

## **Exhibit A**

Mobile Satellite Ventures Subsidiary LLC, Petition to Hold in Abeyance or to Grant with Conditions Application of Telenor Satellite, Inc. to Operate BGAN Terminals with Inmarsat-4 Satellite, File Nos. SES-LFS-20050930-01352, SES-AMD-20051111-01564, ITC-214-20051005-00395 (November 23, 2005)

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November 23, 2005

**Via Hand Delivery**  
Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

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Federal Communications Commission  
Office of Secretary

**Re: Petition of Mobile Satellites Ventures Subsidiary LLC to Hold in Abeyance  
or to Grant with Conditions Application of Telenor Satellite, Inc.  
File No. SES-LFS-20050930-01352  
File No. SES-AMD-20051111-01564  
File No. ITC-214-20051005-00395**

Dear Ms. Dortch:

Mobile Satellites Ventures Subsidiary LLC ("MSV") hereby files this redacted public version of a Petition to Hold in Abeyance or to Grant with Conditions the above-referenced applications of Telenor Satellite, Inc. ("Telenor") for Title III and Section 214 authorizations to operate terminals in the United States with an uncoordinated Inmarsat-4 L band satellite.<sup>1</sup> As discussed herein, certain information provided in the Petition should be treated as confidential.<sup>2</sup>

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<sup>1</sup> See Telenor Satellite, Inc., Application for Title III Blanket License, File No. SES-LFS-20050930-01352 (September 30, 2005); Telenor Satellite, Inc., Amendment, File No. SES-AMD-20051111-01564 (November 11, 2005); Telenor Satellite, Inc., Application for Section 214 Authorization, File No. ITC-214-20051005-00395 (August 26, 2005).

<sup>2</sup> 47 C.F.R. § 0.459(b).

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**47 C.F.R. § 0.459(b)(1) -- Identification of the specific information for which confidential treatment is sought**

MSV requests confidential treatment of information relating to the *Mexico City Memorandum of Understanding* and the on-going international L band frequency coordination process which is confidential to the parties to that coordination, which includes the Commission and MSV.<sup>3</sup> When considering other applications to use Inmarsat satellites in the United States, the Commission has acknowledged the confidentiality of this information and has afforded it confidential treatment.<sup>4</sup>

**47 C.F.R. § 0.459(b)(2) -- Identification of the Commission proceeding in which the information was submitted or a description of the circumstances giving rise to the submission**

This information is being filed in a Petition to Hold in Abeyance or to Grant with Conditions the above-referenced Telenor applications.

**47 C.F.R. § 0.459(b)(3) -- Explanation of the degree to which the information is commercial or financial, or contains a trade secret or is privileged**

As the Commission has acknowledged, the *Mexico City Memorandum of Understanding* and related coordination documents are confidential.<sup>5</sup>

**47 C.F.R. § 0.459(b)(4) -- Explanation of the degree to which the information concerns a service that is subject to competition**

The information contained herein concerns the market for wireless services, in which MSV faces competition from other MSS providers as well as from terrestrial wireless operators.

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<sup>3</sup> See *Memorandum of Understanding for the Intersystem Coordination of Certain Geostationary Mobile Satellite Systems Operating in the Bands 1525-1544/1545-1559 MHz and 1626.5-1646.5/1646.5-1660.5 MHz*, Mexico City, Mexico, 18 June 1996.

<sup>4</sup> See *COMSAT Corporation et. al., Memorandum Opinion, Order and Authorization*, 16 FCC Rcd 21661, ¶¶ 111 (2001) ("*COMSAT Order*") ("The Mexico City Agreement and related coordination documents, such as minutes of coordination meetings, are considered confidential.").

<sup>5</sup> *Id.*

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- 47 C.F.R. § 0.459(b)(5) – Explanation of how disclosure of the information could result in substantial competitive harm**

Disclosure of the information for which confidential treatment is sought would result in violation of the *Mexico City Memorandum of Understanding*.

- 47 C.F.R. § 0.459(b)(6) – Identification of any measures taken by the submitting party to prevent unauthorized disclosure**

Disclosure to third parties of the information for which confidential treatment is sought has been pursuant to non-disclosure agreements.

- 47 C.F.R. § 0.459(b)(7) – Identification of whether the information is available to the public and the extent of any previous disclosure of the information to third parties**

The information for which confidential treatment is sought is not publicly available. Disclosure to third parties of the information for which confidential treatment is sought has been strictly pursuant to non-disclosure agreements.

- 47 C.F.R. § 0.459(b)(8) – Justification of the period during which the submitting party asserts that material should not be available for public disclosure**

The information for which confidential treatment is sought should remain confidential indefinitely or until the parties to the *Mexico City Memorandum of Understanding* agree that it can be made publicly available.

- 47 C.F.R. § 0.459(b)(9) – Any other information that the party seeking confidential treatment believes may be useful in assessing whether its request for confidentiality should be granted**

N/A.

Ms. Marlene H. Dortch  
November 23, 2005  
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Please contact the undersigned with any questions.

Very truly yours,

A handwritten signature in black ink, appearing to be 'Jennifer A. Manner', with a long horizontal stroke extending to the right.

Jennifer A. Manner

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**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the matter of	)	
	)	
Telenor Satellite, Inc.	)	File No. SES-LFS-20050930-01352
Application for Title III Blanket License	)	File No. SES-AMD-20051111-01564
to Operate Mobile Earth Terminals with	)	
Inmarsat 4F2 at 52.75°W	)	
	)	
Telenor Satellite, Inc.	)	File No. ITC-214-20051005-00395
Application for Section 214 Authorization	)	
to Operate Mobile Earth Terminals with	)	
Inmarsat 4F2 at 52.75°W	)	

**PETITION TO HOLD IN ABEYANCE OR TO GRANT WITH CONDITIONS**

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November 23, 2005

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**Summary**

The International Bureau (“Bureau”) should hold in abeyance the applications filed by Telenor to operate terminals in the United States with an uncoordinated Inmarsat satellite until the conclusion of a coordination agreement that results in a more efficient assignment of L band spectrum among the existing operators, including the assignment of contiguous and wider frequency blocks. In evaluating whether the grant of an earth station application to use a non-U.S. licensed satellite will serve the public interest, *DISCO II* requires the Bureau to assess whether the satellite will cause interference to U.S.-licensed systems and whether there is sufficient spectrum available to permit operation of the foreign-licensed system in the United States.

If there is an international coordination agreement in place between the United States and the licensing administration for the foreign satellite, the Commission can generally be assured that permitting the foreign licensed satellite to serve the United States will not raise concerns regarding interference or spectrum availability. But this is not the case in the L band because there is no international coordination agreement pertaining to the operation of Inmarsat 4F2. While the *Mexico City MoU* contemplates the operation of replacement satellites, Inmarsat 4F2 is technically different than Inmarsat-3 which precludes it from being considered a replacement.

In the absence of an international L band coordination agreement covering the Inmarsat 4F2 satellite, there is no basis for the Bureau to conclude that permitting the satellite to serve the United States will not raise concerns regarding interference and spectrum availability. There are three kinds of interference presented by Inmarsat’s new satellite that neither Inmarsat nor Telenor has addressed. The first is interference on spectrum that MSV coordinated for its own use and loaned temporarily to Inmarsat, and that Inmarsat now refuses to relinquish. Interference on this loaned spectrum would be immediate but for MSV’s continued restraint.

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The second kind of interference results from the fact that Inmarsat 4F2 is technically different than the Inmarsat-3 satellites, and its technical characteristics are in no way contemplated in the 1999 Spectrum Sharing Arrangement among the L band operators. The available evidence, which includes the Commission's own review of the satellite's characteristics and Inmarsat's own characterization of the satellite's susceptibility, indicates that Inmarsat 4F2 cannot operate and provide the proposed new services without causing interference to and receiving interference from other systems in the L band.

The third kind of interference is that threatened by Inmarsat's claim that it is entitled, contrary to its earlier commitments to operate only on spectrum it had coordinated pursuant to the 1999 SSA, to operate wherever it chooses in the L band. Inmarsat has never explained how Inmarsat 4F2 in actual practice could possibly operate on all L band frequencies without resulting in mutual interference among L band operators.

