

July 6, 2006

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

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Federal Communications Commission  
Office of Secretary

**Attn:** Mr. John Giusti, Acting Chief, International Bureau  
Mr. Julius Knapp, Acting Chief, Office of Engineering and Technology

**Re: *Joint Opposition to MSV Request to Exclude Disputed Spectrum***  
**File Numbers Listed on Exhibit A**

Dear Ms. Dortch:

BT Americas Inc., FTMSC US LLC, MVS USA, Inc., Satamatics, Inc., SkyWave Mobile Communications Corp., Stratos Communications, Inc., Telenor Satellite Inc., and Thrane & Thrane Airtime Ltd. (collectively, the "Licensees"),<sup>1</sup> together with Inmarsat Ventures Limited ("Inmarsat"), oppose the letter request in which MSV asks the Commission to "clarify" that existing authorizations to provide Inmarsat services exclude certain L-Band frequency segments that Inmarsat has used to provide service to the United States for years, but that MSV now desires to use for its proposed hybrid MSS/ATC system (the "Disputed Spectrum"). The subject proceedings are listed in Exhibit A.

**I. INTRODUCTION**

MSV has raised the issue of Disputed Spectrum in response to virtually every application for authority to provide Inmarsat services filed over the last year, and MSV's current submission adds nothing new substantively to the debate. Inmarsat and the Licensees have previously shown that Commission precedent does not provide MSV with any special rights to the Disputed Spectrum. Moreover, contrary to MSV's assertion, the Commission has not yet "taken firm action" regarding the Disputed Spectrum, but rather has explicitly recognized that

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<sup>1</sup> Certain of the Licensees are not specifically identified in Exhibits A or B of MSV's Letter Request but all have an interest in this proceeding as entities authorized either by STA or "full" Communication licenses to provide Inmarsat services. MSV has requested that the requested relief apply to all entities authorized to communicate over the Inmarsat system. Letter from Jennifer Manner, Mobile Satellite Ventures LP, to Marlene H. Dortch, FCC, at Exhibits A and B (filed June 20, 2006) ("MSV Letter Request").

the use of the Disputed Spectrum is “an issue pending before the International Bureau”<sup>2</sup> and is an “issue pending in connection with [the grantee’s] request for regular authority.”<sup>3</sup>

As demonstrated below, MSV does not “own,” or have the right to demand the “return” of, any L-Band spectrum. Moreover, the existing Commission licenses that are the subject of MSV’s request expressly are not constrained to the frequencies “coordinated for” Inmarsat in the expired 1999 spectrum sharing agreement (“SSA”). Rather, MSV’s request is another attempt to use the Commission’s licensing process to seek to improve MSV’s bargaining position in the international spectrum negotiations in which MSV heretofore has consistently refused to participate. The Commission has twice rejected similar efforts by MSV to stifle the provision of competitive L-Band services in the United States, and it should similarly reject MSV’s latest effort.

Moreover, excluding the Disputed Spectrum from existing authorizations to provide Inmarsat services would not be a “clarification,” as MSV argues. Rather, it would (i) require a change in longstanding Commission policy governing the L-Band, and (ii) constitute a license modification that is subject to the full protections afforded by Section 316 of the Communications Act. Fortunately, the Commission can (and should) dismiss MSV’s request without further consideration because MSV has no right to the Disputed Spectrum, and this is not the proper forum to resolve MSV’s claims in any event.

## **II. MSV DOES NOT “OWN” SPECIFIC L-BAND SPECTRUM SEGMENTS, AND DOES NOT HAVE THE RIGHT TO “RECALL” SPECTRUM FROM OTHER L-BAND OPERATORS**

### **A. The 1999 SSA Expired and Does Not Govern Use of L-Band Spectrum**

The use of the L-Band by MSV, Inmarsat, and three other satellite operators 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. Rather, frequency assignments are made through successively negotiated SSAs, each with a one-year term, and based on the actual usage and short term projections of each system.<sup>4</sup> The most recent annual SSA, covering the twelve months ended December 1999, expired by its

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<sup>2</sup> See generally experimental license authorizations cited in MSV Letter Request at 2, n.4. MSV mischaracterizes the authorization of Hughes Network Systems Sub LLC (“HNS”). HNS *requested* operations only in certain L-Band frequency segments, and the Commission granted this request.

