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

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Federal Communications Commission
Office of Secretary

In the Matter of	
Use of Returned Spectrum in the 2 GHz Mobile Satellite Service Frequency Bands	IB Docket Nos. 05-220 and 05-221
Inmarsat Global Limited, Petition for Declaratory Ruling to Provide Mobile Satellite Service to the United States Using the 2 GHz and Extended Ku-Bands	FCC File Nos. SAT-PPL-20050926-00184, SAT-PDR-20050926-00184, SAT-AMD-20051116-00221

CONSOLIDATED OPPOSITION OF TMI AND TERRESTAR TO PETITIONS FOR RECONSIDERATION OF GLOBALSTAR AND INMARSAT

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February 16, 2006

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SUMMARY

On December 9, 2005, after an exhaustive, well-documented proceeding, the Commission modified the spectrum reservations of TMI/TerreStar and ICO to provide each licensee 20 MHz of spectrum in the 2 GHz MSS band. Two of TMI/TerreStar's competitors, Inmarsat and Globalstar (the "Petitioners"), now seek reconsideration of the Commission's Order, erroneously arguing that the Commission failed to address certain of their arguments. In fact, the Commission did consider these arguments; it just chose to reject them because they did not advance the public interest.

The Commission's well-reasoned decision advances competition in the mobile telecommunications market and permits TMI/TerreStar to invest the resources necessary to serve the crucially important needs of first responders, bring broadband services to underserved rural areas and offer advanced services to the American public. Notwithstanding Petitioners' arguments to the contrary, the Commission considered ample record evidence and properly concluded that the public interest would be best served by providing TMI/TerreStar and ICO with sufficient spectrum to provide revolutionary new communications services to public safety end users and to Americans in rural and other underserved communities.

Moreover, the Commission's decision will enhance competition in the mobile communications market. Specifically, as Petitioners concede, MSS operators in other frequency bands will provide a competitive check on the 2 GHz band MSS offerings of TMI/TerreStar and ICO. The Commission's decision in this proceeding properly distributed to TMI/TerreStar and ICO the spectrum resources necessary to compete in that market.

Finally, although Petitioners complain that the Commission did not consider their comments in reaching its decision, the Order demonstrates that the FCC considered, and rejected, Petitioners' arguments. The FCC found that each of Petitioners' "alternatives" for distribution of

this spectrum did not further the public interest, and therefore declined to adopt them. The Commission also rejected Petitioners' similarly baseless assertion that the FCC was powerless to distribute spectrum to TMI/TerreStar and ICO unless those licensees provided a subjective "demonstration" of need for the spectrum.

The Commission fully considered and soundly rejected each of the arguments raised here by the Petitioners. Neither Petitioner provides new grounds for the Commission to alter its prior decision. Accordingly, both Petitions should therefore be denied.

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CONSOLIDATED OPPOSITION OF TMI AND TERRESTAR TO PETITIONS FOR RECONSIDERATION OF GLOBALSTAR AND INMARSAT

On December 9, 2005, after an exhaustive, well-documented proceeding, the Commission modified the spectrum reservations of TMI Communications and Company Limited Partnership and TerreStar Networks Inc. ("TMI/TerreStar")[1] and ICO Satellite Services ("ICO") to provide each licensee 20 MHz of spectrum in the 2 GHz Mobile Satellite Service ("MSS") band.[2] The Commission's well-reasoned decision advances competition in the mobile telecommunications market and permits TMI/TerreStar to invest the resources necessary to serve the crucially important needs of first responders, bring broadband services to underserved rural areas and offer advanced services to the American public.[3]

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

[2] *Use of Returned Spectrum in the 2 GHz Mobile Satellite Service Frequency Bands,* Order, IB Docket Nos. 05-220 and 05-221, FCC 05-204 (rel. Dec. 9, 2005) (the "*Order*").

[3] *Id.* at ¶¶ 1, 22.

Two of TMI/TerreStar's competitors, Inmarsat and Globalstar (the "Petitioners"), now seek reconsideration of the *Order*.[4] The Petitioners erroneously argue that the Commission failed to address certain arguments they offered in these proceedings. The Commission did consider the arguments; it just chose to reject them because they did not advance the public interest. As TMI/TerreStar demonstrates in this Consolidated Opposition, the Commission fully considered and soundly rejected each of the arguments raised here by the Petitioners. Neither Petitioner provides new grounds for the Commission to alter its prior decision. Accordingly, the *Order* provides a sufficient and compelling explanation of the public interest grounds for modifying the TMI and ICO 2 GHz MSS authorizations based on the record in these dockets.[5] It therefore must be affirmed.

