May 24, 2005

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

Re: *Letter from CTIA filed May 19, 2005 in IB Docket Nos. 99-81, 02-34 & 00-248; ET Docket No. 00-258*

Dear Ms. Dortch:

TMI Communications and Company Limited Partnership and its affiliate, TerreStar Networks Inc. (collectively, "TMI/TerreStar")[1] hereby respond to the misleading statements made by CTIA in the above-referenced letter.[2]

The CTIA letter should not distract the Commission from addressing the legitimate requests made by TMI/TerreStar and ICO Global Communications (Holdings) Limited ("ICO") for redistribution of spectrum surrendered by Celsat, Inc. ("Celsat") to the other 2 GHz mobile satellite service ("MSS") licensees in that band.[3] The parties' request, now pending for over a month, should be promptly placed on public notice so that public comment can be received on it as expeditiously as possible.

First, CTIA wrongly claims that the spectrum redistribution procedures applicable to "NGSO-like" systems do not apply to 2 GHz MSS providers. The fact that CTIA relies on the *NPRM* which preceded the *Space Station Licensing Reform Order* ("*Reform Order*"), rather than the *Reform Order* itself or the rules it established, highlights the weakness of CTIA's claim.[4]

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[1] TerreStar is the prospective assignee of TMI's 2 GHz MSS authorization and has contracted with Space Systems/Loral Inc. for a satellite that will operate in this band.

[2] *See* Letter from Diane Cornell, CTIA, to Marlene H. Dortch, Secretary, FCC (filed May 19, 2005) ("CTIA Letter").

[3] *See* Letter from Gregory C. Staple, Vinson & Elkins, Counsel for TMI and Jonathan D. Blake, Covington & Burling, Counsel for TerreStar to Donald Abelson, Chief, International Bureau, FCC (filed April 19, 2005); Letter from Suzanne Hutchings Malloy, Senior Regulatory Counsel, ICO to Donald Abelson, Chief, International Bureau, FCC (filed May 3, 2005).

[4] CTIA Letter at 2, *citing* Notice of Proposed Rulemaking, *Amendment of the Commission's Space Station Licensing Rules*, 17 FCC Rcd 3847, 3864 ¶ 48 & n.54 (2002).

Indeed, the *Reform Order* made clear that MSS systems are NGSO-like,[5] and it did not exclude *any* NGSO-like system from the spectrum redistribution procedures of Section 25.157(g).[6] That has been the consistent understanding and operation of these rules since they were established in May 2003.

Second, CTIA incorrectly assumes that spectrum surrendered in March 2005 by Boeing and Iridium[7] – the fourth and fifth 2 GHz MSS licensees, respectively – is not to be redistributed to the remaining licensees in that band.[8] This is, of course, wrong. The *Reform Order*, as codified at Section 25.157(g), directly contradicts CTIA:

> In the event that an applicant's license is cancelled for any reason, the Commission will redistribute the bandwidth allocated to that applicant equally among the remaining applicants whose licenses were granted concurrently with the cancelled license, unless the Commission determines that such a redistribution would not result in a sufficient number of licensees remaining to make reasonably

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[5] First Report and Order, *Amendment of the Commission's Space Station Licensing Rules*, 18 FCC Rcd. 10760, 10773 ¶ 21 (2003) ("*Reform Order*") ("NGSO-like satellite systems are those in which the earth station has little or no directivity towards a satellite, so that the earth station must track the satellite in all directions, such as hand-held satellite telephones.").

[6] Apparently, CTIA has overlooked the fact that the "2 GHz MSS [spectrum redistribution] issue" which the 2002 *NPRM* indicated it did "not address" was resolved in January 2003 by the *AWS Order*. *See* Third Report and Order, *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 Systems*,18 FCC Rcd. 2223, 2225 ¶ 3 (2003). When the Commission adopted the *Reform Order* in April 2003, it was thus able to promulgate prospective spectrum redistribution procedures for *all* NGSO-like systems, including MSS.

[7] *See* Letter from Peter D. Shields, Wiley, Rein & Fielding, Counsel to Iridium 2 GHz LLC to Marlene H. Dortch, Secretary FCC, *Voluntary Surrender of 2 GHz Authorization and Notice of Withdrawal of Related Applications*, File Nos. SAT-LOA-19970926-00147 *et al*. (dated March 16, 2005); *and* Letter from Joseph P. Markoski and Bruce A. Olcott, Counsel for The Boeing Company to Marlene H. Dortch, Secretary, FCC, *re: Notice of Surrender of License and Withdrawal of Application*, File Nos. 79-SAT-P/LA-97(16) *et al*. (dated March 28, 2005).

