

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

Commission Invites Comments Concerning	)	
Use of Portions of Returned 2 GHz Mobile	)	IB Docket No. 05-221
Satellite Service Frequencies	)	
	)	
	)	

**REPLY COMMENTS OF GLOBALSTAR LLC**

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## Summary

Globalstar LLC (“Globalstar”) submits these reply comments in response to the Commission’s *Public Notice* seeking views on various proposals for redistributing or reallocating certain 2 GHz Mobile Satellite Service (“MSS”) spectrum that has been returned to the Commission by 2 GHz MSS licensees. As it has discussed in its comments in this proceeding, Globalstar strongly opposes any Commission proposals that would jeopardize its ability to provide MSS service in the frequencies that originally comprised its 2 GHz MSS authorization, which the International Bureau erroneously cancelled in January 2003. None of the comments filed in response to the *Second 2 GHz Public Notice* provides any persuasive justification for the Commission to make a decision to reallocate or redistribute this spectrum before fully and finally deciding Globalstar’s rights to the 2 GHz spectrum.

The spectrum at issue in this proceeding is vitally important to Globalstar. Globalstar’s MSS business continues to experience significant growth in the number of subscribers it serves and the vast array of services it offers; however, if Globalstar is to continue to expand and enhance its MSS service offerings, it requires access to additional spectrum beyond its current 1.6/2.4 GHz authorization. For this reason, Globalstar continues actively to prosecute its pending petition for reconsideration of the cancellation of its 2 GHz MSS license, and stands ready and financially able to launch and operate an MSS system at 2 GHz. Accordingly, Globalstar opposes any suggestion that a redistribution of that spectrum without first determining Globalstar’s rights to it would serve the public interest. Not only would such action severely prejudice Globalstar, it also would work counter to the Commission’s goals of ensuring the efficient use of spectrum and encouraging entry by the maximum feasible number of competitors.

As a general matter, the comments filed in response to the *Second 2 GHz Public Notice* make abundantly clear that the public interest favors avoiding any further erosion of the 2 GHz spectrum allocation for MSS. As the Commission made clear in its Draft Strategic Plan, “[c]ommunications during emergencies and crises must be available for public safety, health, defense, and emergency personnel, as well as all consumers in need.”<sup>1/</sup> MSS services – especially when complemented by an Ancillary Terrestrial Component (“ATC”) – are an essential part of the national communications infrastructure during times of emergency because MSS is the only communications technology capable of providing truly ubiquitous coverage to rural and remote areas as well as urban environments. And MSS is ideally suited to serve the Commission’s goal of ensuring that “[a]ll Americans...have affordable access to robust and reliable broadband products and services,”<sup>2/</sup> because as soon as it is deployed, an MSS network can reach remote and underserved areas. Preserving the remaining MSS allocation at 2 GHz spectrum thus represents an unparalleled opportunity for the Commission to fulfill its goal of ensuring the deployment of advanced broadband services for all Americans – not just those living in urban areas where terrestrial providers have primarily focused their build-out efforts. Not surprisingly, none of the commenters urging the Commission to reallocate MSS spectrum to other services makes any serious effort to suggest that its proposals in any way equal the value of MSS in meeting the needs of public safety

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<sup>1/</sup> See “Public Invited to Review Draft Strategic Plan,” Public Notice, at 16 (rel. July 5, 2005) available at [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-259814A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-259814A1.pdf) (“Draft Strategic Plan”).

<sup>2/</sup> Draft Strategic Plan at 6. The Commission also identified the objective to “promote advanced and universal service domestically” as part of its goal of ensuring competition in the market for telecommunications services. *Id.* at 9.

personnel and emergency first responders, or ensuring that Americans in unserved or underserved areas will have access to advanced broadband services.