I. THE FCC APPROPRIATELY FOUND THAT REDISTRIBUTION OF SPECTRUM TO TMI/TERRESTAR AND ICO IS THE BEST WAY TO ADVANCE SUBSTANTIAL PUBLIC SAFETY, HOMELAND SECURITY, AND RURAL BROADBAND GOALS.

A. The Commission's Public Safety and Homeland Security Conclusions Are Well Supported By The Record.

The Commission's decision to redistribute the 2 GHz MSS spectrum to TMI/TerreStar and ICO was predicated, in significant part, on the benefits likely to accrue to public safety and homeland security agencies throughout the country. Inmarsat nevertheless asserts that "there is *no* analysis in the *Order*, nor any demonstration in the record, how

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[4] Petition of Globalstar for Reconsideration, IB Docket Nos. 05-220 & 05-221 (filed Jan. 9, 2006) ("Globalstar Petition"); Consolidated Petition for Reconsideration of Inmarsat Ventures Ltd. & Inmarsat Global Ltd., IB Docket Nos. 05-220 & 05-221 (filed Jan. 9, 2006) ("Inmarsat Petition").

[5] *See Order* at ¶¶ 1, n. 3, and 18. The public interest standard applied by the Commission in the *Order* reflected the agency's decision to treat modification of the TMI/TerreStar and ICO spectrum reservations in a manner that was no less favorable to the reservation holders than like proposals to modify a license under Section 316 of the Communications Act.

increasing TMI's and ICO['s] spectrum assignments . . . would benefit first responders."[6] This is simply wrong. The *Order* expressly finds that "the first responders' assessment of their MSS needs [for more spectrum] to be compelling in this regard"[7] and then describes at length the basis for this conclusion.[8] In addition, the *Order* explains that the preservation of the full remaining 2 GHz spectrum allocation for MSS "will serve as an invaluable avenue for the provision of communications services to first responders because of the inherent advantages that satellite-delivered services have over other technologies during wide-scale emergency situations where the terrestrial-based infrastructure is compromised."[9]

In reaching these conclusions, the Commission explicitly relied not only upon the comments of TMI/TerreStar[10] and ICO,[11] but also upon comments filed by the Mobile Satellite Users Association,[12] SkyTerra Communications, Inc.,[13] and four national police organizations.[14] These comments explained how the provision of adequate spectrum for 2 GHz MSS operators, particularly for systems with an Ancillary Terrestrial Component ("ATC"), will advance the

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[6] Inmarsat Petition at 9 (emphasis in original).

[7] *Order* , at ¶ 28.

[8] *Id.* at ¶ 28, n.74.

[9] *Order* at ¶ 44.

[10] Reply Comments of TMI and TerreStar, IB Docket No. 05-221, at 22-25 (filed Aug. 15, 2005) ("TMI/TerreStar Second Reply Comments").

[11] Reply Comments of ICO Satellite Servs., IB Docket No. 05-221, at 3 (filed Aug. 15, 2005).

[12] Reply Comments of the Mobile Satellite Users Ass'n, IB Docket No. 05-221, at 3 (filed Aug. 15, 2005).

[13] Reply Comments of SkyTerra Communications, Inc., IB Docket No. 05-221, 4-5 (filed Aug. 15, 2005).

[14] Letter from Chief Joseph G. Estey, President, Int'l Ass'n of Chiefs of Police, et al., to Kevin Martin, Chairman, FCC, IB Docket No. 05-221, at 1 (Aug. 15, 2005).

needs of public safety and homeland security end users.[15] For example, with the additional spectrum requested in this proceeding, TMI/TerreStar advised that its system would have the specialized capability to provide "spot beams," which will allow it to concentrate existing capacity into a specific geographic area affected by an emergency, thereby increasing the level of service to that region.[16] In addition, TMI/TerreStar explained that, with sufficient spectrum, "[a] hybrid MSS/ATC service also will be able to introduce redundancy into the system in a manner that will greatly increase its reliability, capacity and utility for public safety uses."[17]

To buttress its own claim to a portion of the spectrum at issue in these proceedings, Globalstar's Petition discusses its efforts to provide support to public safety personnel responding to the Hurricane Katrina disaster.[18] TMI/TerreStar acknowledges, of course, the benefits that satellite communications provide to emergency responders. The record demonstrates, however, that TMI/TerreStar will offer innovative and advanced telecommunications services to public safety personnel that are simply unavailable from current legacy service providers.[19]

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[15] *Order* at ¶ 44, n. 119.

