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

In the Matter of	)	
	)	
Mobile Satellite Ventures Subsidiary LLC	)	File No. SAT-MOD-20070523-00073
	)	
	)	Call Sign S2358
Application for Limited Waiver of On-Ground Spare Satellite Ancillary Terrestrial Component ("ATC") Gating Factor	)	

COMMENTS ON APPLICATION FOR LIMITED WAIVER

New ICO Satellite Services G.P. ("ICO") submits these comments addressing Mobile Satellite Ventures Subsidiary LLC's ("MSV") request for a limited waiver of the requirement that the operator of an Ancillary Terrestrial Component ("ATC") have a second, spare satellite on the ground within one year after commencing ATC operations.[1] ICO believes that an in-orbit spare will serve the purposes of the Commission's rule *better* than a ground spare, and ICO urges the Commission to evaluate MSV's application with this principle in mind.

ICO is developing an advanced hybrid system, combining both satellite and terrestrial communications capabilities, in order to offer wireless voice, data, video, and Internet services on mobile and portable devices. ICO holds an LOI authorization to provide mobile satellite services ("MSS") in the United States using a geostationary ("GSO") satellite. ICO plans to file for an authorization to deploy ATC as part of its hybrid satellite/terrestrial system.

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[1] *See* FCC Public Notice, Rep. No. SAT-00449 (June 8, 2007).

ICO supports the fundamental principle behind MSV's application. ATC rules require MSS/ATC licensees to maintain a spare satellite on the ground within one year of commencing operations and, in the event of a satellite failure, to launch it into orbit during the next commercially reasonable launch window.[2] The purpose of the rule is to ensure that "MSS operators maintain space station coverage over the relevant geographic area."[3] Requiring continuous coverage through a spare satellite, the Commission explained, would ensure that MSS operators "exercise sufficient diligence" in restoring the MSS system in the event of a failure, and that MSS operators continue to provide satellite coverage with the ATC part of the system.[4]

ICO agrees that an in-orbit spare generally serves the Commission's stated purpose even better than an on-the-ground spare. As MSV explains, an in-orbit spare will enable an MSS/ATC provider to restore service immediately in the event of any satellite anomaly/service disruption. An on-ground spare, by contrast, cannot restore service until it is launched. ICO also concurs with MSV's view that use of an in-orbit spare overcomes the risk that the spare satellite may be destroyed or damaged on launch and, hence, unavailable to restore service. Therefore, the Commission should evaluate whether MSV's proposed implementation of its in-orbit spare proposal, on the facts as presented, serves the purpose of the rule.

In fact, the launching of a spare satellite, without more, should not require a waiver. The full rule at issue covers both non-geostationary orbit ("NGSO") and GSO systems, and states that NGSO systems must have an "in-orbit" spare, whereas GSO

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[2] 47 C.F.R. § 25.147(b)(2)(ii).

[3] *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*, 18 FCC Rcd 1962, ¶ 81 (2003) ("ATC Order").

[4] *Id.*

systems shall have an "on the ground" spare.[5] It appears that the Commission required an NGSO system to do more than a GSO system and launch its spare because an NGSO system, as a constellation of many satellites, is more likely to need the spare and more able to bear the marginal cost of launching the spare.[6] Thus, the "on the ground" part of the requirement is best understood not as a material component of the rule for a GSO system but, rather, as a relaxation of the "in-orbit" requirement that applies to NGSO systems. As a result, a limited waiver (on the basis of serving the purpose of the rule) should be necessary only if the proposed implementation involves more than simply the launching a second MSS satellite that can provide continuous coverage in place of the original satellite. A limited waiver appears to be necessary in this case only because of the particulars of MSV's application.

Respectfully submitted,

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[5] Replacement satellites.

> (i) Operational NGSO MSS ATC systems shall maintain an in-orbit spare satellite.
> (ii) Operational GSO MSS ATC systems shall maintain a spare satellite on the ground within one year of commencing operations and launch it into orbit during the next commercially reasonable launch window following a satellite failure. 47 C.F.R. § 147(b)(2).

[6] ATC Order ¶ 83 ("To recognize these differences, we adopt a standard for reasonable replacement tailored to the particular configuration of a given MSS satellite system and the relative cost of NGSO and GSO space stations."); *see also id.* ¶ 84.

CERTIFICATE OF SERVICE

I hereby certify on this 9th day of July, 2007, a copy of the foregoing Comments has been served via first class mail, postage pre-paid, to the following:

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