

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

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<i>In the Matter of</i>)	
)	
Amendment of Part 2 of the Commission's Rules)	
to Allocate Spectrum Below 3 GHz for Mobile)	
and Fixed Services to Support the Introduction of)	ET Docket No. 00-258
New Advanced Wireless Services, including Third)	
Generation Wireless System)	
)	
The Establishment of Policies and Services Rules)	IB Docket No. 99-81
for the Mobile-Satellite Service in the 2 GHz Band)	
)	
Amendment of the U.S. Table of Frequency)	
Allocations to Designate the 2500-2520/2670-)	RM-9911
2690 MHz Frequency Bands for the Mobile-)	
Satellite Service)	
)	
Petition for Rule Making of the Wireless)	
Information Networks Forum Concerning the)	RM-9498
Unlicensed Personal Communication Service)	
)	
Petition for Rule Making of UTStarcom, Inc.,)	
Concerning the Unlicensed Personal)	RM-10024
Communications Service)	
_____)	

**ICO GLOBAL COMMUNICATIONS
PETITION FOR RECONSIDERATION**

ICO Global Communications (Holdings) Limited requests reconsideration of the Commission's decision to reallocate 30 of the 70 megahertz of 2 GHz spectrum allocated to Mobile-Satellite Service ("MSS"), including all but 10 megahertz of the globally allocated uplink spectrum.¹ Reconsideration is warranted because the Commission failed to explain why

¹ Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, including Third Generation Wireless System, *Third Report and Order, Third Notice of Proposed*

the 2 GHz MSS allocation should be reduced so soon after licensing, or how the many public interest benefits unique to the mobile-satellite service can be provided in light of this action. Reconsideration is also warranted because the particular frequencies selected by the Commission for reallocation will severely disrupt the globally harmonized MSS allocation at 2 GHz, making only one-third of that global uplink band available in the United States. The Commission failed to justify this dramatic departure from harmonization proposals that the United States took to several World Radio Conferences. In fact, the Commission's only factual justification for this decision was contradicted by a related Commission order released the very same day. For all of these reasons, the Commission should on reconsideration decide not to reduce the amount of spectrum allocated to MSS at all – or at the least should not reallocate the globally allocated uplink spectrum at 1990-2000 MHz.

In addition, the *Reallocation Order* was premised in part on the International Bureau's conclusion that certain MSS licensees had abandoned their licenses by failing to satisfy construction milestones. After reviewing the Bureau's decision, the Commission should decide that FCC precedent compels the conclusion that two of those licensees satisfied the milestones by entering into binding contracts to purchase channel capacity on ICO satellites. In that event, the Commission plainly will need to reconsider its decision to reallocate that spectrum. All of these grounds for reconsideration are discussed more fully below.

First, *the Commission did not adequately explain why the MSS allocation should be reduced at all*. The record in this proceeding was filled with voluminous evidence of the many

Rulemaking and Second Memorandum Opinion and Order, FCC 03-16 (rel. Feb. 10, 2003), 68 Fed. Reg. 11986 (Mar. 13, 2003) (the "*Reallocation Order*").

important public interest benefits that MSS is uniquely capable of delivering. For example, MSS networks provide a vital means of communication in times of emergency; rescue workers used MSS phones after the attacks on the World Trade Center and the Pentagon because wireless towers were destroyed in the attacks, and the use of MSS phones has been critical in numerous other disasters.² In addition, MSS offers the promise of service to rural or traditionally underserved communities. Former South African President Nelson Mandela has noted that MSS “may be the only answer to the challenge of connecting communities that are isolated by terrain or distance from urban telecommunications centers.”³ Those communities include Indian reservations in the United States, which, as the Commission has emphasized, do not have adequate service from wireline, wireless, or broadband service providers.⁴ In the past the Commission has consistently and enthusiastically embraced all of these public interest benefits.

In the *Reallocation Order*, the Commission said nothing to suggest that these policy goals had become less important, or that the MSS industry was any less capable of providing them. Instead, the Commission based its decision largely on the observation that terrestrial wireless providers have more subscribers than MSS providers. But of course terrestrial wireless providers had a significant head start, and satellite services by their very nature take time to roll out. It is irrational for the Commission to praise the benefits that a satellite architecture provides while simultaneously penalizing the licensees for needing time to build that architecture. Moreover, the fact that terrestrial wireless service remains unavailable in so many underserved communities despite its head start – and is less useful in case of disaster despite its relative maturity – should

² See ICO Comments in this proceeding (Oct. 22, 2001) at 11-13.