[16] TMI/TerreStar Second Reply Comments at 25.

[17] TMI/TerreStar Second Reply Comments at 22-25.

[18] Globalstar Petition at 6-7. Similarly, in a recent ex parte meeting at the Commission, Globalstar offered the misleading observation that "only Globalstar (and not TMI or ICO) provided the essential services for first responders" in that incident. Plainly, because they have not yet launched their services, TMI/TerreStar and ICO were not in a position to provide emergency service during the Katrina disaster. TMI/TerreStar has committed, however, to going far beyond the public safety efforts of existing MSS providers by providing homeland security agencies with the technical characteristics of its system for use as planning guidelines for wireless-based application development and by serving as a catalyst for development of new public safety communications applications. *See* TMI/TerreStar Second Reply Comments at 22-23.

[19] For example, the Commission reviewed a letter from Senators Burns and Clinton to Secretary of Homeland Security Michael Chertoff which explained that "a ubiquitous, nationwide wireless (continued...)

The unparalleled public safety benefits of the hybrid MSS/ATC system proposed by TMI/TerreStar provide additional justifications for the Commission's recognition that providing sufficient spectrum to TMI/TerreStar and ICO was the best way to ensure that the public safety community has access to state-of the-art satellite services in the future, without denying the benefits now provided by the current generation of MSS operators.

In view of the foregoing discussion in the *Order* and the Commission's related citations to numerous submissions by public safety and other commenters, the Commission was right to conclude that its decision would serve the public interest by furthering public safety and homeland security goals.

B. The Commission's Rural Broadband Conclusions Are Well Supported By The Record.

Similarly, the Commission thoroughly explained and documented its conclusion that the assignment of additional spectrum to TMI/TerreStar and ICO would help promote broadband service in rural areas.[20] The Commission acknowledged, for example, that "satellite services," such as those that will be provided by TMI/TerreStar using a full complement of 2 x 10 MHz of spectrum, will "employ cost-effective technology to serve communities with low penetration rates, especially those in remote areas."[21] As the Commission stated:

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communications network with both a satellite and terrestrial component" such as TMI/TerreStar's MSS/ATC network could fill the nation's need for a flexible, interoperable, next-generation communications system. Letter from Hon. Conrad R. Burns and Hon. Hillary Rodham Clinton, United States Senate, to Hon. Michael Chertoff, Secretary, Dep't of Homeland Security (Aug. 4, 2005), attached to TMI/TerreStar Second Reply at Exh. 2.

[20] The Commission has long emphasized its commitment to encouraging competition and investment in technologies which will support the proliferation of broadband. *See, e.g.,* International Bureau, "Global Vision Local Action," 2006 Annual Report, FCC Open Meeting, at 24 (Jan. 20, 2006), *available at* http://www.fcc.gov/realaudio/presentations/2006/012006/ib.pdf.

[21] *Order* at ¶ 30.

> Satellites have large coverage areas and, in many cases, can reach an entire nation, thereby spreading the costs of deployment across a number of communities. *Satellites also provide communications* opportunities for communities in geographically isolated areas, such as mountainous regions and deep valleys, where rugged and impassable terrain may make service via terrestrial wireless or wireline telephony economically impractical.[22]

The submissions of TMI/TerreStar also described how its hybrid MSS/ATC system will provide innovative high-speed broadband services that are not available now from Petitioners or from any other satellite communications provider.[23] Other commenters agreed that providing sufficient spectrum to TMI/TerreStar and ICO would be the best option for facilitating the provision of high-speed broadband service to rural and other underserved communities. Hughes Network Systems, for instance, stated, "As the demand for sophisticated technologies and services continues to expand, including for global broadband access, the 2 GHz MSS spectrum will assume an increasingly critical role in ensuring that consumers in underserved regions of the United States . . . have access to state-of-the-art communications and information technologies."[24] Likewise, the Satellite Industry Association, an organization of which Petitioners are members, explained that "mobile satellite services are of particular benefit to consumers in traditionally underserved areas [because] [a] robust MSS/ATC network can

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[22] *Id.* Although satellites' wide area footprints make them ideal for bringing broadband service to rural markets, it appears that Globalstar does not intend to take full advantage of those capabilities. The company recently announced that it plans to sell its ATC services to its existing customer base instead of appealing to a mass market. *See* Communications Daily (Jan. 23, 2006), p. 7.

