

**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
CONSOLIDATED REPLY TO OPPOSITION AND COMMENTS**

ICO Global Communications (Holdings) Limited hereby replies to three recent pleadings addressing ICO's petition for reconsideration of the *Third Report and Order*.¹ ICO's petition for reconsideration demonstrates that the Commission erred in reallocating 30 megahertz of MSS

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*").

spectrum, and it was particularly unwise for the Commission to reallocate 10 megahertz of globally harmonized uplink spectrum when 10 megahertz of non-harmonized uplink spectrum was available. The WCA formally opposed ICO's petition. AT&T Wireless, Verizon Wireless, and Cingular Wireless ("the Carriers") jointly filed comments on the petition. CTIA filed a document styled as an opposition, but because CTIA failed to comply with the Commission's rules regarding service of process, that document should be stricken or, at best, considered as an informal comment.² Taken together, these pleadings attempt to create a public interest façade for a terrestrial raid on MSS spectrum generally, and the 1990-2000 MHz band in particular.

I. THE COMMISSION SHOULD RESTORE THE FULL MSS ALLOCATION

The broadest argument advanced in these pleadings is that 40 megahertz of MSS spectrum is more than enough for the 2 GHz MSS licensees, an argument advanced by CTIA as well as the Carriers. On this score, the most important thing to note is that neither CTIA nor the Carriers seem willing to accept that the Commission has long embraced a 70 megahertz MSS allocation, and that any downward departure needs to be justified. Thus, the Carriers challenge the Commission to justify "why 40 MHz is *now necessary* to sustain the remaining MSS licensees,"³ when in fact the question is how the Commission can possibly justify cutting the existing allocation nearly in half. Elsewhere in the record, ICO has documented the many Commission decisions attesting to the important public policies that can only be achieved by a

² Section 1.429(f) of the Commission's rules states that oppositions to petitions for reconsideration of rulemaking actions must be served on the petitioner. Section 1.47(b) of the Commission's rules requires this to be done on or before the day of filing. Section 1.47(g) further requires proof of service to be filed with the Commission, and while proof of service can be filed at a later time, the service itself must be timely.

³ Carriers' Comments at 3 (emphasis added).

healthy MSS industry.⁴ The Commission's endorsement of both the policies and the allocation they support comes from orders as far back as 1995 and as recent as July 2001. Nothing has happened to make the policies less important; and if the passage of time has brought difficulties for the MSS industry, it has also made clear that terrestrial operators will *never* be able to satisfy these public interest objectives.

Predictably, the Carriers and CTIA do not just oppose any restoration of the MSS allocation, they actually seek to reduce it further. This portion of their pleadings comports generally with CTIA's several previous petitions on this point. However, the Carriers acknowledge, as CTIA typically does not, that the Commission's past statements about the sufficiency of the initial MSS assignments were limited to the question of whether the initial assignments were adequate to *commence* MSS service. According to the Carriers, the fact that 2 GHz MSS operators have much larger long-term spectrum requirements "do[es] not support changing the Commission's original finding that 7 MHz is more than adequate to *commence* MSS operations."⁵

The Carriers deserve credit for acknowledging this distinction rather than glossing over it or distorting it. Unfortunately, they are asking the Commission for relief that is completely inconsistent with any long-term growth for 2 GHz MSS. The Carriers' comments suggest on the one hand that successful 2 GHz MSS networks – after meeting all their milestones – will be able to expand into spectrum that has been abandoned by less successful competitors; yet on the other hand the Carriers support CTIA's petition for reconsideration, which would result in the

⁴ See generally ICO Global Communications Opposition to CTIA Petition for Reconsideration, *passim*.

⁵ See Carriers' Comments at 3.

reallocation of that same spectrum now. If the spectrum is reallocated now, it will not be available for expansion later, no matter how successful the 2 GHz MSS service becomes.

The Carriers seem to be equally confused about whether the Commission is adding to or subtracting from the MSS allocation. Their comments object to “[t]he Commission’s award of more spectrum than that necessary to commence operations,” and urge the Commission to “retain[] the original 7 MHz allocation per licensee,” but these comments stand reality on its head. The allocation has *never* been 7 megahertz per licensee. Even allowing for the fact that the Carriers evidently misunderstand the difference between an allocation and an assignment, the fact is that the MSS allocation has been 70 megahertz wide since its adoption, without regard to the number of licensees or even the number of applicants⁶; and the Commission’s decision to slice 30 megahertz off of it is hardly an “award” of any kind. For the Carriers to present this as a question of “whether *more* spectrum is warranted for MSS”⁷ is to misunderstand this controversy about as thoroughly as it can be misunderstood.