While in some cases the Bureau is reasonably able to conclude that an applicant will be able to complete coordination before operating or will be able to operate on a non-interference basis until coordination is complete, that is not the case here. Given the evidence of interference that Inmarsat 4F2 will cause and receive, it is not a solution for the Bureau to grant applications to operate with Inmarsat 4F2 now, hope that a coordination agreement can be reached in the future, and that in the interim there will not be greater interference among L band systems that embroils the Commission and the operators in interference disputes. As the current impasse in the L band indicates, a *post hoc* approach to coordination disserves the public interest and impedes the full and efficient use of L band spectrum. Accordingly, the Telenor applications should be held in abeyance until an L band coordination agreement is concluded.



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If the Bureau grants the applications now despite the lack of a coordination agreement, the Bureau should condition the authorizations on operation strictly on an unprotected, non-interference basis in accordance with the spectrum sharing arrangement negotiated in 1999 among the North American L band operators. The Bureau should make clear that this limited authority does not include permission to use frequencies that were temporarily loaned but subsequently recalled by the lenders under the *Mexico City MOU*. Absent such clarification, the United States is at risk of losing a vital national spectrum resource to Inmarsat's unilateral and illegal action. Moreover, without such a clarification, a precedent will be established that supports attempts by other nations to grab U.S.-coordinated satellite spectrum, thereby undermining the internationally accepted regime for assigning satellite spectrum among sovereign nations.

Lack of international coordination notwithstanding, the Telenor application raises additional issues that warrant further scrutiny, including (i) whether Inmarsat 4F2 qualifies as a replacement satellite; (ii) the failure of Inmarsat 4F2 to comply with the Bureau's interpretation of the Commission's longitudinal station keeping rule; and (iii) the national security and law enforcement concerns presented by operation of terminals in the United States in conjunction with gateway earth stations located overseas.

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**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the matter of	)	
	)	
Telenor Satellite, Inc.	)	File No. SES-LFS-20050930-01352
Application for Title III Blanket License	)	File No. SES-AMD-20051111-01564
to Operate Mobile Earth Terminals with	)	
Inmarsat 4F2 at 52.75°W	)	
	)	
Telenor Satellite, Inc.	)	File No. ITC-214-20051005-00395
Application for Section 214 Authorization	)	
to Operate Mobile Earth Terminals with	)	
Inmarsat 4F2 at 52.75°W	)	

**PETITION TO HOLD IN ABEYANCE OR TO GRANT WITH CONDITIONS**

Mobile Satellite Ventures Subsidiary LLC (“MSV”) hereby files this “Petition to Hold in Abeyance or to Grant with Conditions” the above-referenced applications filed by Telenor Communications, Inc. (“Telenor”) for Title III and Section 214 authorizations to operate terminals in the United States with an uncoordinated Inmarsat-4 L band satellite.<sup>1</sup> The International Bureau (“Bureau”) should hold the Telenor applications in abeyance until the conclusion of a coordination agreement that results in a more efficient assignment of L band spectrum among the existing operators, including the assignment of contiguous and wider frequency blocks. If the Bureau grants the applications now despite the lack of a coordination agreement that results in efficient use of the L band, the Bureau should condition the authorizations on operation strictly on an unprotected, non-interference basis in accordance with

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<sup>1</sup> As one of the L band Mobile Satellite Service (“MSS”) operators in North America which could be subjected to harmful interference from grant of this application, MSV is a “party in interest” with standing to file this Petition. *See* 47 U.S.C. § 309(d)(1). Moreover, as a competitor in the MSS market, MSV will suffer economic injury from grant of this application, thereby establishing competitor standing. *See FCC v. Sanders Brothers Radio Station*, 309 U.S. 475, 477 (1940).

the spectrum sharing arrangement negotiated in 1999 among the North American L band operators, which does not include frequencies that were temporarily loaned but subsequently recalled by the lenders.

### Background

*MSV.* MSV is the entity authorized by the Commission in 1989 to construct, launch, and operate a United States Mobile Satellite Service (“MSS”) system in the L band.<sup>2</sup> MSV’s licensed satellite (AMSC-1) was launched in 1995, and MSV began offering service in 1996. MSV is also the successor to TMI Communications and Company, Limited Partnership (“TMI”) with respect to TMI’s provision of L band MSS in the United States. Today, MSV offers a full range of land, maritime, and aeronautical satellite services, including voice and data, using both its own U.S.-licensed satellite and the Canadian-licensed L band satellite licensed to Mobile Satellite Ventures (Canada) Inc. (“MSV Canada”). In January 2005, the Bureau licensed MSV to launch and operate an L band MSS satellite at 63.5°WL (called “MSV-SA”) to provide MSS in South America.<sup>3</sup> In May 2005, the Bureau licensed MSV to launch and operate a replacement L band MSS satellite at 101°WL (called “MSV-1”).<sup>4</sup>

*Inmarsat.* Inmarsat is a provider of MSS in the L band and is licensed by the United Kingdom. Inmarsat was established in 1976 as a legal monopoly owned largely by foreign government post, telephone, and telegraph (“PTT”) administrations. From its base as a

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<sup>2</sup> *Order and Authorization*, 4 FCC Rcd 6041 (1989); *remanded by Aeronautical Radio, Inc. v. FCC*, 928 F.2d 428 (D.C. Cir. 1991); *Final Decision on Remand*, 7 FCC Rcd 266 (1992); *aff’d, Aeronautical Radio, Inc. v. FCC*, 983 F.2d 275 (D.C. Cir. 1993); *see also AMSC Subsidiary Corporation, Memorandum Opinion and Order*, 8 FCC Rcd 4040 (1993).

<sup>3</sup> *See Mobile Satellite Ventures Subsidiary LLC, Order and Authorization*, DA 05-50 (January 10, 2005) (“MSV-SA Order”).

<sup>4</sup> *See Mobile Satellite Ventures Subsidiary LLC, Order and Authorization*, DA 05-1492 (May 23, 2005) (“MSV-1 Order”).

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monopoly, Inmarsat gradually built a fleet of satellites to provide global service, primarily to large, oceangoing vessels. As the first entrant into the MSS market and as a result of its ties to foreign governments, Inmarsat has developed a dominant share of the MSS market.<sup>5</sup> Inmarsat currently operates a fleet of nine in-orbit second generation (Inmarsat-2) satellites and third generation (Inmarsat-3) satellites.<sup>6</sup> Inmarsat is also currently in the process of constructing and launching three fourth-generation (Inmarsat-4) satellites, which support the Broadband Global Area Network (“BGAN”) terminals at issue here. These terminals use wider bandwidth carriers than terminals operating with Inmarsat-3 satellites and may require larger guard bands to protect other L band operators. Inmarsat has not discussed with other L band operators the necessary guard bands and their locations in the spectrum to protect other L band operators.

*L band coordination process.* Spectrum in the L band in North America is shared among five operators: MSV, MSV Canada, Inmarsat, and Mexican and Russian systems. The five Administrations that license these systems reached an agreement in 1996 for a framework for future coordination of the L band spectrum in North America, called the Mexico City Memorandum of Understanding (“*Mexico City MoU*”).<sup>7</sup> Under the *Mexico City MoU*, the L

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<sup>5</sup> See Inmarsat Finance plc, Form F-4 Registration Statement -- Exchange Offer for 7 5/8% Senior Notes due 2012 (May 25, 2004) (“*Inmarsat May 2004 SEC Form F-4*”), at 2 (“In the maritime sector, we believe we are the leading provider of global mobile satellite services, with 2002 revenues in excess of 30 times those of our nearest competitor.”); *id.* (“We believe we are also the market leader in the provision of high-speed data services to the maritime and land sectors, with 2002 data revenues of more than 15 times those of our nearest competitor.”); Inmarsat Global Ltd., Form F-20 (April 29, 2005), at 28, 33, 34, and 35 (stating that Inmarsat is the “leading provider” of MSS in the land, maritime, and aeronautical sectors) (available at: <http://www.sec.gov/Archives/edgar/data/1291401/000104746905012474/0001047469-05-012474-index.htm>) (“*Inmarsat April 2005 Form F-20*”).

<sup>6</sup> See Comments of Inmarsat Ventures plc, IB Docket No. 01-185 (Oct. 19, 2001), at 3.