[23] Reply Comments of TMI and TerreStar, IB Docket No. 05-220, at 5 (filed Jul. 25, 2005) ("TMI/TerreStar First Reply Comments"); TMI/TerreStar Comments at 14-16; TMI/TerreStar Second Reply Comments at 20-22.

[24] Comments of Hughes Network Systems, LLC, IB Docket No. 05-221, at 4-5 (filed Jul. 29, 2005).

provide advanced mobile voice and data services from the moment it is launched in all parts of the United States."[25]

For citizens in the country's many rural and underserved areas, the *status quo* is simply unacceptable in today's high-tech environment. The unavailability of wireline or terrestrial wireless service in these areas, coupled with the limited services and high cost of today's satellite communications providers, creates a digital divide that is untenable. The American Farm Bureau Federation, an organization with over 5 million members, aptly explained in its comments to the Commission:

> When first-responders, emergency personnel and even government officials were unable to talk to one another in Katrina's aftermath, the whole country witnessed the importance of reliable access to mobile communications. This is something with which millions of rural Americans are especially familiar. In rural communities across the country, people are forced to rely on ground-based systems with intermittent, poor-quality coverage that cuts out between mountains, in isolated areas, and during storms. America's farmers and ranchers and all rural Americans deserve better.[26]

Taking into account the foregoing, the Commission's decision to redistribute additional 2 GHz MSS spectrum to TMI/TerreStar and ICO to advance broadband connectivity in rural portions of the U.S. is fully supported by the record. More importantly, however, it was the right decision to avoid continued disenfranchisement of the many Americans living in underserved areas.

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[25] Comments of the Satellite Industry Ass'n, IB Docket No. 05-221, at 3 (filed Jul. 29, 2005).

[26] Letter from Bob Stallman, President, Am. Farm Bureau Fed., to Kevin Martin, Chairman, FCC, IB Docket No. 05-221 (Nov. 4, 2005).

II. THE *ORDER* WILL ENHANCE COMPETITION IN THE MOBILE TELECOMMUNICATIONS MARKET.

A. The Commission Properly Recognized That MSS Operators In Other Frequency Bands Will Provide A Competitive Check On the 2 GHz Band MSS Offerings Of TMI/TerreStar and ICO.

The Petitioners have asked the Commission to reconsider its *Order*, in large part, because they will face additional competition if TMI/TerreStar and ICO's voice and broadband data services are assigned sufficient spectrum to meet consumer demand. Petitioners therefore concede, as they must, that the 2 GHz MSS licensees will create effective competition for MSS providers in other bands.[27] Yet, paradoxically, Petitioners simultaneously challenge the competitive analysis underlying the *Order* by asserting that the reassignment of spectrum solely to TMI/TerreStar and ICO has created a new *de facto* duopoly in the 2 GHz band.[28]

The Commission properly rejected the Petitioners' attempt to mischaracterize the competitive impact of its action. It flatly "disagree[d] that reassigning the 2 GHz MSS spectrum to ICO and TMI results in a duopoly."[29] Rather, the Commission found "that ICO's and TMI's 2 GHz MSS offerings will compete in the same product market as the offerings of licensees in other MSS bands"[30] and determined that, "[b]y assigning this spectrum to ICO and TMI, we will

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[27] *See* Inmarsat Petition at 6-7 ("The Commission correctly acknowledged that 2 GHz MSS systems would be able to compete with existing and forthcoming MSS offerings in other bands...."); Globalstar Petition at 14 (conceding that "MSS services at 2 GHz will no doubt compete to some extent with MSS services in other bands," but claiming that unspecified regulatory "uncertainties" mean that 2 GHz MSS services' market presence is not relevant to the competition analysis).

[28] *See* Globalstar Petition at 10-15.

[29] *Order* at ¶ 33.

[30] *Id.*

make it easier for them to become effective competitors in the MSS segment of the mobile telecommunications services market. . . ."[31]

The Commission's conclusion that the MSS market is not defined by any one frequency band is amply supported by the record.[32] The record includes, among other support, a declaration by Professor Peter Cowhey which explained that, "[t]o consumers, the spectrum band in which an MSS provider operates is irrelevant."[33] Similarly, Dr. Bruce M. Owen, a member of the faculty at Stanford University and a leading telecommunications economist, explained that "neither frequency bands nor other regulatory categories are markets," because markets are defined by the similarity of competitors' services to one another, rather than on whether the competitors use the same frequency band.[34] These and other submissions[35] provided an ample record basis for the FCC to conclude that the "relevant product market [for TMI/TerreStar and ICO] includes all MSS services."[36] Petitioners' contrary claims must be rejected.