<sup>3</sup> See, e.g., Stratos Communications, Inc. Request for Special Temporary Authority, File No. SES-STA-20060310-00419 (granted May 12, 2006). Nor does the February 17 report required in connection with certain STA grants prejudice the outcome of this issue.

<sup>4</sup> *FCC Hails Historic Agreement on International Satellite Coordination*, Report No. IN 96-16 (rel. Jun. 25, 1996).

own terms when MSV declined to extend the agreement.<sup>5</sup> That SSA is no longer in effect, and it has not been replaced or extended.<sup>6</sup>

Under the MOU, no L-Band operator has the exclusive, permanent right to any particular frequency,<sup>7</sup> and “no operator can assert any claim with respect to a specific piece of spectrum.”<sup>8</sup> Because no operator “owns” any L-Band frequency, and because there is no SSA in

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<sup>5</sup> See Brief for Appellee (FCC), *AMSC Subsidiary Corporation v. FCC*, Case No. 99-1513, p. 34-35 (D.C. Cir. May 17, 2000) (Public Copy) (“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). 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.

<sup>6</sup> See 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”) (AMSC is MSV’s predecessor) (“Beginning January 1, 2000, there has not even been such a short-term sharing arrangement [governing use of the L-Band]”); 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 MSV Sub. LLC*, 20 FCC Rcd 9752, 9765 ¶ 34 (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”); *MSV Sub. LLC*, 20 FCC Rcd 479, 487 ¶ 23 (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).

<sup>7</sup> 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*, 20 FCC Rcd 4616, 4629 n.91 (2005) (“In the L-Band, all licensees have equal rights to all channels in the band.”); *SatCom Systems, Inc., et al.*, 14 FCC Rcd 20798, 20803 ¶ 8 (1999) (“*TMP*”) (“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.”); *COMSAT Corporation d/b/a Comsat Mobile Communications, et al.*, 16 FCC Rcd 21661, 21670 ¶ 6 (2001) (“*COMSAT Order*”) (the MOU creates a “unique framework to facilitate annual spectrum assignment agreements among the operators”).

<sup>8</sup> *COMSAT Order*, 16 FCC Rcd at 21699 ¶ 73.

effect assigning any specific frequency to any operator, (i) no operator today has any spectrum assignment today that it can “loan” to another, and (ii) no operator has any spectrum loan today for which it can “demand” the return. Even MSV’s predecessor has recognized that, since the expiration of the 1999 SSA, “no country and no system have their own unique L-band frequencies.”<sup>9</sup> Thus, the continued use of the L-Band to provide Inmarsat services to, from, and within, the United States not only is proper and legal, but also is fully consistent with Commission precedent that allows such operations on a non-harmful interference basis in the absence of a spectrum sharing agreement.<sup>10</sup>

**B. Commission L-Band Authorizations Do Not Constrain Operations to Specific L-Band Spectrum Segments**

MSV is wrong that licensing conditions constrain the Licensees’ operations to assignments made in the long-defunct 1999 SSA. To the contrary, Commission L-Band authorizations reflect the dynamic nature of L-Band assignments and expressly provide for continued operations in the absence of specific L-Band assignments, and without regard to the 1999 SSA. In virtually every Commission “full” authorization to provide L-Band service, including two MSV authorizations granted just last year, the Commission has not constrained the specific band segments that a licensee may use.<sup>11</sup> Specifically, these L-Band authorizations typically contain two different conditions (i) one that does not constrain service to any specific portion of L-Band, but which requires service be provided on a non-harmful interference basis in the absence of an SSA, and (ii) one constraining the licensee to the “portions” on the band specified in an SSA when such an agreement is in existence.<sup>12</sup>

The genesis of current Commission L-Band policy is the October 1999 order granting U.S. market access to TMI (now MSV Canada). In that case, the Commission explicitly considered the impact of the expiration of the 1999 SSA when addressing how operations would

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<sup>9</sup> AMSC DC Circuit Reply Brief at 2.

<sup>10</sup> Moreover, MSV’s attempt to cloak Inmarsat’s continued use of the Disputed Spectrum as “interference” is unavailing. MSV Letter Request at 3. The Commission repeatedly has found that the L-Band operators have been operating on a non-harmful interference basis, including as recently as twice last year in authorizing MSV’s two next-generation L-Band spacecraft. *MSV 101° Order*, 20 FCC Rcd at 9765 ¶ 34; *MSV 63.5° Order*, 20 FCC Rcd at 487 ¶ 23. Moreover, the fact that one MSS operator’s use of spectrum in a given region precludes another MSS operator from using the same band segment in the same region is not “interference.” If it were, no one (including MSV) would be able to provide service on a non-harmful interference basis.