[8] CTIA characterizes TMI/TerreStar as seeking "250% increase" in TMI's spectrum assignment. CTIA Letter at 1. It appears that CTIA reached this conclusion by dividing the amount of spectrum that will be assigned to TMI if the Bureau makes the requested redistribution of spectrum surrendered in April 2005 by Celsat (*i.e.*, 2 x 10 MHz) by the amount of spectrum assigned to TMI *before* the March 2005 surrenders by Boeing and Iridium (*i.e.*, 2 x 4 MHz). The appropriate denominator, however, is 2 x 6.67 MHz, which reflects the amount of spectrum which should be available to TMI/TerreStar once the Bureau completes the essentially ministerial redistribution of the Boeing and Iridium spectrum, as provided for by Section 25.157(g).

> efficient use of the frequency band … There is a presumption that three satellite licensees in a frequency band are sufficient to make reasonably efficient use of the frequency band.[9]

The principle established by Section 25.157(g) is easily applied to the March 2005 surrenders of 2 GHz MSS spectrum:

- On March 16, 2005, Iridium surrendered its 2 GHz MSS authorization, leaving four licensees in the 2 GHz MSS band. The International Bureau gave public notice of this surrender on March 18, 2005.[10] Each of the four remaining licensees was then entitled to a 2 x 5 MHz *pro rata* assignment.

- On March 28, 2005, Boeing surrendered its 2 GHz MSS authorization, leaving three licensees in the 2 GHz MSS band. The International Bureau gave public notice of this surrender on April 1, 2005.[11] Each of the three remaining licensees was then entitled to a 2 x 6.67 MHz *pro rata* assignment.

Although the Bureau may not yet have taken the ministerial step of amending the TMI/TerreStar, Celsat and ICO authorizations to reflect these spectrum redistributions, Section 25.157(g) clearly directs the Bureau to do so. Such mechanical application of an existing Commission rule should occur promptly and does not require further Public Notice.

Finally, CTIA's allegation that TMI/TerreStar are seeking a "stealth redistribution" of abandoned 2 GHz MSS spectrum is unfounded.[12] Even though TMI/TerreStar's request is specific to the TMI authorization, CTIA argues that TMI/TerreStar should have filed the request in a docketed proceeding of general applicability or, even more strangely, as a Petition for Rulemaking. TMI/TerreStar, however, have not sought consideration of a *new* rule or even a *change* in an existing rule, but merely the application of an *existing* Commission rule, Section 25.157(g), to the TMI authorization. Of course, TMI/TerreStar expect that the Commission will issue a Public Notice seeking comment on their request for rebuttal – as allowed for by the Commission's rules[13] – of the presumption that the Commission will initiate a processing round for new MSS entrants if a licensee's surrender leaves two or less licensees in the 2 GHz MSS band.[14] That will be a separate proceeding dealing solely with an

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9 47 C.F.R. § 25.157(g)(1), (3).

10 *See* Public Notice, Policy Branch Information, DA 05-733 (rel. March 18, 2005).

11 *See* Public Notice, Policy Branch Information, DA 05-1000 (rel. April 1, 2005).

12 CTIA Letter at 1.

13 *Reform Order*, 17 FCC Rcd. at 10789 (allowing a finding that an NGSO-like licensee merits rebuttal of the "three-to-two" presumption if it "provide[s] convincing evidence that allowing only two licensees in the frequency band will result in extraordinarily large, cognizable, and non-speculative efficiencies.").

14 47 C.F.R. § 25.157(g)(2).

issue relating to TMI/TerreStar's authorization. Accordingly, there is no docket into which that request should have been filed, and CTIA's argument to the contrary is baseless.[15]

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In connection with a pleading cycle which TMI and TerreStar hope the Bureau will soon establish, CTIA is certainly free to comment on the request for redistribution of spectrum surrendered by Celsat in April 2005. CTIA should not, however, be allowed to hold up substantive consideration of that request with its baseless allegations concerning the Commission's rules and earlier spectrum surrenders in the 2 GHz MSS band.

Respectfully submitted,

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[15] Although TMI/TerreStar assume that the Bureau will soon issue a Public Notice with a file number for use in filings concerning the requested redistribution of spectrum surrendered by Celsat, TMI/TerreStar will electronically file this letter in the above-referenced dockets as a courtesy to CTIA and any parties who may be monitoring those dockets.