Despite the undeniable public interest benefits that a robust, competitive 2 GHz MSS marketplace can provide, the Commission's recent decisions affecting the spectrum available for MSS seem aimed at stunting the future of MSS. After acting in 2003 to reduce the available 2 GHz MSS spectrum by allocating 30 MHz of it to terrestrial wireless services, the Commission now has proposed to consider in the *Second 2 GHz Public Notice*, among other options, to reallocate yet an additional portion of the 2 GHz band to terrestrial services. The record in this proceeding makes clear, however, that there is no persuasive justification for reallocating any 2 GHz MSS spectrum to services other than MSS. Terrestrial wireless providers – which already have access to over 200 MHz of prime spectrum nationwide – have failed to demonstrate a legitimate need for the spectrum, and their comments supporting a reallocation of the spectrum for terrestrial use entirely ignore all of the public safety and other benefits that preserving the spectrum for MSS would provide. Indeed, the intensifying consolidation of the terrestrial wireless industry threatens exactly the monopsony that the Commission hoped to deter in 1993 when it allocated spectrum for PCS.

The 2 GHz MSS spectrum band can support three operators, and three operators would ensure effective competition. The Commission's goals and spectrum efficiency aims dictate that it promote competition in each spectrum band, particularly where services are in the early stage of deployment and where the services to be offered will yield significant public interest benefits. ICO and TMI have failed to offer any reason why the Commission should stray from its sound policy of disfavoring the creation of duopolies.

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**REPLY COMMENTS OF GLOBALSTAR LLC**

Globalstar LLC (“Globalstar”) submits these reply comments in response to the Commission’s *Second 2 GHz Public Notice* seeking views on various proposals for redistributing or reallocating certain 2 GHz Mobile Satellite Service (“MSS”) spectrum that has been returned to the Commission by 2 GHz MSS licensees.<sup>3/</sup> As it discussed in its comments in this proceeding,<sup>4/</sup> and in its comments filed in response to the Commission’s *First 2 GHz Public Notice*, Globalstar strongly opposes any Commission proposals that would

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<sup>3/</sup> See “Commission Invites Comments Concerning Use of Portions of Returned 2 GHz Mobile Satellite Service Frequencies,” Public Notice, IB Docket No. 05-221, FCC 05-134 (rel. June 29, 2005) (“*Second 2 GHz Public Notice*”). On the same day that the Commission released the *Second 2 GHz Public Notice*, it also released a Public Notice seeking comment on a proposal to modify the 2 GHz MSS spectrum reservations of ICO Satellite Services (“ICO”) and TMI Communications and Company Limited Partnership (“TMI”) pursuant to section 316 of the Act. See “Commission Invites Comments Concerning Use of Portions of Returned 2 GHz Mobile Satellite Service Frequencies,” Public Notice, IB Docket 05-220, FCC 05-133 (rel. June 29, 2005) (“*First 2 GHz Public Notice*”). As Globalstar indicated in its Comments filed in response to the *First 2 GHz Public Notice*, given the unresolved status of Globalstar’s 2 GHz MSS authorization, it is premature to make any change to the 2 GHz MSS licenses held by ICO and TMI in a manner that would affect the 2 GHz MSS spectrum comprising Globalstar’s 2 GHz MSS authorization. See Comments of Globalstar LLC, filed in IB Docket 05-220, July 13, 2005 (“Globalstar Comments in Docket 05-220”).

<sup>4/</sup> See Comments of Globalstar LLC filed in IB Docket No. 05-221, July 29, 2005 (“Globalstar Comments”).

jeopardize Globalstar's ability to provide MSS service in the 2 GHz frequencies that originally comprised its 2 GHz MSS authorization, which the International Bureau erroneously cancelled in January 2003. None of the comments filed in response to the *Second 2 GHz Public Notice* provide any persuasive justification for the Commission to decide to reallocate or redistribute the spectrum at issue before fully and finally resolving Globalstar's rights to that spectrum. Moreover, the comments make abundantly clear that the public interest favors retaining all 40 MHz of the 2 GHz spectrum for MSS and that the Commission should do all that it can to foster the development of a robust and competitive MSS marketplace at 2 GHz.