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[31] *Id.*

[32] *See, e.g.,* TMI/TerreStar Second Reply Comments at 9-12.

[33] Supplemental Declaration of Peter Cowhey, TMI/TerreStar Comments, Exhibit C, at 3.

[34] Bruce M. Owen, "Economic Issues Related to the Number of Firms Licensed to Use 2 GHz Spectrum for MSS Services," TMI/TerreStar Second Reply Comments, Exhibit 4, at 2.

[35] *See e.g., Order,* ¶ 32, n.87.

[36] *Order* at ¶ 34. Globalstar is equally misguided in claiming that the *Order* reversed a settled FCC policy presumption regarding the number of competitors in the 2 GHz MSS band that are required to provide adequate competition. *See* Globalstar Petition at 13-14. As the FCC explained, the *First Space Station Licensing Reform Order* did not limit the FCC's options with respect to the 2 GHz MSS band (*i.e.,* Section 25.157(g) of the Rules was inapplicable) and the agency remained free to decide on a case-by-case basis, following each construction milestone, how best to redistribute spectrum forfeited by any given 2 GHz MSS licensee. *Order,* ¶ 15. Thus, the FCC was entitled to decide the competition issue *de novo* in the dockets at issue here based upon the record before it.

B. The Commission Properly Distributed to TMI/TerreStar and ICO the Spectrum Resources Necessary to Compete In the Mobile Telecommunications Market.

The Petitioners also suggest that the Commission was wrong to distribute the 2 GHz MSS spectrum to TMI/TerreStar and ICO because the 2 GHz MSS spectrum is "unique" and that the Commission was obligated to set aside some of this spectrum for them.[37] Because Petitioners' purported entitlement to 2 GHz spectrum is illusory, however, they resort to arguments of spectrum parity which are refuted by both Commission precedent and assertions made by Globalstar in past proceedings.[38]

In the *Order,* the Commission considered, and dismissed as irrelevant, Petitioners' asserted need to obtain spectrum at 2 GHz. Specifically, the Commission noted, "[W]e do not consider [Petitioners' interest in 2 GHz MSS spectrum] to be relevant to our determination . . . that ICO and TMI need spectrum reservations of 10 megahertz of spectrum in each direction to be roughly comparable with the average spectrum assignment of their competitors in the market for mobile communications services."[39] The Commission reached that conclusion because, even if Petitioners' purported interest in the 2 GHz MSS band as "expansion" spectrum[40] or for use as a "safety valve"[41] were pertinent, the benefits of allowing the growth of a robust and feature-rich next-generation MSS/ATC system far outweigh any

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[37] Inmarsat Petition at 5; Globalstar Petition at 16.

[38] Globalstar Petition at 18-21; Inmarsat Petition at 7-9.

[39] *Order* at ¶ 56.

[40] Reply Comments of Inmarsat Ventures Ltd., IB Docket No. 05-220, at 3 (filed Jul. 25, 2005) ("Inmarsat . . . stands ready to use the 2 GHz band to deploy an expansion MSS system. . . . .").

[41] Comments of Globalstar LLC, IB Docket No. 05-221, at 4 (filed Jul. 29, 2005) ("Globalstar Second Comments").

incremental benefits from granting Petitioners more spectrum to support their current offerings.[42] As the Commission stated, "the public interest weighs in favor of giving ICO and TMI the inputs needed to enable them to become strong MSS competitors more than it does allowing other existing service providers to expand their existing services."[43] Predictably, Globalstar objects to the Commission's decision to give these new entrants sufficient spectrum to compete.[44] But facilitating the provision of service by new entrants is wholly consistent with the Commission's policy of favoring competition in communications markets.

In reaching its decision, the Commission realized that, like Globalstar's,[45] Inmarsat's 2 GHz business plan consists of "two ifs away from a maybe," that is, "*If* Inmarsat locates a strategic partner, and *if* it develops compatible handset technology, then *maybe* it will

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[42] *Order* at ¶¶ 54-56. As noted above (*see* n.22), even with a breakthrough opportunity to provide ATC, Globalstar intends to add ATC to its existing niche service rather than seek a consumer market for an integrated satellite-terrestrial service package. Similarly, Inmarsat recently acknowledged that it has no serious plans for 2 GHz MSS spectrum. In an interview, Inmarsat Chief Financial Officer Rick Medlock announced that, although Inmarsat is interested in pursuing a license in the 2 GHz MSS band because "it's one of the only ways to get a complete transnational band for the U.S." The news report indicated that Inmarsat will not change its business model to accommodate new ATC services, and it has no plans to pay for terrestrial rollout of an ATC network. *See* Adrianne Kroepsch, "Satellite," 26.25 Comm. Daily 11 (Feb. 7, 2006).