Finally, both the Carriers and CTIA make much of the number of CMRS subscribers, arguing that the success of terrestrial mobile services supports the allocation of additional terrestrial mobile spectrum. What they continue to overlook is that *no one is questioning the need for additional mobile spectrum*. Currently, even without reallocating any MSS spectrum, the Commission is poised to allocate at least 90 megahertz of additional spectrum in the 2 GHz range for Advanced Wireless Services. ICO does not oppose that allocation and has not asked the Commission to reconsider it. What ICO does oppose is the unjustified decision to take

⁶ Indeed, the size of the allocation was determined before applications were even solicited. See Amendment of Section 2.106 of the Commission’s Rules to Allocate Spectrum at 2 GHz for Use by the Mobile-Satellite Service, *First Report and Order and Further Notice of Proposed Rulemaking*, 12 F.C.C. Rcd. 7388 (1997).

⁷ Carriers’ Comments at 6.

spectrum away from 2 GHz MSS operators, before they have had an opportunity to commence operations, in order to give terrestrial mobile services *more* than 90 megahertz. It is the reduction of MSS spectrum that must be justified, and absent some finding that terrestrial services will achieve the same public interest objectives (or that the public interest objectives are less important), that reduction cannot be justified. Certainly the observation that some other service has been successful in some other band does not justify it.

II. INTERFERENCE DOES NOT JUSTIFY ANY REALLOCATION

All three of the pleadings addressing ICO's petition attempt to shore up the Commission's reallocation of the 1990-2000 MHz segment by reference to the mysterious last-minute discovery of harmful interference from MSS-ATC operations above 1990 MHz into PCS operations in the adjacent band. However, the interference argument completely fails to justify the actions the Commission has actually taken.

The terrestrial parties blame the adjacent-band interference issue on the Commission's decision to permit MSS networks to incorporate ancillary terrestrial components ("ATCs"), which would result in the placement of ATC base stations in a band adjacent to PCS subscriber terminals. The Carriers, WCA, and CTIA all point out that the Commission adopted both out-of-band emission limits and a guard-band approach to preventing ATC operations from interfering with PCS. But assuming for the sake of argument that both a guard band and an OOB limit were necessary, there are three critical contradictions that neither the Commission nor the terrestrial commenters can explain.

- First, if the interference problem is created by ATC operations rather than traditional, satellite-only MSS, then why did the Commission reallocate the 1990-2000 MHz band away from the entire MSS service instead of just restricting the

ability to operate ATCs? By restricting ATC operations to the frequencies above 2000 MHz, and leaving the rest of the allocation unchanged, the Commission would have maintained the *status quo* with respect to PCS and non-ATC MSS, while permitting ATCs to be implemented in the remaining 25 megahertz of uplink spectrum, completely resolving the interference issue.

- Second, if 10 megahertz of guard band is required, why has the Commission suggested, and why have WCA, CTIA, and the Carriers endorsed, the idea of using 5 of the 10 reallocated megahertz (6 in the case of WCA) for operation under the broadband PCS rules? Or alternatively, if 5 megahertz of guard band above 1990 MHz is sufficient (4 in the case of WCA), why were 10 megahertz above 1990 reallocated?⁸
- Third, even if interference concerns did require the reallocation of the 1990-2000 MHz segment, what justified the reallocation of a corresponding 10 megahertz of downlink spectrum? At a time when terrestrial interests are clamoring for an asymmetric AWS allocation, the Commission ought also to have considered an asymmetric allocation for mobile data applications on MSS platforms.

It should be noted that there are good reasons to doubt the severity of the interference claim to begin with. The Commission mentioned the conflicting evidence on this point, and other petitions for reconsideration have highlighted the conflict. The point here, however, is that no matter how one resolves the conflicting evidence, there is no coherent explanation for how the

⁸ WCA gamely tries to smooth over this rough spot by suggesting that a new PCS service at 1990-1995 MHz would be able to design handsets that would withstand interference from ATC base stations. WCA Opposition at 4 n.14. This argument tends to undercut the Commission's conclusion that reallocating the 1990-1995 MHz band "could allow for use of existing PCS

need for 4 or 5 megahertz of guard band in the *uplink* as protection from *ATC* operations could justify the reallocation of 10 megahertz away from *both ATC and non-ATC* operations, in *both the downlink and the uplink*. Logical gaps this wide are simply inconsistent with any claim that the Commission's reallocation of the 1990-2000 MHz band is an exercise in reasoned decisionmaking. ICO therefore urges the Commission to restore the 1990-2000 MHz band for MSS use, even if it is necessary to limit *ATC* operations to the frequencies above 1995 MHz.⁹

III. THE MSS ALLOCATION SHOULD BE GLOBALLY HARMONIZED

Both ICO and the SIA have emphasized that even if some MSS spectrum had to be reallocated, the Commission failed to give a sufficient justification for taking away globally harmonized MSS spectrum at 1990-2000 MHz when non-globally harmonized spectrum at 2015-2025 MHz or even 2010-2025 MHz would have been available. WCA attempts to take up this argument, but largely misses the point.