**I. The Commission Can Ensure the Most Expeditious Deployment of MSS Services at 2 GHz by Rapidly Resolving Globalstar's Pending Petition for Reconsideration**

As Globalstar discussed in its comments in response to both the *First* and *Second 2 GHz Public Notices*, if Globalstar is to continue to expand and enhance its MSS service offerings, it requires access to additional spectrum beyond its current 1.6/2.4 GHz authorization. In particular, as Globalstar's MSS business continues to grow and expand,<sup>5/</sup> the 2 GHz spectrum originally awarded to it is more vital than ever.<sup>6/</sup> For this reason, Globalstar

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<sup>5/</sup> Now in its sixth year of providing MSS voice and data services, Globalstar currently provides service in all areas of the world except central and southern Africa, Southeast Asia, and the Indian subcontinent, regions in which Globalstar is negotiating to expand coverage. As of June 2005, Globalstar had 153,000 subscribers in more than 120 countries, which reflects an average annual growth rate of 45 percent during Globalstar's first five years of service, and an astounding increase of 50 percent in the last 18 months alone.

<sup>6/</sup> As Globalstar discussed in its comments, its significant increase in subscribers and the bandwidth demands of its new voice and data services necessitate that Globalstar deploy additional capacity to expand its service offerings and meet customer needs. *See* Globalstar Comments at 4-5. If Globalstar is to offer broadband service effectively, while continuing to provide the reliable voice and narrowband data services on which its customers depend, it must have access to additional MSS spectrum. Because the spectrum at 2 GHz at issue in this proceeding is presently the only available MSS expansion spectrum, without access to that

continues actively to prosecute its pending petition for reconsideration of the International Bureau's erroneous cancellation of its 2 GHz MSS license,<sup>7/</sup> and Globalstar stands ready and financially able to launch and operate an MSS system at 2 GHz. In light of Globalstar's demonstrated need for expansion spectrum, as well as the Commission's policies, set forth in its Draft Strategic Plan<sup>8/</sup> and elsewhere, that seek to ensure that "[c]ommunications during emergencies and crises...be available for public safety, health, defense, and emergency personnel, as well as all consumers in need"<sup>9/</sup> and that "[a]ll Americans...have affordable access to robust and reliable broadband products and services,"<sup>10/</sup> Globalstar urges the Commission not to take any action that could affect the availability of the 2 GHz spectrum at issue in this proceeding without first ruling on Globalstar's petition for reconsideration.

Given the importance to Globalstar of the spectrum that comprised its original 2 GHz authorization, Globalstar respectfully opposes the suggestion by ICO that a redistribution of that spectrum without first determining Globalstar's rights to it would serve the public

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spectrum it will be difficult, if not impossible, for Globalstar to ensure that its services will be fully compatible with third-generation terrestrial technologies, such as cdma2000 and W-CDMA, or deploy additional broadband services to aircraft and to mobile units on the ground, all of which will dramatically increase the availability of advanced broadband services. *Id.*

<sup>7/</sup> See Globalstar Petition for Reconsideration, File Nos. SAT-LOA-199709-26-00151/52/53/54/56, *et al* (filed July 26, 2004) ("Globalstar Petition for Reconsideration").

<sup>8/</sup> See Draft Strategic Plan.

<sup>9/</sup> *Id.* at 16.

<sup>10/</sup> *Id.* at 6. The Commission also identified the objective to "promote and advance universal service domestically" as part of its goal of ensuring competition in the market for telecommunications services. *Id.* at 9.

interest.<sup>11/</sup> In particular, although Globalstar understands the Commission’s desire to ensure that all 2 GHz spectrum is put to use as rapidly as possible, given the current circumstances, any decision to reallocate or redistribute 2 GHz MSS spectrum prior to the final resolution of Globalstar’s rights in its 2 GHz authorization would prejudice Globalstar with no countervailing benefit to ICO and TMI – except the elimination of a potential competitor. Furthermore, any decision now to modify those licensees’ spectrum reservations on the assumption that they can simply be *remodified* yet again should the Commission rule favorably on Globalstar’s pending petition not only would undermine Globalstar’s future ability to provide service in the 2 GHz band, but also would call into doubt any such spectrum redistribution, and worse, could necessitate expensive system redesign and ultimately delay ICO’s and TMI’s ability to begin service.

