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October 28, 2005

**Via Hand Delivery**

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

**Re: Petition of Mobile Satellites Ventures Subsidiary LLC to Hold in Abeyance  
or to Grant with Conditions Application of Stratos Communications Inc.  
File No. SES-LFS-20050826-01175  
File No. SES-AMD-20050922-01313  
File No. ITC-214-20050826-00351**

Dear Ms. Dortch:

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

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<sup>1</sup> See Stratos Communications, Inc., Application for Title III Blanket License, File No. SES-LFS-20050826-01175 (August 26, 2005); Stratos Communications, Inc., Amendment to Application for Title III Blanket License, File No. SES-AMD-20050922-01313 (September 22, 2005); Stratos Communications, Inc., Application for Section 214 Authorization, File No. ITC-214-20050826-00351 (August 26, 2005).

<sup>2</sup> 47 C.F.R. § 0.459(b).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

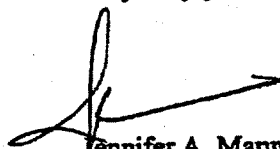
N/A.

Ms. Marlene H. Dortch  
October 28, 2005  
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Please contact the undersigned with any questions.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jennifer A. Manner". The signature is stylized with a large initial "J" and a long horizontal stroke extending to the right.

Jennifer A. Manner

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

In the matter of	)	
	)	
Stratos Communications, Inc.	)	File No. SES-LFS-20050826-01175
Application for Title III Blanket License	)	File No. SES-AMD-20050922-01313
to Operate Mobile Earth Terminals with	)	
Inmarsat 4F2 at 52.75°W	)	
	)	
Stratos Communications, Inc.	)	File No. ITC-214-20050826-00351
Application for Section 214 Authorization	)	
to Operate Mobile Earth Terminals with	)	
Inmarsat 4F2 at 52.75°W	)	

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

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October 28, 2005

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### Summary

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

In the absence of an international L band coordination agreement covering the Inmarsat 4F2 satellite, there is no basis for the Bureau to conclude that permitting the satellite to serve the United States will not raise concerns regarding interference and spectrum availability. The Inmarsat 4F2 satellite is technically different than the Inmarsat-3 satellites, and its operations are in no way contemplated by the sharing agreements adopted pursuant to the *Mexico City MoU*. It is not a solution for the Bureau to grant applications to operate with Inmarsat 4F2 now, hope that a coordination agreement can be reached in the future, and that in the interim there will be no interference to other L band systems. As the current impasse in the L band indicates, a *post hoc* approach to coordination disserves the public interest and impedes the full and efficient use of L band spectrum. Accordingly, the Stratos applications should be held in abeyance until an L band coordination agreement is concluded. If the Bureau grants the applications now despite the lack of a coordination agreement, the Bureau should condition the authorizations on operation strictly on an unprotected, non-interference basis in accordance with the spectrum sharing arrangement negotiated in 1999 among the North American L band operators. The Bureau should make clear

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that this limited authority does not include permission to use frequencies that were temporarily loaned but subsequently recalled by the lenders under the *Mexico City MOU*.

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

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

In the matter of	)	
	)	
Stratos Communications, Inc.	)	File No. SES-LFS-20050826-01175
Application for Title III Blanket License	)	File No. SES-AMD-20050922-01313
to Operate Mobile Earth Terminals with	)	
Inmarsat 4F2 at 52.75°W	)	
	)	
Stratos Communications, Inc.	)	File No. ITC-214-20050826-00351
Application for Section 214 Authorization	)	
to Operate Mobile Earth Terminals with	)	
Inmarsat 4F2 at 52.75°W	)	

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

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

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

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

### Background

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

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

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

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

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

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

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

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

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

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

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

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

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

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Since 1999, the L band operators, with the exception of Inmarsat, have been operating on a non-interference basis using spectrum assignments listed in the 1999 SSA. Inmarsat, however, has continued to use certain L band frequencies that were temporarily loaned to it by MSV and MSV Canada.

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*Stratos BGAN Application.* Stratos is a distributor of Inmarsat's services in the United States. In November 2001, the Commission authorized various entities, including Stratos, to provide service in the United States using Inmarsat-3 satellites.<sup>9</sup> The Commission granted the applications subject to the condition that operations be on a non-interference basis, using only those frequencies coordinated for Inmarsat-3 satellites under the 1999 SSA. See *COMSAT Order* ¶ 115(c)-(d).

