



July 2, 2003

By Electronic Filing

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W., TW-A325
Washington, D.C. 20554

Re: **EX PARTE**
IB Docket No. 01-185

Dear Ms. Dortch:

On July 2, 2003 Gerry Salemme, ICO Counsel Cheryl Tritt, and the undersigned, all representing ICO Global Communications (Holding) Ltd. (“ICO”) met with Jennifer Manner, legal advisor to Commissioner Kathleen Abernathy to discuss the above-referenced dockets. ICO urged the Commission not to exercise its *sua sponte* authority under Commission Rule Section 1.108 as requested in ex parte filings by AT&T Wireless Services, Inc., Cingular Wireless LLC, and Verizon Wireless (“Terrestrial Carriers”).¹ The Terrestrial Carriers asked the Commission to state “consistently” its decision with respect to the timing and grant of requests for authority to use an ancillary terrestrial component (“ATC”) to mobile satellite service (“MSS”) operations.

As stated previously in its June 26 *ex parte* filing, ICO concludes that no need exists for the Commission to make substantive changes to the *ATC Order*² only a few days before the statutory comment period for reconsideration or clarification of those rules concludes. Moreover, ICO questions whether the Commission has authority to make substantive changes to the *ATC Order* at all at this juncture.

¹ Letter from Kathryn A. Zachem and Andrew D. Krinsky, Counsel, Terrestrial Carriers, to Marlene H. Dortch, Secretary, FCC, IB Docket No. 01-185 (June 20, 2003); Letter from Kathryn A. Zachem and Andrew D. Krinsky, Counsel, Terrestrial Carriers, to Marlene H. Dortch, Secretary, FCC, IB Docket No. 01-185 (June 27, 2003)

² *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 Bands*, 18 FCC Rcd 1962 (2003)(“*ATC Order*”).

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ICO notes that the Terrestrial Carriers initially sought Commission *sua sponte* reconsideration of asserted ‘inconsistencies’ in the *ATC Order* in early March, 2003.³ The Commission subsequently issued an Errata to the *ATC Order* on March 7 but did not incorporate any corrections or clarifications related to the timing or grant of requests for ATC authority.⁴ The Commission did, however, presumably after careful review and consideration, make nine pages of corrections to both the newly adopted rules and the text of the *ATC Order*, including numerous corrections apparently intended to ensure that language and rule references were ‘consistent’ throughout.⁵

In view of the exhaustive corrections made to the *ATC Order* four months ago, ICO is mystified as to how or why the Commission is racing to correct the *ATC Order* in a way that will complicate and delay any reconsideration of an already prolonged and complicated proceeding. As it now stands, the *ATC Order* will have spawned comments on its accompanying further Notice of Proposed Rulemaking,⁶ almost certainly petitions for clarification or reconsideration, and likely separate filings on whether the *sua sponte* order, if issued, constitutes an impermissible substantive change to rules absent APA mandated public notice and comment. Rather than provoke unnecessary additional pleadings and comment cycles, the Commission instead should simply respond to any questions as to its intent in the *ATC Order* in the context of petitions for clarification or reconsideration.

Finally, ICO is concerned that the Commission properly address the limitations on the scope of permissible *sua sponte* action once rules have been adopted pursuant to APA-mandated procedures. Specifically, the Commission may take such action only under certain limited circumstances, *e.g.* where a rule is being clarified or where an existing rule is set aside. The Commission would exceed its rulemaking authority, authority, however, where its actions would “change[] the rules of the game.”⁷ In this instance, the Commission apparently is being asked to state *sua sponte* that it will not grant ATC authorizations conditional upon compliance with MSS system milestones.⁸ A revised rule that would delay ATC authorization until after MSS operators have already committed enormous sums to construct and launch their constellations would

³ Letter from Kathryn A. Zachem, Counsel, Terrestrial Carriers, to Marlene H. Dortch, Secretary, FCC, IB Docket No. 01-185 (Mar. 6, 2003)(“March 6 Letter”).

⁴ *Errata to 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 Bands*, IB Docket Nos. 01-185, 02-364 (Mar. 7, 2003).

⁵ *Id.*

⁶ *Review of the Spectrum Sharing Plan Among Non-Geostationary Satellite Orbit Mobile Satellite Service Systems in the 1.6/2.4 GHz Bands*, 18 FCC Rcd 1962, 2087 (2003).

⁷ *Sprint Corp. v. FCC*, 315 F.3d 369, 374 (D.C. Cir. 2003).

⁸ March 6 Letter.

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contradict rules set forth in the *ATC Order* clearly contemplating that MSS licensees like ICO would file “integrated service showings as early as possible to allow full evaluation without compromising the timing of ATC deployment.”⁹

In accordance with section 1.1206(b) of the Commission’s rules, an electronic copy of this letter is being filed.

Very truly yours,

/s/ Suzanne Hutchings

Suzanne Hutchings

cc: J. Manner

⁹ *ATC Order*, 18 FCC Rcd at 2009 ¶ 88.