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Via Hand Delivery

December 13, 2005

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: Hughes Network Systems Sub, LLC – File No. 0137-EX-ML-2005 (Call Sign WD2XJU); Aeronautical Radio, Inc. – File No. 0327-EX-PL-2005

Dear Ms. Dortch:

Inmarsat Ventures Limited opposes the November 28, 2005 request of Mobile Satellite Ventures LP ("MSV") that OET (i) reconsider the experimental license issued to HNS, and (ii) refrain from granting the experimental license as requested by Aeronautical Radio, Inc. Inmarsat has an interest in these proceedings, as MSV has made allegations about the use of Inmarsat's I-4 satellite and about the state of international spectrum coordination with Inmarsat.

There is no basis for OET to preclude or limit the use of the I-4 satellite, as MSV requests. The relief that MSV requests is supported neither by the law nor the facts, and no interference issues are presented here. Moreover, the Commission has a long history of authorizing L-Band operations on a non-harmful interference basis in the absence of a spectrum coordination agreement.

As MSV has noted, the issues it raises were fully briefed in another proceeding just last week. As with MSV, Inmarsat encloses and incorporates by reference its recent filing in that matter which fully addresses MSV's arguments, Inmarsat's December 7, 2005 Opposition to MSV in File No. SES-LFS-20050930-01352, *et al.*

Sincerely yours,

John P. Janka

Enclosure

cc: Diane J. Cornell, Vice President, Government Affairs, Inmarsat, Inc.

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Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of	)	
	)	
TELENOR SATELLITE, INC.	)	File No. SES-LFS-20050930-01352
	)	File No. SES-AMD-20051111-01564
Application for Title III Blanket License 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	)	

OPPOSITION OF INMARSAT VENTURES LIMITED

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December 7, 2005

SUMMARY

Prompt Commission action will allow an exciting array of new broadband MSS services to be provided in the U.S. beginning in early 2006. The recently-launched L-Band Inmarsat satellite used to provide these broadband services is being prepared for commercial service. Thus, Inmarsat and its partners soon will be ready to offer the U.S. the very same broadband MSS services now available elsewhere in the world.

These broadband services, called "BGAN" (Broadband Global Area Network), use affordable, notebook-sized, mobile terminals. BGAN will extend broadband to underserved and unserved areas in the U.S., and restore connectivity when natural disasters, terrorism, or other events disrupt the terrestrial network. Thus, BGAN is an invaluable tool for the military, law enforcement, public safety officials, and first responders in their homeland security efforts.

No one opposes the grant of authority to provide BGAN. The only party to comment is MSV, Inmarsat's L-Band competitor, who has not invested in new MSS spacecraft for over a decade, and who will not be in a position to offer a service like BGAN for the foreseeable future. MSV seeks regulatory delay so that it can exert leverage in ongoing international spectrum negotiations regarding the L-Band. Specifically, MSV asks the Commission to hold these BGAN applications in abeyance "until the conclusion of a coordination agreement that results in a more efficient assignment of L band spectrum," "including the assignment of contiguous and wider frequency blocks."[1]

Inmarsat shares MSV's stated desire to re-engage in multi-lateral spectrum negotiations, and to reach a new agreement. Doing so would end the deadlock that has existed since 1999, when MSV vetoed an extension of the agreement that once provided L-Band

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[1] MSV Petition at 1.

spectrum assignments to five different MSS operators, including Inmarsat and MSV. Inmarsat and its regulator, Ofcom, have urged the recommencement of negotiations among the affected U.S., Canadian, U.K., Russian, and Mexican MSS operators, under the terms of the governing international framework, the 1996 Mexico City MoU. Unfortunately, because MSV has declined to participate on the terms to which the United States agreed a decade ago, a mutually agreeable solution does not appear realistic in the immediate future. Moreover, MSV has ignored Inmarsat's efforts over the past six months to address a much more limited set of issues---the routine coordination of the Inmarsat satellite that was launched on November 8, 2005.

There is no legitimate reason to withhold BGAN service from the U.S. pending the negotiation of a new international L-Band coordination agreement among Inmarsat, MSV, and three other MSS operators. In similar cases, the Commission consistently has authorized the provision of new L-Band services on a non-harmful interference basis. Thus, the correct result from a policy perspective, and under both Commission precedent and international law, is to authorize BGAN (on a non-harmful interference basis), ensure the continued provision of Inmarsat services to the U.S., and reinitiate the international negotiation process. There are a number of reasons this is the right answer:

- The Commission has recognized that MSV itself is responsible for the absence of a continuing L-Band coordination agreement, and previously declined to allow MSV to invoke the expiration of that agreement for its own advantage.
- The Commission consistently has determined that it would not serve the public interest to withhold competitive service offerings in the U.S. to protect MSV.
- The Commission has acknowledged that WTO obligations do not allow the denial of market access to others in order to increase MSV's leverage in international spectrum negotiations.
- In January and May of this year, the Commission authorized MSV to deploy two new, high-powered L-Band MSS spacecraft before they were

internationally coordinated. The Commission is obligated under U.S. law and the WTO to treat Inmarsat no less favorably.

- There is no new interference issue presented by BGAN: Inmarsat will operate BGAN within the same technical "envelope" under which Inmarsat is providing MSS service to the U.S. today.

In the absence of a coordination agreement assigning specific frequencies to any L-Band operator, the Commission has a longstanding and clear policy that governs *all* L-Band operators who serve the U.S. (including MSV): (i) every L-Band operator must operate on a non-harmful interference basis, and (ii) no operator is constrained to operating in any particular range of L-Band frequencies. This means of ensuring that robust L-Band competition continues to occur, and that interference does not result, was affirmed by the U.S. Court of Appeals for the D.C. Circuit when MSV challenged it the first time. Moreover, the Commission consistently has applied this policy, in authorizing a Canadian operator to provide MSS, in authorizing Inmarsat service in the U.S. before, and in authorizing MSV to operate two uncoordinated, next-generation L-Band satellites in January and May of 2005. There is no basis to vary from this policy and to constrain the specific L-Band frequencies on which BGAN service will be provided in the U.S.

MSV's other arguments are baseless:

- MSV's argument that Inmarsat's new in-orbit spacecraft is not a "replacement" ignores the reality that the spacecraft will serve as an operational substitute for, be located at the functionally equivalent orbital location of, serve the same parts of the U.S. as, and operate within the umbrella of technical parameters coordinated for, its predecessor.

- Just last year, the Commission expressly declined to extend to MSS spacecraft, like Inmarsat's, the Fixed Satellite Service station-keeping rule that MSV asks be extended to cover Inmarsat's MSS spacecraft.

- The E911 issues that MSV raises are premature because E911 requirements have not yet been adopted for MSS. Inmarsat, like every other MSS operator, will need to comply with such requirements as and when they are adopted.

- The confidential implementation terms of national security agreements with the DoJ and the FBI covering MSS simply are not a matter for the public record.

In sum, MSV's arguments are fundamentally inconsistent with how the Commission consistently has authorized L-Band service in the U.S. in the absence of an L-Band coordination agreement. The Commission previously rejected similar MSV efforts to stymie the introduction of new, competitive MSS offerings in the L-Band, even when, as here, MSV cloaked those efforts with "international coordination" and "spectrum management" arguments, and when MSV invoked the absence of a coordination agreement governing the L-Band. The Commission should promptly authorize BGAN so that U.S. consumers will have a new competitive broadband alternative in early 2006.