<sup>7</sup> See *Memorandum of Understanding for the Intersystem Coordination of Certain Geostationary Mobile Satellite Systems Operating in the Bands 1525-1544/1545-1559 MHz and 1626.5-1646.5/1646.5-1660.5 MHz*, Mexico City, Mexico, 18 June 1996 (“*Mexico City MoU*”).

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band operators are each assigned certain specific frequencies to use on their specific satellites through multi-party operator agreements, called Spectrum Sharing Arrangements (“SSA”). Under the 1999 SSA, which was based on operation of narrowband carriers only, spectrum is divided among the five L band operators in largely non-contiguous slivers.

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*Mexico City MoU* and the subsequent SSAs have never included operation of Inmarsat-4 satellites at any orbital locations or with wideband carriers.

Under the *Mexico City MoU*, the L band operators are required to ensure that spectrum is

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Since 1999, the L band operators, with the recent exception of Inmarsat, have been operating on a non-interference basis using spectrum assignments listed in the 1999 SSA. For example,

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<sup>8</sup> Inmarsat’s decision in 2003 to request an additional loan from MSV and MSV Canada is also consistent with such a commitment, as is its statement in its April 2005

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Indeed, even more recently, the Commission was under the impression that “the parties continue to operate under the 1999 assignments pending further negotiations.” *See Flexibility for Delivery of Communications by MSS Providers, Report and Order*, IB Docket No. 01-185, 18 FCC Rcd 1962, n. 144 (February 10, 2003) (“*ATC Order*”).

securities filing that “the amount of spectrum available to each operator is currently frozen at the levels agreed in 1999.”<sup>9</sup>

Despite these commitments, Inmarsat has continued to use certain L band frequencies that were coordinated for MSV and MSV Canada, temporarily loaned to Inmarsat, and then subsequently recalled.

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MSV and MSV Canada need access to this spectrum to conduct tests of their hybrid systems and to implement their aggressive plans to deploy an interim-generation integrated satellite-terrestrial system.

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*Telenor BGAN Application.* Telenor is a distributor of Inmarsat’s services in the United States. In November 2001, the Commission authorized various entities, including Telenor’s predecessor COMSAT Mobile, to provide service in the United States using Inmarsat-3 satellites.<sup>11</sup> The Commission granted the applications subject to the condition that operations be

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<sup>9</sup> Inmarsat Global Ltd., Form F-20 (April 29, 2005), at 10 (“*Inmarsat April 2005 Form F-20*”) (available at: <http://www.sec.gov/Archives/edgar/data/1291401/000104746905012474/0001047469-05-012474-index.htm>).

<sup>10</sup> Inmarsat has acknowledged its refusal to return the loaned spectrum in a filing with the U.S. Securities and Exchange Commission (“SEC”). See *Inmarsat April 2005 Form F-20* at 48.

<sup>11</sup> See *COMSAT Corporation et. al., Memorandum Opinion, Order and Authorization*, 16 FCC Rcd 21661 (2001) (“*COMSAT Order*”).

on a non-interference basis, using only those frequencies coordinated for Inmarsat-3 satellites under the 1999 SSA. See *COMSAT Order* ¶ 115(c)-(d).

In its above-referenced applications, Telenor seeks Title III and Section 214 authorizations to operate BGAN terminals in the United States with an uncoordinated Inmarsat-4 satellite that will be located at 52.75°W (called “Inmarsat 4F2”).<sup>12</sup> Telenor claims that this satellite is a replacement for an Inmarsat-3 satellite located at 54°W. *Telenor Title III Application*, Information Required by Section 25.137 at 4 and Attachment A at 1-3. To support this claim, Telenor alleges that the Inmarsat 4F2 will serve the same geographic area as the Inmarsat-3 satellite at 54°W and that the BGAN terminals operating with Inmarsat 4F2 will use the same frequencies that the Commission in the *COMSAT Order* authorized METs to use with Inmarsat-3 satellites. *Id.*, Attachment A at 1-2.

Telenor states that Inmarsat 4F2 will operate with  $\pm 0.1^\circ$  East-West station-keeping, noting that the Commission’s rule requiring Fixed Satellite Service (“FSS”) satellites to operate with  $\pm 0.05^\circ$  East-West station-keeping does not apply to MSS satellites. *Telenor Title III Application*, Attachment A at 37. Telenor explains that the gateway earth stations to be operated with Inmarsat 4F2 will be located in The Netherlands and Italy. *Id.*, Attachment A at 3. Telenor states that it has entered into a revised agreement with the Department of Justice (“DOJ”), the Federal Bureau of Investigation (“FBI”), and the Department of Homeland Security (“DHS”) to address the national security and law enforcement concerns presented by operation of the BGAN terminals in the United States in conjunction with gateway earth stations located overseas, but it

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<sup>12</sup> See Telenor Satellite, Inc., Application for Title III Blanket License, File No. SES-LFS-20050930-01352 (September 30, 2005) (“*Telenor Title III Application*”); Telenor Satellite, Inc., Amendment, File No. SES-AMD-20051111-01564 (November 11, 2005); Telenor Satellite, Inc., Application for Section 214 Authorization, File No. ITC-214-20051005-00395 (August 26, 2005).



has not included a copy of this revised agreement in the record of this proceeding. *Id.*, Additional Response to Item 43 at 6-7.

### Discussion

#### I. THE BUREAU SHOULD HOLD THE TELENOR APPLICATIONS IN ABEYANCE UNTIL THE CONCLUSION OF AN L BAND COORDINATION AGREEMENT

In *DISCO II*, the Commission established a framework for evaluating whether the grant of an earth station application to use a non-U.S. licensed satellite to provide service in the United States will serve the public interest.<sup>13</sup> Among other things, the Commission will assess whether the foreign-licensed satellite will cause interference to U.S.-licensed systems and whether there is sufficient spectrum available to permit the operation of the foreign-licensed system in the United States. *DISCO II* ¶ 150. The Commission found in *DISCO II* that this exercise of spectrum management authority is consistent with the Chairman's Note to the World Trade Organization ("WTO") Basic Telecommunications Agreement,<sup>14</sup> which states that WTO Members may exercise their domestic spectrum and frequency management policies when considering whether to allow foreign-licensed satellites to service the U.S. market.<sup>15</sup>

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<sup>13</sup> See *Amendment of the Commission's Regulatory Policies To Allow Non-U.S.-Licensed Space Stations To Provide Domestic and International Satellite Service in the United States, Report and Order*, IB Docket No. 96-111, 12 FCC Rcd 24094 (1997) ("*DISCO II*").

<sup>14</sup> Fourth Protocol to the GATS (April 30, 1996), 36 I.L.M. 354 (1997) ("WTO Basic Telecommunications Agreement").

<sup>15</sup> See *Chairman of the World Trade Organization Group on Basic Telecommunications, Chairman's Note, Market Access Limitations on Spectrum Availability*, 36 I.L.M. at 372 ("under the GATS each Member has the right to exercise spectrum/frequency management"); *Space Imaging, LLC, Declaratory Order and Order and Authorization*, DA 05-1940, ¶ 18 (Chief, International Bureau, July 6, 2005) ("In *DISCO II*, the Commission determined that, given the scarcity of orbit and spectrum resources, it would consider spectrum availability as a factor in determining whether to allow a foreign satellite to serve the United States. This is consistent with the Chairman's Note to the WTO Basic Telecom Agreement, which states that WTO Members may exercise their domestic spectrum/frequency management policies when

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If there is an international coordination agreement in place between the United States and the licensing administration for the foreign satellite, the Commission can generally be assured that permitting the foreign licensed satellite to serve the United States will not raise concerns regarding interference or spectrum availability. This is not the case in the MSS L band because there is no coordination agreement among the L band operators covering Inmarsat 4F2 at 52.75°W or any other orbital location, or covering its technical parameters. While Telenor and Inmarsat claim that Inmarsat 4F2 is a replacement satellite under the Commission's satellite processing rules, it does not qualify as a replacement satellite under the *Mexico City MoU*.