<sup>11</sup> See Exhibit B (attached hereto) (providing ten examples of L-band authorizations from 1999-2005 that demonstrate this licensing policy); *MSV 101° Order*, 20 FCC Rcd at 9773-9774 ¶ 59; *MSV 63.5° Order*, 20 FCC Rcd at 492 ¶ 37.

<sup>12</sup> See Exhibit B.

occur “without an agreement assigning each of the five operators L-band frequencies.”<sup>13</sup> In other words, the Commission clearly understood that when the 1999 SSA expired on December 31, 1999, so, too, would the frequency assignments embodied in that agreement. That makes sense, because the only thing the 1999 SSA did was to assign specific band segments to specific operators.<sup>14</sup> The licensing conditions that the Commission adopted to cover the absence of a SSA *do not preclude operations in any specific portion* of the L-Band uplink or downlink spectrum, but rather simply provide for operations to be conducted on a non-harmful interference basis.<sup>15</sup>

The United States Court of Appeals for the District of Columbia Circuit had reason to examine those licensing conditions, when MSV’s predecessor challenged the *TMI* decision as wrongly allowing TMI to operate in bands previously coordinated for MSV’s exclusive use. In denying MSV’s challenge, the Court of Appeals provided the following explanation of the licensing framework in the *TMI*:

Although the METs would be licensed to receive MSS from the TMI satellite throughout the Upper L-band, their licenses would be conditioned upon receiving service only in those portions of the Upper L-band coordinated for the use of the TMI satellite, and not on spectrum coordinated for [MSV].

*This license condition comes into play, however, only when there is a coordination agreement in effect. . . . If no new coordination agreement was reached, [MSV] argued, then the new METs would be free to operate anywhere in the Upper L- band . . . .*

The Commission responded to this concern by further conditioning the new earth station licenses upon non-interference with [MSV] . . . [i]n the absence of any continuing operator-to-operator agreement in the L-Band.<sup>16</sup>

In other words, the Court of Appeals recognized that in permitting TMI’s entry into the United States market in 1999, the Commission allowed L-Band operators to operate on frequencies that

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<sup>13</sup> *TMI*, 14 FCC Rcd at 20814 ¶ 33 (operations “will be on a non-interference basis until a future operator-to-operator agreement is reached.”); *see also Mobile Satellite Ventures Subsidiary LLC*, 19 FCC Rcd 4672, 4675 ¶ 8 (2004) (“in the absence of a continuing annual operator-to-operator coordination agreement . . . operation . . . will be on a non-harmful interference basis.”).

<sup>14</sup> The Mexico City MOU provides the framework for entering into SSAs, but does not itself assign any part of the L-Band to any system. Such spectrum assignments were done in the 1999 SSA and in prior SSAs. The 1999 SSA did not establish the technical “umbrella” under which MSV and Inmarsat are able to coexist with one another. That was done in a 1992 bilateral technical coordination agreement.

<sup>15</sup> *See COMSAT Order*, 14 FCC Rcd at 21712 ¶ 115(d).

<sup>16</sup> *AMSC v. FCC*, 216 F.3d at 1158 (emphasis added).

previously had been coordinated for MSV's use once the spectrum assignments established in the 1999 SSA were no longer in effect.<sup>17</sup>

That TMI was free, under the Commission's licensing conditions, to operate in bands not coordinated for TMI's use in the 1999 SSA was the fundamental underpinning of MSV's appeal. MSV's appeal was based on the theory that TMI's ability to operate in "MSV's spectrum" constituted an impermissible modification of MSV's license. In addressing that argument, the Commission and the court all thought the same thing—that TMI was not constrained by the 1999 SSA after the expiration of that agreement.

Indeed, if the Commission had intended to constrain operations to the spectrum last designated in the 1999 SSA, there would have been no debate at the Commission or in the Court of Appeals about what the "operation on a non-harmful-interference basis" condition meant, or how the Commission would implement or enforce that license condition.<sup>18</sup> Rather, the Commission simply would have specifically constrained the bands in which TMI service could be provided to the portions designated for TMI's usage in the 1999 SSA. Notably, the Commission did not do so.