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	)	
TELENOR SATELLITE, INC.	)	File No. SES-LFS-20050930-01352
	)	File No. SES-AMD-20051111-01564
Application for Title III Blanket License 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	)	

OPPOSITION OF INMARSAT VENTURES LIMITED

Inmarsat Ventures Limited ("Inmarsat") Opposes the Petition to Hold in Abeyance or to Grant with Conditions filed by Mobile Satellite Ventures Subsidiary LLC ("MSV") in these proceedings.

I. INTRODUCTION

Prompt Commission grant of authority in this case will provide consumers and government users throughout the United States with access an exciting array of next-generation broadband MSS services. Through its applications, the Applicant proposes to offer broadband MSS to the United States at speeds of almost 500 kbps to notebook-sized satellite earth terminals that are one third the price, size and weight of the smallest MSS terminals in use today with the Inmarsat system. These are the features of Inmarsat's new Broadband Global Area Network ("BGAN") service, which will enable the extension of broadband to parts of the U.S. that are currently underserved or unserved by terrestrial networks, offering Internet access, high-speed data transmissions, virtual private networking, and voice communications, among other

communications services. Thus, BGAN promises to be an invaluable tool for public officials, the military, law enforcement, public safety officials, and first responders, among others, in their efforts to protect and promote U.S. homeland security. BGAN will provide essential services in support of U.S. relief efforts when natural disasters, terrorism, or other events disrupt the terrestrial communications network, by restoring connectivity.

BGAN will be provided over the L-Band, U.K.-licensed, Inmarsat 4 satellite that was launched November 8, 2005, and will be ready to provide commercial service in early 2006. Thus, prompt approval of these BGAN applications is essential to allow Inmarsat to bring these technological innovations and essential services to U.S. consumers and government users, enhancing their options for communications services, and increasing competition.

MSV currently provides MSS in the United States over two L-Band satellites, one licensed by the United States, and one licensed by Canada. Thus, MSV is Inmarsat's direct competitor. MSV expressly *does not* oppose the grant of the BGAN applications. Rather, MSV seeks regulatory delay in the provision of a class of new and innovative broadband MSS services that MSV itself is not in a position to offer, and that MSV will not be able to offer for the foreseeable future. MSV seeks this delay for its own commercial advantage in international spectrum negotiations: it asks the Commission to hold these BGAN applications in abeyance "until the conclusion of a coordination agreement that results in a more efficient assignment of L band spectrum" among the five existing L-Band operators, "including the assignment of contiguous and wider frequency blocks."[2]

For the reasons provided below, Inmarsat urges the Commission to grant the BGAN applications without delay and without any conditions, other than the requirement to

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[2] MSV Petition at 1.

operate on a non-harmful interference basis in the absence of an international coordination agreement governing the L-Band.

II. THE COMMISSION ROUTINELY AUTHORIZES L-BAND MSS OPERATIONS IN THE ABSENCE OF A COORDINATION AGREEMENT

Even though there has been no L-Band spectrum coordination agreement since 1999, the five L-Band MSS operators have been able to successfully operate their systems without causing harmful interference. Moreover, the Commission has authorized new and innovative L-Band services to be provided in the United States. As demonstrated below, in the absence of an ongoing L-Band coordination agreement, the Commission has a clear policy to facilitate competition by authorizing new L-Band MSS services. The Commission exercises its spectrum management responsibilities by requiring that those new operations be conducted on a non-harmful interference basis, not by withholding new services from the public.

A. The Last L-Band Coordination Agreement Expired in 1999, When MSV's Predecessor Vetoed Efforts to Extend It

The use of the L-Band by MSV, Inmarsat, and three other non-U.S.-satellite operators for certain MSS networks is governed by the 1996 Mexico City Memorandum of Understanding (the "*Mexico City MoU*" or the "*MoU*"). The *Mexico City MoU* does not assign specific frequencies to any L-Band operator, nor does it govern the types of carriers that the operators may employ. Frequency assignments are made through successively negotiated coordination agreements, each with a one-year term, and based on the actual usage and short terms projections of each system.[3] The last annual operating agreement, covering the twelve

[3] *FCC Hails Historic Agreement on International Satellite Coordination*, Report No. IN 96-16 (rel. Jun. 25, 1996).

months ended December 1999, expired by its own terms, and, therefore, is no longer is in effect.[4] In MSV's predecessor's own words "Beginning January 1, 2000, there has not even been such a short-term sharing arrangement" governing use of the L-Band.[5]

The expired 1999 agreement was neither renewed nor extended for one simple reason, which both the Commission and MSV's predecessor have acknowledged: MSV's predecessor vetoed efforts to keep that agreement in effect. MSV made the strategic decision that its leverage in seeking more L-Band spectrum would be enhanced (i) if no coordination agreement remained in effect, and (ii) if the Commission precluded other L-Band operators from

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[4] Letter from Lon C. Levin, Vice President and Regulatory Counsel, AMSC, to Secretary, FCC, Oct. 19, 1999 ("As of January 1, 2000, there is no spectrum sharing agreement among the five operators"); *Accord, Mobile Satellite Ventures Subsidiary LLC*, DA 05-1492, at ¶ 34 (rel. May 23, 2005) ("*MSV 101° Order*") (noting that operators' spectrum assignments change from year to year, and that "While the most recent operator-to-operator agreement dates from 1999, the five parties have continued to coordinate their operations informally and have been operating interference-free"); *Mobile Satellite Ventures Subsidiary LLC*, DA 05-50, at ¶ 23 (rel. Jan. 10, 2005) ("*MSV 63.5° Order*") ("While the most recent annual operator-to-operator agreement has not been renewed since 1999, the five parties have continued to coordinate their operations informally and have been operating interference-free"); *Kitcomm Satellite Communications Ltd.*, 19 FCC Rcd 6069, ¶ 9 (2004) ("While the operator-to-operator agreement expired in 1999, the five parties have continued to coordinate their operations informally and have been operating interference-free"); *AMSC Subsidiary Corp. v. FCC*, 216 F.3d 1154, 1159-1160 (D.C. Cir. 2000) ("*AMSC v. FCC*") (noting that there has not been any interference since the last agreement expired in 1999); MSV Petition at 4 ("The last [operating agreement] expired on December 31, 1999. It has not been extended or renewed by the five satellite operators.").

Whether other operators were, at one time, willing to extend the 1999 operating agreement is irrelevant. Petition at n.8; *see* Brief for Appellee (FCC), *AMSC Subsidiary Corporation v. FCC*, Case No. 99-1513, p. 35 (filed Mar. 31, 2000) (Public Copy) ("FCC DC Circuit Brief") (noting that AMSC was the party that vetoed extension of the 1999 operating agreement). As with any contract, the December 31, 1999 expiration date of the 1999 agreement could not have been extended without the express written consent of each party thereto.

