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

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Federal Communications Commission
Office of Secretary

In the Matter of	)	
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Use of Returned Spectrum in the 2 GHz Mobile Satellite Service Frequency Bands	)	IB Docket Nos. 05-220 and 05-221
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REPLY OF GLOBALSTAR TO OPPOSITIONS TO PETITION FOR RECONSIDERATION

Pursuant to section 1.106 of the Commission's rules, 47 C.F.R. § 1.106, Globalstar LLC ("Globalstar") submits the following reply to the oppositions filed by TMI Communications and Company Limited Partnership and TerreStar Networks Inc. ("TMI")[1] and ICO Satellite Services G.P. ("ICO")[2] to Globalstar's Petition for Reconsideration[3] of the Commission's decision in the above-referenced dockets. The oppositions of TMI and ICO fail to provide any additional support for the Commission's flawed decision in the *December 9th Order*[4] to award all of the 2 GHz mobile satellite service ("MSS") spectrum to those two entities. To the contrary, the

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1 TMI Communications and Company Limited Partnership and TerreStar Networks Inc., Consolidated Opposition to Petitions for Reconsideration of Globalstar and Inmarsat, IB Docket Nos. 05-220 and 05-221 (filed Feb. 16, 2006) ("TMI Opposition").

2 New ICO Satellite Services G.P., Opposition to Petition for Reconsideration, IB Docket Nos. 05-220 and 05-221 (filed Feb. 16, 2006) ("ICO Opposition").

3 Globalstar, Petition for Reconsideration, IB Docket Nos. 05-220 and 05-221 (filed Jan. 9, 2006) ("Globalstar Petition").

4 Order, *Use of Returned Spectrum in the 2 GHz Mobile Satellite Service Frequency Bands*, IB Docket Nos. 05-220 and 05-221, FCC 05-204 (rel. Dec. 9, 2005) ("*December 9th Order*"). *See also* Public Notice, "Commission Invites Comments Concerning Use of Portions of Returned 2 GHz Mobile Satellite Service Frequencies," IB Docket 05-220, FCC 05-133 (rel. June 29, 2005); Public Notice, "Commission Invites Comments Concerning Use of Portions of Returned 2 GHz Mobile Satellite Service Frequencies," IB Docket No. 05-221, FCC 05-134 (rel. June 29, 2005) (collectively "*2 GHz Public Notices*").

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oppositions highlight the unsoundness of the Commission's grant of a spectrum bonanza to two companies that have demonstrated neither a need for the spectrum nor any proven commitment or ability to put the spectrum to a critically important use – providing essential communications services to first responders and other public safety officials. The Commission's settled competition and spectrum assignment policies, and the communications needs of the Nation's public safety community, require that the Commission reconsider the *December 9th Order* and make a portion of the spectrum available to a viable third competitor, such as Globalstar.

I. THE OPPOSITIONS HIGHLIGHT THE FLAWED CONCLUSION THAT RESERVATION OF ALL OF THE 2 GHZ SPECTRUM FOR TMI AND ICO WILL ENSURE THE MOST EXPEDITIOUS DEPLOYMENT OF SERVICES TO THE PUBLIC SAFETY COMMUNITY AND RURAL AREAS.

The oppositions underscore the illogic in the Commission's reservation of all of the 2 GHz spectrum to TMI and ICO "so they can offer public safety services more quickly than would be possible if the spectrum were assigned to another party."[5] Neither TMI nor ICO has ever provided any MSS public safety services, and thus entrusting all of the 2 GHz spectrum to them hardly ensures the deployment of the advanced public safety services the 2 GHz spectrum is intended to support – particularly in light of the very real possibility that one or both of those entities may never deploy a 2 GHz MSS system.[6] In seeking to defend the Commission's decision, TMI and ICO merely pursue a free ride on the public support and attention that MSS services recently have received – the result largely of the exemplary services *operational MSS providers such as Globalstar* have provided in the wake of the recent hurricanes.

