Before the
DEPARTMENT OF COMMERCE
NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION
Washington, D.C. 20230

In the Matter of	)	
	)	
Deployment of Broadband Networks and Advanced Telecommunications	)	Docket No. 011109273-1273-01
	)	

COMMENTS OF ICO GLOBAL COMMUNICATIONS

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ICO Global Communications (Holdings) Ltd. ("ICO")[1] submits these comments in response to the Request for Comments in the above-captioned proceeding.[2]

Widespread access to broadband services is unquestionably one of the most important communications policy objectives in the United States today. ICO applauds the National Telecommunications and Information Administration ("NTIA") initiative to commence a public dialogue on broadband access issues. As ICO prepares to launch a next-generation mobile satellite service ("MSS") system with advanced telecommunications capabilities, ICO urges the Administration to identify and eliminate regulatory barriers that impede the timely deployment of facilities-based competition for all types of broadband services, including those delivered by satellites. These comments will address certain questions raised in the Request for Comments, specifically as they affect the deployment of satellite broadband services.

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[1] ICO, a Delaware corporation, is the parent of ICO Services Limited, a UK company that is authorized to provide 2 GHz mobile satellite service in the United States.

[2] *See* 66 Fed. Reg. 57941 (Nov. 19, 2001).

I. "ACCESS FOR ALL" SHOULD BE A PRIMARY POLICY CONSIDERATION OF ANY COMPREHENSIVE NATIONAL BROADBAND POLICY

[Question A: *What should be the primary policy considerations in formulating broadband policy for the country? Please discuss the relative importance of the following: access for all; facilities-based competition; minimal regulation; technological neutrality; intra-modal competition; inter-modal competition; and any other policy consideration.*

Question D: *Should government adopt as a goal "access for all" to broadband service? What would be the costs of such a goal? What policy initiatives, if any, should be considered to achieve that goal? Are there areas or persons that are unlikely to be served through marketplace forces?*]

A primary objective that the government should and must strive to achieve in formulating and implementing a comprehensive broadband policy is to ensure that broadband services are universally available to all. This objective is not only a laudable social goal, but also a Congressionally mandated objective that ultimately redounds to the benefit of all Americans. Specifically, Section 706(a) of the Telecommunications Act of 1996 directs the Federal Communications Commission ("FCC") and each state commission to "encourage the deployment on a reasonable and timely basis of advanced telecommunications capability *to all Americans*."[3] This directive reflects a keen awareness of the importance of broadband access to the social and economic vitality of individuals, families, and communities, particularly those in rural and underserved areas. Indeed, the FCC has observed that broadband services could provide "increased prospects for at-home learning and working at home (a special help for those who are home-bound due to age or disability), platforms for entrepreneurs to launch new information-based businesses and home-based businesses, great improvements in medical

[3] Pub. L. 104-104, Title VII, § 706(a), 110 Stat. 153 (1996) (reproduced at 47 U.S.C. § 157 note) (emphasis added).

treatment, and health care at home in emergencies and for the chronically infirm."[4] In view of these benefits, the FCC concluded that "[w]idespread access to broadband capability can increase our nation's productivity and create jobs....[and] can also meaningfully improve our educational, social, and health care services."[5]

To achieve the goal of providing "access for all" to broadband services, the government should implement policy initiatives that eliminate regulatory roadblocks to the development of innovative technologies such as MSS systems. MSS systems are uniquely suited to serve rural and underserved communities by virtue of their inherent capability to provide coverage to the entire United States at all times. These communities are unlikely to be adequately served through marketplace forces by terrestrial-based wireline or wireless systems because of terrain limitations, costly network build-outs, lack of coverage, or incompatible technical standards.[6] As a result of these economic and technical limitations, terrestrial carriers historically have focused their deployment of services on densely populated urban areas, at the expense of rural and remote areas.

Unlike existing terrestrial wireline and wireless networks, MSS systems hold the distinct promise of offering a distance-insensitive, cost-effective means of delivering broadband services to all areas of the United States. ICO's 2 GHz MSS system,[7] in particular, will provide an array

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[4] *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*, Report, 14 FCC Rcd 2398, 2401 (1999) (footnotes omitted).

