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February 3, 2005

Via Electronic Filing

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

**Re: *Ex Parte* Presentation
Mobile Satellite Ventures LP
IB Docket No. 01-185**

Dear Ms. Dortch:

Mobile Satellite Ventures L.P. (“MSV”) hereby responds to two recent *ex parte* presentations in the above-captioned proceeding, by Cingular Wireless LLC (“Cingular”) and by the Cellular Telecommunications & Internet Association (“CTIA”), both of which relate to the Commission’s decision in 2003 to authorize Mobile Satellite Service (“MSS”) licensees to implement an Ancillary Terrestrial Component (“ATC”).¹ Cingular attempts to claim that recent developments warrant imposing new gating factors on ATC, a claim that is utterly devoid of merit.² CTIA repeats its attempt to put unnecessary, inefficient, and anticompetitive restrictions on the deployment of ATC. These are transparently efforts to prevent the development of new services and more efficient use of spectrum.

In its 2003 decision, the Commission imposed substantial gating requirements on MSS operators to insure that their systems remain legitimate satellite systems once they deploy ATC. These requirements impose enormous capital expense, including the cost of operating at least one satellite that provides full CONUS coverage, maintaining the availability of a spare satellite,

¹ See Letter from Brian F. Fontes, Cingular Wireless LLC, to Ms. Marlene H. Dortch, FCC, IB Docket No. 01-185 (January 28, 2005) (“*Cingular*”); Letter from Diane Cornell, CTIA, to Ms. Marlene H. Dortch, FCC, IB Docket No. 01-185 (February 2, 2005) (“*CTIA*”); see also *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, Report and Order*, 18 FCC Rcd 1962, FCC 03-15, IB Docket No. 01-185 (February 10, 2003) (“*ATC Order*”).

² Cingular claims that it has “standing” to challenge the *ATC Order*. See *Cingular* at 6-7. This is not the case, as the Commission has recognized that hybrid satellite/terrestrial services and terrestrial-only services are not perfect substitutes given the unique coverage capabilities and service offerings of a hybrid satellite/terrestrial service. *ATC Order* ¶¶ 39, 229. As the Commission has observed, “terrestrial CMRS and MSS ATC are expected to have different prices, coverage, product acceptance and distribution.” *Id.* ¶ 39.

and the offering of an integrated service that effectively combines the satellite and terrestrial offerings. MSV is fully committed to meeting these requirements and deploying the most robust possible hybrid system—one that makes maximum use of both the satellite and terrestrial elements of its system. We expect our system to be used for innovative new services that will bring great value to the American public, including for public safety communications, rural communications, and wireless broadband. As such, we vigorously oppose any new requirements that serve no legitimate purpose other than to hinder the deployment of new services.

In 2003, the Commission properly rejected arguments that ATC should be artificially limited in how robust it could become, including proposals for a satellite predominance test. The Commission recognized that “even with a satellite constellation operating at full capacity, terrestrial operations can reuse communications channels more intensively than satellite operations because terrestrial cells can be much smaller than the geographic area covered by satellite spot beams...[T]he concentration of users need not imply that provision of satellite service is being degraded or diminished.” *ATC Order* ¶ 36.

Geostationary satellites provide excellent rural coverage. Cingular is wrong when it claims that the decision by certain S-band licensees to change from non-geostationary (“NGSO”) to geostationary (“GSO”) MSS systems represents an abandonment of service to rural areas. *Cingular* at 2-5. In fact, GSO MSS satellites are just as effective as NGSO systems for providing MSS, including to rural areas. For example, current MSS operators in the United States all provide effective MSS to rural America using either GSO (*e.g.*, MSV, MSV Canada, XM Satellite Radio) or NGSO (*e.g.*, Iridium, Globalstar, Sirius Satellite Radio) systems. It is terrestrial-only network operators, such as Cingular—not satellite networks operators—that have failed to provide service to rural America.³

Satellite-based companies have strong economic incentives to use their satellites fully. GSO MSS licensees will have every economic incentive to provide substantial satellite service. *Cingular* at 4-5. As the Commission concluded in the *ATC Order*, the substantial up-front, sunk costs of satellite construction and launch will provide MSS licensees with an economic incentive to make effective use of the satellite.⁴ While Cingular claims that a GSO MSS satellite costs

³ See, *e.g.*, *Qualcomm Incorporated, Order*, DA 00-2438, ¶ 7 (Chief, Wireless Bureau, Oct. 30, 2000) (“[M]obile satellite service may provide an important additional emergency telecommunications resource, especially to callers located in remote and rural areas and callers located in underpopulated regions where neither landline nor terrestrial mobile services exists. Mobile satellite systems . . . can provide continuous, reliable coverage in many areas where cellular coverage is patchy.”).

⁴ *ATC Order* ¶ 35 (“we do not believe that our active intervention to ensure substantial satellite service consistent with the MSS ATC service rules adopted in this Order will prove necessary. As at least one economic expert has stated on the record, ‘the significant upfront and sunk costs of satellite systems increase the likelihood that the licensees would continue to operate their satellite systems.’ Unlike marginal costs, sunk costs cannot be avoided by discontinuing or

only \$200 million to construct and launch, this figure is drastically understated. The type of GSO satellite Cingular cites would not be powerful enough to close the satellite link with a hand-held, integrated MSS/ATC handset. Moreover, Cingular neglects to mention many costs associated with constructing and operating a satellite, such as insurance and construction and operation of gateway earth stations and network control centers. The cost of deploying a next-generation, one-satellite GSO MSS system could approach \$800 million. In addition, the Commission has required GSO MSS licensees to have a satellite ground spare constructed within one year of initiating ATC. 47 C.F.R. § 25.149(b)(2)(ii). These are hardly insignificant costs. As such, MSS licensees will have every incentive to make full use of their satellite resources rather than abandoning them in favor of ATC. MSS providers would be foolish not to take full advantage of their next-generation satellites.