The Commission followed this same course in granting market access over the Inmarsat system in the 2001 *COMSAT Order*. MSV's claim that the *COMSAT Order* constrained Inmarsat distributors to the frequency assignments that expired when the last SSA terminated on December 31, 1999<sup>19</sup> is belied by the express language of that decision. The Commission recognized that two years had passed since the TMI decision, and that there still was no SSA. Even in the face of these different facts, the Commission expressly rejected MSV's request to constrain Inmarsat's L-Band distributors to using the frequency assignments last made in the expired 1999 SSA. The express language of this order contradicts MSV's assertions that Inmarsat service is constrained to the frequencies "coordinated for the Inmarsat system" in the expired 1999 SSA:

[U]nlike 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 [an SSA], however, is not a sufficient basis upon which to deny the pending applications.

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<sup>17</sup> *Id.* at 1158-1159 (citing *TMI*, 14 FCC Rcd at 20826 ¶¶ 63-64).

<sup>18</sup> *See COMSAT Order*, 14 FCC Rcd at 21697, 21699 ¶¶ 68, 72. MSV voiced its concern to the Commission that lack of an agreement "could take away lower L-band spectrum coordinated for [MSV's] system in the 1999 operator-to-operator agreement" and that, "under these circumstances," the Commission should "explain what operation on a non-interference basis means or how the Commission will implement or enforce this license condition." *Id.* at 21697 ¶ 68. The Commission rejected MSV's argument, stating: "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 . . . ." *Id.* at 21699 ¶ 72.

<sup>19</sup> MSV Letter Request at 3.

[T]he absence of an operator-to-operator agreement since 1999 has not led to any complaints of harmful interference by any of the five L-band operators. . . . This experience provides additional support for our belief that spectrum limitation concerns are best addressed in the L-band coordination process.

\* \* \*

[T]here is no permanent assignment of specific spectrum to any L-band operator. Thus, no operator can assert any claim with respect to a specific piece of spectrum.<sup>20</sup>

Recognizing that the last SSA had expired, the ordering clauses in paragraphs 115(c) and (d) of the *COMSAT Order* provide as follows: (i) in the absence of an SSA, the Commission did not constrain the portions of the L-Band in which service can be provided, but rather required that service be provided *on a non-harmful interference basis*, and (ii) once such an SSA is in existence, constrain the licensee to the “portions” on the band coordinated for its use in that SSA.<sup>21</sup> That the Commission did not constrain the frequencies that could be used in the absence of a SSA is reinforced by the express recognition earlier in the *COMSAT Order* that Inmarsat distributors were not being limited to operation on “frequencies coordinated for [Inmarsat]” in that circumstance.<sup>22</sup>

MSV is wrong that paragraph 115(c) of the ordering clauses in the *COMSAT Order* constrains L-Band uses to the segments last assigned in the 1999 SSA. MSV’s reading ignores the express text in paragraph 71 of the *COMSAT Order*, and the plain language of paragraph 115(d) of the ordering clauses, which apply in the absence of an SSA, and do not preclude the use of any specific L-Band segment.<sup>23</sup> Analogous provisions in MSV’s recent

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<sup>20</sup> *COMSAT Order*, 16 FCC Rcd at 21698-21699 ¶¶ 71-73 (emphasis supplied).

<sup>21</sup> *Id.* at 21712 ¶¶ 115(c)-(d).

<sup>22</sup> *Id.* at 21698, 21699 ¶¶ 71, 72 & n.175. Paragraph 115(c) of the *COMSAT Order* – limiting spectrum assignments to “the most recent annual L-Band operator-to-operator agreement” – is fully consistent with this interpretation. Paragraph 115(c) provides a mechanism for conforming the license terms to any spectrum sharing agreement entered into under the MOU after the date of the *COMSAT Order*.