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(i) it is not replacing another satellite;<sup>16</sup> (ii) it will cause greater interference to other L band operators (*see infra* pages 9-13); and (iii) it will require greater protection from other L band operators (*see infra* pages 11-12). In addition to these and other interference concerns, Telenor states that Inmarsat 4F2 will have inefficient global L band

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considering foreign entry. Thus, in DISCO II, we stated that when grant of access would create interference with U.S.-licensed systems, we may impose technical constraints on the foreign system's operations in the United States or, when conditions cannot remedy the interference, deny access.") (citing *DISCO II*).

<sup>16</sup> Inmarsat has admitted that the Inmarsat-3 satellite at 54°W that Inmarsat 4F2 is allegedly "replacing" will in fact continue to operate after the launch of Inmarsat 4F2. *See Inmarsat April 2005 Form F-20* at 29 (noting that Inmarsat-3 satellite will cease commercial operations in 2014); *id.* at 39-40 (explaining that Inmarsat-3 satellites have sufficient fuel remaining to be relocated to other orbital locations). While Telenor in its application indicates that the Inmarsat-3 at 54°W will be retired (*Telenor Title III Application*, Attachment A at 2), Inmarsat has recently repudiated this statement and admitted that the satellite will be retired from service only *at its current orbital location*, but will not be retired from service altogether. *See Inmarsat Ventures Limited, Response*, File Nos. SES-LFS-20050826-01175, SES-AMD-20050922-01313, ITC-214-20050826-00351 (November 10, 2005) ("*Inmarsat Response*"), at 13.

beams, REDACTED .<sup>17</sup> Until coordination is complete, Inmarsat 4F2 is simply a rogue satellite that has no internationally recognized rights.

While the Commission has in the past licensed earth stations to operate with L band satellites on a non-interference basis in the absence of a coordination agreement, the spectrum management issues presented now are fundamentally different.<sup>18</sup> Unlike the Inmarsat 4F2 satellite at issue here, those L band satellites had already been coordinated in the past for narrowband carriers. The operators discussed the technical parameters of their respective systems and developed an initial sharing plan by which, even after the annual meetings reached a stalemate, the operators agreed to abide. *See supra* note 8. The Commission and the L band operators could be reasonably assured that narrowband operations could be conducted on a non-interference basis, provided the operators adhered to the frequency assignments detailed in the 1999 SSA.

In this case, however, there is no similar arrangement which defines the frequency assignments for Inmarsat 4F2. It is a vast oversimplification for Telenor to merely state that the Inmarsat-4 satellite at issue here will use the same frequencies that have been authorized for Inmarsat-3. *See Telenor Title III Application*, Attachment A at 1-2. Inmarsat 4F2 is more likely

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<sup>17</sup> *Telenor Title III Application*, Attachment A at 12-14, 16;  
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<sup>18</sup> *See COMSAT Order* (authorizing Inmarsat satellites to provide service in the United States on a non-interference basis after concluding that operation pursuant to such a condition was possible); *Applications of SATCOM Systems, Inc., TMI Communications and Company, LP, et al., Order and Authorization*, 14 FCC Rcd 20798 (1999), *aff'd sub nom. AMSC Subsidiary Corp. v. FCC*, 216 F.3d 1154 (D.C. Cir. 2000) (authorizing Canadian-licensed satellite to provide service in the United States on a non-interference basis after concluding that operation pursuant to such a condition was possible).

both to cause interference to and receive interference from other L band operators relative to the Inmarsat-3 satellites.

The first type of interference is presented by Inmarsat's use of frequencies on its current system that were coordinated for MSV's own use under the 1999 SSA, then loaned to Inmarsat on a temporary basis, and that Inmarsat now refuses to relinquish or to refrain from using on Inmarsat 4F2. MSV and MSV Canada need access to this spectrum to conduct tests of their hybrid systems and to implement their aggressive plans to deploy an interim-generation integrated satellite-terrestrial system. Interference from Inmarsat's operation on this loaned spectrum would occur immediately but for MSV's continued restraint in not using these frequencies so as to protect Inmarsat's customers.

The second type of interference results from the fact that Inmarsat 4F2 is technically different than the Inmarsat-3 satellites, and is more likely both to cause interference to and to suffer interference from other L band systems. BGAN terminals operating with Inmarsat 4F2 will use wideband carriers

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Inmarsat and other L band operators have never coordinated an envelope of frequency assignments, including necessary guard band requirements, within which Inmarsat can operate these wideband carriers while avoiding interference to other L band operators. The inappropriate placement of a broadband, uncoordinated carrier at frequencies too close to a band edge may result in an absolute level of out-of-band emissions that result in harmful interference to other L band operators. Moreover, the aggregate EIRP ("AEIRP") of Inmarsat 4F2 is significantly higher than that of Inmarsat-3, raising the potential for increased interference in the downlink to other L band operators. A BGAN forward link carrier may be radiated from the Inmarsat 4F2 satellite at 10 dB higher power, or more, relative to a coordinated narrowband Inmarsat-3 carrier,

owing to the higher data throughput capability of the BGAN carrier being at least one order of magnitude higher compared to that of the narrowband Inmarsat-3 carrier. As such, absent coordination, out-of-channel and out-of-band emissions of the BGAN carrier are likely to cause harmful interference to other L band systems. The fact is that key technical parameters of Inmarsat 4F2, such as its proposed use of loaned frequencies, wideband carriers, guard bands, out-of-channel and out-of-band emissions, and higher AEIRP, have not been previously coordinated, thus making operation of Inmarsat 4F2 on a non-interference basis relative to other L band systems unlikely.

The potential for interference is not limited to that caused to other L band systems because Inmarsat itself may suffer greater interference upon operation of its new satellite. Inmarsat 4F2 is far more susceptible than the Inmarsat-3 satellites to co-channel interference from operation of current-generation L band satellite terminals. The Commission has noted that uplink co-channel interference resulting from MSV's current-generation satellite terminals will increase from 58.6%  $\Delta T/T$  to 794.1%  $\Delta T/T$  as Inmarsat transitions from the Inmarsat-3 satellites to the narrow spot beams on the Inmarsat-4 satellites used to support BGAN operations.<sup>19</sup> With respect to adjacent-band interference, Inmarsat has claimed in another proceeding that the

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<sup>19</sup> See *ATC Order*, Appendix C2, Table 2.1.1.C. The Commission's characterization of the interference environment is strictly limited to interference from satellite operations. The Commission's decision to permit operation of an Ancillary Terrestrial Component considered separately the potential impact of such terrestrial operations, concluding that terrestrial operations would be permitted if they added no more than an additional 1%  $\Delta T/T$  to the interference environment of co-channel operations of other, already-coordinated systems. See *Flexibility for Delivery of Communications by MSS Providers, Memorandum Opinion and Order and Second Order and Reconsideration*, IB Docket Nos. 01-185, FCC 05-30 (February 25, 2005) ("*ATC Reconsideration Order*"), ¶¶ 44-45. For uncoordinated systems such as the Inmarsat-4 satellites, the Commission left it to the operators to negotiate a combined interference limit and, in the absence of an agreement, indicated that it would permit a similar one percent additional rise in the noise floor, above whatever level the parties coordinate for satellite operations. *Id.*

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Inmarsat 4F2 satellite has not been designed to accommodate the level of adjacent band interference that can exist from operation of current L band systems based on the system parameters contemplated when Inmarsat-3 was coordinated.<sup>20</sup> If this is the case (which MSV has reason to doubt),<sup>21</sup> then Inmarsat 4F2 is more susceptible to adjacent band interference than the Inmarsat-3 satellites. The result is that, even assuming Inmarsat operates within the confines of the 1999 SSA, it is unlikely to be able to operate on an unprotected, non-interference basis once Inmarsat 4F2 begins operation. Thus, if the Bureau permits Inmarsat-4 satellites to operate in the United States, operation on an unprotected, non-interference basis may not be possible without substantial Commission oversight and enforcement.