## **II. The Comments Filed in Response to the *Second 2 GHz Public Notice* Emphasize the Significant Public Interest Benefits that MSS Services Provide**

As Globalstar discussed in its comments, any reallocation of the remaining 2 GHz MSS spectrum to other services would permanently hinder the development of a competitive and robust MSS marketplace and threaten the likelihood that MSS will provide a viable complement, and in certain circumstances, a more reliable alternative to terrestrial wireless services.<sup>12/</sup> The record submitted in response to the *Second 2 GHz Public Notice* furnishes extensive support for the proposition that MSS providers meet vital communications needs

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<sup>11/</sup> See Comments of ICO Satellite Services G.P. filed in IB Docket No. 05-221 at 12 (“ICO Comments”). Specifically, ICO suggests that “an immediate redistribution of the available 2 GHz MSS spectrum would not prejudice, but rather would be subject to the outcome of Globalstar’s pending petition for reconsideration of its 2 GHz MSS license cancellation.”). *Id.*

<sup>12/</sup> See Globalstar Comments at 5.

that are not being – and in fact may never be – met by terrestrial service providers. For the Commission to remove spectrum from the current 2 GHz MSS allocation would be to completely ignore the many public interest benefits MSS provides, and could ultimately threaten the future viability of MSS at 2 GHz.

MSS services – especially when complemented by an Ancillary Terrestrial Component (“ATC”) – are an essential part of the national communications infrastructure during times of emergency, because MSS is the only communications technology capable of providing truly ubiquitous coverage, to both rural and remote areas as well as urban environments. The comments in response to the *Second 2 GHz Public Notice* make abundantly clear that MSS is uniquely qualified to achieve these goals, and in fact is doing so already. For example, as Globalstar and many commenters have recognized, “[t]ime and again, MSS has proven to be the only effective means of communications at times and in locations where terrestrial wireline and wireless systems have failed.”<sup>13/</sup> In particular, as a number of commenters have emphasized, a significant benefit of MSS services during times of emergency stems from the redundant nature of satellite technologies. Because satellites are located “thousands of miles above earth and thus are not impacted by ground-based disasters, MSS networks offer a particularly redundant communications option for first responders and other public safety officials.”<sup>14/</sup> Not surprisingly, none of the commenters urging the

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<sup>13/</sup> See ICO Comments at 7. See also Comments of Inmarsat Ventures Limited filed in IB Docket No. 05-221 (“Inmarsat Comments”) at 8 (“MSS...remains essential to support the needs of public safety and homeland security”); Comments of the Satellite Industry Association filed in IB Docket No. 05-221 (“SIA Comments”) at 2 (“Unlike any other communications technology, MSS networks equipped with an [ATC] are capable of providing truly ubiquitous coverage, from the most rural areas to the densest urban cores.”).

<sup>14/</sup> See SIA Comments at 2. See also Lockheed Martin Corp. Comments at 1 (“because MSS/ATC networks necessarily include redundant capabilities, communicating with satellites

Commission to reallocate returned MSS spectrum to other services make any persuasive effort to suggest that its proposals in any way equal the value of MSS in meeting the needs of public safety personnel and emergency first responders.

In addition to the undeniable public safety and homeland security benefits that a robust 2 GHz MSS service provides, the comments submitted in response to the *Second 2 GHz Public Notice* also demonstrate that retaining the already-reduced 2 GHz spectrum allocation for MSS is essential to ensuring the rapid deployment of advanced broadband capabilities to all Americans. As Globalstar discussed in its comments, MSS is ideally suited to serve the Commission's goal in its Draft Strategic Plan of ensuring that "all Americans...have affordable access to robust and reliable broadband products and services,"<sup>15/</sup> because as soon as it is deployed an MSS network can reach remote and underserved areas – ensuring that those Americans that currently are unserved by wireline or terrestrial wireless providers have access to advanced broadband technologies.<sup>16/</sup> Preserving the existing allocation of all of the