Everyone agrees that 2 GHz spectrum is vital to public safety communications; that is not at issue here. The issue is whether conferring a duopoly on two entities, neither of which has ever provided such communications, is the best way to ensure that these needs are met. Nothing

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5 *December 9th Order* ¶ 28.

6 Globalstar Petition at 8.

in the record remotely suggests that it is.[7] TMI's and ICO's oppositions again miss the point. All they can do is point to passages in the *December 9th Order* that stress the public safety benefits of reserving the spectrum for MSS, as distinguished from establishing that TMI and ICO should be the sole licensees.[8]

TMI's and ICO's defense of the Commission's conclusion that allocation of all of the 2 GHz spectrum to them will benefit rural communities suffers from the identical flaw. Their entire defense consists of quotations from commenters whose words on their face relate only to the proposition that the 2 GHz spectrum should remain allocated to MSS.[9] That is a telling acknowledgment that nothing in the record supports putting 2 GHz MSS services for rural areas solely in the hands of TMI and ICO.[10]

As Globalstar and Inmarsat have shown, the *December 9th Order* completely ignores the compelling needs that others have for part of the scarce 2 GHz spectrum.[11] Globalstar has shown that its very success in meeting the needs of public safety, rural, and other users creates a necessity for growth spectrum that can only be found at 2 GHz.[12] The Commission's failure to

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7 Globalstar Petition at 8-10; Inmarsat Ventures Limited and Inmarsat Global Limited, Consolidated Petition for Reconsideration at 9-12, IB Docket Nos. 05-220 and 05-221, (filed Jan. 9, 2006) ("Inmarsat Petition"). Inmarsat correctly notes, "[T]here is *no* analysis in the [*December 9th Order*], nor any demonstration in the record, how increasing TMI's and ICO['s] assignments 250 percent would benefit [public safety]." *Id.* at 9.

8 *See December 9th Order* ¶ 28.

9 *See* TMI Opposition at 6-7 (quoting comments of the Satellite Industry Ass'n, IB Docket No. 05-221, at 3, (filed July 29, 2005); Comments of Hughes Network Systems, LLC, IB Docket No. 05-221, at 4-5 (filed July 29, 2005); Letter from Bob Stallman, President, Am. Farm Bureau Fed., to Kevin Martin, Chairman FCC, IB Docket No. 05-221 (Nov. 4, 2005)).

10 ICO notes that the Commission's rules require "ICO's and TMI's geostationary MSS systems to be *capable* of providing service to the entire United States, including rural areas." That is a far cry from a commitment – which ICO still has not made – to develop and deploy services that meet the needs of rural areas. ICO Opposition at 3-4.

11 Globalstar Petition at 7, 15-18; Inmarsat Petition at 12-16.

12 *See* Globalstar Petition at 16.

justify its refusal to retain some portion of the 2 GHz MSS spectrum for at least one more provider fatally undermines the *December 9th Order*.[13]

II. NEITHER TMI NOR ICO SUPPLIES THE MISSING JUSTIFICATION FOR THE *DECEMBER 9TH ORDER'S* DEPARTURE FROM THE COMMISSION'S STATED COMPETITION POLICIES.

TMI's and ICO's oppositions leave the Commission's decision to license only two unproven competitors in the 2 GHz band just as it was before – a naked and unjustified departure from the Commission's own spectrum management policies. Up until its sudden decision to ignore the uncertain and nascent nature of the services to be provided in the 2 GHz band, the Commission repeatedly has declared that it generally takes *at least three* competitors for a market to be competitive and that as a general rule, if only two licensees exist in a band, an additional processing round should be held to ensure the existence of a third competitor.[14] That strong policy in favor of at least three licensees is also embedded in the Commission's space station licensing rules. In adopting those rules, the Commission acknowledged that the courts are highly skeptical of mergers that create a duopoly,[15] unless it can be demonstrated that "allowing only two licensees in the frequency band will result in extraordinarily large, cognizable, and non-speculative efficiencies."[16] Neither the Commission, nor TMI or ICO in their respective oppositions, have met this heavy burden.