[5] *Id.* at 2400-2401 ¶ 2.

[6] *See Inquiry Concerning the Deployment of Advanced Telecommunications Capability*, Second Report, 15 FCC Rcd 20913, 20996-97 ¶¶ 220-23, 21001-1002 ¶¶ 237-41 (2000) (noting the alarming lack of broadband deployment, wireline or wireless, to rural and other underserved areas in the United States); *Extending Wireless Telecommunications Services to Tribal Lands*, Report and Order and Further Notice of Proposed Rule Making, 15 FCC Rcd 11794, 11799 ¶ 13 (2000) (finding that satellite systems offer distinct economic and technical advantages over terrestrial wireless and wireline systems).

[7] As used herein, the term "2 GHz MSS" will refer to MSS using spectrum at 1990-2025 MHz and 2165-2200 MHz.

of broadband services with transmission speeds of up to 384 kbps in both directions to rural, low-income, and other underserved communities that have been largely ignored by terrestrial carriers. To further ensure that its services are available to the most underserved communities, ICO has made a specific commitment to offer service to noncommercial locations on Native American tribal lands at a discount of up to 50 percent from applicable retail rates, subject to consultation with the tribal governments.[8]

Thus, because 2 GHz MSS licensees[9] such as ICO are committed to and fully capable of extending broadband services to all areas of the United States, the government can best achieve the statutory objective of providing broadband "access for all" simply by identifying and eliminating burdensome regulations that impede the deployment of 2 GHz MSS systems. The government also will achieve other important objectives, such as fostering facilities-based competition and minimizing government intervention in the marketplace. The Assistant Secretary of Commerce for Communications and Information recently expressed a commitment to pursuing policies that encourage investment in telecommunications facilities and recognized that "there are network reliability and security advantages to having a diversity of facilities-based competitors."[10] The Assistant Secretary also observed that the government's role "should be to remove impediments to broadband deployment and then get out of the way and let the market

[8] *See* Ex parte letter from R.G. Salemme, Eagle River Investments L.L.C., & C. Tritt, Counsel for ICO Global Communications, to M.R. Salas, Secretary, FCC, at 1, *The Establishment of Policies and Service Rules for the Mobile-Satellite Service in the 2 GHz Band*, IB Docket No. 99-81 (Mar. 17, 2000).

[9] With respect to 2 GHz MSS, the terms "licensees" and "licenses," as used herein, will refer, respectively, to all authorized 2 GHz MSS system proponents and their FCC authorizations to provide 2 GHz MSS in the United States.

[10] N.J. Victory, Assistant Secretary of Commerce for Communications and Information, *Removing Roadblocks to Broadband Deployment*, Speech before the Competition Policy Institute's Conference on *Keeping Telecom Competition on Track* (Dec. 6, 2001).

work."[11] The various FCC Commissioners, including the Chairman, have echoed these same sentiments.[12]

ICO recognizes that the goal of ensuring "access for all" to basic telephone services historically has required both implicit and explicit universal service subsidies imposing substantial costs on all Americans. ICO notes, however, that eliminating regulatory barriers to the deployment of MSS systems will accomplish all of the important broadband policy objectives at minimal cost and without requiring any subsidies or government intervention in the marketplace.

II. ELIMINATING RESTRICTIONS ON THE USE OF 2 GHz MSS SPECTRUM WILL STIMULATE THE DEPLOYMENT OF SATELLITE BROADBAND SERVICES

> [Question I: *What problems have companies experienced in deploying broadband services via wireless and satellite? What regulatory changes would facilitate further growth in such services? Is available spectrum adequate or inadequate? What additional spectrum allocations, if any, are needed?*
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> Question N: *With respect to any proposed regulatory changes suggested in response to the above questions, can those changes be made under existing authority or is legislation required?*]

The deployment of next-generation MSS systems has been hindered by FCC restrictions on the use of authorized spectrum. To rectify this problem, the FCC is considering proposals to permit more flexible and efficient use of MSS spectrum by authorizing 2 GHz MSS licensees to

