

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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APR 18 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Applications of)
)
Motient Services Inc.) File Nos. SAT-ASG-20010302-00017
and)
TMI Communications and Company,)
Limited Partnership)
)
for Authority to Assign Their Earth Station,)
Space Station, 214, Special Temporary, and)
Pending Authorizations to)
Mobile Satellite Ventures Subsidiary LLC;)
and)
to Modify Their Earth Station and Space Station)
Authorizations as well as Their STAs and Pending)
Applications to permit MSV Sub to Use)
Canadian-Licensed Facilities;)
and)
to Launch and Operate a Next-Generation Mobile)
Satellite System.)
)

SES-ASG-20010116-00097

SES-ASG-20010116-00098

SES-ASG-20010116-00099

Received
APR 23 2001
Satellite Policy Branch
International Bureau

To: Chief, International Bureau

PETITION TO DENY OF DEERE & COMPANY

Deere & Company (“Deere”), by its counsel and pursuant to Sections 1.45 and 25.154 of the Commission’s rules, hereby petitions to deny the above-referenced applications of Motient Services, Inc. (“Motient”) and TMI Communications and Company, Limited Partnership (“TMI”).¹ Deere is currently a user customer of Motient for a data transport service, accessed by receive-only mobile earth stations mounted on agricultural vehicles, which is used to refine GPS information for a “precision farming” application. Deere uses Inmarsat service in Canada,

¹ See *Motient/TMI Assignment and Modification Applications in Public Notice, Report No. SAT-00066*, Public Notice, Report No. SPB-165, April 2, 2001.

Mexico and Central and South America for this application, but its receive-only earth stations have to date not been permitted by the Commission to receive this existing signal in the U.S.²

I. INTRODUCTION AND OVERVIEW

As demonstrated in pleadings filed with respect to Deere's applications for Inmarsat access, Deere has found Motient's service to be inadequate, unnecessarily costly, and inefficient, and has found Motient to be insensitive to Deere's customer requirements. Deere requested authority for Inmarsat access because Deere's experience demonstrated that the Inmarsat service suffers from none of these defects, as well as because Deere has already paid for the Inmarsat service. Significantly, absent Commission permission for Inmarsat access, TMI is the only potential alternative carrier to Motient available to Deere.

TMI was recently authorized to provide service in the U.S. in order to provide "increased competition in the MSS market."³ The subject proposed merger, if approved, however, would eliminate Deere's only possible alternative service provider. Approval of the merger would consequently substantially *decrease* competition in the U.S., by allowing Motient, originally a government-sanctioned monopoly, to merge with the only company now with the technical capability and regulatory authority to provide even nominal competition to Motient. The Commission has previously acknowledged Motient's efforts to further entrench its monopoly position, and this merger, rather than promoting competition, would perpetuate and strengthen Motient's stranglehold on the market.

² Deere Consolidated Opposition to Petitions to Deny, File No. SES-LIC-20010112-00051, March 22, 2001; Deere Petition for Reconsideration, File No. SES-STA-20010112-00046, March 22, 2001.

³ *In the Matter of the Application of TMI Communications and Co., LP for Blanket Authorization to Operate up to 100,000 METs*, File Number 730-DSE-P/L-98, *Order and Authorization*, FCC 99-344, para. 1. ("*TMI Authorization*")

Should the Commission nonetheless approve a merger that on its face is anti-competitive, the public interest would require the Commission to condition its approval of the merger on the withdrawal by Motient of its opposition to Deere's receive-only earth station applications for Inmarsat access authority, and the grant of those applications. Significantly, in filings with the Commission with respect to Deere's applications, both commenting beneficiaries of the ORBIT Act's protectionism have acknowledged that the Commission has the authority under the ORBIT Act to grant conditional applications (which would include interim short-term authority) for Inmarsat access for non-core services.⁴

II. GRANT OF MOTIENT'S MERGER APPLICATIONS IS CONTRARY TO THE PUBLIC INTEREST.

There can be no more basic tenet of the U.S. free-market system than that competition is in the public interest. Although the Commission granted Motient a monopoly 12 years ago, the global market and the U.S. market have changed since, as the Commission itself recognized in *DISCO II*.⁵ In allowing TMI's market entry, over Motient's vociferous protests, the Commission responded to these new market realities. While the Commission in the past may have felt some need to protect Motient as a domestic-only service provider, it is hard to fathom any rationale