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13 Globalstar Petition at 15-18; Inmarsat Petition at 4-12.

14 *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, *Amendments of the Commission's Space Station Licensing Rules and Policies*, 18 FCC Rcd 10760, 10788-89 ¶ 64 (2003)("*Space Station Licensing Rules*") (*citing* Hearing Designation Order, *Application of Echostar Communications Corp., General Motors Corp. and Hughes Elec. Corp.*, 17 FCC Rcd 20559, 20604-05 ¶¶ 99-103 (2002)).

15 *See e.g., FTC v. H.J. Heinz Co.*, 246 F.3d 708, 717 (D.C. Cir. 2001); *FTC v. Staples, Inc.*, 970 F. Supp. 1066, 1081 (D.D.C. 1997).

16 *Space Station Licensing Rules*, 18 FCC Rcd at 10788-89 ¶ 64.

TMI's and ICO's own pleadings in this proceeding expose the fact that nobody – including the Commission – can predict what the 2 GHz MSS marketplace ultimately will look like. On the one hand, TMI acknowledges that not all spectrum is created equal and asserts that the 2 GHz spectrum can support services and products that do not exist today and cannot be provided in other spectrum bands. Specifically, in touting its future services, TMI argues that it can "offer innovative and advanced telecommunications services to public safety personnel that are simply unavailable from current legacy providers."[17] At the same time, ICO and TMI assert inconsistently that "2 GHz MSS offerings will compete in the same product market as the offerings of licensees in other MSS bands."[18] This reasoning does more to call into doubt than defend the Commission's decision here to speculate that future 2 GHz MSS services will be sufficiently similar to services in other MSS bands to warrant departure from the policy applied consistently elsewhere, that competition should be assessed within each band.

ICO's assertion that Section 25.157(g) of the Commission's rules does not apply to the 2 GHz band provides no defense for that departure. The important public policies favoring competition and efficient spectrum use that have led the Commission consistently to favor at least three competitors in a spectrum band exist independently of the applicability of that section of the rules, as we have shown.[19] Those policies hold true more than ever in the case of the 2

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[17] TMI Opposition at 4 (citation omitted). We note again that TMI itself will offer nothing except a satellite license and reservation of spectrum. The 2 GHz services in Canada would be provided by TerreStar Networks, Inc., a company formed only in mid-2005 by investors in MSV (one of which is TMI) with no history of providing satellite or any other telecommunications services.

[18] *See id.* at 8 (quoting *2 GHz Order* ¶ 33); ICO Opposition at 6-8. It is interesting that, when TMI addresses the public benefits of its 2 GHz allocation, it touts its ability to offer unique and innovative products that other MSS providers cannot and do not offer; but when TMI addresses competition, its products are suddenly "in the same product market" as other MSS products. *Compare* TMI Opposition at 4 *with id.* at 8.

[19] *See* Globalstar Petition at 10-15; Inmarsat Petition at 5-7.

GHz spectrum, which TMI and ICO both admit is a new, undeveloped band with unique qualities.[20]

III. THE OPPOSITIONS DO NOT REMEDY THE COMMISSION'S FAILURE TO CONSIDER THE CORPORATE RELATIONSHIP BETWEEN TMI AND MSV.

Nowhere are the oppositions more empty than in attempting to excuse the Commission's failure to consider the very real corporate relationship between TMI and Mobile Satellite Ventures Subsidiary LLC ("MSV").[21] Although TMI boldly asserts that the Commission fully considered this corporate relationship, it fails to cite any statement in the *December 9th Order* in which the Commission even acknowledged that the relationship exists.[22] Nor is the point rendered moot, as TMI suggests, by a recent press release issued by MSV's and TMI's ultimate corporate parent, Motient Corporation, announcing that it no longer plans to consolidate MSV and TMI/TerreStar into a single entity, but instead may transfer its interests in MSV to Motient shareholders.[23] As if the timing of the press release – coming just after Globalstar and Inmarsat's petitions were filed – were not curious enough, the press release acknowledges that "Motient can provide no assurance that any of these transactions will ultimately be completed on the terms described...if at all."[24] Furthermore, there is no suggestion that the potential transaction – in which MSV would be spun off to largely the same shareholders that control Motient and thus TMI, would alter the basic fact that TMI and MSV are affiliates of one another whose spectrum holdings should be aggregated for purposes of any competition analysis.[25]

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20 *See* TMI Opposition at 4; ICO Opposition at 7-8.