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thousands of miles in the sky as well as with terrestrial base stations, they are considerably less vulnerable to attack than terrestrial-only wireless services and the wireline telephone network."); Inmarsat Comments at 8 ("MSS is essential for [public safety] purposes because the network is independent of the terrestrial and cellular communications networks that may be unavailable or overwhelmed in an emergency. MSS communications thus are ensured in the time of an emergency, when police, firefighters and other rescue personnel need reliable communications the most."); Loral Space & Communications Comments filed in IB Docket No. 05-221 ("Loral Comments") at 2 ("[B]ecause MSS/ATC networks are redundant, communicating with satellites thousands of miles in the sky as well as terrestrial base stations, they are considerably less vulnerable to attack than terrestrial-only wireless services and the wireline telephone network.").

<sup>15/</sup> Draft Strategic Plan at 6. The Commission also identified the objective to "promote and advance universal service domestically" as part of its goal of ensuring competition in the market for telecommunications services. *Id.* at 9.

<sup>16/</sup> See, e.g., SIA Comments at 3 ("The broadband capabilities of MSS networks will be particularly vital to residents of areas corresponding to the five percent of U.S. zip codes with no access to advanced data services."); Comments of TMI Communications and Company

2 GHz spectrum for MSS represents an unparalleled opportunity for the Commission to fulfill its goal of ensuring the deployment of advanced broadband services for all Americans – not just those living in urban areas on which terrestrial providers have primarily focused their build-out efforts. Other commenters similarly have praised the benefits of MSS – as compared to terrestrial wireless and wireline networks – for achieving the Commission’s broadband deployment goals.<sup>17/</sup> In short, if the Commission truly wishes to ensure that *all* Americans will have access to advanced communications technologies, there is no way it can justify taking this spectrum away from MSS and allocating it to other services.

### **III. Commenters Advocating the Reallocation of the 2 GHz MSS Spectrum to Other Services Have Failed To Demonstrate a Compelling Need for the Spectrum**

As Globalstar and others have demonstrated in their comments in response to the *First* and *Second 2 GHz Public Notices*, the Commission’s recent decisions diminishing the spectrum available for MSS seem to ignore the public interest benefits that MSS provides, and instead will surely stunt the future development of MSS.<sup>18/</sup> After acting in 2003 to reduce the

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Limited Partnership and Terrestar Networks Inc. in IB Docket 05-221 (filed July 29, 2005) (“Comments of TMI and Terrestar”) at 14-15 (“There are few, if any, other technologies and services available that directly respond to the President’s call for broadband service to all Americans”); Inmarsat Comments at 8 (“MSS is the sole technology that can offer a nationwide, highly-reliable, ‘anytime, anywhere’ broadband network with the launch of a single radio transmitter. MSS thereby supports the provision of reliable and ubiquitous broadband services to all Americans, particularly in rural and other areas that will be unserved or underserved by terrestrial networks.”).

<sup>17/</sup> See, e.g., Lockheed Martin Corp. Comments at 1.

<sup>18/</sup> See, e.g., Globalstar Comments at 7; Hughes Network Systems, LLC Comments at 7 (“Hughes Comments”) (“[W]hile the Commission has supported the development of the next-generation MSS systems at 2 GHz, and expended considerable efforts to implement international and domestic spectrum allocations for MSS in the 2 GHz band, it also reallocated more than 40% of its spectrum to terrestrial services in 2003.”).

available 2 GHz MSS spectrum by allocating 30 MHz of it to terrestrial wireless services,<sup>19/</sup> the Commission now has proposed in the *Second 2 GHz Public Notice*, among other options, to reallocate yet additional portions of the 2 GHz band to services other than MSS. The Commission thus appears to be on the verge of ensuring that its vision for a robust MSS market that will meet important public safety and other service needs *never* will become a reality.