⁴ Pan Am Sat has expressly stated that it did not oppose grant of Deere's requested STA because it recognized that "Deere cannot force Inmarsat to comply with ORBIT." PanAmSat Petition to Deny or Defer Application of Deere & Company, File No. SES-LIC-20020112-00051, March 1, 2001, at 2. Motient itself acknowledged that the Commission has authority to grant a conditional application. Motient Opposition to Petition for Reconsideration of Deere, File No. SES-STA-20010112-00046, April 4, 2001, at 6 n.13. Deere is neutral as to the formalities used if it can obtain prompt access, even on a limited term basis, to the Inmarsat service that would otherwise be accessible to it in the U.S. absent regulatory prohibition by the Commission. (Deere, like PanAmSat and Motient, believes that the Commission has the required licensing authority under the ORBIT Act, since Deere's access would be for a non-core, not an "additional," Inmarsat service.)

⁵ *Amendment of the Commission's Regulatory Policies to Allow Non-U.S. Licensed Space Stations to Provide Domestic and International Service in the United States*, Report and Order, 12 FCC Rcd 24094 (1997), appeal docketed, *Comsat Corp. v. FCC*, No. 98-1011 (D.C. Cir. filed Jan. 12, 1998) ("*DISCO II Order*").

justifying a merger that would eliminate Motient's only permitted competitor.

TMI was granted U.S. access rights specifically to "facilitate increased competition in the MSS market."⁶ Even though TMI's authorizations have been valid for a year and a half, Deere has to date seen none of the promised "additional service options" nor other "benefits of competition such as lower prices, innovation, and improved service" that TMI's authorizations were supposed to bring.⁷ Nonetheless, the loss of this potential competitor would preclude any hope of a competitive market for MSS in the United States until Inmarsat access is permitted. Any analysis calculating the market impact of the proposed merger would have to recognize the substantial adverse impact on competition of the foreclosure of competition from the only other possible alternative carrier. Thus, the grant of approval for this proposed merger could hardly be deemed to promote market competition, especially if the Commission retains its position of prohibiting Inmarsat access for non-core services.⁸

III. MOTIENT HAS BEEN RELENTLESS IN PROTECTING ITS MONOPOLY POSITION.

Motient has petitioned against *every single application* filed in the last year to use Inmarsat for new services.⁹ In each of those application proceedings, on the pretext of complying

⁶ *In the Matter of the Application of TMI Communications and Co., LP for Blanket Authorization to Operate up to 100,000 METs*, File Number 730-DSE-P/L-98, *Order and Authorization*, FCC 99-344, para. 1.

⁷ *Id.* In particular, one would expect that competitive entry – or even the threat of competitive entry – would cause Motient to provide lower prices, greater innovation, and improved service.

⁸ Indeed, elimination of competition would allow Motient to extract monopoly rents from captive ratepayers such as Deere.

⁹ See *Marinesat Communications Network, d/b/a Stratos Communications*, File No. SES-LIC-20000426-00630 (Motient Petition to Deny filed 7/7/00); *Comsat Corporation*, File No. SAT-ITC-20000605-00103 (Motient Petition to Deny filed 7/26/00); *Honeywell Inc.*, File No. SES-LIC-20000403-00534 (Motient Petition to Deny filed 7/7/00); *SITA Information Networking Computing Canada, Inc.* File No. SES-MS-20000209-1020 (Motient Petition to Deny filed

with international agreements between the U.S. and other countries, Motient has cavalierly requested confidential treatment for material included with Motient's petitions. In order to be relevant to those proceedings, the redacted material would have had to be related somehow to the merits of the applications. If so, applicants (who received as service copies redacted versions of petitions filed against them) were precluded from countering Motient's arguments.¹⁰ Now Motient seeks to use the Commission's regulatory process governing mergers to continue its entrenched monopoly by taking out its new competitor TMI, which recently was granted U.S. access rights.