[5] Final Reply Brief for Appellant (AMSC), AMSC Subsidiary Corporation v. FCC, Case No. 99-1513, p. 2 (D.C. Cir. May 17, 2000) (Public Copy) ("AMSC DC Circuit Reply Brief").

serving the U.S. in the absence of such an agreement.[6] As the Commission explained, MSV theorized that it could justify more spectrum in international negotiations if non-U.S. licensed systems were not able to provide competitive service alternatives in the U.S. in the absence of a coordination agreement.[7] Thus, MSV ensured that the last coordination agreement did not continue.

B. The Commission Has Repeatedly Rejected MSV's Calls to Forestall Competition in the Absence of an L-Band Coordination Agreement

MSV's prior attempts to forestall competition in the U.S. backfired. The Commission rejected as illegitimate MSV's efforts to invoke the expiration of the 1999 agreement, and its desire for more L-Band spectrum, as reasons to exclude other L-Band MSS systems from serving the U.S. market.

Prior to 2000, MSV (through its predecessors AMSC and Motient) had a regulatory monopoly in the U.S.[8] MSV opposed the entry by the Canadian-licensed TMI into the U.S. market, expressly arguing that allowing a Canadian system to compete in the U.S. would increase the level of spectrum used by the Canadian system, and therefore undercut

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[6] FCC DC Circuit Brief at 34-35 ("One is reminded of the man who killed his parents and asked for mercy because he was an orphan. As AMSC acknowledges in its brief . . . *it was AMSC that vetoed the proposed extension of the operating agreement*, despite the absence of any immediate interference problem, believing it was better strategically to force the issue of how to deal with the spectrum shortage.'" (emphasis supplied)).

[7] *See SatCom Systems, Inc., et al.*, 14 FCC Rcd 20798, 20813 ¶ 30 (1999) ("*TMI Market Access Order*") ("AMSC argues that . . . we should preclude any other L-band system from serving the United States until AMSC has coordinated 20 megahertz of spectrum. . . . Put another way, AMSC requests that we keep foreign carriers out of the U.S. market long enough for AMSC to use its monopoly power over U.S. customers to increase its traffic so significantly that it justifies its increased spectrum assignment.").

[8] *Id.*

MSV's leverage in seeking a more advantageous coordination agreement.[9] The Commission rejected this argument, noting that:

> AMSC requests that we keep foreign competitors out of the U.S. market long enough for AMSC to use its monopoly power over U.S. customers to increase its traffic so significantly that it justifies its increased spectrum assignment. We find that such a *quid pro quo* would be inconsistent with U.S. market access commitments in the WTO Agreement. If the United States is to obtain [additional spectrum] for its system, it should be done in the normal course of the international coordination process.[10]

Once TMI received market access, MSV partnered with TMI, and thereby effectively restored MSV's longstanding monopoly in the U.S.[11]

When Inmarsat proposed to provide much needed competition on the L-Band here in the U.S., MSV opposed Inmarsat's entry into the U.S. market on essentially the same grounds that it raises here, arguing that grant of "applications to access foreign-licensed satellites could take away lower L-band spectrum coordination for Motient's system in the 1999 operator-to-operator agreement" and that "the Commission should explain what operation on a non-interference basis means or how the Commission will implement or enforce this license condition."[12] The Commission rejected those arguments:

> We recognize that the circumstances before us are different than that in *TMI* because of the absence of an operator-to-operator agreement.

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[9] *See id.* at 20807-20808, 20810 ¶¶ 17, 24.

[10] *Id.* at 20813 ¶ 30.

[11] MSV's unfounded allegations that Inmarsat is "dominant" and a "monopolist" are particularly hollow in light the Commission's repeated rejection of those arguments and its express findings to the contrary—that Inmarsat's privatization and entry into the U.S. market have enhanced service options and competition in the U.S. *See FCC Report to Congress as Required by the ORBIT Act*, FCC 04-132, at 13-14 (2004); *see also Inmarsat Market Access Order*, 16 FCC Rcd at 21697-21700 ¶¶ 69-76; *FCC Report to Congress as Required by the ORBIT Act*, FCC 03-131, at 16 (2003).

[12] *Comsat Corporation d/b/a Comsat Mobile Communications, et al.*, 16 FCC Rcd 21661, 21997 ¶ 68 (2001) ("*Inmarsat Market Access Order*").

> Thus, unlike the *TMI Order*, we cannot state that Inmarsat will be operating on frequencies coordinated for it and that there is no chance of interference. The absence of such an agreement, however, is not a sufficient basis upon which to deny the pending applications.
>
> * * *
>
> As in the *TMI Order*, we require that all services authorized herein be provided on a non-interference basis. We believe that the non-interference requirement promulgated in our rules and in the ITU Radio Regulations is sufficiently clear and needs no further explanation as Motient suggests.[13]

Each time MSV has invoked the absence of a coordination agreement, the Commission has rejected MSV's request to forestall competition. And each time, the Commission has authorized the provision of a competitive MSS service under a consistent spectrum management policy: "Without an agreement assigning each of the five systems to specific operating frequencies, *all systems* must operate on a non-interference basis consistent with the ITU Radio Regulations."[14]

Just this year, when MSV itself sought additional L-Band authority in the absence of a coordination agreement, the Commission applied the same policy. In two separate orders the Commission addressed the absence of a coordination agreement in considering MSV's request to launch a replacement satellite into 101 ° W.L. and an expansion satellite into 63.5° W.L.[15] In each case, the Commission found that the operator-to-operator agreement had expired in 1999,[16] and therefore required that MSV operate on a non-interference basis. In short, the

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[13] *Id.* at 21698-21999 ¶¶ 72-73.

[14] *TMI Market Access Order,* 14 FCC Rcd at 20814 ¶ 34 (emphasis supplied).

[15] *MSV 101° Order* at ¶ 34; *MSV 63.5° Order* at ¶ 23.

[16] *Id.*

Commission again found that the existence of a coordination agreement is *not* a prerequisite to receiving authority to operate in the L-Band today.[17]

Moreover, the Commission has appropriately rejected MSV's attempt to cloak itself in national protectionism with the claim that allowing non-U.S. licensed spacecraft to serve the U.S. in the absence of a coordination agreement will result in spectrum being lost to "foreign" satellite systems. The Commission has declined to exact spectrum coordination concessions favorable to MSV as the price for U.S. market access, because doing so would violate U.S. WTO commitments,[18] and because the appropriate place to seek additional spectrum is the *Mexico City MoU* "annual coordination meetings pursuant to the applicable procedures."[19]

It bears emphasis that absence of an L-Band coordination agreement is the result not only of MSV's unilateral actions in 1999, but also MSV's course of conduct since then. MSV is the reason that the parties to the *Mexico City MoU* have not met as a group since October 1999. Inmarsat and its regulator, Ofcom, have tried over the last six years to reconvene annual operator meetings, but MSV has been the one required participant who has refused to

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[17] *Id.*

[18] *TMI Market Access Order,* 14 FCC Rcd at 20813 ¶ 30 (rejecting argument that the Canadian TMI system should be precluded entry into the U.S. market, because TMI's increased traffic usage would hinder AMSC's ability to coordinate additional L-Band spectrum for the U.S.).

[19] *Id.* ¶ 32.

