

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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JUN 25 2001

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In re Applications of )  
)  
**Motient Services Inc. and** )  
)  
**Mobile Satellite Ventures** )  
**Subsidiary LLC** )  
)  
Application for Assignment of Licenses and )  
For Authority to Launch and Operate a )  
Next-Generation Mobile Satellite Service )  
System )  
)  
)  
**TMI Communications and Company,** )  
**Limited Partnership** )  
)  
)  
Application for Modification and )  
Assignment of Licenses to Operate Mobile )  
Terminals for Mobile Satellite Services )

File Nos. SAT-ASG-20010302-00017 *et al.*

Received  
JUN 26 2001  
Satellite Policy Branch  
International Bureau

File No. SES-ASG-20010116-00099 *et al.*

**OPPOSITION OF DEERE & COMPANY TO AMENDED MOTION FOR  
MODIFICATION OF EX PARTE STATUS**

Deere & Company (“Deere”), by its attorneys, hereby responds to the “Amended Motion For Modification of *Ex Parte* Status” (“Amended Motion”) filed by Motient Services, Inc. (“Motient”), Mobile Satellite Ventures Subsidiary LLC (“MSV”), and TMI Communications and Company, Limited Partnership (“TMI”) (Motient, MSV, and TMI, collectively, “Applicants”), on June 19, 2001. In their Amended Motion, Applicants request modification of their earlier status change motion<sup>1</sup> so as to have “Permit but Disclose” status applied only to the engineering aspects of the referenced applications relating to their proposed merger (“Applications”).

<sup>1</sup> Motion for Modification of *Ex Parte* Status of Motient Services Inc., *et al.*, File Nos. SAT-ASG-20010302-00017 *et al.*, SES-ASG-20010116-00099 *et al.*, (filed May 10, 2001) (“Motion”). Neither Deere nor any other party to the proceeding filed an opposition to that Motion.

Deere agrees that “Permit but Disclose” status may facilitate Commission consideration of engineering issues. Deere opposes grant of the Amended Motion, however, because consideration of the serious anti-competitive concerns raised by the proposed merger may also be facilitated by according “Permit but Disclose” status to the assignments of licenses proposed in the Applications.

As shown in Deere’s Petition to Deny the Applications,<sup>2</sup> grant of the proposed assignments of licenses will completely eliminate any actual or even potential competition in the L-Band mobile satellite services market in the U.S. While TMI was authorized to enter this market over Motient’s vociferous objections, since Motient’s monopoly was ended by the TMI authorization,<sup>3</sup> Motient now seeks to preserve its monopoly by combining its operations with those of TMI. To date, the Commission has yet to grant *any* application for U.S. access to the potentially competitive Inmarsat space segment, including Deere’s application for receive-only non-core use.<sup>4</sup> Thus, if the Applications are granted, an end-user such as Deere will have not even a potential choice of service providers, much less an actual choice.<sup>5</sup>

The Commission granted TMI U.S. market entry specifically so that there would be a choice of service providers, and end-users would not be left with Motient as their sole option for service.<sup>6</sup> To eliminate even the modicum of competition so recently authorized in the market is clearly a serious step, and one at odds with the Commission’s general focus on market competition as the means for providing end-users such as Deere with reasonably priced, high

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<sup>2</sup> Petition to Deny of Deere & Company (filed April 18, 2001”).

<sup>3</sup> See *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 (“*TMI Authorization*”) at 30 (“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. . .”).

<sup>4</sup> See *In re Deere & Company Application for Blanket Authority to Operate up to 10,000 Non-Common Carrier, Receive-Only Domestic Mobile Earth Stations in the United States Using Inmarsat II, F2 Satellite*, SES-LIC-20010112-00051 (“*Deere Application*”); *In re Application of Deere & Company for Special Temporary Authority for Certain Receive-Only Mobile Earth Stations*, SES-STA-20010112-00046; *denied sub nom.* Letter to Deere from Thomas S. Tycz, Chief, Satellite and Radiocommunication Division, International Bureau, dated Mar. 2, 2001; Petition for Reconsideration pending (“*STA Application*”).

<sup>5</sup> Given their merger plans, it is unrealistic to view Motient and TMI as arms’ length competitors even now.

<sup>6</sup> *TMI Authorization*, para. 1.

quality, efficient, and state-of-the-art services.<sup>7</sup> In this case, granting the Applications would completely eliminate any market discipline effect. By any form of competitive analysis, the elimination of the sole competitor to a former monopolist must be deemed to have a substantial adverse impact on competition in that market.

Therefore, just as in the case of the engineering issues raised by the Applications, a grant of “Permit but Disclose” status also to the merger aspects of the proposed transaction “would allow the parties more flexibility to make presentations to Commission staff”<sup>8</sup> and “will be useful to create a more complete record on which the Commission may decide the issues raised.”<sup>9</sup> Absent such flexibility, the Commission may have insufficient information to address the serious competitive concerns, including the potential harm to end-users, raised by the complete elimination of competition in the L-Band mobile satellite service market in the U.S.

### Conclusion

As Deere has shown, the proposed merger of Motient and TMI eliminates even the potential for competition in the L-Band MSS market in the U.S. because there is no other authorized provider of such service, and end-users such as Deere have not been permitted even on a short-term or conditional basis to access Inmarsat space segment for even non-core receive-only purposes. The creation of a *de jure* and *de facto* monopoly in a market raises serious competitive concerns and has a substantial adverse impact on end-users such as Deere. As in the case of the engineering issues raised by the Applicants’ applications, the Commission can substantially benefit from the opportunity to discuss on an *ex parte* basis with affected parties the adverse competitive consequences of a decision to grant the Applications. Therefore, for the reasons detailed above, the Commission should dismiss the Amended Motion to limit the

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<sup>7</sup> See, e.g., Remarks By Michael K. Powell, Chairman, FCC, Before The Federal Communications Bar Association, Washington, D.C. , June 21, 2001, "Consumer Policy In Competitive Markets" at 2-3 (“Serving the public interest means crafting the conditions and the environment that will allow innovation to bring new and improved products and services to all Americans at reasonable prices.”).

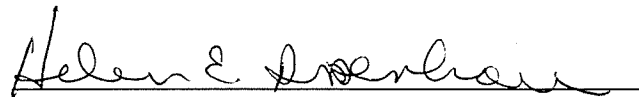
<sup>8</sup> Amended Motion at 2.

<sup>9</sup> Amended Motion at 3.

“Permit but Disclose” status of the above-captioned proceeding to engineering issues and instead extend such status to all aspects of the proceeding.

Respectfully submitted,

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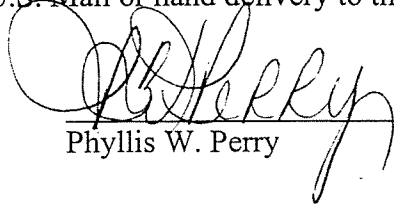
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June 25, 2001

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**CERTIFICATE OF SERVICE**

I, Phyllis W. Perry, hereby certify that on this 25th day of June 2001, I caused a copy of the foregoing Opposition of Deere & Company to Amended Motion for Modification of *Ex PARTE* STATUS served on the following by U.S. Mail or hand delivery to the attached list of recipients.

  
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