In its above-referenced applications, Stratos seeks Title III and Section 214 authorizations to operate BGAN terminals in the United States with an unlaunched and uncoordinated Inmarsat-4 satellite that will be located at 52.75°W (called "Inmarsat 4F2").<sup>10</sup> Stratos claims that this satellite is a replacement for an Inmarsat-3 satellite located at 54°W. *Stratos Title III Application*, Attachment 3 at 6. To support this claim, Stratos alleges that the Inmarsat 4F2 will serve the same geographic area as the Inmarsat-3 satellite at 54°W and that the BGAN terminals operating with Inmarsat 4F2 will use the same frequencies that the Commission in the *COMSAT Order* authorized METs to use with Inmarsat-3 satellites. *Id.*, Attachment 3 at 6, Attachment A at 1-2.

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<sup>8</sup> Inmarsat has acknowledged its refusal to return the loaned spectrum in a filing with the U.S. Securities and Exchange Commission ("SEC"). See *Inmarsat April 2005 Form F-20* at 48.

<sup>9</sup> See *COMSAT Corporation et. al., Memorandum Opinion, Order and Authorization*, 16 FCC Rcd 21661 (2001) ("*COMSAT Order*").

<sup>10</sup> See *Stratos Communications, Inc., Application for Title III Blanket License*, File No. SES-LFS-20050826-01175 (August 26, 2005) ("*Stratos Title III Application*"); *Stratos Communications, Inc., Amendment to Application for Title III Blanket License*, File No. SES-AMD-20050922-01313 (September 22, 2005); *Stratos Communications, Inc., Application for Section 214 Authorization*, File No. ITC-214-20050826-00351 (August 26, 2005).

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Stratos states that Inmarsat 4F2 will operate with  $\pm 0.1^\circ$  East-West station-keeping, noting that the Commission's rule requiring Fixed Satellite Service ("FSS") satellites to operate with  $\pm 0.05^\circ$  East-West station-keeping does not apply to MSS satellites. *Stratos Title III Application*, Attachment A at 37. Stratos explains that the gateway earth stations to be operated with Inmarsat 4F2 will be located in The Netherlands and Italy. *Id.*, Attachment A at 3. Stratos states that it has entered into a revised agreement with the Department of Justice ("DOJ"), the Federal Bureau of Investigation ("FBI"), and the Department of Homeland Security ("DHS") to address the national security and law enforcement concerns presented by operation of the BGAN terminals in the United States in conjunction with gateway earth stations located overseas, but it has not included a copy of this revised agreement in the record of this proceeding. *Id.*, Attachment 3, at 7.

### Discussion

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

In *DISCO II*, the Commission established a framework for evaluating whether the grant of an earth station application to use a non-U.S. licensed satellite to provide service in the United States will serve the public interest.<sup>11</sup> Among other things, the Commission will assess whether the foreign-licensed satellite will cause interference to U.S.-licensed systems and whether there is sufficient spectrum available to permit the operation of the foreign-licensed system in the United States. *DISCO II* ¶ 150. If there is an international coordination agreement in place between the United States and the licensing administration for the foreign satellite, the

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<sup>11</sup> See *Amendment of the Commission's Regulatory Policies To Allow Non-U.S.-Licensed Space Stations To Provide Domestic and International Satellite Service in the United States, Report and Order*, IB Docket No. 96-111, 12 FCC Rcd 24094 (1997) ("*DISCO II*").

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Commission can generally be assured that permitting the foreign licensed satellite to serve the United States will not raise concerns regarding interference or spectrum availability.

This is not the case in the MSS L band because there is no coordination agreement among the L band operators covering Inmarsat 4F2 at 52.75°W or any other orbital location, or covering the use of wide band carriers. While the Commission has in the past licensed earth stations to operate with Inmarsat-3 satellites on a non-interference basis in the absence of a coordination agreement, the spectrum management issues presented now are fundamentally different. Unlike the Inmarsat 4F2 satellite at issue here, the Inmarsat-3 satellites had already been coordinated in the past for narrowband carriers. The Commission and the L band operators could be reasonably assured that narrowband operations could be conducted on a non-interference basis, provided the operators adhered to the frequency assignments detailed in the 1999 SSA.