[43] *Id.* at ¶ 56; *see also* Globalstar Second Comments at 4.

[44] *See* Attachment to Globalstar Ex Parte at 8.

[45] Globalstar was initially a 2 GHz MSS licensee, but the Commission cancelled Globalstar's license based on the company's admission that Globalstar's construction contract "did not show adequate intention to proceed with construction, and to bring its satellite system into service within the milestone deadlines specified in the license." *Emerg. Application for Review & Request for Stay of Globalstar, L.P.*, 19 FCC Rcd. 11548, 11556-57 ¶ 19 (2004). In fact, the Commission "question[ed] whether Globalstar in fact intended to construct the entire 2 GHz MSS system it proposed in its original license application or its 2002 modification application." *Id.* at 11562 ¶ 31.

enter the MSS/ATC marketplace by 2010."[46] In a meeting last October with the staff of the International Bureau, TMI/TerreStar explained how it, in contrast to Inmarsat, will use the 2 GHz MSS spectrum to serve the public interest:

> TMI/TerreStar is years past the "if" stage of development; it *will* deploy the next-generation mobile satellite service by 2008, as evidenced by the substantial capital it has raised, continued milestone compliance, and a well-documented vision for the 2 GHz MSS/ATC service. It would disserve the public for the Commission to withhold adequate spectrum from the 2 GHz authorization holders – TMI/TerreStar and ICO – who have satisfied the Commission's milestones and are spending billions of dollars to back up their 2 GHz authorizations issued in the processing round from which Inmarsat subsequently withdrew – for so iffy an interest as Inmarsat has shown.[47]

Faced with no real support for their entitlement argument, Petitioners contend that the Commission's competitive rationale for assigning more spectrum to TMI/TerreStar is undercut by TMI's relationship with Mobile Satellite Ventures ("MSV").[48] Petitioners also seek to rely upon a principle of spectrum parity.[49] Neither of these arguments withstands scrutiny.

Regardless of Petitioners' protestations, the *Order* shows that the Commission considered arguments about the relationship between these companies, but properly concluded that TerreStar and MSV are separately owned and managed, that they will operate separate MSS systems, and that the two companies plan to compete against one another, as well as against

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[46] Letter from Jonathan D. Blake, Counsel for TerreStar Networks Inc., to Marlene H. Dortch, IB Docket Nos. 05-220 and 05-221, at 2 (Oct. 17, 2005) (summarizing October 14, 2005 ex parte meeting with International Bureau).

[47] *Id.* at 2-3.

[48] *See e.g.,* Globalstar Petition at 18-20.

[49] *Id.*

Petitioners and others.[50] The FCC properly concluded that any relationship between TerreStar and MSV was irrelevant to distribution of 2 GHz MSS spectrum to TerreStar in these proceedings.[51]

Regardless, even if the TMI and MSV spectrum holdings were considered together, the spectrum parity argument which follows from Petitioners' argument has previously been rejected by the FCC and does not deserve further consideration now. In the Big LEO proceeding, to which both Petitioners cite extensively, the Commission wrote:

> We disagree with Iridium's contention that the new band plan must ensure "spectrum parity." Iridium fails to persuade us that disproportionate amounts of spectrum in the Big LEO bands prevent Iridium from providing competitive services or that Iridium's alleged competitive disadvantage justifies allocating the same amount of spectrum to TDMA and CDMA MSS operators. Indeed, we are not convinced that such "spectrum parity" in the Big LEO bands will better serve the public interest.... [W]e reject Iridium's proposal that "spectrum parity" be a consideration in our decision today.[52]

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[50] For example, the FCC expressly notes (citing an ICO pleading) that MSV had been assigned up to 20 MHz of internationally coordinated spectrum in the L-band. Then, in the very next sentence, the FCC observes that the additional assignment of 10 MHz to each of TMI and ICO is "thus fairly conservative when compared with other MSS spectrum assignments." *Order* at ¶ 37, n.99. The FCC could not have made this statement if it had any reason to believe that TMI would not compete with the beneficiaries of these "other MSS spectrum assignments," including MSV. Hence, contrary to Globalstar's claim, Globalstar Petition at 21, it is evident from the *Order* and the pleadings cited therein that the FCC was aware of and took into account any relationship between TMI and MSV in reaching its decision.

