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Satellite Policy Branch
International Bureau

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

DUPLICATE

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
Mobile Satellite Ventures Subsidiary LLC)	File No. SAT-ASG-20010302-00017
)	
TMI Communications and Company, Limited Partnership)	File No. SES-ASG-20010116-00099

JOINT PETITION TO DEFER

Motient Services Inc. (“Motient”), a U.S. corporation, and TMI Communications and Company, Limited Partnership (“TMI”), a Canadian limited partnership, and the Federal Bureau of Investigation (“FBI”) and the Department of Justice (“DOJ”), (collectively, the “Parties”), through their attorneys, respectfully request that the Federal Communications Commission (“Commission”) (a) accept this Petition and (b) defer grant of the above-captioned applications pending a resolution by the Parties of those aspects of the applications that the FBI and DOJ believe may raise potential national security, law enforcement, and public safety issues.

In the above-captioned applications, Motient and TMI seek approval from the Commission to assign numerous space station and earth station licenses held by Motient and TMI to Mobile Satellite Ventures Subsidiary LLC (“MSV Sub”). Upon consummation of the transactions contemplated in the applications, MSV Sub will be formed as a Delaware limited liability company and as a wholly owned subsidiary of Mobile Satellite Ventures L.P., a Delaware limited partnership that will be managed by a Delaware corporate general partner, Mobile Satellite Ventures GP Inc. (“MSV GP”). TMI will own approximately 27.2% of the voting and equity interests in MSV LP and MSV GP. Thus, MSV Sub will exceed the 25%

indirect foreign ownership threshold of Section 310(b)(4) of the Communications Act of 1934, as amended. Motient and TMI have sought a declaratory ruling from the Commission that indirect foreign ownership in excess of 25% would serve the public interest. In addition, in the MSV Sub application, MSV Sub proposes to use a fixed earth station and switching facility in Ottawa, Canada but to route calls to and from United States customers through a United States point of presence in Reston, Virginia.¹

Because the FBI and the DOJ believe that the integrity of U.S. telecommunications services is critical to the ability of our government to satisfy its obligations to preserve the national security, enforce the laws, and maintain the safety of the public, the FBI and the DOJ have previously availed themselves of the opportunity under Sections 214 and 310 of the Act, and implementing regulations, to comment regarding the public interest concerns raised by particular transactions. In *the Foreign Participation Order*, the Commission said that, in reviewing license applications from foreign carriers under Sections 214 and 310(b)(4) of the Communications Act, it would: (1) continue to apply the public interest test, and (2) “continue to find national security, law enforcement, foreign policy and trade policy concerns relevant to our decision to grant or deny Section 214 and 310(b)(4) applications from applicants from WTO Member[s].”² The Commission elaborated by saying that:

¹MSV Application, File No. File No. SAT-ASG-20010302-00017 et. al, at page 6.

² *In the Matter of Rules and Policies of Foreign Participation in the U.S. Telecommunications Market*, 12 FCC Rcd 23,891, ¶ 61 (Nov. 1997). The presumption the Commission has adopted “in favor of entry for foreign participation applies only to competition concerns that may arise because of a foreign carrier's market power in a foreign market.” *Id.* at ¶ 57. Concerns relating to national security, law enforcement, and public safety are to be given consideration independent of any competitive concerns presented by the transaction.

[W]e realize that foreign participation in the U.S. telecommunications market may implicate significant national security or law enforcement issues uniquely within the expertise of the Executive Branch. . . .

We thus will continue to accord deference to the expertise of Executive Branch agencies in identifying and interpreting issues of concern related to national security, law enforcement, and foreign policy that are relevant to an application pending before us.³

It is the opinion of the FBI and the DOJ that granting the authority requested by the parties in this transaction without sufficient conditions could present impediments to the ability of our government to meet its obligations to the citizens to preserve the national security, enforce the laws and protect the public safety. Since the filing of the above-captioned applications, representatives of Motient and MSV Sub have briefed the FBI and the DOJ regarding the nature of their proposed venture. Motient, TMI, and MSV Sub are currently and in good faith working diligently towards the execution of an agreement with the FBI and DOJ to address the potential threats posed to national security, law enforcement, and public safety that the FBI and the DOJ believe are presented by the above-captioned applications. Accordingly, the Parties jointly urge the Commission to defer approving the above-captioned applications absent such an agreement and the imposition of appropriate conditions.

Wherefore, in view of the foregoing, the Parties respectfully request that the Commission accept for filing the instant Petition to Defer with regard to the captioned applications and defer grant of the above-captioned applications pending an agreement among the Parties to resolve the

³ *Id.* at ¶¶ 62-63.

concerns addressed herein, and the imposition of the terms of such agreement as conditions to the authority granted.

Date: April 18, 2001



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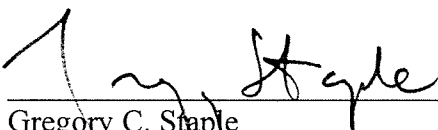
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CERTIFICATE OF SERVICE

I, Sylvia A. Davis, a secretary with the law firm of Shaw Pittman, hereby certify that on this 18th day of April 2001, served a true copy of the foregoing "JOINT PETITION TO DEFER" upon the following:

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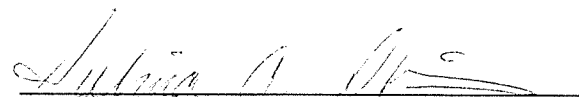
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