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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

June 2, 2004

BY HAND

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

Re: ***Ex Parte Submission:***
In the Matter of Inmarsat Ventures Limited
File No. SAT-MS-20040210-00027

Received
JUN 2 1 2004
Policy Branch
International Bureau

Int'l Bureau
JUN 1 5 2004
Front Office

Dear Ms. Dortch:

Inmarsat has previously explained how its debt securities that are currently listed for trading on the Luxembourg Stock Exchange were used to partially fund the dilution of the ownership interests of former Inmarsat Signatories, and that those securities soon will be exchanged for substantially identical securities in an offering being registered with the U.S. Securities and Exchange Commission ("SEC").

In its various submissions, Inmarsat has characterized its issuance of debt securities as an "initial public offering of securities" for purposes of the ORBIT Act. SES and MSV have argued in opposition that the term "initial public offering of securities" in the ORBIT Act can mean only an initial public offering of equity securities. The purpose of this letter is to support Inmarsat's assertions that the staff of the SEC, which is charged under the Securities Act of 1933 (the "Securities Act") with the regulation of public offerings of both debt and equity securities, characterizes offerings such as Inmarsat's public debt offering as an "initial public offering" for purposes of U.S. securities laws.

As previously described in this proceeding, a bridge loan partially financed the December 17, 2003 acquisition of a combined 52.28% beneficial ownership interest in Inmarsat by certain funds advised by Apax Partners and certain funds advised by Permira. The financial institutions providing this bridge financing expressly contemplated that this loan would be repaid from the proceeds of a subsequent offering of Inmarsat debt securities. That repayment occurred on February 3, 2004 with the proceeds from the issuance of 7½% Inmarsat Series A notes, due in

2012, that are now listed for trading on the Luxembourg Stock Exchange.¹ The Series A notes were initially issued to approximately two hundred investors, and are eligible for trading on the Luxembourg Stock Exchange. However, the Series A notes are not freely tradable in the United States.

When Inmarsat issued its Series A notes pursuant to exemptions from registration under the Securities Act,² Inmarsat contemporaneously entered into a registration rights agreement with the initial purchasers pursuant to which Inmarsat became contractually bound to file with the SEC a registration statement for an offering of Series B notes, the terms of which would be substantially identical to those of the Series A notes, and for which the Series A notes would be exchanged in a SEC-registered public offering. On May 25, 2004, Inmarsat filed a Form F-4 registration statement with the SEC with respect to its offering of Series B notes. See SEC File No. 333-1158654. After the effectiveness of that registration statement, the Series B notes will be issued and will become freely tradable in the United States upon consummation of the exchange offer.

This type of offering, commonly known as an A/B exchange offer, or an *Exxon Capital* exchange offer, has been an accepted method for over a decade for companies to raise capital from institutional investors by means of high yield debt securities. A “private placement” of securities under U.S. securities laws is followed by an A/B exchange offer that is registered with the SEC. The designation as an *Exxon Capital* exchange offer by investment bankers and the SEC results from a line of SEC interpretive letters dating back to 1998 which permit this type of offering.³ Prior to this line of interpretive letters, securities that have been “privately placed” under U.S. securities laws could be registered with the SEC for resale only by the investors---the holders of the privately placed securities. An *Exxon Capital* exchange offer enables a company to quickly and effectively raise capital without an SEC registration, and to subsequently effectuate an SEC-registered exchange offer in order to provide freely tradable securities to its investors. An *Exxon Capital* exchange offer (i) is subject to SEC review; (ii) subjects the issuer to the disclosure requirements of the Securities Act; and (iii) subjects the issuer of the securities to the periodic reporting obligations under the Securities Exchange Act of 1934 (the “Exchange Act”). Each of these three elements is equally applicable to an initial public offering of *equity* securities.

Exxon Capital exchange offers typically involve the exchange of one class of *debt* securities for another class of substantially identical *debt* securities. As a matter of practice in the financial markets, *Exxon Capital* exchange offers are the standard procedure for companies issuing high yield debt securities, such as the Inmarsat notes at issue in this matter.

¹ See Inmarsat’s February 10, 2004 letter to Marlene H. Dortch, Secretary, Federal Communications Commission, File No. SAT-MSC-20040210-00027 at 2-5 (“February 10th Letter”).

² See *id.* at 4.

³ See, e.g., the following SEC “No-action letters”: *Exxon Capital Holdings Corp.* (rel. May 13, 1988); *Morgan Stanley & Co. Inc.* (rel. June 5, 1991); *Mary Kay Cosmetics, Inc.* (rel. June 5, 1991); *Shearman & Sterling* (rel. July 2, 1993); *Brown & Wood LLP* (rel. Feb. 7, 1997).

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In a November 1998 release, the SEC recognized that many companies conduct their initial public offerings through *Exxon Capital* exchange offers. In the so-called *Aircraft Carrier* release, SEC Release No. 33-7606 (Nov. 3, 1998), the SEC stated that: "Since July 1, 1998, more than one third of all initial public offerings have been Exxon Capital exchanges."⁴ This statement is consistent with the SEC's treatment of *Exxon Capital* exchange offers under the Securities Act. In other words, the SEC treats the first filing by a company, whether that filing registers debt or equity securities, and whether that offering is on Form S-1, F-1, S-4 or F-4, as *the initial public offering of securities of that issuer*, because it is the first offering pursuant to which that issuer has a registration statement declared effective under the Securities Act and it is the reason why the issuer's securities become subject to the reporting and disclosure requirements of the Exchange Act.⁵

Once an issuer has had a registration statement declared effective under the Securities Act, any subsequent offering of securities under the Securities Act is viewed as a repeat offering and *not* as an initial public offering of securities. Inmarsat has not previously had a registration statement declared effective under the Securities Act, and Inmarsat is not currently subject to the reporting obligations of the Exchange Act. Therefore, the SEC considers the transaction to be effectuated pursuant to Inmarsat's May 25, 2004 SEC registration statement---the forthcoming exchange offer of Series B notes---to be Inmarsat's initial public offering of securities *in the United States*.

Respectfully submitted,



John P. Janka
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cc: Neil Dellar
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Eliot Greenwald
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Bruce Henoch

⁴ See Section V.H. of SEC Release No. 33-7606. Under the *Aircraft Carrier* proposals, the SEC proposed to repeal the *Exxon Capital* line of interpretive letters but only if the proposals were adopted. Because the SEC never adopted the proposal, the line of letters still is relied upon and *Exxon Capital* exchange offers are still filed with and reviewed by the SEC.

⁵ Of course, not every *Exxon Capital* exchange offer is an initial public offering, because some companies conduct an A/B or *Exxon Capital* exchange offer after they have already gone public.

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CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of June, 2004, I caused a true copy of the foregoing “*Ex Parte* Submission” to be served by first-class mail and, where noted, by hand (*) on the following:

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