In Deere's case, in contrast to PanAmSat's position that customers should not be hamstrung by ORBIT Act issues,¹¹ Motient has continuously fought Deere's efforts to substitute the Inmarsat service it already receives in Canada, Mexico and North and South America for Motient's unsatisfactory service in the U.S. Motient has also provided poor service to Deere,¹² confident of its protected position as Deere's only option for service -- classic monopolist behavior.

Motient's record of regulatory obstructionism has tried the patience of even the Commission. When authorizing TMI to enter the U.S. market, the Commission said:

AMSC [now, Motient] 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 the increased spectrum

7/28/00); Deere & Company, File No. SES-LIC-20010112-00051 (Motient Petition to Deny filed 3/9/01).

¹⁰ *Deere & Company*, SES-LIC-20010112-00051, Deere Motion to Strike, March 22, 2001, Motient Opposition to Motion to Strike, April 3, 2001, Deere Reply to Opposition to Motion to Strike, April 16, 2001.

¹¹ PanAmSat Petition to Deny or Defer Application of Deere & Company, File No. SES-LIC-20020112-00051, March 1, 2001, at 2.

¹² Declaration of William Peter Williams, Consolidated Opposition to the Petitions to Deny, *Deere & Company*, SES-LIC-20010112-00051, March 22, 2001; Declaration of William Peter Williams, Reply of Deere & Company, *Deere & Company*, File No. SES-STA-20010112-00046, April 16, 2001.

assignment. We find that such a *quid pro quo* would be inconsistent with U.S. market access commitments in the WTO Agreement.¹³

Now, having failed in its efforts to block TMI's U.S. market entry, Motient is trying to co-opt any potential competition by proposing this merger. Apparently Motient will stop at nothing to preserve its monopoly. The Commission does not have a mandate to protect service providers, not even Motient. Rather, the Commission's mission is to serve the public interest by providing market opportunities ". . . to encourage the provision of new technologies and services to the public. . ." ¹⁴ and ". . . to make available, so far as possible . . . adequate facilities at reasonable charges. . ." ¹⁵ It would be hard to demonstrate that having no competition to Motient in the market would promote achievement of these goals.

¹³ *TMI Authorization* at 30.

¹⁴ 47 U.S.C. § 157.

¹⁵ 47 U.S.C. § 151.

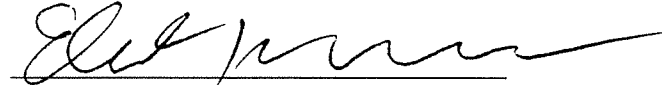
CONCLUSION

For the reasons stated above, the Commission should deny Motient's and TMI's requests to assign their licenses to MSV Sub. If the Commission nonetheless deems it appropriate to permit this merger to go forward, then the Commission should condition the grant of authority on Motient's withdrawal of all opposition to grant of Deere's pending applications for interim short-term authority to access Inmarsat space segment. Absent such limited Inmarsat access rights, Deere would be forced to continue to obtain inadequate service from the TMI/Motient monopoly for lack of any other authorized competitor.

Respectfully submitted,

DEERE & COMPANY

By:


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April 18, 2001

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VERIFICATION OF WILLIAM PETER WILLIAMS

I, William Peter Williams, do hereby verify and state:

I am Director, Marketing for NavCom Technology Inc. ("NavCom"), a wholly owned subsidiary of Deere & Company.

My business address is 123 West Torrance Boulevard, Suite 101, Redondo Beach, CA 90277.

I hold a Bachelor of Science in electrical engineering and a Doctorate in Electronic Engineering, both from the University of Nottingham, England.

I have reviewed the attached "Petition to Deny of Deere & Company" and hereby verify that the factual statements contained therein are true and correct.

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

Executed on April 18, 2001.


Signature

CERTIFICATE OF SERVICE

I, Penny Jackson, hereby certify that on this 18th day of April, 2001, copies of the attached, "**PETITION TO DENY OF DEERE & COMPANY**", were sent via First-Class U.S. Mail, postage prepaid, to the following:

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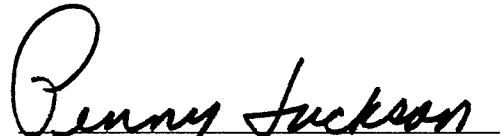
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