1990 MHz. We believe that in this instance, these interference concerns outweigh the benefits of increased global harmonized spectrum.⁴¹

The Commission summarized those interference concerns earlier in its order, citing to filings by CTIA showing that out-of-band emissions ("OOBE"), receiver overload, and/or desensitization interference would impact existing PCS operations from 2 GHz mobile earth terminals and ATC

³⁸ See SIA Petition at 2, 5-10; ICO Petition at 5-8; TMI Petition at 5.

³⁹ See SIA Petition at 2.

⁴⁰ See ICO Petition at 7 (noting that ICO had selected the 1990-1993.88 MHz segment as part of its selected assignment).

⁴¹ See, e.g., *Third Report and Order* at ¶ 35 (footnote omitted); see also *id.*, Statement of Chairman Powell.

handsets.⁴² The FCC's concerns about protecting current PCS subscribers fully warranted its decision.

The Satellite Petitioners acknowledge the interference issue, but claim that the emission limits placed on MSS ATC operations in the *ATC Order* obviate the need for a guard band between MSS and existing PCS operations.⁴³ SIA in particular claims that according to Nextel Communications, Inc. ("Nextel"), interference to PCS from MSS ATC is unlikely and in any event could be easily corrected through coordination rather than a guard band.⁴⁴

However, CTIA and Verizon Wireless both showed, and the *ATC Order* and the AWS *Third Report and Order* so found, that *both* a guard band and emission limits were necessary to protect PCS operations.⁴⁵ Indeed, the wireless carriers demonstrated the need for up to 20 MHz as a guard band *in addition* to an emission limit of -80 dBm.⁴⁶ As a result of the FCC balancing of competing claims, and its desire to preserve some of the global allocation, the FCC set the

⁴² See *Third Report and Order* at ¶ 25 (citing CTIA *Ex Parte* in ET Docket No. 00-258 at 4-10 (Jan. 14, 2002); Verizon Wireless *Ex Parte* in ET Docket No. 00-258 at 1-6 (Jan. 6, 2003)). CTIA and Verizon Wireless also noted that the risk of interference was present from MSS operations generally above 1990 MHz, particularly in the context of MSS mobile transmitters interfering with PCS mobile receivers. See CTIA *Ex Parte* in ET Docket No. 00-258 at 4 (Jan. 14, 2003); Verizon Wireless *Ex Parte* in ET Docket No. 00-258 at 4 (Jan. 6, 2003).

⁴³ See ICO Petition at 7; SIA Petition at 8-9.

⁴⁴ See SIA Petition at 8-9 (citing Nextel *Ex Parte* in ET Docket No. 00-258 at 4-7 (Jan. 23, 2003)).

⁴⁵ See CTIA *Ex Parte* in ET Docket No. 00-258 at 10 (Jan. 14, 2003); CTIA *Ex Parte* in ET Docket No. 00-258 at 3 (Jan. 17, 2003); Verizon Wireless *Ex Parte* in ET Docket No. 00-258 at 3 (Jan. 22, 2003); *Third Report and Order* at ¶ 35 & n.98; *ATC Order* at ¶¶ 117, 119 & n.332, App. C1 at § 3.1 (finding that "compliance with a more stringent out-of-band emissions limitation, *coupled with* reallocation of the 1990-2000 MHz band to other uses, would mitigate the potential for interference") (emphasis added).

⁴⁶ See CTIA *Ex Parte* in ET Docket No. 00-258 at 3 (Jan. 17, 2003); Verizon Wireless *Ex Parte* in ET Docket No. 00-258 at 3 (Jan. 22, 2003).

ATC emission limits at -40 dBm,⁴⁷ making the 10 MHz guard band at 1990-2000 MHz that much more important. The Nextel filing cited by SIA does not alter this analysis. As CTIA explained, advance coordination is not possible where mobiles are concerned and the likelihood of interference was far greater than Nextel acknowledged.⁴⁸ As a result, both an adequate guard band and emission limits were required.⁴⁹

With respect to ICO's specific concern related to its selected assignment, ICO accepted the risk of choosing an assignment in the 1990-2000 MHz band when it made its selection. ICO's license was explicitly conditioned upon the FCC's ability to change the assignment at any time,⁵⁰ and the pendency of the rulemaking examining whether to reallocate MSS spectrum was certainly well known, as ICO participated in the proceeding. Accordingly, ICO's choice of a selected assignment has no bearing on the conclusions reached in the *Third Report and Order*, and provides no basis for reconsidering that decision.

⁴⁷ See *ATC Order* at ¶ 119 n.332 (adopting a -70 dBW/MHz emission limit to protect PCS receivers, which is the equivalent of -40 dBm).

⁴⁸ See *CTIA Ex Parte* in ET Docket No. 00-258 at 1-2 (Jan. 24, 2003).

⁴⁹ See *id.* Nextel did not respond to CTIA and its conclusions thus stand unrefuted in the record.

⁵⁰ See *ICO Licensing Order* at ¶ 37 ("IT IS FURTHER ORDERED that this *Order* is subject to change by summary order of the Commission on 30 days' notice and does not confer any permanent right to use the orbit and spectrum.").

CONCLUSION

For the foregoing reasons, the Commission should grant the petition for reconsideration filed by CTIA and deny the petitions filed by ICO, SIA and TMI.

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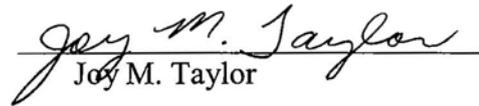
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