³ See Letter from N. Mandela to C. Powell, Secretary, Department of State at 2 (June 9, 2001), attached to *ex parte* letter from S. Hutchings to M. Salas, ET Docket 95-18 (June 26, 2001).

⁴ ICO Comments at 10.

have militated strongly against any reallocation, by confirming that terrestrial wireless service is incapable of providing the same benefits.

The *Reallocation Order* is all the more puzzling when one considers its timing. On the same day it adopted the *Reallocation Order*, the Commission made significant changes to the service rules governing the 2 GHz MSS band. Specifically, in the *MSS Flexibility Order*,⁵ the Commission acted to spur the development of MSS systems by permitting MSS operators to provide ancillary terrestrial service. All of the observations in the *Reallocation Order* about subscribership and economic viability were therefore outdated on the very day that order was issued.

Nor was the concurrent *MSS Flexibility Order* the only example of curious timing. The Commission also failed to take any serious notice of the fact that 2 GHz MSS licensees have had far less opportunity to bring their networks into use than have other MSS licensees. Of all of the MSS bands where the Commission has issued licenses, the 2 GHz MSS band is the least mature. Licenses in this band were granted less than two years ago, and only the first of the licensees' milestones has been reached.⁶ Hence, even assuming that the total amount of MSS spectrum allocated for use in the U.S. was excessive, why would the Commission reallocate spectrum away from the band in which licensees have had the shortest time to bring their systems into use?

In summary, although there currently are more terrestrial wireless customers than MSS customers, the fact that these customers are so heavily concentrated in urban areas ought to have

⁵ Flexibility for Delivery of Communications by Mobile Satellite Service Providers in the 2 GHz Band, the L-Band, and the 1.6/2.4 GHz Bands, *Report and Order and Notice of Proposed Rulemaking*, FCC 03-15 (rel. Feb. 10, 2003) (the "*MSS Flexibility Order*").

⁶ ICO has nonetheless completely finished building eight satellites, one of which is already in orbit. Another four satellites are in the final stages of construction. Significantly, this impressive construction effort took place despite huge uncertainty in the marketplace over the future of the 2 GHz MSS.

lead the Commission to the conclusion that MSS is needed to provide service to those areas that terrestrial wireless service has not reached. The Commission therefore should retain all 70 megahertz of MSS spectrum in the 2 GHz band.

Second, *the precise frequencies selected by the Commission for reallocation will cause maximum disruption for MSS without any corresponding benefit for other users.* Even if the record justified reallocation of so much MSS spectrum so soon, the Commission's decision to reallocate the 1990-2000 MHz segment (which is globally allocated for MSS) rather than the 2010-2020 MHz segment (which is not globally allocated) is baffling. As ICO explained in its comments, the United States led the initiative for a global MSS allocation.⁷ More specifically, the FCC urged WRC-92 to allocate much of the spectrum at issue to MSS, and it did so. The FCC then changed its position somewhat, and had to ask WRC-95 to adjust the global MSS allocation. WRC-95 did so, and eventually 60 megahertz of spectrum in the 2 GHz band was globally allocated to MSS, but there remains a significant misalignment in the uplink band: 1990-2025 MHz in the United States, but 1980-2010 MHz in most of the rest of the world. Licensees in the 2 GHz MSS band were therefore obliged make trade-offs in their satellite designs to compensate for the consequences of the Commission's failure to follow through on its own WRC-92 initiative; ICO did so by constructing its satellites to operate in the 1985-2015 MHz band, essentially trading 5 MHz of global spectrum off against 5 MHz of U.S.-only spectrum.

In the *Reallocation Order*, the Commission has once again changed course and walked away from its own harmonization efforts, reducing the amount of globally harmonized MSS

⁷ This history is set forth in more detail in ICO's Comments in this proceeding at 26-28.

spectrum to 30 megahertz – only 10 megahertz in the uplink band.⁸ The Commission should reconsider this specific choice of frequencies in order to restore as much global uniformity as possible to the 2 GHz MSS band.