<sup>23</sup> There is no validity to MSV’s claim that Inmarsat use of the L-Band “is likely to spread to additional frequencies” MSV Letter at 1. To the extent there ever was any question about the bands Inmarsat intends to use, Inmarsat has clarified that it intends to use for United States service the same portions of the L-Band that Inmarsat has been using for years to serve the United States. This commitment not to expand the portion of the band over which Inmarsat currently provides service to the United States, in the absence of a new spectrum sharing agreement, renders MSV’s speculation moot.

license grants allow service when no SSA is in place, and without excluding specific L-Band frequencies from MSV's authority.<sup>24</sup>

Likewise, MSV's allegations related to "national spectrum" have been fully briefed in the past year,<sup>25</sup> and long have been settled in any event.<sup>26</sup> As an initial matter, MSV's predecessor represented in litigation with the Commission that, since the expiration of the 1999 SSA, "no country and no system have their own unique L-band frequencies."<sup>27</sup> Moreover, Commission policy is clear that no L-Band operator has the exclusive, permanent right to any particular frequency,<sup>28</sup> and "no operator can assert any claim with respect to a specific piece of spectrum."<sup>29</sup>

Furthermore, over seven years ago, the Commission soundly rejected the protectionist theme that MSV now invokes again. In the TMI market access proceeding, the Commission rejected MSV's calls to thwart the provision of competitive services until MSV obtained access to additional spectrum in the MOU process, finding "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."<sup>30</sup> The Commission should not change its policy here.

### **III. EXCLUDING THE DISPUTED SPECTRUM FROM CURRENT AUTHORIZATIONS WOULD BE A CHANGE IN POLICY AND REQUIRE A SECTION 316 PROCEEDING**

As demonstrated above, any Commission decision to modify the Licensees' authorizations to exclude the Disputed Spectrum would constitute a fundamental change in

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<sup>24</sup> See *MSV 63.5° Order*, 20 FCC Rcd at 487 ¶ 23; *MSV 101° Order*, 20 FCC Rcd at 9765-9766 ¶ 34.

<sup>25</sup> See, e.g., Opposition of Inmarsat, File Nos. SES-LFS-20051011-01396 *et al.*, at 5-9 (filed Dec. 7, 2005).

<sup>26</sup> *TMI*, 14 FCC Rcd at 20813 ¶ 30.

<sup>27</sup> AMSC DC Circuit Reply Brief at 2. MSV's chart purporting to show several instances in which MSV has requested that Inmarsat cede to MSV the Disputed Spectrum is of no probative value. See MSV Letter, Exhibit E. As noted above, MSV has no lawful claim to the Disputed Spectrum. Since 2001, Inmarsat has attempted to reinstate spectrum sharing negotiations with MSV, and the Mexico City process. Each time, MSV has refused to fulfill its obligations under the Mexico City MOU unless Inmarsat concedes spectrum to MSV even before the negotiations commence, and even before MSV makes the required evidentiary showing related to current usage and short term projections of need under the Mexico City MOU.

<sup>28</sup> See *supra* note 7.

<sup>29</sup> *COMSAT Order*, 16 FCC Rcd at 21699 ¶ 73.

<sup>30</sup> *TMI*, 14 FCC Rcd at 20813 ¶ 30.

longstanding Commission policy governing the L-Band. Thus, it would not be a mere “clarification” of the terms of the existing authorizations listed on Exhibit A. To the contrary, what MSV really seeks is a license modification under Section 316 of the Communications Act. Section 316 provides that station licenses “may be modified” by the Commission, but only after a hearing.<sup>31</sup> Thus, pursuant to the Communications Act, MSV’s requested relief would require the Commission to notify the individual licensees in writing of the proposed action and the “grounds and reasons therefor,” and provided an opportunity to “protest such proposed order.”<sup>32</sup> Such a modification may not be implemented without complying with the full procedural protections afforded by Section 316. Fortunately, the Commission can (and should) dismiss MSV’s request without further consideration because MSV has no right to the Disputed Spectrum, and this is not the proper forum to resolve MSV’s claims in any event.

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<sup>31</sup> 47 U.S.C. § 316(a).

<sup>32</sup> *Id.* This requirement may not apply in the case of experimental authorizations or STAs.

For the foregoing reasons, the Commission should deny MSV's letter request to exclude the Disputed Spectrum from authorizations to provide Inmarsat services.