The third potential for interference results from Inmarsat's claim that it is permitted to operate on each and every frequency in the L band.<sup>22</sup> Inmarsat provides no explanation as to

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<sup>20</sup> At the time the last L band coordination agreement was reached, Inmarsat was well aware of the potential for the U.S. and Canadian-licensed L-band satellites to support more than 1,000 METs transmitting simultaneously, allowing for voice activation. Given the 16 dBW maximum EIRP of these METs, there can be more than 46 dBW EIRP ( $16 + 10 \cdot \log(1000)$ ) launched toward space from current L-band METs alone. See MSV, Opposition to Inmarsat Ventures Ltd. Petition for Partial Reconsideration and Clarification, IB Docket No. 01-185 (August 4, 2005), at 9-10 and Technical Appendix. In the ATC proceeding, however, Inmarsat has claimed that Inmarsat 4F2 has been designed to accommodate only 37 dBW from "MSV-related" sources of interference. See Inmarsat Ventures Ltd, Petition for Partial Reconsideration and Clarification, IB Docket No. 01-185 (May 13, 2005) ("*Inmarsat Petition*"), at 9.

<sup>21</sup> See Letter from Jennifer A. Manner, MSV, to Ms. Marlene H. Dortch, FCC, IB Docket No. 01-185 (November 15, 2005).

<sup>22</sup> REDACTED

Moreover, Inmarsat's decision in 2003 to request an additional loan from MSV and MSV Canada is also consistent with this commitment, as is its statement in its April 2005 securities filing that "the amount of spectrum available to each operator is currently frozen at the levels agreed in 1999." Inmarsat Global Ltd., Form F-20 (April 29, 2005), at 10 ("*Inmarsat April 2005 Form F-20*") (available at: <http://www.sec.gov/Archives/edgar/data/1291401/000104746905012474/0001047469-05-012474-index.htm>).

how L band operators in actual practice could possibly operate on all L band frequencies and not cause mutual interference. Even assuming that the Commission did authorize Inmarsat-3 to operate on every L band frequency (which is not the case),<sup>23</sup> this would no longer be sound spectrum management policy in the case of Inmarsat 4F2, which is technically different than Inmarsat-3 and is more likely to cause interference to, and to receive interference from, other L band operators.

Given the interference concerns presented by Inmarsat 4F2, requiring Inmarsat to coordinate prior to operation is both good spectrum management policy and consistent with precedent.<sup>24</sup> The technical issues presented by the proposed operation of Inmarsat-4 satellites can only be resolved through *a priori* frequency coordination among the L band operators and their licensing administrations, which has not yet occurred. Given the likelihood of operations of Inmarsat 4F2 to cause harmful interference to other L band operators and Inmarsat's refusal to abide by previous coordination agreements by returning loaned spectrum, it is not a solution for the Bureau to grant applications to operate with Inmarsat 4F2 now and hope that a coordination agreement can be reached in the future. As the current impasse in the L band indicates, a *post hoc* approach to coordination disserves the public interest and impedes the full and efficient use of spectrum.<sup>25</sup> If the Bureau were to permit Inmarsat 4F2 to provide service in the United States prior to a coordination agreement, the ability of L band operators to provide vital satellite services, including to the public safety community, will be threatened. L band operators will

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<sup>23</sup> *COMSAT Order* ¶ 115(c)-(d); *see infra* pages 14-17.

<sup>24</sup> *See* Letter from Thomas S. Tycz, FCC, to Joseph A. Godles, Counsel for PanAmSat, File No. SAT-STA-19980902-00057 (September 15, 1998) (refusing to permit PanAmSat to operate C band payload until after coordinating with affected Administrations).

<sup>25</sup> As it has done numerous times in the past, MSV invites Inmarsat to participate in discussions to make the most efficient use of the L band spectrum.

soon find themselves embroiled in interference disputes before the Commission, unable to take full advantage of this prime spectrum resource and depriving consumers of the benefits of innovative services that MSV will provide in the near future. Accordingly, unless and until L band coordination discussions are finalized and a coordination agreement is reached, the Bureau should hold the Telenor applications in abeyance.<sup>26</sup> Consistent with the Commission's stated strategic goals, MSV stands ready to work with the Commission and other L band operators to use L band spectrum more efficiently and effectively by coordinating the assignment of contiguous and wider frequency blocks among the L band operators.<sup>27</sup>

**II. IF THE BUREAU GRANTS THE TELENOR APPLICATIONS DESPITE THE LACK OF A COORDINATION AGREEMENT, IT SHOULD ATTACH CONDITIONS**

In the event the Bureau contemplates grant of the Telenor applications despite the lack of a coordination agreement, the Bureau should condition the grant on operation strictly on an unprotected, non-interference basis in accordance with the spectrum sharing arrangement negotiated in 1999 among the North American L band operators, which does not include frequencies that were temporarily loaned but subsequently recalled by the lenders. Under the

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<sup>26</sup> A Bureau decision holding the Telenor earth station applications in abeyance is consistent with its recent decisions authorizing MSV to operate next-generation satellites on a non-interference basis. *See MSV-1 Order; MSV-SA Order*. In MSV's case, the Bureau granted licenses for satellites that are years away from launch, not earth station licenses for imminent operation that are presented by Telenor's applications.

<sup>27</sup> The Commission has identified the promotion of "efficient and effective" use of spectrum as one of its strategic objectives. *See FCC, Strategic Plan: 2006-2011* (September 30, 2005). The Commission has recognized that assignment of contiguous frequency blocks will increase spectrum efficiency and redound to the benefit of the American public. *See generally Improving Public Safety Communications in the 800 MHz Band, Report and Order*, 19 FCC Rcd 14969 (August 6, 2004); *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, Third Report and Order, Third Notice of Proposed Rule Making, and Second Memorandum Opinion and Order*, 18 FCC Rcd 2223, ¶ 68 (2003).



terms of the *COMSAT Order*, earth stations accessing Inmarsat satellites in the United States are permitted to operate only on a non-interference basis *and* only on those frequencies coordinated for the Inmarsat-3 satellites pursuant to the 1999 SSA. *See COMSAT Order* ¶ 115(c)-(d). The Commission granted these applications in 2001, well after expiration of the last SSA at the end of 1999. Thus, the Commission was aware that the SSA had expired. It also was aware that Inmarsat had REDACTED

.<sup>28</sup> In its decision, the Commission specifically conditioned the licenses to use Inmarsat on use of only those frequencies coordinated for Inmarsat in the “most recent annual L-Band operator-to-operator agreement,” which is a reference to the 1999 SSA. *COMSAT Order* ¶ 115(c). Neither Inmarsat nor its distributors ever sought reconsideration or clarification of this unambiguous condition. Indeed, even more recently in February 2003,<sup>29</sup> November 2004,<sup>30</sup> and February 2005,<sup>31</sup> the Commission was under the impression that the parties were continuing to operate under the 1999 assignments pending further negotiations. Moreover, Inmarsat’s decision in 2003 to request an additional loan from MSV and MSV Canada is also consistent with such a

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<sup>29</sup> *See ATC Order* ¶ 92 (“The parties to the MoU last revised spectrum assignments in 1999 and, pending further negotiations, continue to operate under those assignments today.”); *id.* n.144 (“Although annual meetings were to have taken place under the terms of the Mexico City MoU, these meetings have not occurred since the parties last agreed to a complex spectrum-sharing arrangement in London in 1999; therefore, the parties continue to operate under the 1999 assignments pending further negotiations.”).

<sup>30</sup> *See Mobile Satellite Ventures Subsidiary LLC, Order and Authorization*, DA 04-3553 (Int’l Bur. 2004), at n.8 (“The parties to the MOU last revised the spectrum assignments in 1999 and, pending further negotiations, continue to operate with those assignments today.”).

<sup>31</sup> *See Flexibility for Delivery of Communications by MSS Providers, Memorandum Opinion and Order and Second Order and Reconsideration*, IB Docket Nos. 01-185, FCC 05-30 (February 25, 2005), at ¶ 38 (“These negotiations have not occurred since 1999, and the 1999 coordination agreement remains in effect.”).

condition, as is its statement in its April 2005 securities filing that “the amount of spectrum available to each operator is currently frozen at the levels agreed in 1999.”<sup>32</sup>

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The Bureau should make clear if it grants the Telenor applications that METs authorized to operate with any L band satellites in the United States are not permitted to use frequencies that were loaned by one operator to another but subsequently recalled by the lenders.<sup>33</sup>

Such a clarification is crucial because Inmarsat’s unilateral re-interpretation of the *COMSAT Order* along with its theory of “prevailing usage” would allow it to confiscate spectrum coordinated by the United States for MSV.<sup>34</sup> Absent clarification by the Bureau that Inmarsat is only permitted to use those frequencies it coordinated under the 1999 SSA, the United States is at risk of losing a vital national spectrum resource to Inmarsat’s unilateral and illegal action. Moreover, without such a clarification, a precedent will be established that

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<sup>32</sup> Inmarsat Global Ltd., Form F-20 (April 29, 2005), at 10 (“*Inmarsat April 2005 Form F-20*”) (available at: <http://www.sec.gov/Archives/edgar/data/1291401/000104746905012474/0001047469-05-012474-index.htm>).