In this case, however, there is no similar arrangement which defines the frequency assignments for Inmarsat 4F2. It is a vast oversimplification for Stratos to merely state that the Inmarsat-4 satellite at issue here will use the same frequencies that have been authorized for Inmarsat-3. *See Stratos Title III Application*, Attachment 3 at 6, Attachment A at 1-2. The Inmarsat-4 satellites are technically different than the Inmarsat-3 satellites and, as a result, are more likely to cause harmful interference to other L band operators. BGAN terminals operating with Inmarsat 4F2 will use wide band carriers that REDACTED

. Inmarsat and other L band operators have never coordinated an envelope of frequency assignments, including necessary guard band requirements, within which Inmarsat can operate these wide band carriers while avoiding interference to other L band operators. The inappropriate placement of a broadband, uncoordinated carrier at frequencies too close to a band edge may result in an absolute level of out-of-band emissions that result in

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harmful interference to other L band operators. As a result, uncoordinated operation of wide band carriers may cause out-of-band interference to other L band operators. Thus, if the Bureau permits Inmarsat-4 satellites to operate in the United States, operation on an unprotected, non-interference basis may not be possible and may require substantial Commission oversight and enforcement. In addition to these and other interference concerns, Stratos states that Inmarsat 4F2 will have inefficient global L band beams, REDACTED

<sup>12</sup> Inmarsat has also failed to specify what it plans to do with the Inmarsat-3 satellite at 54°W and its inefficient global beam.<sup>13</sup>

The technical issues presented by the proposed operation of Inmarsat-4 satellites can only be resolved through *a priori* frequency coordination among the L band operators and their licensing administrations, which has not yet occurred. Given the likelihood of operations of Inmarsat 4F2 to cause harmful interference to other L band operators and Inmarsat's refusal to abide by previous coordination agreements by returning loaned spectrum, it is not a solution for the Bureau to grant applications to operate with Inmarsat 4F2 now and hope that a coordination agreement can be reached in the future. As the current impasse in the L band indicates, a *post hoc* approach to coordination disserves the public interest and impedes the full and efficient use

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<sup>12</sup> *Stratos Title III Application*, Attachment A at 12-14, 16;

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<sup>13</sup> In filings with the SEC, Inmarsat has explained that its Inmarsat-3 fleet will be moved to other locations where they will continue to provide service, perhaps until as late as 2014. *See Inmarsat April 2005 Form F-20* at 29 (noting that Inmarsat-3 satellite will cease commercial operations in 2014); *id.* at 39-40 (explaining that Inmarsat-3 satellites have sufficient fuel remaining to be relocated to other orbital locations).



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of spectrum.<sup>14</sup> Accordingly, unless and until L band coordination discussions are finalized and a coordination agreement is reached, the Bureau should hold the Stratos applications in abeyance. Consistent with the Commission's stated strategic goals, MSV stands ready to work with the Commission and other L band operators to use L band spectrum more efficiently and effectively by coordinating the assignment of contiguous and wider frequency blocks among the L band operators.<sup>15</sup>

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

In the event the Bureau contemplates grant of the Stratos applications despite the lack of a coordination agreement, the Bureau should condition the grant on operation strictly on an unprotected, non-interference basis in accordance with the spectrum sharing arrangement negotiated in 1999 among the North American L band operators, which does not include frequencies that were temporarily loaned but subsequently recalled by the lenders. Under the terms of the *COMSAT Order*, earth stations accessing Inmarsat satellites in the United States are permitted to operate only on a non-interference basis and only on those frequencies coordinated for the Inmarsat-3 satellites pursuant to the 1999 SSA. See *COMSAT Order* ¶ 115(c)-(d).

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<sup>14</sup> As it has done numerous times in the past, MSV invites Inmarsat to participate in discussions to make the most efficient use of the L band spectrum.

<sup>15</sup> The Commission has identified the promotion of "efficient and effective" use of spectrum as one of its strategic objectives. See *FCC, Strategic Plan: 2006-2011* (September 30, 2005). The Commission has recognized that assignment of contiguous frequency blocks will increase spectrum efficiency and redound to the benefit of the American public. See generally *Improving Public Safety Communications in the 800 MHz Band, Report and Order*, 19 FCC Rcd 14969 (August 6, 2004); *Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, including Third Generation Wireless Systems, Third Report and Order, Third Notice of Proposed Rule Making, and Second Memorandum Opinion and Order*, 18 FCC Rcd 2223, ¶ 68 (2003).