[51] In any case, Petitioners' argument has been mooted by the recent announcement by Motient Corporation, TerreStar's majority owner, that Motient had abandoned plans to "roll-up" its minority interest in MSV, and that it instead planned to spin off most of its interest in MSV to its shareholders. *See* Press Release, Motient Corp., *Motient Corp. Updates Shareholders on MSV Roll-Up* (Feb. 2, 2006).

[52] *Review of the Spectrum Sharing Plan Among Non-Geostationary Satellite Orbit Mobile Satellite Services Systems in the 1.6/2.4 GHz Bands,* Report & Order, 19 FCC Rcd 13,356, 13,378 ¶ 49 (2004).

The Commission's conclusion rejecting the concept of "spectrum parity" was urged in the Big LEO proceeding by Globalstar, which argued, "The Commission may not rely on an unsupported supposition that 'rebalancing' is needed in the Big LEO spectrum bands, and must recognize that Iridium's Petition for additional spectrum was nothing more than an effort to hamper Globalstar's ability to compete in the MSS marketplace."[53] Further, Globalstar urged that "the Commission expressly and properly rejected Iridium's suggestion that the L-band spectrum be divided on the basis of 'spectrum parity.' As the Commission acknowledged, the various segments of the L-band spectrum are not equal in terms of encumbrances, and the CDMA and TDMA systems use the spectrum differently, making a megahertz-by-megahertz comparison impossible."[54]

Globalstar's statements about the fallaciousness of the so-called "spectrum parity" argument in the Big LEO proceeding are equally applicable to the 2 GHz MSS band. The only difference is that, in this proceeding, it is Globalstar which is using its Petition as "nothing more than an effort to hamper" TMI/TerreStar's and ICO's "ability to compete in the MSS marketplace."[55] The contrived "spectrum parity" arguments advanced by Globalstar and Inmarsat, like the baseless suppositions which surround them, should be rejected.

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[53] Comments of Globalstar LLC, IB Docket No. 02-364, at 16 (filed Sep. 8, 2004).

[54] *Id.* at 14.

[55] *Id.* at 16.

III. THE *ORDER* DOES NOT SUPPORT PETITIONERS' CONTENTION THAT THE FCC DID NOT CONSIDER THEIR COMMENTS.

A. The "Alternatives" For Spectrum Distribution Urged By Petitioners Are Not In The Public Interest.

Inmarsat's Petition urges that the Commission should have adopted one of several alternatives for redistributing 2 GHz MSS spectrum in order to permit Inmarsat to have access to the 2 GHz band, even though it voluntarily dismissed its own 2 GHz MSS application some six years ago.[56] Inmarsat even suggests that the Commission should have instituted a "race to space" procedure, "whereby spectrum would be made available to the first entities to actually launch a 2 GHz MSS satellite."[57] In other words, rather than creating regulatory certainty and encouraging investment in the 2 GHz mobile satellite service, Inmarsat would have the Commission require putative licensees to spend tremendous amounts of capital to develop a satellite service without any guarantee that they would ever be permitted to begin service. This is, at its base, the best way for an incumbent satellite operator to ensure the highest-possible hurdles to new market entrants. Moreover, it is a position that Inmarsat has taken in Europe as European Administrations debate the terms under which ATC might be authorized in those jurisdictions. Inmarsat is at least consistent, therefore, in trying to reduce the number of operators with which it has to compete in any market. This policy continues, however, to be at variance both with the pro-competitive principles by which the Commission is disposed to regulate, and with the treatment that Inmarsat claims for itself in the United States.

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[56] Inmarsat Petition at 12-16. Inmarsat's Petition also requests reconsideration of the Commission's "Inmarsat PDR Order," *Petition for Declaratory Ruling to Provide Mobile Satellite Service to the United States Using the 2 GHz and Extended Ku-Bands*, Order, DA 05-3170, File Nos. SAT-PPL-20050926-00184, SAT-PDR-20050926-00184 & SAT-AMD-20051116-00221 (rel. Dec. 9, 2005). Because reconsideration of the Commission's 2 GHz *Order* is unwarranted, reconsideration of the *Inmarsat PDR Order* is also inappropriate.

[57] *Id.* at 13.