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[11] *Id.*

[12] *See, e.g.*, M.K. Powell, FCC Chairman, Remarks before the National Summit on Broadband Deployment (as prepared for delivery) (Oct. 25, 2001) (admonishing the government to "keep incentives alive that encourage investment in alternate platforms (such as cable, wireless, and satellite)" and to "look at modifying or relaxing laws and regulations that impede [broadband] deployment"); K.J. Martin, FCC Commissioner, Remarks before the National Summit on Broadband Deployment (as prepared for delivery) (Oct. 26, 2001) (stating that the government "should place a higher priority on facilities-based deployment" and "ought to work to remove regulatory underbrush—burdensome regulations that may be impeding deployment.").

integrate an ancillary terrestrial component ("ATC") into their networks.[13] ATC use will allow 2 GHz MSS licensees to operate, on an ancillary basis, terrestrial facilities that transmit on the licensee's own assigned frequencies. This increased flexibility in spectrum use will allow 2 GHz MSS licensees to extend service to indoor and urban areas that otherwise would remain unserved by a satellite-only MSS system.

By making 2 GHz MSS spectrum available with minimal restrictions, the FCC will promote efficient facilities investment, spur the development of innovative technologies, and provide incentives to deploy broadband services. In fact, the FCC has long recognized that flexible spectrum use results in more efficient spectrum markets.[14] For example, the FCC has allowed commercial mobile radio service ("CMRS") providers to provide fixed services in addition to mobile services.[15] The FCC recently added a mobile allocation to permit Multichannel Multipoint Distribution Service and Instructional Television Fixed Service licensees to provide mobile services either in addition to or instead of the fixed services that they currently provide.[16] The FCC found that "the public interest is served because a flexible allocation allows licensees to make efficient use of spectrum, especially if licensees are given greater freedom in determining the specific services to be offered."[17] It further concluded that "a flexible allocation will actually encourage investment in and the development of new and

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[13] *See 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 Band*, Notice of Proposed Rulemaking, 16 FCC Rcd 15532 (2001).

[14] *See Principles for Reallocation of Spectrum to Encourage the Development of Telecommunications Technologies for the New Millennium*, 14 FCC Rcd 19868, 19870 ¶ 9 (1999).

[15] *See Amendment of the Commission's Rules to Permit Flexible Service Offerings in the Commercial Mobile Radio Services*, First Report and Order and Further Notice of Proposed Rule Making, 11 FCC Rcd 8965 (1996).

[16] *See Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, Including Third Generation Wireless Systems*, FCC 01-256 (Sept. 24, 2001).

[17] *Id.* at ¶ 24.

innovative technology and services."[18] In addition, the FCC's International Bureau recently granted special temporary authorizations to permit the two Satellite Digital Audio Radio Service ("SDARS") licensees to use terrestrial repeaters as part of their networks. In doing so, the Bureau recognized that the use of terrestrial facilities is crucial to permit the satellite licensees to begin commercial SDARS on a nationwide basis.[19]

ATC will provide the same, if not greater, incentives to deploy broadband services as other spectrum flexibility measures that the FCC has adopted or proposed to adopt for other wireless services. Specifically, ATC will enable 2 GHz MSS operators to make new applications available for the first time, such as seamless, nationwide mobile Internet and email services for highly mobile customers (e.g., commercial airline passengers, interstate highway patrols, and trucking companies), as well as other new broadband applications that depend on seamless coverage. ATC will result in more efficient use of the spectrum by enabling 2 GHz MSS spectrum to be more useful in urban areas and ensuring that adequate satellite capacity remains available for rural areas. ATC-integrated 2 GHz MSS systems will allow customers to remain "on-net" at all times and in all areas, as well as permit operators to provide consistent service quality, a single point of contact, and a single pricing plan. By offering service features that appeal to a greater number of customers, ATC will help 2 GHz MSS operators to achieve economies of scale, resulting in lower prices and higher quality services. In fact, ICO estimates that ATC could reduce the price of a standard MSS handset by more than 80 percent.