<sup>33</sup> While the present applications pertain only to BGAN METs proposing to operate with Inmarsat 4F2, the Commission has the discretion to issue a declaratory ruling *sua sponte* in this proceeding clarifying that any METs authorized to operate with any L band satellites, including all of the Inmarsat satellites, are not authorized to use loaned but recalled frequencies. *See* 47 C.F.R. § 1.2.

<sup>34</sup> In the prospectus Inmarsat recently filed in connection with its initial public offering (“IPO”), Inmarsat explained that its so-called right to use L band frequencies in North America is based on its theory of “prevailing usage,” which apparently refers to Inmarsat’s view that it can use any frequency it wants provided it does so for a sufficiently long time. *See* Inmarsat plc Prospectus, Global Offer of Approximately 164.6 Million Shares of €0.0005 each and admission to listing on the Official List and to trading on the London Stock Exchange at an Offer Price expected to be between 215p and 245p per share (“*Inmarsat Prospectus*”), at 53 (attached at Exhibit A).

supports attempts by other nations to grab U.S.-coordinated satellite spectrum, thereby undermining the internationally accepted regime for assigning satellite spectrum among sovereign nations.

In addition, to the extent the Bureau grants the Telenor applications in the absence of a coordination agreement, it should also condition the authorization on a prior showing by Inmarsat as to how it will avoid interference to other L band operators.

### III. THE TELENOR APPLICATIONS RAISE ADDITIONAL ISSUES THAT WARRANT FURTHER SCRUTINY

The lack of international frequency coordination for Inmarsat 4F2 notwithstanding, the Telenor applications raise additional issues that warrant further scrutiny. First, while Telenor claims that Inmarsat 4F2 is a replacement for the Inmarsat-3 satellite at 54°W, there is insufficient evidence in the record to support this claim. While Telenor claims that Inmarsat 4F2 will serve the same geographic area as the Inmarsat-3 satellite at 54°W, Inmarsat has never provided the coverage area for its Inmarsat-3 satellite in order to make that comparison.<sup>35</sup> Moreover, despite Telenor's claim that the Inmarsat-3 satellite at 54°W will be retired shortly after Inmarsat 4F2 is brought into service,<sup>36</sup> Inmarsat has explained to the Securities and Exchange Commission ("SEC") that its Inmarsat-3 fleet will be moved to other locations where

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<sup>35</sup> While Telenor states that Inmarsat 4F2 will "serve the same geographic regions" as the Inmarsat-3 satellite at 54°W, this leaves unanswered whether Inmarsat 4F2 will cover geographic regions beyond those covered by the Inmarsat-3 satellite at 54°W, which would disqualify Inmarsat 4F2 from being a replacement satellite. *See Telenor Title III Application, Attachment A at 1*; 47 C.F.R. § 25.165(e) ("A replacement satellite is one that is . . . [a]uthorized to be operated at the same orbit location, in the same frequency bands, and with the same coverage area as one of the licensee's existing satellites.").

<sup>36</sup> *See Telenor Title III Application, Attachment A at 2.*

they will continue to provide service, perhaps until as late as 2014.<sup>37</sup> To the extent the Bureau finds that Inmarsat 4F2 is a replacement satellite under the Commission's rules despite these discrepancies, the Bureau should make clear that this decision does not mean that the Commission as the representative of the United States in international frequency coordination negotiations considers Inmarsat 4F2 to be a replacement satellite under the *Mexico City MoU*. As discussed above (*see supra* pages 8-9), Inmarsat 4F2 cannot be considered a replacement satellite under the *Mexico City MoU*.

Second, while Telenor is correct when it states that the Commission rule requiring FSS satellites to operate with  $\pm 0.05^\circ$  East-West station keeping does not apply to MSS satellites, it is incorrect when it implies that this is settled law.<sup>38</sup> In acting on MSV's application to operate an MSS satellite with  $\pm 0.1^\circ$  East-West station keeping, the Bureau held that MSV was required to justify a waiver of the rule requiring FSS satellites to operate with  $\pm 0.05^\circ$  East-West station keeping.<sup>39</sup> MSV has sought reconsideration of this decision, asking the Bureau to clarify that the rule requiring FSS satellites to operate with  $\pm 0.05^\circ$  East-West station-keeping does not apply to MSS satellites.<sup>40</sup> This proceeding is pending. To the extent the Bureau authorizes Inmarsat 4F2 for service in the United States with  $\pm 0.1^\circ$  East-West station keeping without seeking a waiver, the Bureau must afford similar treatment to other MSS satellites proposing to serve the U.S. market, such as MSV-1. Conversely, if the Bureau on reconsideration of the *MSV-1 Order*

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<sup>37</sup> See *Inmarsat April 2005 Form F-20* at 29 (noting that Inmarsat-3 satellite will cease commercial operations in 2014); *id.* at 39-40 (explaining that Inmarsat-3 satellites have sufficient fuel remaining to be relocated to other orbital locations).

<sup>38</sup> *Telenor Title III Application*, Attachment A at 37; see 47 C.F.R. § 25.210(j).

<sup>39</sup> See *MSV-1 Order* ¶ 21.

<sup>40</sup> See MSV, Petition for Clarification and Partial Reconsideration, File Nos. SAT-LOA-19980702-00066 et al (June 22, 2005).

upholds its decision that MSS satellites are required to comply with  $\pm 0.05^\circ$  East-West station-keeping, the Telenor application must be dismissed for failing to seek a waiver of this rule.<sup>41</sup>

Third, while Telenor states that it has reached a revised agreement with the Executive Branch to address the admitted national security and law enforcement concerns presented by operation of the BGAN terminals, it has not filed this agreement in the record. *See Telenor Title III Application*, Additional Response to Item 43 at 6-7. The Commission has explained that in reviewing applications from foreign entities proposing to provide telecommunications services in the United States, it will assess any national security and law enforcement concerns raised by the application.<sup>42</sup> While the Commission has stated that it will defer to the expertise of the Executive Branch in identifying these concerns, the application must provide the Bureau with the information it needs to perform its own public interest analysis by assessing whether national security and law enforcement efforts will be compromised by grant of the application.<sup>43</sup>

Telenor's failure to provide a copy of the revised agreement it has reached with the Executive Branch deprives the Bureau and interested parties of vital information needed to assess whether

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<sup>41</sup> *See* Letter from Thomas S. Tycz, FCC, to John K. Hane, Pegasus Development Corporation, DA 03-3665 (November 19, 2003) (dismissing application for failing to seek waiver of Commission's East-West station-keeping rule).

<sup>42</sup> *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market, Report and Order and Order on Reconsideration*, 12 FCC Rcd 23891, ¶ 61 (November 26, 1997). In reviewing other applications to provide MSS in the United States, the Executive Branch has expressed concern with the national security and law enforcement implications of routing MSS traffic through a gateway earth station located in a foreign country. *See TMI Communications and Company, Limited Partnership*, 14 FCC Rcd 20798, ¶ 55 (1999) ("*TMI Order*").