Upon review of the record submitted in response to the *Second 2 GHz Public Notice*, it becomes clear that there is no compelling justification for reallocating the 2 GHz spectrum to services other than MSS. As an initial matter, as many commenters have noted, terrestrial wireless providers have shown no legitimate need for this spectrum that cannot already be met by the significant amount of spectrum to which they already have (or in the near future will have) access. Indeed, terrestrial wireless providers already have been allocated over 200 MHz of prime spectrum nationwide, and the Commission will soon make available 175 MHz of *additional* spectrum for their use.<sup>20/</sup> The recent mergers and anticipated continuing consolidation in the terrestrial wireless industry will afford some companies access to hundreds of MHz of valuable spectrum. And as TMI discusses, this “flood of spectrum” stands in stark contrast to the mere 40 MHz of spectrum currently allocated to MSS at 2 GHz,

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<sup>19/</sup> See Third Report and Order, Third Notice of Proposed Rulemaking and Second Memorandum Opinion and Order, *Amendment of Part 2 of the Commission’s Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services*, 18 FCC Rcd 2223, 2239-40 ¶ 32 (2003).

<sup>20/</sup> See, e.g., SIA Comments at 4 (citations omitted); ICO Comments at 14 (“No changes in the last year have occurred that would warrant a sudden departure from the Commission’s established 2 GHz MSS allocation policies. Reallocation of the spectrum would not expedite service to the public and certainly would not ensure broadband access to all Americans by 2007.”).

which the Commission is thinking of reducing even further.<sup>21/</sup> In support of their suggestion that the Commission reallocate the spectrum for terrestrial services, CTIA, Intel and others focus almost exclusively on the economic value of the spectrum were it auctioned off to the highest bidder, while entirely ignoring all of the public safety and other benefits that preserving the spectrum for MSS would provide.<sup>22/</sup> This is not the Commission's mandate from Congress, nor is it consistent with the public interest. As Globalstar made clear in its comments,<sup>23/</sup> CTIA's and Intel's repeated references to the proceeds that the 2 GHz spectrum would bring at auction cannot as a matter of law (and should not, as a matter of public policy) enter into the Commission's consideration of the best use of the spectrum.<sup>24/</sup>

On similar public interest grounds, the Commission should reject the requests by Sirius Satellite Radio, Inc., the American Petroleum Institute, and the Society of Broadcast Engineers, Inc.<sup>25/</sup> that the 2 GHz MSS spectrum be reallocated for use by them. None of these

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<sup>21/</sup> See Comments of TMI and Terrastar at 25.

<sup>22/</sup> See Comments of CTIA – The Wireless Association™ filed in IB Docket No. 05-221, July 29, 2005 at 9-10; Comments of Intel Corp. filed in IB Docket No. 05-221, July 29, 2005 at 4.

<sup>23/</sup> See Globalstar Comments at 9 n. 20.

<sup>24/</sup> Specifically, the Communications Act makes clear that the Commission *cannot* consider projected auction revenues in deciding whether to allocate (or reallocate) spectrum to a particular service. 47 U.S.C. § 309(j)(7)(A) (“In making a decision...to assign a band of frequencies to a use for which licenses or permits will be issued [by auction],...the Commission *may not* base a finding of public interest, convenience, and necessity on the expectation of Federal revenues from the use of a system of competitive bidding under this subsection.”)(emphasis added).

<sup>25/</sup> See Comments of Sirius Satellite Radio, Inc. in IB Docket No. 05-221, July 29, 2005 (“Sirius Comments”); Comments of the American Petroleum Institute in IB Docket No. 05-221, July 29, 2005; Comments of the Society of Broadcast Engineers, Inc. in IB Docket No. 05-221, July 29, 2005 (“SBE Comments”).

parties has made a persuasive showing that its proposals would advance the public interest to the same extent as would MSS providers' use of the spectrum to enhance and expand their invaluable service offerings. In this connection, Globalstar strongly disagrees with Sirius' assertion that it would be "premature to assign additional 2 GHz spectrum to *any* MSS provider" because any such assignment should be based "on commercial experience" and "system loading."<sup>26/</sup> In fact, as Globalstar has demonstrated in previous comments,<sup>27/</sup> it *has* the commercial experience and growing customer base necessary to show its need for expansion spectrum at 2 GHz. Indeed, Globalstar currently offers MSS voice and data services throughout most of the world, and, if its petition for reconsideration is granted, arguably will be the most viable 2 GHz MSS provider.