The *Reallocation Order* acknowledged that “globally harmonized spectrum is an important resource,”⁹ but did not acknowledge that the United States, led by the FCC, had urged the whole world to adopt the globally harmonized allocation it was reducing. Nor did the Commission acknowledge that, as it had previously stated, “satellite systems operate most efficiently in a globally consistent allocation of contiguous spectrum.”¹⁰ Instead, the *Reallocation Order* merely recited that the Commission had given “careful consideration” to the issue, without adequately explaining why it makes sense to undermine the credibility of the United States and the efficiency of MSS systems by reducing the amount of globally consistent spectrum. A conclusory recitation of “careful consideration” does not evidence the sort of reasoned decisionmaking that is expected of the Commission.¹¹

⁸ Obviously, because of channel pairings, the disruption of the uplink band make the apparent harmonization of the downlink band illusory.

⁹ *Reallocation Order* ¶ 35.

¹⁰ Amendment of Section 2.106 of the Commission’s Rules to Allocate Spectrum at 2 GHz for Use by the Mobile-Satellite Service, *First Report and Order and Further Notice of Proposed Rulemaking*, 12 F.C.C. Rcd. 7388, 7395 ¶ 8 (1997).

¹¹ By contrast, the Commission did not even pretend to give “careful consideration” to the effect that reallocation of the 1990-2000 MHz band would have on MSS rollout. The 1990-2000 MHz band was an integral part of the phased BAS relocation plan that had been painstakingly negotiated among all 2 GHz interests over a period of many years. *See* Amendment of Section 2.106 of the Commission’s Rules to Allocate Spectrum at 2 GHz for Use by the Mobile-Satellite Service, 15 F.C.C. Rcd. 12315 (2000). The 1990-2000 MHz band was in the portion of the 2 GHz band where relocation was to occur first, thereby facilitating the earliest possible rollout of MSS operations at 2 GHz. For the Commission to reallocate this spectrum without even mentioning the likely consequences for the delivery of service to the public belies any claim of “careful consideration.”

Moreover, the precise frequencies selected for reallocation – particularly the 1990-2000 MHz segment – cause enormous practical problems for MSS operators in general and ICO in particular. The reallocation of 10 megahertz of globally allocated uplink spectrum at 1990-2000 MHz conflicts squarely with ICO’s pre-existing selection of the 1990-1993.88 MHz segment as its “Selected Assignment,” and puts a large hole in the middle of the frequency range that is already built into ICO’s fleet of satellites (which can transmit across the 1985-2015 MHz band). The Commission makes passing mention of ICO’s predicament in the background section of the *Reallocation Order*, yet nowhere does the Commission explain why this degree of hardship to an incumbent licensee is justified here.

What is perhaps most surprising about the Commission’s reallocation of 1990-2000 MHz is that it relies on a factual contention that the Commission actually rejected in other contexts on the very same day. Faced with both practical and policy reasons to reallocate 2010-2020 MHz rather than 1990-2000 MHz, the Commission instead opted for the lower band based on a last-minute claim by CTIA that broadband PCS operations at 1930-1990 MHz could not withstand MSS-ATC operations in the immediately adjacent 1990-2000 MHz band. However, *on the very same day* in the *MSS Flexibility Order*, the Commission downplayed these interference concerns and adopted an emissions limit that was deemed adequate to resolve the issue.¹² Moreover, in the *Third NPRM* portion of the *Reallocation Order* – not just on the very same day, but in the very same document – the Commission proposed to use the reallocated spectrum for (among other things) *broadband PCS*. Thus, on a single day, the Commission was simultaneously (1) adopting an emissions limit to make it possible for broadband PCS and MSS-ATC networks to operate in adjacent bands; (2) citing interference concerns about adjacent-band operation as a

¹² *MSS Flexibility Order* ¶¶ 119-120.

reason to reallocate the 1990-2000 MHz band away from MSS; and (3) seeking comment on a proposal to extend broadband PCS all the way up to 2000 MHz, thus making the bands once again immediately adjacent. This had the Commission talking out of not just two sides of its mouth, but three.