MSV's claim that the Commission exclude Inmarsat from the U.S. market to preserve "U.S." spectrum is inconsistent with MSV's prior assertions in a similar context that "no country and no system have their own unique L-Band frequencies." AMSC DC Circuit Reply Brief at 2.

attend those multilateral meetings.[20] Moreover, MSV has not responded to Inmarsat's recent efforts to coordinate Inmarsat 4F2 outside the formal *MoU* process.

If MSV wishes to obtain access to additional spectrum in order to begin testing of its hybrid ATC/MSS network, and to employ spectrum currently in use by Inmarsat, MSV alone holds the key to doing so. MSV can make its case in multi-lateral frequency coordination discussions provided under the terms of the *MoU*. The Commission should not reward MSV's strategic decision to terminate the most recent operating agreement, and MSV's failure to attempt to negotiate a new multi-lateral operating agreement, by delaying grant of authority to provide competitive, next-generation BGAN MSS services.

As the Commission has made clear time and time again, as long as MSS operations are conducted on a non-harmful interference basis, L-Band spectrum coordination concerns do not justify precluding the provision of new L-Band MSS service to the U.S. in the absence of such an agreement.

III. THERE IS NO BASIS TO LIMIT THE SPECTRUM ON WHICH INMARSAT 4 SERVES THE U.S.

Recognizing that the Commission cannot treat these BGAN applications for Inmarsat 4 differently than it treated MSV's applications for new L-Band satellites earlier this year, MSV has a fall-back request. MSV requests that the Commission reestablish the frequency assignments made under the long-expired 1999 operating agreement and exclude from Inmarsat's grant of authority certain frequencies that Inmarsat now is using, and which MSV desires to use itself.[21] Essentially, MSV asks that the Commission reinstate and modify the terms of an expired contract between five entities, three of whom are not even before the agency.

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[20] As the Commission and MSV have requested, Inmarsat and MSV have met on a bilateral basis multiple times. MSV is simply wrong in representing otherwise. *See* MSV Petition at 13, n.25.

[21] MSV Petition at 14-17.

There is no basis for the Commission to do so. Moreover, Commission policy since the expiration of the 1999 agreement does not constrain operators to the frequency assignments that expired along with the 1999 agreement---rather, it allows operations on a non-harmful interference basis. Application of that policy here obviates the need for the Commission to engage in the contractual and international coordination issue that MSV seeks to raise.

A. MSV's Dispute with Inmarsat Under the *Mexico City MoU* Should Not Be Resolved Here

As an initial matter, the 1999 operating agreement was a contract among the five operators. No Administration was a party to that operating agreement or any prior operating agreement entered under the *MoU*. The Commission has a clear policy not to insert itself in disputes over commercial agreements between parties, particularly, as here, where there is a specified forum for the resolution of the dispute.[22] There is no basis for the Commission to interject itself into ongoing commercial negotiations between Inmarsat and MSV. Even if the Commission were willing to do so, there is no way, without fundamentally altering the overall balance struck under the last arrangement, that the Commission could address one small piece of a complex five-party agreement in which the spectrum sharing arrangements among the parties are closely interrelated.

More fundamentally, the equities do not favor MSV. After all, as the Commission itself recognized, "it was AMSC that vetoed the proposed extension of the 1999 operating agreement."[23] That MSV's repudiation of the 1999 operating agreement no longer suits MSV's purposes six years later is no basis on which to delay BGAN broadband service in

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[22] *See, e.g., Listeners' Guild, Inc. v. FCC*, 813 F.2d 465, 469 (D.C. Cir. 1987) (noting the Commission's "longstanding policy of refusing to adjudicate private contract law questions for which a forum exists" elsewhere for resolution).

[23] FCC DC Circuit Brief at 35.

the U.S. or to constrain the way in which Inmarsat has been operating for years in the absence of a coordination agreement.

Similarly, MSV's assertions about recalling "loaned" spectrum are baseless. As noted above, the *Mexico City MoU* does not assign any L-Band frequency to any nation or any operator. Those assignments are made in successive, one-year operating agreements based on demonstrated spectrum usage and short term need. Thus, no L-Band operator has the exclusive, permanent right to any particular frequency.[24] Correspondingly, because no operator "owns" any L-Band frequency, and because there is no operating agreement in effect assigning any specific frequency to any operator, (i) no operator today has any spectrum assignment that it can "loan" to another, and (ii) no operator has any spectrum loan that it can "recall."[25] Even MSV's

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[24] *See Flexibility for Delivery of Communications by MSS Providers in the 2 GHz Band, the L-Band, and the 1.6/2.4 GHz Bands*, FCC 05-30 at n.91 (rel. Feb. 25, 2005) ("In the L-Band, all licensees have equal rights to all channels in the band."); *TMI Market Access Order*, 14 FCC Rcd at 20803 ¶ 8 ("The 1996 operator-to-operator agreement provided each system with an amount of spectrum based upon its current and projected near-term traffic requirements. Thus unlike most international coordination agreements that create permanent assignments of specific spectrum, here the operators' assignments could change from year to year."); *Inmarsat Market Access Order*, 16 FCC Rcd at 21670 ¶ 6 (the *MoU* creates a "unique framework to facilitate annual spectrum assignment agreements among the operators").

[25] Inmarsat does not agree with MSV's recitation of the history of spectrum assignments under the *MoU*, its characterization of the terms and conditions under which various operators used or use portions of the L-Band, its assertions whether a specific portion of the L-Band was ever "loaned," its assertions about global beams, or its assertions about which Inmarsat satellites are covered by the *MoU*. Nor has Inmarsat "acknowledged its refusal to return the loaned spectrum" as MSV wrongly claims. MSV Petition at n.10.; *cf.* Inmarsat plc, Prospectus, June 17, 2005 at 45 (available at http://about.inmarsat.com/investor_relations/default.aspx) ("MSV and MSV Canada have challenged our right to use particular frequency ranges . . ., claiming they are entitled to those spectrum segments. We have rejected those claims."). MSV's claims in that regard are legal "red herrings" because the Commission has consistently granted applications, such as this one, subject to the outcome of international coordination negotiations over such issues. *See* cases cited, *supra*, pages 5-9.

predecessor has recognized that, since the expiration of the 1999 operator agreement, "no country and no system have their own unique L-band frequencies."[26]

Moreover, the *Mexico City MoU* provides clear measures to resolve disputes among operators that arise under the *MoU*—a specified multilateral dispute resolution process. Consistent with the obligations on the United States under that *MoU*, any unresolved disputes between the operators should be resolved through that multilateral process, in a manner that involves all of the Administrations, not just the United States.

Fortunately, the Commission need not address the foregoing contractual and international spectrum coordination matters. Longstanding Commission precedent provides a clear basis for authorizing the provision of BGAN service when no operating agreement is in place, and without constraining the frequencies used for L-Band BGAN service.[27]

B. Non-Interfering Uses of the L-Band Are Not Constrained by the Expired 1999 Coordination Agreement

In the absence of an effective coordination agreement, the Commission never has constrained operators to the spectrum last coordinated for their use under an expired coordination agreement, as MSV requests here. Rather, the Commission has allowed *all* operators, including MSV, to operate in the *entire range of L-Band frequencies,* in the absence of a coordination agreement, because no L-Band operator has the exclusive, permanent right to any particular frequency.[28] In the place of specific L-Band frequency assignments, the Commission has

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[26] AMSC DC Circuit Reply Brief at 2.