Respectfully submitted,

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## **EXHIBIT A**

### **Mobile Earth Stations Authorized to Use Inmarsat in the L band in the United States**

| Call Sign/File Number   | Licensee                                          |
|-------------------------|---------------------------------------------------|
| E010011                 | Deere & Company                                   |
| E040176                 | Exxon Communications Company (Inmarsat B)         |
| E050284                 | FTMSC US, LLC                                     |
| E000156                 | Honeywell, Inc.                                   |
| E020074                 | Satamatics Worldwide Limited (Inmarsat D+)        |
| SES-MS-C-20000209-01020 | SITA Information Networking Computing             |
| E030055                 | Skywave Mobile Communications Corp. (Inmarsat D+) |
| E000180                 | Stratos (Inmarsat M-4)                            |
| E010047                 | Stratos (Inmarsat M)                              |
| E010048                 | Stratos (Inmarsat Mini-M)                         |
| E010049                 | Stratos (Inmarsat B)                              |
| E010050                 | Stratos (Inmarsat C)                              |
| E000280                 | Telenor Satellite, Inc. (Inmarsat M-4)            |
| E000282                 | Telenor Satellite, Inc. (Inmarsat Mini-M)         |
| E000283                 | Telenor Satellite, Inc. (Inmarsat M)              |
| E000284                 | Telenor Satellite, Inc. (Inmarsat C)              |
| E000285                 | Telenor Satellite, Inc. (Inmarsat B)              |

### **Fixed Earth Stations Authorized to Use Inmarsat in the L Band in the United States**

| Call Sign/File Number | Licensee                    |
|-----------------------|-----------------------------|
| E970322               | Lockheed Martin Corporation |
| E980144               | Lockheed Martin Corporation |
| E890649               | Telenor Satellite, Inc.     |
| E980136               | Telenor Satellite, Inc.     |
| E980137               | Telenor Satellite, Inc.     |
| E990027               | Telenor Satellite, Inc.     |
| E990032               | Telenor Satellite, Inc.     |
| E990034               | Telenor Satellite, Inc.     |
| E940422               | Telenor Satellite, Inc.     |
| KA31                  | Telenor Satellite, Inc.     |
| KA249                 | Telenor Satellite, Inc.     |
| KA304                 | Telenor Satellite, Inc.     |
| KA305                 | Telenor Satellite, Inc.     |
| KA312                 | Telenor Satellite, Inc.     |
| KA313                 | Telenor Satellite, Inc.     |
| KB34                  | Telenor Satellite, Inc.     |
| WA28                  | Telenor Satellite, Inc.     |
| WB36                  | Telenor Satellite, Inc.     |

**Experimental Licenses Authorizing Use of Inmarsat**

| <b>Authorization Holder</b>                           | <b>Call Sign</b> | <b>File Number</b> |
|-------------------------------------------------------|------------------|--------------------|
| American Broadcasting Companies, Inc.                 | KE2XAE           | 0150-EX-RR-2004    |
| The Boeing Company                                    | KM2XDY           | 0099-EX-RR-2006    |
| The Boeing Company                                    | KB2XSY           | 0126-EX-ML-2005    |
| California, State of                                  | WC2XRK           | 0071-EX-RR-2005    |
| Gulfstream                                            | WB2XIJ           | 0070-EX-PL-2005    |
| Lockheed Martin Corporation                           | WA2XGJ           | 0197-EX-RR-2003    |
| Lockheed Martin Corporation                           | WA2XST           | 0055-EX-RR-2005    |
| Maine Maritime Academy                                | WC2XTX           | 0263-EX-PL-2001    |
| Maritime Institute of Technology and Graduate Studies | WA2XCS           | 0059-EX-RR-2004    |
| Rockwell Collins, Inc.                                | KE2XAG           | 0106-EX-RR-2005    |
| Telenor Satellite, Inc.                               | WA2XGG           | 0144-EX-RR-2004    |
| Telenor Satellite, Inc.                               | WC2XNE           | 0143-EX-RR-2004    |
| Telenor Satellite, Inc.                               | WC2XRT           | 0023-EX-TC-2005    |
| Telenor Satellite, Inc.                               | WD2XLH           | 0023-EX-RR-2005    |

## **EXHIBIT B**

The following are examples of L-Band precedent showing two conditions: one constraining spectrum assignments when a spectrum sharing agreement (“SSA”) is in effect; and one allowing service potentially to be provided anywhere in the L-Band on a non-harmful interference basis in the absence of an SSA. In the latter case, the applicable standard is “non-harmful interference” as provided by ITU Radio Regulation No. 4.4.

### **1. TMI Market Access Order (1999)**

SatCom and TMI are authorized to use the spectrum in the 1545-1559 and 1646.5-1660.5 MHz bands coordinated for the TMI satellite network in the 1999 annual operator-to-operator agreement, as well as any subsequent or appropriate agreements. In the absence of any continuing operator-to-operator agreement in the L-band, SatCom and TMI’s operations—like those of AMSC—and the other operators with overlapping North America coverage areas, will be on a non-interference basis until a future operator-to-operator agreement is reached.