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The Bureau should make clear if it grants the Stratos applications that METs authorized to operate with any L band satellites in the United States are not permitted to use frequencies that were loaned by one operator to another but subsequently recalled by the lenders.<sup>16</sup>

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

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

The lack of international frequency coordination for Inmarsat 4F2 notwithstanding, the Stratos applications raise additional issues that warrant further scrutiny. First, while Stratos claims that Inmarsat 4F2 is a replacement for the Inmarsat-3 satellite at 54°W, there is insufficient evidence in the record to support this claim. While Stratos claims that Inmarsat 4F2 will serve the same geographic area as the Inmarsat-3 satellite at 54°W, Inmarsat has never provided the coverage area for its Inmarsat-3 satellite in order to make that comparison.<sup>17</sup>

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<sup>16</sup> While the present applications pertain only to BGAN METs proposing to operate with Inmarsat 4F2, the Commission has the discretion to issue a declaratory ruling *sua sponte* in this proceeding clarifying that any METs authorized to operate with any L band satellites, including all of the Inmarsat satellites, are not authorized to use loaned but recalled frequencies. *See* 47 C.F.R. § 1.2.

<sup>17</sup> While Stratos states that Inmarsat 4F2 will “serve the same geographic regions” as the Inmarsat-3 satellite at 54°W, this leaves unanswered whether Inmarsat 4F2 will cover geographic regions beyond those covered by the Inmarsat-3 satellite at 54°W, which would disqualify Inmarsat 4F2 from being a replacement satellite. *See Stratos Application, Attachment A at 1; 47*

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Moreover, despite Stratos's claim that the Inmarsat-3 satellite at 54°W will be retired shortly after Inmarsat 4F2 is brought into service,<sup>18</sup> Inmarsat has explained to the SEC that its Inmarsat-3 fleet will be moved to other locations where they will continue to provide service, perhaps until as late as 2014.<sup>19</sup> To the extent the Bureau finds that Inmarsat 4F2 is a replacement satellite under the Commission's rules despite these discrepancies, the Bureau should make clear that this decision does not mean that the Commission as the representative of the United States in international frequency coordination negotiations considers Inmarsat 4F2 to be a replacement satellite under the *Mexico City MoU*. Under the *Mexico City MoU*, a replacement satellite

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Second, while Stratos is correct when it states that the Commission rule requiring FSS satellite to operate with  $\pm 0.05^\circ$  East-West station keeping does not apply to MSS satellites, it is incorrect when it implies that this is settled law.<sup>20</sup> In acting on MSV's application to operate an MSS satellite with  $\pm 0.1^\circ$  East-West station keeping, the Bureau held that MSV was required to

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C.F.R. § 25.165(e) ("A replacement satellite is one that is . . . [a]uthorized to be operated at the same orbit location, in the same frequency bands, and with the same coverage area as one of the licensee's existing satellites.").

<sup>18</sup> See *Stratos Title III Application*, Attachment A at 2.

<sup>19</sup> See *Inmarsat April 2005 Form F-20* at 29 (noting that Inmarsat-3 satellite will cease commercial operations in 2014); *id.* at 39-40 (explaining that Inmarsat-3 satellites have sufficient fuel remaining to be relocated to other orbital locations).

<sup>20</sup> *Stratos Title III Application*, Attachment A at 37; see 47 C.F.R. § 25.210(j).

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justify a waiver of the rule requiring FSS satellites to operate with  $\pm 0.05^\circ$  East-West station keeping.<sup>21</sup> MSV has sought reconsideration of this decision, asking the Bureau to clarify that the rule requiring FSS satellites to operate with  $\pm 0.05^\circ$  East-West station-keeping does not apply to MSS satellites.<sup>22</sup> This proceeding is pending. To the extent the Bureau authorizes Inmarsat 4F2 for service in the United States with  $\pm 0.1^\circ$  East-West station keeping without seeking a waiver, the Bureau must afford similar treatment to other MSS satellites proposing to serve the U.S. market, such as MSV-1. Conversely, if the Bureau on reconsideration of the *MSV-1 Order* upholds its decision that MSS satellites are required to comply with  $\pm 0.05^\circ$  East-West station-keeping, the Stratos application must be dismissed for failing to seek a waiver of this rule.<sup>23</sup>

Third, while Stratos states that it has reached a revised agreement with the Executive Branch to address the admitted national security and law enforcement concerns presented by operation of the BGAN terminals, it has not filed this agreement in the record. *See Stratos Title III Application*, Attachment 3 at 7. The Commission has explained that in reviewing applications from foreign entities proposing to provide telecommunications services in the United States, it will assess any national security and law enforcement concerns raised by the application.<sup>24</sup>

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<sup>21</sup> *See Mobile Satellite Ventures Subsidiary LLC, Order and Authorization*, DA 05-1492 (May 23, 2005), at ¶ 21 (“*MSV-1 Order*”).