As Inmarsat knows, of course, this and other "alternatives" for the 2 GHz MSS spectrum would not promote the rapid deployment of new MSS services to the public. No investor would reasonably support a business model that depends in its entirety on having a satellite ready for launch the day before one's competitor. Such a policy of uncertainty does not support the public interest.

B. Inmarsat's Other Proposals Are Equally Unfounded.

Notably, the *Order* also rejected the suggestion that a new rulemaking or processing round was required, and determined that "there are significant public interest benefits to keeping the current MSS allocation, in addition to strengthening competition in the market for mobile telecommunications."[58] The Commission also specifically rejected as "inherently subjective" a proposal by Inmarsat that the FCC should "determine the optimal amount of spectrum for each 2 GHz MSS system, and thereby determine the optimal number of 2 GHz MSS system operators to permit in the frequency band."[59] Inmarsat complains that the Commission did not "give serious consideration" to this proposal.[60] The Commission clearly did consider the proposal and responded to it specifically in a section of the *Order* titled "Inmarsat Proposal."[61] There the Commission concluded that Inmarsat's proposal was unworkable and thus the Commission wisely declined to adopt it.[62] In so doing, the agency plainly met its

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[58] *Order* at ¶ 43.

[59] *Order* at ¶¶ 58-60.

[60] Inmarsat Petition at 14.

[61] *Order* at ¶¶ 58-60.

[62] *Order* at ¶ 26 (citing Reply Comments of SkyTerra Communications, Inc., IB Docket No. 05-221, at 9-10 (filed Aug. 15, 2005)) ("[W]e find that increasing ICO's and TMI's spectrum assignments to 10 megahertz in each direction would further the public interest by better enabling them to provide crucial communications services during times of national emergencies, and to offer rural broadband services. In addition, we find that increasing ICO's and TMI's (continued...)

obligation to consider relevant comments submitted in response to its second Public Notice,[63] *and Inmarsat's assertion to the contrary is baseless.*

C. The Remaining 2 GHz MSS Licensees Had No Obligation Specifically To Demonstrate Their Need For The Redistributed Spectrum.

In its comments in the 2 GHz MSS proceedings, as in its Petition for Reconsideration, Globalstar asserts that TMI/TerreStar and ICO have not conclusively demonstrated that they need additional spectrum.[64] But, as the Commission properly found, no such showing was required to satisfy the parties' public interest burden. The FCC determined that, "[g]iven the rapidly changing satellite technology and the time needed to construct and launch a satellite, any [need] assessment is likely to be obsolete by the time the satellite is ready to provide service."[65] And, the Commission continued, "given the innovative designs and unique markets targeted by each satellite operator, any proceedings to quantify specific requirements would be lengthy and inherently subjective."[66]

Accordingly, instead of the questionable "demonstrations" urged by the Petitioners, the Commission observed that it had successfully relied upon other mechanisms, such as milestone requirements, to "ensure that licensees make the capital investments necessary to bring their assigned spectrum into use. . . ."[67] It is these mechanisms, not contrived

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spectrum assignments is in the public interest because ICO and TMI will be able to bring the spectrum into use more quickly -- and thus offer public safety and rural broadband services more quickly -- than would be possible if the spectrum were assigned to another party.").

[63] Commission Invites Comments Concerning Use Of Portions Of Returned 2 GHz Mobile Satellite Service Frequencies, *Public Notice*, IB Docket No. 05-221, 20 FCC Rcd. 12,234 (2005).

[64] Globalstar Second Reply at 11-12.

[65] *Order* at ¶ 40.

[66] *Id.*

[67] *Id.* (citing precedent).

demonstrations of need, which will assure the Commission that the 2 GHz MSS spectrum will be used in the public interest. The Commission has long been successful in relying on them, and its decision to continue to do so in this proceeding was appropriate and well-supported.

IV. CONCLUSION

As described above, the Petitions for Reconsideration include no information that has not already been considered and rejected by the Commission in its *Order*. Moreover, despite Petitioners' claims, that decision contains a reasoned explanation for the Commission's actions, is consistent with the public interest, and is fully supported by the record. TMI/TerreStar therefore respectfully requests that the Commission deny both Petitions.

Respectfully submitted,

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February 16, 2006

CERTIFICATE OF SERVICE

I, Robert M. Sherman, hereby certify that on this 16th day of February, 2006, I caused a true copy of the foregoing *Consolidated Opposition of TMI and TerreStar to Petitions* for Reconsideration of Globalstar and Inmarsat to be served by first-class mail, postage prepaid, upon the following:

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