[27] *See TMI Market Access Order*, 14 FCC Rcd at 20814 ¶ 34, 20826 ¶¶ 63-64; *Inmarsat Market Access Order*, 16 FCC Rcd at 21698-21699 ¶ 72, 21712 ¶ 115; *MSV 63.5° Order*, DA 05-50, at ¶ 23; *MSV 101° Order*, DA 05-1492, at ¶ 34.

[28] *See supra* note 24.

conditioned authority on the requirement that operations be conducted on a non-harmful interference basis.[29]

The right of an L-Band operator to operate anywhere in the L-Band, in the absence of an L-Band coordination agreement, was at the heart of a recent appeal by MSV's predecessor to the U.S. Court of Appeals for the D.C. Circuit.[30] In 1999, MSV's predecessor (AMSC) disputed MSV Canada's (then TMI's) ability to serve the U.S. in certain L-Band frequencies, arguing that allowing MSV Canada to do so would impermissibly modify MSV's FCC license for those very same frequencies.

Both the Commission[31] and the Court of Appeals[32] examined MSV Canada's right to operate in the disputed portion of the L-Band, under ITU regulations, the *MoU*, and relevant FCC license provisions. They also considered whether, in the absence of a coordination agreement, MSV had a right to any segment of the L-Band that warranted precluding MSV Canada (TMI) from being allowed to use that very same spectrum. The Commission did *not*, as MSV requests here, constrain TMI to the spectrum last coordinated under the expired 1999 coordination agreement, or preclude use of frequencies previously designated for MSV's use. Both the Commission and the Court of Appeals determined that MSV had no right to keep others from using frequencies that at one time were coordinated for MSV's use (under an expired coordination agreement). In fact, MSV's predecessor (AMSC), admitted in federal court that, in the absence of a coordination agreement, another operator is *"free to operate on any frequency*

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29 *See* discussion, *infra*, pages 13-17 and accompanying footnotes.

30 *AMSC v. FCC*, 216 F.3d at 1154.

31 *TMI Market Access Order*, 14 FCC Rcd at 20810-20814 ¶¶ 25-34.

32 *AMSC v. FCC*, 216 F.3d at 1159-1160.

[licensed to AMSC], including the frequencies that previously had been coordinated for AMSC" under an expired coordination agreement.[33]

MSV engages in unsubstantiated *post hoc* rationalizations when it argues in a related proceeding that the *TMI Market Access Order* does not control here because the TMI satellite had already been coordinated and that *TMI* "stands for the unremarkable proposition that it is reasonable for the Commission to authorize operations on a non-interference basis if there is evidence that such operations are feasible."[34] This is not what MSV argued at the time. The entire basis of MSV's appeal in that case was that the operation of the TMI spacecraft, unless constrained to the 1999 coordination agreement, would result in interference.[35] Moreover, the FCC extended the *TMI* decision in the *Inmarsat Market Access Order*. The Commission explained:

> We recognize that the circumstances before us are different than that in *TMI* because of the absence of an operator-to-operator agreement. Thus, unlike the *TMI Order,* we cannot state that Inmarsat will be operating on frequencies coordinated for it and that there is no chance of interference. The absence of such an agreement . . . is not a sufficient basis upon which to deny the pending applications.
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[33] *Id.* at 1158-59 (emphasis supplied) (citing *TMI Market Access Order*, 14 FCC Rcd at 20826 ¶¶ 63-64). In this instance, MSV Canada's authorization provided: "*In the absence of a continuing annual L-band operator-to-operator coordination agreement*, TMI's operation in the 1545-1558.5 and 1546.5-1660 MHz bands will be on a non-interference basis until a future operator-to-operator agreement is concluded." *TMI Market Access Order*, 14 FCC Rcd at 20826 ¶ 64 (emphasis added).

[34] Mobile Satellite Ventures Subsidiary LLC, Consolidated Reply to Oppositions, File No. SES-LFS-20050826-01175 *et al.*, at 10 (filed Nov. 23, 2005) ("MSV Stratos Reply to Oppositions").

[35] AMSC DC Circuit Reply at 7 (arguing that the Commission's order "requires the licensees to do the impossible and avoid interference when there is no coordination agreement"); see *id.* at 3 ("There is no spectrum that has been coordinated for Canada; the spectrum TMI is using to serve its new users in the United States is not Canadian spectrum – it is spectrum previously licensed in the United States to AMSC").

> As in the *TMI Order*, we require that all services authorized herein be provided on a non-interference basis. We believe that the non-interference requirement promulgated in our rules and in the ITU Radio Regulations is sufficiently clear and needs no further explanation as Motient suggests.[36]

Significantly, the Commission has been consistent with the L-Band frequencies that it has allowed to be used for U.S. service (i) during the existence of a coordination agreement, and (ii) in the absence of a coordination agreement. In the former case, parties are constrained to the frequencies designated for their use under the current operating agreement. In the absence of an effective coordination agreement, the parties are free to operate anywhere in the L-Band, as long as they do so on a non-harmful interference basis.

In considering MSV's appeal of the *TMI Market Access Order*, the Court contrasted the two very different ordering clauses, which MSV conveniently ignores in its brief here. As to the first condition, which limited operations to frequencies coordinated for the TMI satellite,[37] the Court recognized that by its own terms, that provision "*comes into play, however, only when there is a coordination agreement in effect.*"[38] In contrast, once there is no coordination agreement assigning specific frequencies to specific operators, the Commission provided that, "TMI's operation in 1545-1558.5 and 1646.5-1660 MHz band will be on a non-

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[36] *See Inmarsat Market Access Order*, 16 FCC Rcd at 21698-21999 ¶¶ 71-72.

[37] *TMI Market Access Order*, 14 FCC Rcd at 20826 ¶ 64 ("TMI Communications and Company, L.P. IS AUTHORIZED to operate up to 100,000 mobile earth terminals through the Canadian licensed MSAT-1 space station in the portions of the 1545-1558.5 and 1646.5-1660 MHz band coordinated for the TMI satellite network in the most recent annual L-band operator-to-operator coordination agreement, to the extent indicated herein, in accordance with the technical specifications set forth in its application and its Radio Station Authorization, and consistent with the Commission's rules.").

[38] *AMSC v. FCC*, 216 F.3d at 1158-59 (emphasis supplied) (citing *TMI Market Access Order*, 14 FCC Rcd at 20826 ¶¶ 63-64).

interference basis until a future operator-to-operator agreement is concluded."[39] The Commission acknowledged this is the case, arguing that it did not increase the likelihood of interference because of the continuing requirement that operations be on a non-harmful interference basis.[40]

These very same conditions, providing different conditions during the term of an operating agreement, and during such time as no operating agreement is in effect, are present in the Commission's 2001 decision authorizing Telenor (as successor in interest to Comsat), among others, to provide Inmarsat service to the U.S. When there is an operating agreement, the authorization provides:

> c. Operations shall be limited to the portions of the 1525-1559 and 1626.5-1660.5 MHz band coordinated for the Inmarsat satellite system in the most recent annual L-Band operator-to-operator agreement.[41]

When, as now, there is no operating agreement, the authorization does not constrain the frequencies used:

> d. *In the absence of a continuing annual L-band operator-to-operator coordination agreement*, operations of METs in the 1525-1559 and 1626.5-1660.5 MHz bands will be on a non-interference basis until a future operator-to-operator agreement is concluded."[42]

Earlier this year, in authorizing MSV's replacement satellite at 101° W.L. and new satellite 63.5° W.L., and with over five years of operations without a coordination agreement in place, the Commission followed its policy that L-Band operators should be allowed to commence new operations on a non-harmful interference basis. Specifically, with regard to

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[39] *TMI Market Access Order*, 14 FCC Rcd at 20826 ¶ 64 (emphasis supplied).