Finally, the Commission should not be misled by SBE's wholly unsupported contention that "flaws appeared in the MSS approach" that justify a reallocation of the spectrum.<sup>28/</sup> As Hughes Network Systems and others correctly suggest, MSS is still in the early years of development, and, as is the case with other technologically complex services, the Commission must provide adequate time for MSS to develop before taking action that would effectively result in a death knell for MSS providers.<sup>29/</sup> In addition, as the Commission is well aware, SBE has never fully come to terms with the Commission's prior decisions to reallocate spectrum from BAS use to MSS (as well as other services), based on

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<sup>26/</sup> See Sirius Comments at 9.

<sup>27/</sup> See, e.g., Globalstar Comments at 2-3; Globalstar Comments in Docket No. 05-220 at 1-2.

<sup>28/</sup> See SBE Comments at 1-2.

<sup>29/</sup> See, e.g., Hughes Comments at 7.

its conclusion that the undeniable public interest benefits of MSS outweighed the benefits of maintaining the BAS allocation.<sup>30/</sup>

#### **IV. The Commission Must Ensure That There Are At Least Three Viable MSS Competitors in the 2 GHz Band**

The Commission has repeatedly cited the importance of ensuring competition in markets for spectrum-based services and has declared that a minimum of three competitors is generally necessary for effective competition in any spectrum band.<sup>31/</sup> Globalstar and Inmarsat have shown the critical necessity of ensuring that there can be at least three competitors in the 2 GHz MSS spectrum band.<sup>32/</sup> In contrast, ICO and TMI have not shown why the Commission should depart from its long-standing and fundamentally sound competition policies.

The Commission has made quite clear that it will consider allowing the creation of a duopoly only when an interested party provides “convincing evidence that allowing only two licensees in the frequency band will result in extraordinarily large, cognizable, and non-speculative efficiencies.”<sup>33/</sup> As Inmarsat states, contrary to the Commission’s policies that

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<sup>30/</sup> Indeed, SBE’s suggestion that the public interest would be better served by use of the spectrum at issue here for coverage of “breaking news stories, political conventions, and sporting events” (*see* SBE Comments at 4) – rather than to meet the vital communications needs of public safety and critical infrastructure providers – illustrates the weakness of its position.

<sup>31/</sup> *See e.g.*, First Report and Order and Further Notice of Proposed Rulemaking in IB Docket No. 02-34, and First Report and Order in IB Docket No. 02-54, *Amendment of the Commission’s Space Station Licensing Rules and Policies*, 18 FCC Rcd 10760, 10788-89 ¶ 64 (2003) (“*Space Station Licensing Rules*”) (*citing Application of Echostar Communications Corp., General Motors Corp. and Hughes Elec. Corp.*, Hearing Designation Order, 17 FCC Rcd 20559, 20604-05 ¶¶ 99-103 (2002)); Draft Strategic Plan at 9.

<sup>32/</sup> *See* Inmarsat Comments at 26; Globalstar Comments at 12-13.

<sup>33/</sup> *Space Station Licensing Rules*, at 10788-89 ¶ 64.

disfavor duopolies, “there is no obvious public interest basis for the Commission’s current proposal to allow two MSS incumbents to warehouse additional spectrum, without undertaking a comprehensive analysis of the attendant policy issues.”<sup>34/</sup> Even minimal analysis of the record in this proceeding confirms that ICO and TMI have failed to demonstrate any “extraordinarily large, cognizable, and non-speculative” efficiencies or spectrum needs to persuade the Commission to create a duopoly in the 2 GHz MSS spectrum band. At best, ICO and TMI assert spectrum needs based on unsubstantiated and highly speculative subscriber numbers and on assumed inefficiency rather than efficiency of spectrum use.