21 *See* Globalstar Petition at 18-21, Inmarsat Petition at 7-9; T-Mobile Support at 7-8.

22 *See* TMI Opposition at 12-13 (citing the *December 9th Order* ¶ 37 n.99).

23 *Id.* at 13 n.51. Press Release, Motient Corp., *Motient Updates Shareholders on MSV Roll-Up*, Feb. 2, 2006, *available at* http://phx.corporate-ir.net/phoenix.zhtml?c=110135&p=irol-newsArticle&ID=811879&highlight= (last visited Feb. 27, 2006) ("Motient Press Release").

24 Motient Press Release.

25 TMI misconceives Globalstar's petition as making a "spectrum parity" argument and launches an attack on considerations of spectrum parity. *See* TMI Opposition at 13-14. But it is the *December 9th Order* that makes a spectrum parity argument, in its attempt to justify the

IV. GLOBLASTAR AND INMARSAT HAVE STANDING TO REQUEST RECONSIDERATION OF THE *DECEMBER 9TH ORDER*.

ICO makes the curious argument that neither Globalstar nor Inmarsat has standing to seek reconsideration of the *December 9th Order*.[26] But under ICO's flawed reasoning, the only parties that would have standing to challenge the Commission's action would be the two 2 GHz license holders themselves, TMI and ICO. Simple logic instructs that this cannot be the case. The *December 9th Order* represents the outcome of a Commission rulemaking proceeding instituted by two public notices[27] seeking comment on alternative uses of the 2 GHz spectrum – including the possibility of reallocating the spectrum for terrestrial use. And the *December 9th Order* expressly states that petitions for reconsideration of the Commission's decision could be filed pursuant to Section 1.106 of the Commission's rules, 47 C.F.R. § 1.106.[28] It is frivolous for ICO to contend that Globalstar or Inmarsat (or others for that matter) should be precluded from seeking reconsideration of the *December 9th Order*.

V. GLOBALSTAR IS A PROVEN MSS PROVIDER THAT IS ENTITLED TO A 2 GHZ MSS SPECTRUM ASSIGNMENT.

The *December 9th Order* shrugs off Globalstar's substantial claim to a portion of the 2 GHz spectrum by alluding to Globalstar's existing "more than 20 megahertz of spectrum" in another MSS band.[29] As we demonstrated in Section II, above, this rationale is an unexplained departure from precedent. The salient consideration is not how much spectrum another applicant has but whether past performance under a spectrum license should be taken into account when new spectrum is assigned.

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reservation of all 2 GHz MSS spectrum for TMI and ICO. *See December 9th Order* ¶ 37. That Commission rationale is fatally flawed by the Commission's failure to consider TMI's and MSV's spectrum together.

26 ICO Opposition at 11-13.

27 *See 2 GHz Public Notices.*

28 *See December 9th Order* ¶ 69.

29 *Id.* ¶ 37.