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[18] *Id.*

[19] *See Sirius Satellite Radio, Inc.*, Order and Authorization, DA 01-2171, ¶ 1 (Int'l Bur. rel. Sept. 17, 2001); *XM Radio Inc.*, Order and Authorization, DA 01-2172, ¶ 1 (Int'l Bur. rel. Sept. 17, 2001). The FCC has a pending rulemaking proceeding to consider adopting rules authorizing SDARS licensees to use terrestrial repeaters in conjunction with their satellite systems. *See Establishment of Rules and Policies for the Digital Audio Radio Satellite Service in the 2310-2360 MHz Frequency Band*, Report and Order, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 12 FCC Rcd 5754, 5810 ¶ 138 (1997).

The only obstacles to the realization of the full benefits of ATC-integrated, next-generation 2 GHz MSS systems are the FCC's own rules limiting use of the spectrum. These restrictions are not mandated by statute, and therefore the FCC has full authority to eliminate them so as to be consistent with its existing policies encouraging more flexible, innovative, and efficient spectrum use.

III. THE GOVERNMENT MUST NOT JEOPARDIZE THE DEPLOYMENT OF SATELLITE BROADBAND SYSTEMS BY REVERSING COURSE ON THE WELL-CONSIDERED 2 GHz MSS ALLOCATION POLICY

[Questions I and N]

Another significant obstacle to the deployment of satellite broadband services arises from the regulatory uncertainty over the existing domestic allocation of spectrum in the 2 GHz band for MSS. Specifically, the current FCC rulemaking proceeding to consider reallocating a portion of the 2 GHz MSS spectrum has cast a pall over the future of 2 GHz MSS systems, which in turn has hindered access to adequate capital funding.

NTIA, the FCC, and a number of other parties have invested substantial time and resources over the last decade to secure sufficient 2 GHz spectrum for MSS both internationally and domestically. Since the 1992 World Administrative Radio Conference, the United States actively has pursued international and domestic MSS allocations in the 2 GHz band.[20] At the urging of the United States during the 1995 World Radiocommunication Conference ("WRC-95), WRC-95 conferees agreed to accelerate, by five years, the worldwide availability of 60 MHz of spectrum in the 2 GHz band (i.e., 1980-2010 MHz and 2170-2200 MHz) from January

[20] *See, e.g., 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 Rule Making, 12 FCC Rcd 7388, 7389 ¶ 2 (1997) ("*2 GHz MSS Allocation Order*") (citing Final Acts of the 1992 World Administrative Radio Conference, Malaga-Torremolinos (1992)).

1, 2005 to January 1, 2000.[21] The United States also successfully obtained at WRC-95 70 MHz of spectrum in the 2 GHz band (i.e., 1990-2025 MHz and 2165-2200 MHz) to permit the introduction of MSS in the United States and Canada beginning January 1, 2000.[22] NTIA, in particular, had a lead role in advocating for additional spectrum for MSS in the 2 GHz band.

The pending FCC rulemaking proceeding now threatens to undermine the long, hard-fought efforts of the United States to meet MSS spectrum needs. A reversal of the well-considered 2 GHz MSS allocation policy would jeopardize the integrity of the government's spectrum allocation and licensing process, as well as fuel investors' doubts regarding the certainty of that process. This in turn would deter crucial investments in wireless broadband facilities, both satellite and terrestrial. To restore investor confidence in satellite broadband deployment, it is therefore critical that the FCC promptly affirm its intent to stay the course with respect to the current 2 GHz MSS allocation.

IV. THE GOVERNMENT SHOULD SUPPORT TECHNOLOGY-NEUTRAL, DEREGULATORY POLICIES THAT PERMIT EFFICIENT AGGREGATION OF SPECTRUM

[Questions I and N]

2 GHz MSS licensees currently are subject to regulations restricting their ability to aggregate sufficient spectrum, which are not imposed on other wireless licensees. Specifically, the FCC's "anti-trafficking" rule requires the FCC to review transfers of 2 GHz MSS licenses to determine whether the licensee has engaged in "trafficking,"[23] which generally is defined as "obtaining or attempting to obtain an authorization for the principal purpose of speculation or

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[21] *Id.* at 7392 ¶ 8.

[22] *Id.*

[23] *See* 47 C.F.R. § 25.143(g).

profitable resale of the authorization rather than for the provision of telecommunication services to the public or for the licensee's own private use."[24] Although the rule is not intended to prevent 2 GHz MSS licensees from obtaining capital investments through debt and equity financing, it nonetheless effectively deters these legitimate transactions by adding regulatory uncertainty and unnecessary administrative delay to the FCC's review of the transactions.