ICO and TMI both seem to suggest that more spectrum equals greater efficiency. TMI argues that its planned launch of a satellite using amplifiers that have greater capacity than TMI’s assigned spectrum should somehow warrant the allocation of more spectrum so that TMI can utilize all of the planned satellites capabilities.<sup>35/</sup> TMI also claims that it will need to place handset orders in excess of 4.5 million handsets per year to offer competitively priced handsets, and thus in turn its system must have the capacity to handle a customer base between 15 and 25 million.<sup>36/</sup> Globalstar’s own experience and the experience of the MSS market as a whole fails to support TMI’s subscriber numbers, and, more importantly, the fact that TMI chose to build a larger than necessary satellite and believes it can do efficient business only on a massive scale undermines rather than supports its suggestion that it can achieve efficiencies that warrant the duopoly it advocates. Both ICO and TMI accurately

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<sup>34/</sup> Inmarsat Comments at 28-29.

<sup>35/</sup> See TMI Comments at 10-11.

<sup>36/</sup> See *Id.* at 19.

depict the vital public benefits of MSS service, but ICO errs in asserting that giving the spectrum to *only* ICO and TMI is the best way to reap these public benefits.<sup>37/</sup> ICO utterly fails to account for the fact that vigorous competition is the most effective driver of these benefits. Without vigorous competition there would be little incentive for the providers to offer innovative services and products that will meet the constantly changing and expanding needs of public safety, government agencies, and first responders.

ICO and TMI have ample spectrum to launch and operate 2 GHz MSS systems, and the addition of a third competitor would in no way slow the launch or operation of their systems. To the contrary, the loss of competition were the Commission to foreclose the entry of a third MSS provider in this spectrum would be more likely to slow the deployment of ICO and TMI's systems. Having as many competitors as possible is particularly important at the nascent stages of new service development for a spectrum band. In any given band, one or more of the initial licensees may fail in the marketplace; but it is the initial competition among the licensees to build systems and market services that enables the market to winnow and ultimately produce the best providers.<sup>38/</sup> If competition is absent at the initial stage, there is significantly less incentive for licensees to roll out service rapidly and provide innovative products. In fact, if the spectrum band is initially occupied by fewer competitors, there may be incentives to delay service and warehouse spectrum to profit further from investment based

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<sup>37/</sup> See ICO Comments at 7-8.

<sup>38/</sup> See e.g. Order, *Auction of Direct Broadcast Satellite Licenses*, 19 FCC Rcd 23849, 23860 ¶ 23 (2004) (“[W]e believe that a marketplace with additional competitors would likely result in such public benefits as greater price competition, additional new services, and increased technological innovation”); Memorandum Opinion and Order, *Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation*, 19 FCC Rcd 21522, 21553

on the spectrum's predicted value in an underdeveloped market. Competition at every stage of development, particularly the early stages, is vital to achieving spectral efficiency and successful services in any spectrum band – this maxim has guided the Commission in the past and there is no reason to depart from this sound principle now.

As discussed throughout this proceeding, Globalstar stands ready to be a competitor in the 2 GHz MSS spectrum band. No other commenter in this proceeding has the MSS voice and data experience and customer base to be an effective competitor from the outset in the 2 GHz band. Furthermore, Globalstar already has plans for a 2 GHz MSS system and is ready to continue the system's development upon reinstatement of its license.

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¶ 61 (2004) (citing the importance of the transition of the cellular market duopoly to a “far more competitive” market in creating better market structure and market performance).

## Conclusion

The record submitted in response to the *Second 2 GHz Public Notice* makes clear that the public interest favors retention of the full 40 MHz 2 GHz spectrum allocation to MSS and maintenance of policies that will facilitate the development of a robust and competitive 2 GHz MSS marketplace. As the only MSS provider with an interest in the 2 GHz spectrum that is currently providing service, Globalstar urges the Commission not to prejudice Globalstar's ability to operate an MSS system at 2 GHz upon the grant of its pending petition for reconsideration of the cancellation of its 2 GHz license.

Respectfully Submitted,



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