In contrast to TMI and ICO, Globalstar has a proven track record of meeting the needs of state and federal public safety and other users – a record it can build on in launching and operating a robust 2 GHz system. Globalstar is now in its sixth year of providing MSS voice and data services under its Big LEO MSS license. In the wake of last year's Gulf Coast hurricanes, Globalstar garnered high praise for the invaluable services it provided to public safety officials.[30] Within 30 days after Hurricane Katrina, Globalstar provided approximately 10,000 *additional* handsets to public safety officials (including FEMA and the governor's offices in Louisiana and Mississippi) in the regions impacted by these storms, and the company was able to shift its system capacity to meet the 500% surge in demand in the southeastern United States. In addition, in collaboration with FEMA, Globalstar designed and provided portable communications units containing multiple handsets and a central communications link so that FEMA personnel would instantly have communication links upon arrival. In recognition of these invaluable services, Mississippi Governor Haley Barbour stated, "[a]s a result of Globalstar's performance [during Hurricane Katrina], [Globalstar's] satellite phones are now a part of the State Emergency Response Team deployment package for future emergencies."[31] In addition, Globalstar is one of only two MSS providers with ancillary terrestrial component ("ATC") authority and is aggressively moving to develop and rollout ATC services that will dramatically enhance its current satellite services.

Globalstar thus has shown what it can and is doing to ensure that the communications needs of the public safety community are met, in contrast to TMI's and ICO's misty promises. A 2 GHz license will enable Globalstar to build on this record by expanding its broadband services, without depriving TMI and ICO of spectrum to begin services of their own. Although the

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[30] *See* Letter from Haley Barbour, Governor of Mississippi to Chairman Kevin J. Martin, FCC (Dec. 21, 2005); Letter from President George W. Bush to Globalstar (Nov. 21, 2005) (commending Globalstar for assisting the victims of Hurricanes Katrina and Rita).

[31] Letter from Haley Barbour, Governor of Mississippi to Chairman Kevin J. Martin, FCC (Dec. 21, 2005).

International Bureau cancelled Globalstar's 2 GHz license in 2004,[32] Globalstar continues to challenge that decision, which it believes was erroneous on both legal and policy grounds.[33] And Globalstar has made clear that, if its 2 GHz license is reinstated, it is committed to a milestone schedule just as aggressive as those imposed on TMI and ICO to ensure that its 2 GHz system is placed in operation as expeditiously as possible.[34] ICO is thus flatly wrong in asserting that "Globalstar likely would not be required to commence service for at least another four or five years, long after ICO's expected launch of service."[35] The *December 9th Order* utterly fails to consider the concrete public interest benefits that would flow from having a third, proven MSS operator at 2 GHz to compete with and supplement any hypothetical services that TMI or ICO might one day provide. The oppositions do not remedy this defect, as they cannot. Instead, as discussed above, they content themselves with reciting the public safety applications that 2 GHz MSS services can have, without regard to who will provide them or how many providers there will be.

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32 Memorandum Opinion and Order, *Emergency Application for Review and Request for Stay of Globalstar, L.P.*, 19 FCC Rcd 11548 (2004) (*denying review of* Memorandum Opinion and Order, *Application of Globalstar, L.P., For Modification of License for a Mobile-Satellite Service System in the 2 GHz Band*, 18 FCC Rcd 1249 (2003)).

33 *See* Globalstar, Petition for Reconsideration, File Nos. SAT-LOA-19970926-00151/52/53/54/56, *et al.* (filed July 26, 2004); Supplement to Petition for Reconsideration, File Nos. SAT-LOA-19970926-00151/52/53/54/56, *et al.* (filed Aug. 26, 2005) ("Supplement to Petition for Reconsideration"). The Commission's decision in the *December 9th Order* was expressly conditioned upon the outcome of Globalstar's Petition for Reconsideration. *See December 9th Order* ¶ 63.

34 Supplement to Petition for Reconsideration at 5.

35 ICO Opposition at 5.

CONCLUSION

For the reasons stated here and in Globastar's Petition for Reconsideration, it is vital that the Commission reconsider its decision to reserve all of the 2 GHz MSS spectrum for TMI and ICO.

Respectfully Submitted,

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February 27, 2006

CERTIFICATE OF SERVICE

I, Nathan T. Mitchler, hereby certify that on February 27, 2006, I caused to be served a copy of the foregoing **Reply of Globalstar to Oppositions to Petition for Reconsideration** by first-class U.S. mail (unless otherwise indicated) upon the following:

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