Several things are clear. First, if the Commission reduces the amount of globally harmonized MSS spectrum, it must acknowledge that it is abandoning a cause for which the United States has fought at successive World Radio Conferences. To justify that change, the Commission would need to explain why the benefits of the reallocation outweigh the costs, including the cost to the credibility of the United States and the efficiency costs to MSS operators. Second, the Commission clearly cannot maintain that interference concerns outweigh harmonization benefits when those interference concerns have been expressly rejected or remedied in other contexts. Thus, even if only 40 megahertz of spectrum is to remain available for MSS at 2 GHz, all 20 megahertz of uplink spectrum should be located in the globally harmonized band at 1990-2010 MHz. Otherwise, as Commissioner Copps stated, the Commission's decision "will raise costs of satellite design and construction, make trans-national interference coordination more difficult, especially where satellite and terrestrial licensees must coordinate, and may further erode U.S. credibility internationally when we next fight for harmonized spectrum."

Finally, *the reallocation decision must be made subject to Commission review of the International Bureau's conclusion that some MSS operators abandoned their spectrum.* The Commission explained that the 30 megahertz of reallocated spectrum "comes from two sources," including "16 megahertz of spectrum ... that has been abandoned as a result of MSS licensees not

meeting initial milestones.”¹³ “Presently,” the Commission explained, “the International Bureau has cancelled three MSS authorizations, thereby recapturing 21 megahertz of spectrum.”¹⁴

Coincidentally, the Bureau’s order canceling the licenses of Mobile Communications Holdings, Inc. (MCHI) and Constellation Communications Holdings, Inc., was adopted the same day the Commission adopted the *Reallocation Order*.¹⁵

ICO, MCHI, and Constellation have appealed the Bureau’s order to the Commission. As explained more fully in the filings in that docket, MCHI and Constellation met the applicable milestones by entering into non-contingent contracts with ICO to obtain channel capacity on its satellite system. Because the Commission has consistently and without exception permitted licensees to satisfy their obligations by entering into such agreements, the Commission should overturn the Bureau’s decision canceling the licenses.¹⁶ If it does so, then it is plain that the *Reallocation Order* will need to be reconsidered, since the basis for the reallocation of much of the spectrum was that it had been abandoned by MSS operators.

The Commission acknowledged in the *Reallocation Order* that “MSS milestone review is an ongoing process,” but it then considered only the possibility that *more* MSS spectrum may be “recaptured.”¹⁷ The Commission failed to note that the Bureau’s decision canceling licenses was subject to appeal; that the Commission could not prejudge the arguments that the MSS licensees

¹³ *Reallocation Order* ¶ 32.

¹⁴ *Id.*

¹⁵ *Mobile Communications Holdings, Inc. and ICO Global Communications (Holdings) Limited for Transfer of Control*, DA 03-285 (IB rel. Jan. 30, 2003).

¹⁶ See, e.g., *United States Satellite Broadcasting Co., Inc. and Hughes Comm. Galaxy, Inc.*, 7 F.C.C. Rcd. 7247, 7251 ¶ 21 (MMB 1992); *Volunteers in Technical Assistance*, 12 F.C.C. Rcd. 13995, 14000 ¶¶ 7, 16 (1997); *Volunteers in Technical Assistance*, 12 F.C.C. Rcd. 3094, 3107 ¶ 40 (IB 1997).

¹⁷ *Reallocation Order* ¶ 32.

might raise; and that the ongoing process of MSS milestone review therefore might result in no change in the MSS allocation.¹⁸ Hence, even if the *Reallocation Order* were perfect in all other respects, the Commission must keep the prior allocation in place after it reviews the Bureau's milestone decisions.

CONCLUSION

The Commission should reconsider its decision to reallocate 30 megahertz of MSS spectrum. In light of the need for MSS to provide service in case of emergencies and to provide service to underserved communities, the Commission should retain all 70 megahertz of MSS spectrum in the 2 GHz band. At the least, the Commission should ensure that all of the remaining MSS spectrum comes from the portion that has been allocated globally to MSS. In any event, if the Commission concludes that MCHI and Constellation did not abandon their spectrum, the Commission must reconsider the *Reallocation Order* because it was premised in part on the erroneous assumption that a substantial amount of abandoned MSS spectrum was available for reallocation.

Respectfully submitted,

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April 14, 2003

¹⁸ In addition, even if the milestone orders are upheld on appeal, the Commission still failed to explain why the "recaptured" spectrum should be reallocated rather than redistributed to the surviving licensees – a redistribution that has consistently been dangled as a possibility in past Commission orders but never seems to capture the Commission's attention for long enough to permit a firm decision.