<sup>43</sup> In other cases, applicants proposing to route MSS traffic through a gateway earth station located in a foreign country have been required to provide the Bureau with a copy of the agreement entered into with the Executive Branch. *See, e.g., TMI Order; COMSAT Order; Motient Services Inc. and TMI Communications and Company, LP, Assignors, and Mobile Satellite Ventures Subsidiary LLC, Assignee, Order and Authorization*, DA 01-2732, 16 FCC Rcd 20469 (Int'l Bur. 2001).

grant of the application will serve the public interest. To the extent the Bureau does not require Telenor to file its revised agreement, the Bureau must afford similar treatment to other MSS operators. Moreover, even assuming that Telenor has reached an agreement with the Executive Branch, this is not sufficient to assure the Bureau that the application does not raise national security and law enforcement concerns. Given the Commission's recent decision directing the Network Reliability and Interoperability Council ("NRIC") to adopt recommendations for E911 for MSS,<sup>44</sup> the Bureau can only conclude that grant of the application will hamper law enforcement efforts and harm public safety given Inmarsat's stated position that the location of its gateway earth stations in Europe makes E911 compliance infeasible.<sup>45</sup> The Bureau must make clear that, to the extent the Commission eventually requires MSS operators to provide E911, Inmarsat's unilateral choice to locate gateway earth stations overseas does not excuse it from having to comply with any E911 requirements the Commission may adopt.

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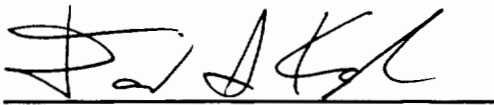
<sup>44</sup> See *Second Report and Order*, CC Docket No. 94-102, IB Docket No. 99-67, FCC 04-201 (August 25, 2004).

<sup>45</sup> See Reply Comments of Inmarsat Ventures PLC, IB Docket No. 99-67, at 8-11 (March 25, 2002). While the Commission has exempted MSS terminals that cannot be used in motion from E911 compliance, Inmarsat has admitted that at least some of its BGAN terminals must be E911 compliant. See Inmarsat Ventures Limited, Reply, File No. SAT-MOD-20031118-00333 (January 5, 2005), at 3 n.9 ("[T]he Commission *did not* exempt all BGAN terminals from E911 requirements.") (emphasis in original).

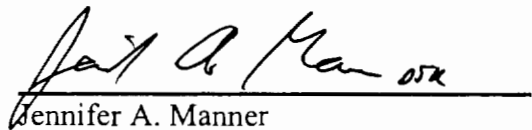
**Conclusion**

Based on the foregoing, the Commission should hold in abeyance the Telenor applications until the conclusion of an L band coordination agreement. If the Bureau grants the applications now despite the lack of a coordination agreement, the Bureau should condition the authorizations on operation strictly on an unprotected, non-interference basis in accordance with the spectrum sharing arrangement negotiated in 1999 among the North American L band operators, which does not include frequencies that were temporarily loaned but subsequently recalled by the lenders.

Respectfully submitted,



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Dated: November 23, 2005

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**Exhibit A**

Excerpt from: Inmarsat plc Prospectus, Global Offer of Approximately 164.6 Million Shares of €0.0005 each and admission to listing on the Official List and to trading on the London Stock Exchange at an Offer Price expected to be between 215p and 245p per share.





# Inmarsat plc Prospectus

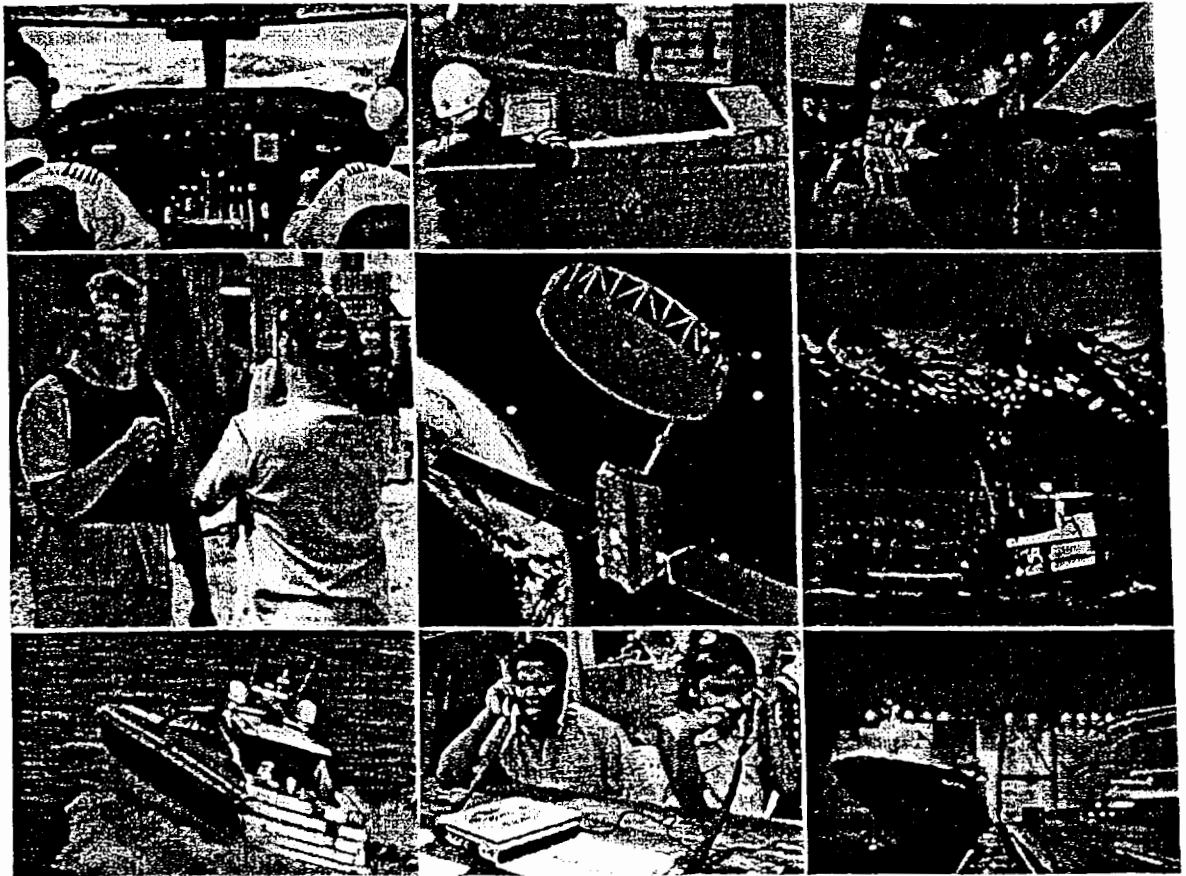
## Joint Bookrunners

JPMorgan Cazenove  
(Joint Sponsors)

Lehman Brothers

Merrill Lynch International

Morgan Stanley  
(Joint Sponsors)



A copy of this document, which comprises a prospectus relating to Inmarsat plc (the "Company") as required by the Listing Rules (the "Listing Rules") made under section 74 of the Financial Services and Markets Act 2000 ("FSMA"), has been delivered to the Registrar of Companies in England and Wales for registration as required by section 83 of FSMA.

Application has been made to the UK Listing Authority and to the London Stock Exchange respectively for admission of all of the ordinary shares of €0.0005 each (the "Shares") issued and to be issued in connection with the Global Offer (as defined in "Part 11: Definitions"): (i) to the Official List of the UK Listing Authority (the "Official List"); and (ii) to the London Stock Exchange plc's (the "London Stock Exchange") market for listed securities (together "Admission"). Conditional dealings in the Shares are expected to commence on the London Stock Exchange on 17 June 2005. It is expected that Admission will become effective and that unconditional dealings in the Shares will commence on the London Stock Exchange at 8.00 a.m. (London time) on 22 June 2005.

All dealings before the commencement of unconditional dealings will be on a "when issued" basis and will be of no effect if Admission does not take place. Such dealings will be at the sole risk of the parties concerned.

The Directors (as defined in "Part 11: Definitions") and the Proposed Directors (as defined in "Part 11: Definitions") of Inmarsat plc, whose names appear on page 1 of this document, accept responsibility for the information contained in this document. To the best of the knowledge and belief of the Directors and the Proposed Directors, who have taken all reasonable care to ensure that such is the case, the information contained in this document is in accordance with the facts and does not omit anything likely to affect the import of such information.