[40] *AMSC v. FCC*, 216 F.3d at 1158-59.

[41] *Inmarsat Market Access Order*, 16 FCC Rcd at 21712-21713 ¶ 115.

[42] *Id.* (emphasis supplied). Thus, there is no basis to modify the existing authorizations of Inmarsat's distributors, as MSV suggests, to exclude frequencies to which MSV claims rights under the expired 1999 operating agreement. MSV Petition at 16, n.33.

MSV's replacement satellite at 101° W.L. the Commission held that, "in the absence of a coordination agreement with other lawfully authorized L-band operators, MSV's operations in the 1525-1544 MHz, 1545-1559 MHz, 1626.5-1645.5 MHz and 1626.5-1660.5 MHz frequency bands will be on a non-harmful interference basis."[43] In authorizing MSV's L-Band expansion satellite at 63.5° W.L., the Commission similarly required that, "in the absence of a coordination agreement, MSV's operation in the L-band will be on a non-harmful interference basis to other mobile-satellite service systems operating in the L-band."[44]

Thus, in the absence of a coordination agreement, the Commission has uniformly provided *all* operators (including MSV) the express right to operate in the *entire range of L-Band frequencies*, subject to a non-harmful interference condition. "[W]ithout an agreement assigning each of the five systems to specific operating frequencies, *all systems* must operate on a non-interference basis consistent with the ITU Radio Regulations."[45] No further condition is warranted or appropriate here.

IV. MSV'S THEORETICAL INTERFERENCE CONCERNS ARE NOT A BARRIER TO AUTHORIZING THIS NEXT-GENERATION SYSTEM

Inmarsat is replacing its Inmarsat 3 L-Band satellite at 54° W.L. with a new, next-generation, Inmarsat 4 spacecraft, now located at 52.75° W.L., and capable of providing MSS over the same L-Band frequency range as the existing Inmarsat 3 satellite. Specifically, Inmarsat 4F2's MSS service links will operate using 1525-1544/1545-1559 MHz and 1626.5-1645.5/1646.5-1660.5 MHz, the same frequency range authorized for communications with the

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[43] *MSV 101° Order* at ¶ 59.

[44] *MSV 63.5° Order* at ¶ 39.

[45] *TMI Market Access Order,* 14 FCC Rcd at 20814 ¶ 34.

Inmarsat fleet in the *Inmarsat Market Access Order*.[46] The 52.75° W.L location is the functional equivalent of the 54° W.L. location from which Inmarsat is currently serving the U.S.[47] In fact, the geographic coverage of the U.S. from 52.75° W.L is very similar to the coverage 1.25 degrees away at 54° W.L., and Inmarsat 4F2 will serve as an operational substitute for its predecessor.

The design of Inmarsat 4F2 allows the satellite to be operated in a manner that will produce no greater potential for interference into MSV's 101° W.L. satellite than Inmarsat 3. In fact, in many ways, Inmarsat 4F2 is more "interference friendly" than the Inmarsat 3 satellite that it will replace: (i) its narrower spot beams with steeper antenna side lobes reduce interference to adjacent areas, and (ii) its higher gain spot beams allow the use of terminals that radiate less than one-tenth the power of existing Inmarsat high speed data terminals. In other words, Inmarsat 4F2 can and will operate on a non-harmful interference basis pending entry into a new multi-lateral L-Band coordination agreement.

In considering MSV's interference allegations, it is critical to recognize that MSV does not seek to preclude the use of Inmarsat 4F2 to serve the U.S. based on interference considerations. Rather, as noted above, MSV simply asks that the Commission hold these applications to use Inmarsat 4F2 in abeyance because MSV seeks to modify the way in which the entire L-Band is used over North America by all five L-Band operators: "until the conclusion of a coordination agreement that results in a more efficient assignment of L band spectrum" among

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[46] *Inmarsat Market Access Order*, 16 FCC Rcd at 2168 ¶ 1 & n.3.

[47] This true because of the highly-non-directional antennas used to provide MSS.

the five existing L-Band operators, "including the assignment of contiguous and wider frequency blocks."[48]

Because MSV's concerns are not with the operation of Inmarsat 4F2, it is not surprising that two of MSV's allegations are completely unrelated to the operation of Inmarsat 4F2 and would exist today in any event. Two others are based on unsubstantiated, and incorrect, claims that Inmarsat 4F2 will potentially cause more interference than Inmarsat 3. In short, MSV does not present any new issues, or any reason that Inmarsat 4F2 cannot and should not be promptly authorized, so that service may commence at the same time as preparations are made for the five L-Band operators to negotiate a new coordination agreement.

A. One Interference Dynamic is Entirely Within MSV's Control

MSV indicates that it wishes to modify MSV's own operations to begin testing a hybrid terrestrial/MSS system in L-Band spectrum in which MSV currently does not operate, but Inmarsat currently does operate.[49] MSV claims that if MSV altered the way in which the L-Band is currently used, interference would result. As an initial matter, that may be true, but based MSV's very limited explanation, this situation has nothing whatsoever to do with the proposed operation of Inmarsat 4F2---the same result would likely occur if MSV unilaterally modified its own operations while Inmarsat 3 continued to operate. Thus, any interference problem would appear to be of MSV's own making.

B. Authorization to Operate on a Non-Harmful Interference Basis Will Not Result in "Anarchy"

MSV claims that the potential for Inmarsat 4F2 to operate in any frequency in the L-Band (in the absence of a coordination agreement) will result in anarchy in the band, and

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[48] MSV Petition at 1.

[49] *Id.* at 10.

therefore result in interference.[50] Contrary to MSV's baseless assertions, Inmarsat has never claimed that it intends to "operate on all L band frequencies," or that Inmarsat will increase the amount of L-Band spectrum it uses once U.S. service over Inmarsat 4F2 is authorized. MSV fails to explain why the situation will be any different with Inmarsat 4F2 than it has been for the six years that Inmarsat 3 has been operating successfully in the absence of an operating agreement. More fundamentally, both the Commission and the courts have rejected similar claims that MSV's unilateral termination of the past coordination agreement has resulted (or will result) in operational anarchy.[51]

Citing the Commission's requirements that all L-Band systems serve the United States on a non-harmful interference basis in the absence of a coordination agreement, and the Commission's authority to enforce such a condition, the Court of Appeals for the D.C. Circuit noted, "without surprise," that MSV's predecessor did not claim to have experienced any interference since the last coordination agreement expired, even when each operator had the nominal right to operate anywhere in the L-Band.[52] Indeed, as recently as May 2005, the Commission found that, in the absence of a coordination agreement, all satellite operators covered by the *MoU* "have continued to coordinate their operations informally and have been operating interference-free."[53]

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[50] *Id.* at 12-13; *see* FCC DC Circuit Brief at 34 (noting AMSC's "theory" that the FCC left AMSC "to operate in anarchy" with the expiration of the 1999 agreement).