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

<sup>23</sup> *See Letter from Thomas S. Tycz, FCC, to John K. Hane, Pegasus Development Corporation*, DA 03-3665 (November 19, 2003) (dismissing application for failing to seek waiver of Commission’s East-West station-keeping rule).

<sup>24</sup> *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market, Report and Order and Order on Reconsideration*, 12 FCC Rcd 23891, ¶ 61 (November 26, 1997). In reviewing other applications to provide MSS in the United States, the Executive Branch has expressed concern with the national security and law enforcement implications of routing MSS traffic through a gateway earth station located in a foreign country. *See TMI Communications and Company, Limited Partnership*, 14 FCC Rcd 20798, ¶ 55 (1999) (“*TMI Order*”).

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While the Commission has stated that it will defer to the expertise of the Executive Branch in identifying these concerns, the application must provide the Bureau with the information it needs to perform its own public interest analysis by assessing whether national security and law enforcement efforts will be compromised by grant of the application.<sup>25</sup> Stratos's failure to provide a copy of the revised agreement it has reached with the Executive Branch deprives the Bureau and interested parties of vital information needed to assess whether grant of the application will serve the public interest. Moreover, even assuming that Stratos has reached an agreement with the Executive Branch, this is not sufficient to assure the Bureau that the application does not raise national security and law enforcement concerns. Given the Commission's recent decision directing the Network Reliability and Interoperability Council ("NRIC") to adopt recommendations for E911 for MSS,<sup>26</sup> the Bureau can only conclude that grant of the application will hamper law enforcement efforts and harm public safety given Inmarsat's stated position that the location of its gateway earth stations in Europe makes E911 compliance infeasible.<sup>27</sup> The Bureau must make clear that, to the extent the Commission eventually requires MSS operators to provide E911, Inmarsat's unilateral choice to locate

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<sup>25</sup> In other cases, applicants proposing to route MSS traffic through a gateway earth station located in a foreign country have been required to provide the Bureau with a copy of the agreement entered into with the Executive Branch. *See, e.g., TMI Order; COMSAT Order; Motient Services Inc. and TMI Communications and Company, LP, Assignors, and Mobile Satellite Ventures Subsidiary LLC, Assignee, Order and Authorization*, DA 01-2732, 16 FCC Rcd 20469 (Int'l Bur. 2001).

<sup>26</sup> *See Second Report and Order*, CC Docket No. 94-102, IB Docket No. 99-67, FCC 04-201 (August 25, 2004).

<sup>27</sup> *See Reply Comments of Inmarsat Ventures PLC*, IB Docket No. 99-67, at 8-11 (March 25, 2002). While the Commission has exempted MSS terminals that cannot be used in motion from E911 compliance, Inmarsat has admitted that at least some of its BGAN terminals must be E911 compliant. *See Inmarsat ATC Reply* at 3 n.9 ("[T]he Commission *did not* exempt all BGAN terminals from E911 requirements.") (emphasis in original).


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gateway earth stations overseas does not excuse it from having to comply with any E911 requirements the Commission may adopt.

**Conclusion**

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

Respectfully submitted,



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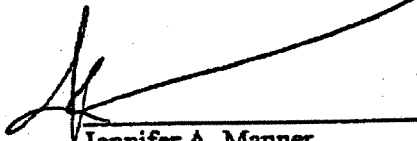
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Dated: October 28, 2005

**Declaration of Jennifer A. Manner**

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

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

  
\_\_\_\_\_  
Jennifer A. Manner

Executed on October 28, 2005

**Technical Certification**

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

I am the technically qualified person with overall responsibility for the technical information contained in this Petition to Hold in Abeyance or to Grant with Conditions. I am familiar with the Commission's rules, and the information contained in the Petition to Hold in Abeyance or to Grant with Conditions is true and correct to the best of my knowledge and belief.



~~Dr. Peter D. Karabinis~~

Dated: October 28, 2005



## CERTIFICATE OF SERVICE

I, David S. Konczal of the law firm of Pillsbury Winthrop Shaw Pittman LLP, hereby certify that on this 28<sup>th</sup> day of October 2005, served a true copy of a PUBLIC VERSION of the foregoing by first-class United States mail, postage prepaid, upon the following:

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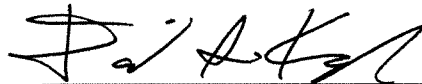
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