First, the WCA seems to think that “the MSS community has never raised [global harmonization] as a problem before,” and follows that mistake of fact with unflattering speculation.¹⁰ Perhaps WCA can be excused for not knowing it, but the Commission well knows that global harmonization has been a fixation for the 2 GHz MSS industry for more than a decade. Some of the history recounted in ICO's other pleadings in this proceeding will

equipment with little modification and easier manufacture and design of equipment, thereby enabling significant economies of scale.” *Third Report and Order* ¶ 48.

⁹ Naturally, the “non-ATC-only” solution does not work if the total uplink allocation is too small or the number of viable licensees is too large. Specifically, if ICO were to receive an uplink assignment of less than 10 megahertz, it would not be possible to set aside half of that spectrum as “non-ATC” spectrum. This consideration suggests that it might be prudent for the Commission to defer resolution of this question until after the International Bureau has completed the July 2003 milestone review for 2 GHz MSS licensees.

¹⁰ WCA Opposition at 8.

presumably have educated the WCA on this matter by now, and there is no need to belabor the point.

Second, the WCA seems to have little appreciation (even for a terrestrial commenter) of why global uniformity is important. WCA observes that placing terrestrial services in the 1990-2000 MHz band is “fully consistent with the international allocation for the band, which allows MSS *and* terrestrial fixed and mobile services.”¹¹ But the problem here is not that the rest of the world forbids terrestrial service in the 1990-2000 MHz band; the problem is that the rest of the world forbids satellite service in the 2010-2020 MHz band. The Commission’s band plan therefore forces global satellite operators to carry communications payloads for the 2010-2020 MHz band on their satellites even though those frequencies are virtually useless outside North America. Conversely, the tradeoff for building satellites in these “U.S. only” frequencies was to build satellites that do *not* cover some of the frequencies that *can* be used throughout the rest of the world.

The Commission should, of course, consider all public interest objectives, including those that conflict with global harmonization. However, now that the comments in this proceeding have made clear just how little the terrestrial mobile industry can do with the 1990-2000 MHz segment, the Commission should take a fresh look at restoring it to the MSS, for which it is crucial.

IV. THE REALLOCATION HAS TOO MANY LOOSE ENDS

In addition to the foregoing arguments for reconsideration of the *Third Report and Order*, ICO’s petition for reconsideration also noted two timing-related reasons for reconsidering the decision. The first was that the 1990-2000 MHz segment reallocated by the Commission was

¹¹ WCA Comments at i.

part of the uplink segment in which MSS deployment was to occur first, according to the painstakingly developed relocation plan for BAS incumbents in the 1990-2025 MHz band.¹² For the Commission to reallocate this spectrum without even mentioning the consequences for how soon service could be rolled out in the 2 GHz band was clearly the sort of omission that justifies reconsideration. No party has commented on this ground for reconsideration.

Second, ICO's petition also noted that the reallocation discussed in the *Third Report and Order* must be made expressly subject to the resolution of pending applications for review of the milestone decisions that made it possible for the Commission to reallocate so much MSS spectrum.¹³ The Carriers make a fair point in noting that 14 megahertz of reallocated spectrum do not depend on the Commission's efforts to "recapture" spectrum from MSS licensees, but the Carriers do not explain how one can know which 14 megahertz are finally reallocated and which 16 megahertz are only tentatively reallocated. ICO, of course, believes that the 2018-2025 MHz and 2165-2172 MHz frequencies would be the most appropriate for the expedited treatment that the Carriers implicitly suggest. But to the extent that other parties disagree, it would appear that the entire action must be in some sense tentative until the applications for review of the Bureau's milestone orders have become final orders.

In conclusion, the Commission's *Third Report and Order* contained inherent contradictions on important matters affecting the public interest. Though not all of these contradictions were immediately apparent from the face of the Order, the subsequent proceedings on the *Third NPRM* have exposed large gaps in the underlying logic. In particular, the subsequent suggestions of terrestrial commenters regarding the potential uses of the 1990-

¹² ICO Petition for Reconsideration at 6 n.11.

2000 MHz segment strongly suggest that CTIA's last-minute claim of adjacent-band interference was at best exaggerated, and that from a terrestrial perspective, the difference between that 10 megahertz and any other 10 megahertz is not nearly as critical as it is from a satellite perspective. In addition, comments on the *Third NPRM* have stimulated a number of creative suggestions that were not even considered in the *Third Report and Order*, such as the use of a "non-ATC MSS" band instead of a guard band at 1990-1995 MHz, and the use of asymmetric pairings for the MSS allocation as well as the AWS allocation. Finally, no party has contradicted ICO's assertion that the Commission chose the 1990-2000 MHz segment for reallocation without considering the effect on speed of deployment, in light of the 2 GHz relocation policies. For all of these reasons, the Commission should reconsider its reallocation decision and leave as much of the 70 megahertz MSS allocation intact as possible.

Respectfully submitted,

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¹³ ICO Petition for Reconsideration at 8-10.

CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of May 2003, the foregoing Consolidated Reply to Opposition and Comments was filed electronically on the FCC's Electronic Comment Filing System and was served via first-class U.S. mail, postage pre-paid, on the following:

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