\* \* \*

*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.<sup>88</sup>*

*FN88. Operations will be on a non-interference basis in accordance with 47 C.F.R. § 25.111(b) and ITU Radio Regulation S4.4.*

\* \* \*

IT IS FURTHER ORDERED . . . TMI Communications and Company, L.P. IS AUTHORIZED to operate . . . 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. In the absence of a continuing annual operator-to-operator coordination agreement, TMI’s operation in the 1545-1558.5 and 1646.5-1660 MHz band will be on a non-interference basis until a future operator-to-operator agreement is concluded.

*SatCom Systems, Inc., et al.*, 14 FCC Rcd 20798, 20814 ¶¶ 33-34 & n.88, 20826 ¶ 64 (1999) (emphasis added).

### **2. COMSAT Order (2001)**

[U]nlike 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 [an operator-to-operator spectrum sharing] agreement, however, is not a sufficient basis upon which to deny the pending applications.

\* \* \*

[T]he absence of an operator-to-operator agreement since 1999 has not led to any complaints of harmful interference by any of the five L-band operators. . . . This experience provides additional support for our belief that spectrum limitation concerns are best addressed in the L-band coordination process. 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.<sup>175</sup>

*FN175. 47 C.F.R. § 25.111(b) and ITU Radio Regulations, Article S4.2 [sic].*

\* \* \*

[T]here is no permanent assignment of specific spectrum to any L-band operator. Thus, no operator can assert any claim with respect to a specific piece of spectrum.

\* \* \*

IT IS FURTHER ORDERED . . .

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;

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.

*COMSAT Corporation d/b/a Comsat Mobile Communications, et al.*, 16 FCC Rcd 21661, 2168-21699 ¶¶ 71-73 & n.175, 21712 ¶ 115 (2001) (emphasis added).

### 3. Mobile Satellite Ventures Subsidiary LLC (2002)

IT IS FURTHER ORDERED that Mobile Satellite Ventures Subsidiary LLC's MET operations shall be limited to the portions of the 1525-1559 and 1626.5-1660.5 MHz band coordinated for the satellite being accessed in the most recent annual L-band operator-to-operator agreement.

IT IS FURTHER ORDERED that, in the absence of a continuing annual operator-to-operator coordination agreement, Mobile Satellite Ventures Subsidiary LLC's operation in the 1525-1559 and 1626.5-1660.5 MHz band will be on a *non-harmful interference* basis.

*Mobile Satellite Ventures Subsidiary LLC*, 17 FCC Rcd 12894, 12896-12897 ¶¶ 9-10 (2002) (emphasis added).

**4. National Systems & Research Co. (2002)**

IT IS FURTHER ORDERED that National Systems & Research Co.'s MET operations shall be limited to the portions of the 1525-1559 and 1626.5-1660.5 MHz band coordinated for the satellite being accessed in the most recent annual L-band operator-to-operator agreement.

IT IS FURTHER ORDERED that in the absence of a continuing annual operator-to-operator coordination agreement, National Systems & Research Co.'s operation in the 1525-1530 MHz, 1530-1544 MHz, 1626.5-1645.5 MHz frequency bands (lower L-band) and the 1545-1559 MHz and 1646.5-1660.5 MHz (upper L-band) frequency bands will be on a non-interference basis until a future operator-to-operator agreement is concluded. National Systems & Research Co. *shall not cause harmful interference* to any other lawfully operating satellite or radio facility and shall cease operations upon written notification of such interference.

*National Systems & Research Co.*, 17 FCC Rcd 12011, 12015 ¶¶ 11-12 (2002) (emphasis added).

**5. Vistar Data Communications, Inc. (2002)**

IT IS FURTHER ORDERED that Vistar Data Communications, Inc.'s MET operations shall be limited to the portions of the 1525-1559 and 1626.5-1660.5 MHz band coordinated for the satellite being accessed in the most recent annual L-band operator-to-operator agreement.

IT IS FURTHER ORDERED that in the absence of a continuing annual operator-to-operator coordination agreement, Vistar Data Communications, Inc.'s operation in the 1525-1559 and 1626.5-1660.5 MHz band will be on a *non-harmful interference* basis. Consequently, in the absence of a coordination agreement, Vistar Data Communications, Inc. *shall not cause harmful interference* to any other lawfully operating satellite or radio facility and shall cease operations upon written notification of such interference.