Flexible use of spectrum is sound policy not unjust enrichment. Cingular is also wrong when it claims that MSS operators will be “unjustly enriched” by obtaining ATC authority. *Cingular* at 4-5. As an initial matter, it is highly ironic for Cingular to make a claim of unjust enrichment when billions of dollars of its prime 800 MHz spectrum in major markets was acquired through wireline set-asides at virtually no cost before there were auctions. *ATC Order* ¶ 39. Moreover, while Cingular claims that the “cost” of ATC is the cost of constructing and launching one satellite, this is an oversimplification. In addition to the cost of constructing, launching, and maintaining a satellite and a ground spare (which are significant costs), MSS operators must also design dual-mode handsets that can communicate with both ATC base stations and satellites in order to meet the “integrated service” gating factor. This is a cost terrestrial wireless operators do not face. *Id.* ¶ 226. Moreover, as the Commission concluded in the *ATC Order*, Cingular and other wireless carriers have no basis for making a claim of unjust enrichment because hybrid MSS/ATC services will not be directly competitive with terrestrial wireless services.⁵ Finally, as the Commission noted in the *ATC Order*, avoiding unjust enrichment is just one of several objectives listed in Section 309(j)(3) that the Commission must consider and balance in determining whether to auction spectrum. *Id.* ¶ 229.

Restrictions on spectrum use create inefficiencies. Cingular also demonstrates its lack of understanding of ATC when it claims that an MSS licensee will dedicate up to 99 percent of its licensed spectrum to ATC. *Cingular* at 1. In an ATC system that utilizes dynamic frequency sharing, such as that contemplated by MSV, all frequencies will be available simultaneously to

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degrading service.” (citing *Report of Gregory L. Rosston, Ph.D.*, Stanford University, Stanford Institute for Economic Policy Research)).

⁵ *ATC Order* ¶ 229 (“We also do not believe that MSS, even with ATC, will be directly competitive with the terrestrial services offered by CMRS carriers. . . . [T]he operating, functional, and cost characteristics of MSS with ATC are sufficiently different from CMRS terrestrial services that we do not believe they will be close substitutes for each other for the vast majority of customers. Thus, we do not believe there is any substantial competitive inequity to CMRS carriers from our grant of ATC to MSS operators.”).

both the ATC and the satellite.⁶ It is for this reason that Cingular's and CTIA's request that the Commission limit the amount of bandwidth that can be utilized for ATC does not make sense. It would stand spectrum policy on its head for the Commission to adopt a proposal to *restrict* how efficiently MSV and others can use their spectrum. As long as a satellite operator meets the present gating requirements and does not cause interference to other systems, it will have ample incentive to reuse its spectrum as intensively as possible and provide as much service as possible.

Customers should dictate how the next generation MSS systems will be used. The unnecessary gating factors Cingular and CTIA propose should be rejected. While they renew their request that ATC handsets be required to "look first" to the satellite (*Cingular* at 8, *CTIA* at 5), MSV has explained that such a gating requirement would defeat the Commission's goal of increasing efficient use of MSS spectrum. *MSV Opposition* at 16. Satellite capacity should be reserved for those callers who actually need access to the satellite, such as in suburban and rural areas and on waterways where ATC base stations may not provide signal coverage. *Id.* The Commission should also refrain from prohibiting ATC-only subscriptions. *Cingular* at 8; *CTIA* at 5. Again, satellite capacity should be reserved for those who need it the most. Such a restriction also would be a needless limitation that may hinder development of new systems. *MSV Opposition* at 16-17. Moreover, the Commission has historically refrained from regulating the prices, service offerings, and marketing practices of CMRS providers, choosing to rely on the marketplace instead. *Id.*

Cingular and CTIA also renew their request that the Commission reverse its decision to exempt data devices, such as computers and Personal Data Assistants ("PDAs"), from the integrated service gating factor. *Cingular* at 6; *CTIA* at 5. Cingular and CTIA do not offer any new evidence to support its request. In fact, Cingular fails to refute the evidence in the record establishing that the data device exemption is a narrowly crafted and appropriate exception to the general rule requiring dual-mode handsets.⁷

⁶ See Mobile Satellite Ventures Subsidiary LLC, Opposition to Petitions for Reconsideration, IB Docket No. 01-185 (August 20, 2003) ("*MSV Opposition*"), at 18-19.

⁷ See Globalstar, Opposition to Petitions for Reconsideration, IB Docket No. 01-185 (August 20, 2003), at 8-9; ICO, Opposition to Petitions for Reconsideration, IB Docket No. 01-185 (August 20, 2003), at 2-4.

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Please direct any questions regarding this matter to the undersigned.

Very truly yours,

/s/Lon C. Levin

Lon C. Levin

cc: Chairman Michael K. Powell
Commissioner Kathleen Q. Abernathy
Commissioner Michael J. Copps
Commissioner Kevin J. Martin
Commissioner Jonathan S. Adelstein
Sam Feder
Jennifer Manner
Paul Margie
Barry Ohlson
Bryan Tramont
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