[51] *See Inmarsat Market Access Order*, 16 FCC Rcd at 21698-21999 ¶¶ 71-71.

[52] *AMSC v. FCC*, 216 F.3d at 1159-60 (citing 47 U.S.C. § 312).

[53] *MSV 101° Order* at ¶ 34; *MSV 63.5° Order* at ¶ 23.

The principle that, in the absence of a coordination agreement, L-Band operators are "free to operate on any . . . frequencies that previously had been coordinated for [MSV]"[54] is well-established and now over six years old. This is settled law as interpreted by the D.C. Circuit and the Commission, and conceded by MSV's predecessor. MSV has neither demonstrated that there has been a recent change in Inmarsat's operations that has caused harmful interference, nor shown that Inmarsat 4F2 is incapable of operating over the same frequencies as Inmarsat 3 has been operating on a non-harmful interference basis. To the contrary, Inmarsat has constrained its operations despite its growing need for spectrum, and in the face of MSV's (and MSV Canada's) demonstrated warehousing of the L-Band.

C. Inmarsat 4F2's Technical Parameters Are Not a Reason to Withhold Authority

MSV's allegation that Inmarsat 4F2 "is more likely both to cause interference to and to suffer interference from other L band systems"[55] is unsubstantiated and wrong. Moreover, this situation is no different than the two cases where the Commission authorized two higher-power, wider-band MSV spacecraft in January and May of 2005.

1. Inmarsat 4F2 is Not More Likely to Cause or Receive Interference

As to the potential for Inmarsat 4F2 to cause interference to MSV's 101° W.L. spacecraft, MSV misleadingly references the total power that can be generated on the spacecraft, without addressing how that power is used to support individual carriers or how that power is spread over any given carrier.[56] The higher power on Inmarsat 4F2 (relative to Inmarsat 3) is not used to increase EIRP spectral density. Rather, it is used to support additional MSS users and to

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[54] *AMSC v. FCC*, at 1158-59 (emphasis supplied) (citing *TMI Market Access Order*, 14 FCC Rcd at 20826 ¶¶ 63-64).

[55] MSV Petition at 10.

[56] *Id.*

support the provision of BGAN service, in addition to the Inmarsat services being provided today on Inmarsat 3. In other words, the EIRP spectral density of the forthcoming BGAN carriers will be no higher than the Inmarsat 3 carriers with the highest EIRP density. And when today's Inmarsat 3 services are transitioned over to Inmarsat 4F2, their EIRP spectral density levels will be maintained at the Inmarsat 3 levels, consistent with the coordination arrangement last established with MSV. Thus, Inmarsat plans (and is able) to operate Inmarsat 4F2 within the technical envelope of the last coordination arrangement with MSV, and to ensure that the interference levels MSV receives from Inmarsat 4F2 are no higher than those already agreed for Inmarsat 3.

MSV is likewise wrong that Inmarsat 4F2 is more susceptible to interference than Inmarsat 3. As an initial matter, the global beam on Inmarsat 4F2 has the same receive sensitivity as the global beam on Inmarsat 3. The regional and narrow spot beams on Inmarsat 4F2 have better receive performance than Inmarsat 3, as well as better side-lobe roll-off. Overall, the sensitivity of Inmarsat 4F2 to interference from MSV is not much different than it is today with Inmarsat 3. Inmarsat has taken these factors into account in managing the potential for interference into Inmarsat 4F2, and thus is confident that it can provide service over that spacecraft in a manner that is no more susceptible to interference than Inmarsat 3.

2. The Commission Must Treat Inmarsat Similarly to MSV

The Commission has already faced the issue of accommodating higher-powered, next-generation satellites in the L-Band. In January and May of this year, the Commission authorized two new MSV L-Band satellites with fundamentally different carriers and channelization plans, than the L-Band spacecraft currently in use today.[57] In both cases, MSV

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[57] *See MSV 101° Order; MSV 63.5° Order.*

proposed carriers that are up to 1000x wider than MSV's existing carriers, and up to *twenty-five times* wider than the Inmarsat 4 carriers at issue here. MSV also proposed to add an entirely new geographic region to its service area—South America. In fact, one new L-Band MSS spacecraft that the Commission authorized MSV to operate is both *approximately 40° closer to* Inmarsat's L-Band satellite at 54° W.L. than MSV ever was before (in fact, only 9.5° away from Inmarsat).

The Commission did not hold either of MSV's L-Band applications in abeyance despite (i) the fundamental changes in MSV's geographic coverage, power levels, carrier bandwidths, or any other aspect of MSV's technical architecture, (ii) the potential for increased interference into Inmarsat, (iii) the absence of a coordination agreement covering these very different parameters, or (iv) the fact that the new MSV satellite at 63.5° W.L. is outside the ambit of the *MoU* and MSV has not even attempted to initiate coordination of that location with Inmarsat.[58] The Commission simply imposed the same types of conditions that it has imposed for years: the operation of MSV's satellites must be conducted on a non-harmful interference basis until MSV completes a coordination agreement that governs those spacecraft.[59]

To be sure, if (i) MSV's evolution from 5 kHz carriers to 5,000 kHz carriers (a 1,000x increase in bandwidth), (ii) the increased EIRP of its spacecraft, (iii) its new coverage of South America, (iv) its use of an entirely new orbital location almost 40 degrees away, and (v) the resulting potential to cause greater interference, did not warrant holding MSV's applications

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[58] Thus, if any issue even theoretically existed whether Inmarsat 4 fits within the scope of the *MoU*, the same issue would apply to the new MSV spacecraft at 101° W.L. and 63.5° W.L.

[59] *MSV 101° Order* at ¶ 34 ("We also remind MSV that until coordination is completed, its operations will be on a non-harmful interference basis to other lawfully operating satellite or radio facilities and will receive no protection from interference caused by those facilities."); *MSV 63.5° Order* at ¶ 39 ("in the absence of a coordination agreement, MSV's operation in the L-band will be on a non-harmful interference basis to other mobile-satellite service systems operating in the L-band.").

in abeyance pending MSV's entry into a new coordination agreement, neither do the advancements made with operation of the Inmarsat 4 satellite.

It is no answer that MSV's two newly authorized spacecraft have not yet been launched, or that Inmarsat did not object to the increased interference potential raised by MSV's new spacecraft. The Commission was well aware of the interference issues presented by the fundamental changes that MSV proposed, and it addressed the issue by requiring that MSV conduct its operations on a non-harmful interference basis.[60] Moreover, Inmarsat 4F2 will cause no more interference to (and be no more susceptible to interference from) MSV's L-Band satellites than the Inmarsat 3. Consistency with the Commission's own precedent, its obligations to treat similarly-situated parties similarly, and the national treatment obligations imposed by the WTO warrant that Inmarsat be treated the same way as MSV.

V. NO OTHER ISSUE PROVIDES A REASON TO WITHHOLD AUTHORITY

MSV raises four additional issues that warrant a brief response, none of which warrants withholding grant of the Applications.