The rule also imposes requirements on 2 GHz MSS licensees that the FCC already jettisoned for terrestrial CMRS and other wireless licensees. Notably, the FCC generally does not review transfers of terrestrial wireless licenses to attempt to surmise whether the parties' principal purpose is to engage in license speculation.[25] The FCC also has eliminated its long-standing rule prohibiting for-profit sales of unbuilt commercial broadcast stations.[26] In addition, the FCC has decided to raise immediately the spectrum cap applicable to terrestrial CMRS providers to 55 MHz in all markets and subsequently eliminate the spectrum cap in its entirety, effective January 1, 2003.[27]

The continued imposition of this superfluous and subjective requirement on 2 GHz MSS licensees not only is inconsistent with the FCC's deregulatory efforts to permit wireless licensees to enhance their operational efficiencies through business consolidation and spectrum aggregation, but also contravenes the government's important policy objective of maintaining

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[24] 47 C.F.R. § 1.948(i)(1).

[25] *See* 47 C.F.R. § 1.948(i); *Forbearance from Applying Provisions of the Communications Act to Wireless Telecommunications Carriers*, 15 FCC Rcd 17414, 17429 ¶ 33 (2000) ("*Wireless Forbearance Order*").

[26] *See 1998 Biennial Regulatory Review—Streamlining of Mass Media Applications, Rules, and Processes*, 13 FCC Rcd 23056, 23070 ¶ 30 (1998) ("*1998 Mass Media Biennial Review*").

[27] *See 2000 Biennial Regulatory Review Spectrum Aggregation Limits for Commercial Mobile Radio Services*, Report and Order, FCC 01-328, ¶¶ 1-2 (Dec. 18, 2001).

technology neutrality where possible. This disparate treatment unduly penalizes 2 GHz MSS licensees for their choice of technology.

The only purported basis for this differential regulation is that 2 GHz MSS licensees did not obtain their licenses by auction. There is simply no sound economic or policy basis, however, for denying licensees the ability to acquire additional spectrum simply because they did not pay a fee to the government for their licenses. In fact, the FCC's lifting of its anti-trafficking and spectrum aggregation restrictions for other wireless licensees has not been conditioned on whether those licenses were obtained by auction.[28]

Furthermore, any risk that 2 GHz MSS licensees might engage in speculation is non-existent and certainly no greater than the risk that exists for terrestrial wireless licensees. 2 GHz MSS licensees have made substantial investments in their systems. In particular, ICO's shareholders already have invested fully $3.7 billion, as well as committed an additional $1.4 billion to vendors, for the launch of its global network. Just as payments for auctioned licenses are presumed to safeguard against the risk of speculation,[29] so should the substantial investments made by 2 GHz MSS licensees be entitled to the same presumption. If the government is serious about putting spectrum to its highest-value use and letting the market operate free from undue government interference, it must allow the development of a robust secondary market for all wireless licenses, regardless of whether they are satellite licenses or initially were obtained by auction.

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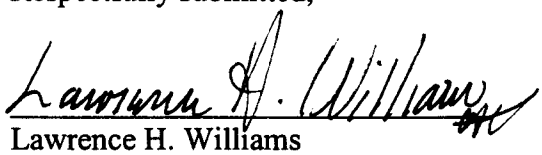
[28] *See supra* notes 25 and 26.

[29] *See 1998 Mass Media Biennial Review* at 23071 ¶ 31; *Wireless Forbearance Order* at 17429 ¶ 33.

CONCLUSION

Based on the foregoing, ICO urges NTIA and the Administration to pursue diligently policies and initiatives to eliminate regulatory obstacles that threaten to thwart the development and growth of the nascent 2 GHz MSS industry. Specifically, the fundamental objective of providing universal access to broadband services will be significantly advanced by (1) the elimination of FCC rules that restrict ATC use of 2 GHz MSS spectrum, (2) the preservation of the existing 2 GHz MSS allocation policy, and (3) the elimination of FCC rules that limit 2 GHz MSS licensees' ability to transfer their licenses and aggregate spectrum.

Respectfully submitted,



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