This document does not constitute an offer to sell, or the solicitation of an offer to buy, Shares in any jurisdiction where such offer or solicitation is unlawful. The Shares have not been, and will not be, registered under the US Securities Act of 1933 (the "Securities Act"), and, subject to certain exceptions, may not be offered or sold within the United States. The Shares are being offered and sold outside the United States pursuant to, and in reliance on, Regulation S ("Regulation S") under the Securities Act and within the United States only to qualified institutional buyers ("QIBs") as defined in Rule 144A ("Rule 144A") under the Securities Act in transactions exempt from the registration requirements of the Securities Act. Sellers of the Shares may be relying on the exemption from the provisions of Section 5 of the Securities Act provided by Rule 144A. For a description of these and certain further restrictions on offers, sales and transfers of the Shares and the distribution of this document, see paragraph 15 under "Part 10: Additional Information".

Anyone considering acquiring Shares in the Global Offer should read this document in its entirety and, in particular, "Part 1: Risk Factors".



**Inmarsat plc**

*(incorporated and registered in England and Wales under the Companies Act 1985 with registered no. 4886072)*

**Global Offer of approximately 164.6 million Shares of €0.0005 each and admission to listing on the Official List and to trading on the London Stock Exchange at an Offer Price expected to be between 215p and 245p per Share**

**Joint Sponsors**

**JPMorgan Cazenove**

**Morgan Stanley**

**Joint Bookrunners**

**JPMorgan Cazenove**

**Lehman Brothers**

**Merrill Lynch International**

**Morgan Stanley**

**Expected ordinary share capital immediately following Admission**

<u>Authorised</u>		<u>Issued</u>	
Number	Amount	Number	Amount
1,169,017,709	€584,509	473,572,588	€236,786

Shares of €0.0005 each

Pursuant to the Radio Regulations, national regulators are required to file technical information with the ITU relating to the proposed satellite systems of operators under their jurisdiction. Ground-based transmission facilities operated by us or our distribution partners, called land earth stations, which connect our satellites to terrestrial communications networks, are also subject to the Radio Regulations if the land earth station coordination area crosses an international border.

All necessary filings for our in-orbit satellites have been made on our behalf by the UK Radiocommunications Agency (which, from 29 December 2003, was incorporated into and replaced by the UK Office of Communications, known as Ofcom). Once filings have been made with the ITU, a frequency co-ordination process follows to ensure that each operator's services do not cause unacceptable interference to the services of other operators. The negotiations are conducted by the national administrations with the assistance of satellite operators. The timetable and procedures for co-ordination are also governed by the Radio Regulations. We have co-ordinated frequencies in the mobile satellite services spectrum at L-band (1.5 and 1.6 GHz) for communication between our satellites and end-user terminals, as well as frequencies in the C-band (4 and 6 GHz) for communications between land earth stations and our satellites. We also have co-ordinated frequencies in the C-band for our tracking, telemetry and command signals to and from our satellites.

Frequency in the L-band is allocated on an annual basis in a regional multilateral co-ordination process which takes place annually through two separate and independent regional operator review meetings among satellite operators using frequencies in the L-band. One meeting involves operators whose satellites cover North America (known as Region 2), while the other involves operators whose satellites cover Europe (known as Region 1), Africa, Asia and the Pacific (collectively known as Region 3). Both of these groups co-ordinate our use of frequencies in South America. In each case, satellite operators co-ordinate frequencies and assign spectrum by consensus. It may be possible to agree frequency allocation and co-ordination on a bilateral basis between operators outside this multilateral process, subject to non-interference with third parties.

In the past, we have been able to secure sufficient spectrum through these co-ordination meetings to provide all our services. However, satellite operators at the North American meeting have been unable to agree on new spectrum allocations and spectrum rights in the North America region are therefore now founded on prevailing usage under the over-arching principles established by the ITU. MSV and MSV Canada have challenged our right to use particular frequency ranges in our current North American spectrum, claiming that they are entitled to use those spectrum segments. We have rejected these claims, pointing to our continuous use of these spectrum segments and MSV's failure to use other spectrum available to it. Moreover, we believe the appropriate forum for any spectrum coordination issue is a multilateral meeting of all North American operators. Pending such a meeting, our rights to the current spectrum over North America are founded on the well-established principles of manifest continuous usage and non-interference. (A)

We have agreed spectrum allocations in the Region 1 and Region 3 operators' review meetings (1) with all operators in respect of our existing services and (2) with all operators, except one, in respect of our next-generation BGAN services. We believe these agreements provide sufficient spectrum to support our existing and next-generation services, including BGAN, throughout the period of validity of the allocation agreements. However, the operator who has not agreed to the latter plan has already stated that it will continue to operate according to the previous spectrum allocation plan. If this situation persists, there is potential for interference to both our and that operator's services. Furthermore, it is possible we would need to apply for additional spectrum to support our future services.

Increased competition for spectrum and orbital locations (and/or disputes with parties to regional co-ordination processes) may make it difficult for us to retain rights to use the spectrum and orbital resources we require. We cannot guarantee that we will be able in the future to retain spectrum and orbital rights sufficient to provide our existing or future services. We also cannot determine to what extent regulatory authorities will charge us or our distribution partners for the use of mobile satellite communications service spectrum or how much would need to be paid to acquire or retain such spectrum in the future. To the extent we or our distribution partners are unable to retain the rights to use such spectrum or are required to pay for such use (by spectrum auctions or otherwise), our ability to provide services may either be limited or become more costly, which may harm our business or our results of operations.

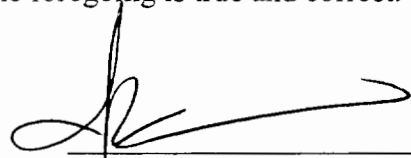
#### **Use of Mobile Satellite Communications Service Spectrum to Provide Terrestrial Communications Services**

In January 2003, under the ATC Ruling the FCC decided to permit mobile satellite communications service operators to use their assigned mobile satellite communications service frequencies to provide ancillary terrestrial wireless communication services in the United States as part of an integrated service.

**Declaration of Jennifer A. Manner**

1. I am the Vice President, Regulatory Affairs of Mobile Satellite Ventures Subsidiary LLC.
2. I have read the foregoing Petition to Hold in Abeyance or to Grant with Conditions the applications of Telenor Satellite, Inc. ("Telenor") for Title III and Section 214 authorizations to operate Broadband Global Area Network ("BGAN") terminals in the United States.
3. I have personal knowledge of the facts stated in the Petition to Hold in Abeyance or to Grant with Conditions. The facts set forth in the Petition, other than those of which official notice may be taken, are true and correct to the best of my knowledge, information, and belief.

I declare under penalty of perjury that the foregoing is true and correct.



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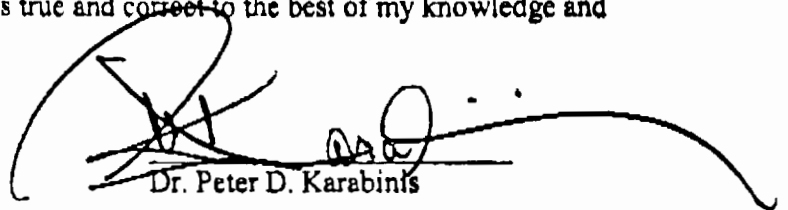
Jennifer A. Manner

Executed on November 23, 2005

**Technical Certification**

I, Dr. Peter D. Karabinis, Senior Vice President and Chief Technical Officer of Mobile Satellite Ventures Subsidiary LLC, certify under penalty of perjury that:

I am the technically qualified person with overall responsibility for the technical information contained in the foregoing. I am familiar with the Commission's rules, and the information contained in the foregoing is true and correct to the best of my knowledge and belief.



Dr. Peter D. Karabinis

Dated: November 23, 2005

**PUBLIC COPY (REDACTED)**

**CERTIFICATE OF SERVICE**

I, Sylvia A. Davis, a secretary with the law firm of Pillsbury Winthrop Shaw Pittman LLP, hereby certify that on this 23<sup>th</sup> day of November 2005, served a true copy of the foregoing by first-class United States mail, postage prepaid, upon the following:

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International Bureau  
Federal Communications Commission  
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Rockville, MD 20852

  
Sylvia A. Davis

\*By e-mail

## CERTIFICATE OF SERVICE

I, Sylvia A. Davis, hereby certify that on this 28<sup>th</sup> day of November 2005, served a true copy of the foregoing by first-class United States mail, postage prepaid, upon the following:

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Cassandra Thomas\*  
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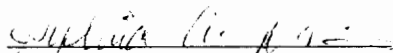
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