First, MSV questions whether Inmarsat 4 qualifies as a "replacement satellite" under the *Mexico City MoU* and the Commission's rules. With regard to the definition of "replacement satellite" under the Commission's rules, the rule to which MSV cites—specifying when a bond must be posted[61]—is wholly inapposite. Inmarsat 4F2 was launched on November 8, 2005, and no bond is due after launch. As to Commission policy, Inmarsat 4F2 will serve as an operational substitute for, serve the same parts of the U.S. as, and operate within the umbrella of technical parameters coordinated for, its predecessor, Inmarsat 3. Moreover, Inmarsat 4F2's orbital location is the functional equivalent of the current location of the Inmarsat 3 satellite

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[60] *MSV 101° Order* at ¶ 59; *see MSV 63.5° Order* at ¶ 39.

[61] MSV Petition at 17, n.35 (citing 47 C.F.R. § 25.165).

1.25° away, and no other operator could use at any nearby orbital location the same L-Band frequencies that Inmarsat will continue to employ to serve the U.S.[62] Moreover, the Commission has a longstanding policy of allowing replacement satellites to cover additional areas beyond that of the spacecraft they replace.[63]

With respect to the *MoU*, the question whether Inmarsat 4F2 is a "replacement" for Inmarsat 3 is simply a red herring. At the outset, whether a spacecraft falls within the ambit of the *MoU* is not a relevant consideration. To the extent that a spacecraft does not fall within the *MoU*, all that is required is that the spacecraft not cause harmful interference to spacecraft that do fall within the *MoU*.[64] This is the very same type of condition that the Commission imposes when there is no coordination agreement. Indeed, the Commission conditioned MSV's two next-generation satellites in this way, including MSV's satellite 40° away from its currently authorized satellite that could not reasonably be said to "replace" anything.

As a final note related to the definition of "replacement satellite," there is nothing in the *MoU* that limits the parameters of replacement spacecraft when, as here, no coordination agreement has been in place for six years. Indeed, under MSV's theory, by refusing to participate in the *MoU* process, MSV could prevent any replacement satellite from being deployed. Neither common sense, nor the *MoU*, mandates such an absurd result. In any event,

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[62] *See, e.g., MSV 63.5° Order* at ¶ 8 ("geographic separation is not sufficient to limit co-frequency interference between multiple NGSO-like systems serving [North and South America]. The Commission . . . will not consider applications for new systems where the new system's operations would cause interference to licensed systems.").

[63] *Amendment of the Commission's Space Station Licensing Rules and Policies*, 18 FCC Rcd 10760, 10857 ¶ 258 (2003). Indeed, MSV's substantial geographic coverage expansion *to reach an entirely new hemisphere* did not prevent the Commission from deeming MSV's next-generation satellite at 101° W.L. a "replacement," *see MSV 101° Order* at ¶ 14, or from considering MSV's application for 63.5° W.L. outside a processing round, *MSV 63.5° Order* at ¶ 8.

[64] *MSV 63.5 Order* at ¶ 23.

disputes under the *MoU* (including what qualifies as a "replacement satellite") should be resolved under the dispute resolution procedures of the *MoU*.

Second, MSV's arguments regarding Inmarsat's station-keeping tolerance are baseless. MSV acknowledges that "the Commission rule requiring FSS satellite to operate with ±0.05° East-West station keeping does not apply to MSS satellites," such as Inmarsat 4F2. Indeed, the Commission explicitly declined to apply this station keeping requirement to MSS satellites.[65] Yet MSV tries to tie this proceeding to an unrelated problem—an issue that arose elsewhere because MSV asked for a waiver of a rule that did not exist.[66] Inmarsat has coordinated the operation of Inmarsat 4F2 with adjacent operators and ensured that the station-keeping boxes do not overlap. Any reasons that might have justified imposing a ±0.05° East-West station keeping requirement on MSV at the congested 101° W.L. location[67] do not exist in the case of Inmarsat 4F2. Therefore, there is no legitimate basis to tie the grant of these Applications to the resolution of an issue raised by MSV in its petition for reconsideration of a decision involving an entirely separate application.

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[65] *Mitigation of Orbital Debris*, 19 FCC Rcd 11567, 11586 ¶ 44 (2004) ("We conclude that the record in this proceeding is not sufficiently developed at this time to adopt a change in our rules [to apply the station-keeping requirement] to non-FSS space stations.").

[66] In its pending Petition for Reconsideration of that authorization for a new satellite at 101° W.L., MSV also admits that "there is no rule requiring MSS satellites to operate with a ±0.05° East-West station keeping box." Mobile Satellite Ventures Subsidiary, LLC, Petition for Clarification or Partial Reconsideration, filed in File No. SAT-LOA-19980702-00066 *et al.*, at 3 (Jun. 22, 2005).

[67] While there is no station-keeping tolerance requirement of general application to MSS satellites, the Commission reserved discretion to impose a condition on station-keeping tolerance on a case-by-case basis (*e.g.*, where there are multiple spacecraft leading to concerns related to orbital collisions). *Mitigation of Orbital Debris*, 19 FCC Rcd at 11587 ¶ 47 ("We retain discretion in any specific case, based upon any concerns arising in the licensing process, to include any needed conditions concerning the tolerance within which an NGSO spacecraft maintains its orbit.").

Third, there is no reason for the Commission even to entertain MSV's request that the Applicant file with the Commission its network security implementation arrangements with the United States Government. The Applicant's arrangements with the Executive Branch are not a matter for public comment by competitive MSS providers.[68]

Fourth, MSV's speculation about the possible future application of E911 to MSS[69] provides no basis to withhold action on this application. Inmarsat and its distribution partners will make appropriate provision for E911 service to covered terminals, in accordance with such requirements as may be adopted in the future.

VI. CONCLUSION

For the foregoing reasons, the Commission should deny MSV's petition and grant the Applications without further delay.

Respectfully submitted,

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Counsel for Inmarsat Ventures Limited

December 7, 2005

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[68] Inmarsat is confident that the Applicant will address any national security concerns of the U.S. government prior to grant, but notes that national security and business confidentiality are among the legitimate reasons that resolution of national security issues may not be appropriate for disclosure on the *public* record, as MSV requests.

[69] MSV Petition at 13.

CERTIFICATION OF PERSON RESPONSIBLE FOR PREPARING ENGINEERING INFORMATION

I hereby certify that I am the technically qualified person responsible for preparation of the engineering information contained in the foregoing Opposition of Inmarsat Ventures Limited, that I am familiar with Part 25 of the Commission's rules, that I have either prepared or reviewed the engineering information contained therein, and that it is complete and accurate to the best of my knowledge and belief.

/s/
Jonas Eneberg
Manager, Spectrum Regulatory Affairs
Inmarsat Global Limited

December 7, 2005

CERTIFICATE OF SERVICE

I, Jeffrey A. Marks, hereby certify that on this 7th day of December, 2005, I caused to be served a true copy of the foregoing "Opposition of Inmarsat Ventures Limited," by first class mail, postage pre-paid upon the following:

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CERTIFICATE OF SERVICE

I, Evelyn F. Carpenter, hereby certify that on this 13th Day of December, 2005, I served a true copy of the foregoing by first-class United States mail, postage prepaid, upon the following:

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