*Vistar Data Communications, Inc.*, 17 FCC Rcd 12899, 12903 ¶¶ 17-18 (2002) (emphasis added).

**6. Infosat Communications, Inc. (2002)**

IT IS FURTHER ORDERED that Infosat Communications, Inc. IS AUTHORIZED to operate in the 1525-1530 MHz, 1530-1544 MHz, and 1626.5-1645.5 MHz frequency bands (lower L-band) subject to the following conditions:

b. Operations shall be limited to the portions of the lower L-band coordinated for TMI satellite network in the most recent annual L-band operator-to-operator agreement;

IT IS FURTHER ORDERED that in the absence of a continuing annual L-band operator-to-operator coordination agreement, Infosat's operations of METs in the 1530-1559 and

1631.5-1660 MHz band will be on a *non-harmful interference basis* until a future operator-to-operator agreement is concluded.

*Infosat Communications, Inc.*, 17 FCC Rcd 1610, 1615 ¶¶ 14-15 (2002) (emphasis added).

**7. Richtec Inc. (2003)**

IT IS FURTHER ORDERED that Richtec's mobile earth station operations shall be limited to the portions of the 1525-1544 and 1626.5-1645.5 MHz band coordinated for the satellite being accessed in the most recent annual L-band operator-to-operator agreement. In the absence of a continuing annual L-band operator-to-operator coordination agreement, Richtec's operation in the 1525-1530 MHz, 1530-1544 MHz, 1626.5-1645.5 MHz frequency bands (lower L-bands) will be on a non-interference basis until a future operator-to-operator agreement is concluded. Richtec *shall not cause harmful interference* to any other lawfully operating satellite or radio facility and shall cease operations upon notification of such interference.

*Richtec Inc.*, 18 FCC Rcd 3295, 3301 ¶ 17 (2003) (emphasis added).

**8. MSV AMSC-1 (2004)**

IT IS FURTHER ORDERED that Mobile Satellite Ventures Subsidiary LLC's MET operations shall be limited to 2.0 MHz of spectrum in each direction of the 1626.5-1645.5 MHz and 1530-1544 MHz band coordinated for the satellite being accessed in the most recent annual L-band operator-to-operator agreement, and that no additional spectrum will be requested or used.

IT IS FURTHER ORDERED that, in the absence of a continuing annual operator-to-operator coordination agreement, Mobile Satellite Ventures Subsidiary LLC's operation in the 1626.5-1645.5 MHz and 1530-1544 MHz band will be on a *non-harmful interference basis*.

*Mobile Satellite Ventures Subsidiary LLC*, 19 FCC Rcd 4672, 4675 ¶¶ 7-8 (2004) (emphasis added).

**9. SkyWave Mobile Communications, Corp. (2004)**

Licensee's mobile earth station operations shall be limited to the portions of the 1525-1544 and 1626.5-1645.5 MHz band coordinated for the satellite being accessed in the most recent annual L-band operator-to-operator agreement. In the absence of a coordination agreement, Licensee's operation in the 1525-1544 and 1626.5-1645.5 MHz band will be on a *non-harmful interference basis*.

*SkyWave Mobile Communications, Corp. License* (Call Sign E030055, Special Condition 5899) (emphasis added).

**10. Satamatics, Inc. (2005)**

Licensee's mobile earth station operations shall be limited to the portions of the 1525-1544 and 1626.5-1645.5 MHz band coordinated for the satellite being accessed in the most recent annual L-band operator-to-operator agreement. In the absence of a coordination agreement, Licensee's operation in the 1525-1544 and 1626.5-1645.5 MHz band will be on a *non-harmful interference basis*.

*Satamatics, Inc. License* (Call Sign E020074, Special Condition 5899) (emphasis added).

## **CERTIFICATE OF SERVICE**

I, Jeffrey A. Marks, hereby certify that on this 6<sup>th</sup> day of July, 2006, I caused to be served a true copy of the foregoing, by first class mail, postage pre-paid (or as otherwise indicated) upon the following:

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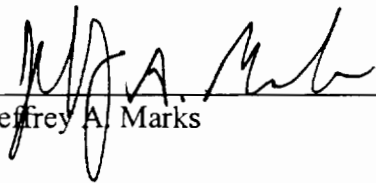
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Jeffrey A. Marks