

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

In the matter of	)	
	)	
<b>Mobile Satellite Ventures LP</b>	)	Call Sign S2358 (MSV-1)
<b>Mobile Satellite Ventures Subsidiary LLP</b>	)	File No. SAT-LOA-19980702-00066
<b>MSV International LLC</b>	)	
Request for Confidential Treatment	)	
	)	Call Sign: S2487 (MSV-SA)
	)	File No. SAT-LOA-20030827-00174

**ORDER TO DISCLOSE PURSUANT TO PROTECTIVE ORDER**

**Adopted:** May 15, 2006

**Released:** May 15, 2006

By the Chief, International Bureau:

1. On January 11, 2006, Mobile Satellite Ventures LP, Mobile Satellite Ventures Subsidiary LLC and MSV International, LLC (collectively, "MSV") filed with the Commission an unredacted copy of a satellite construction contract and accompanying exhibits ("MSV Contract") executed between MSV and Boeing Satellite Systems, Inc. The cover letter transmitting the contract requested confidential treatment of the documents submitted. Pursuant to the Commission's rules and policies, MSV also submitted a redacted version of the MSV Contract for the public record. MSV submitted the MSV Contract to demonstrate its compliance with its initial FCC milestones for MSV-1 and MSV-SA, File Nos. SAT-LOA-19980702-00066, SAT-LOA-20030827-00174, Call Signs: S2358 and S2487, respectively.<sup>1</sup>

2. On March 24, 2006, Inmarsat Ventures Limited ("Inmarsat") filed, pursuant to the Freedom of Information Act ("FOIA"),<sup>2</sup> a request to inspect an unredacted copy of the MSV Contract.<sup>3</sup> Inmarsat asserts that "MSV has redacted from the public version of the MSV Contract contractual terms that are essential to a full analysis as to whether MSV has in fact entered into a non-contingent construction contract, such as payment schedules and provisions governing termination for convenience."<sup>4</sup> On April 5, 2006, MSV filed an Opposition to the

<sup>1</sup> On April 21, 2006, the International Bureau ("Bureau") concluded that MSV had met its initial FCC milestone for both licenses. See Public Notice, Report No. SAT-00356 (April 21, 2006).

<sup>2</sup> 5 U.S.C. § 522 *et seq.*

<sup>3</sup> See FOIA Request, FOIA 2006-281 (filed on March 24, 2006) ("FOIA Request"). Inmarsat has agreed to withdraw its FOIA Request.

<sup>4</sup> FOIA Request, at 2.

FOIA Request. MSV asserts that “the type of commercial, financial, and technical information that is at issue here is competitively sensitive and should be withheld from public disclosure pursuant to Exemption 4 of the FOIA.”<sup>5</sup> On April 17, 2006, Inmarsat submitted a Reply to Opposition responding to MSV’s arguments.<sup>6</sup>

3. As a result of discussions between MSV and Inmarsat, MSV has agreed to disclose to Inmarsat, pursuant to the attached FCC protective order, certain confidential information in the MSV Contract (hereafter the “Confidential Submission”).<sup>7</sup> We conclude that the voluntary agreement reached by the parties serves the public interest. MSV’s disclosure to Inmarsat of the confidential information identified above pursuant to the terms of the attached protective order will provide adequate protection of the confidential information and allow Inmarsat the opportunity to evaluate whether it will seek review of the International Bureau’s milestone determination.<sup>8</sup> We require MSV to provide the Confidential Submission to Inmarsat, once Inmarsat has executed and delivered the Acknowledgment of Confidentiality that is part of the Protective Order attached to this Order.<sup>9</sup>

4. Accordingly, IT IS ORDERED that MSV SHALL provide to Inmarsat a copy of the Confidential Submission, under the terms of the Protective Order attached to this Order, once Inmarsat has executed such Protective Order.

<sup>5</sup> See Opposition to FOIA Request, at 1 (filed on April 5, 2006).

<sup>6</sup> See Reply to Opposition (filed on April 17, 2006).

<sup>7</sup> The specific exhibits and provisions of the MSV Contract that will not be provided in the Confidential Submission are as follows: Section 19.2 regarding intellectual property indemnification, Section 25.1 regarding major subcontractors, Section 26.1.1 regarding contractor insurance requirements, various sections of Article 27 regarding personnel and key personnel, various sections of Article 30 regarding intellectual property rights, Section 35.16 regarding cooperation before government agencies, Exhibit A: L-Band Space Based Network Statement of Work, Exhibit B: Technical Requirements for MSV L-Band Space Based Network, Exhibit C: L-Band SBN System Test Plan, Exhibit D: Satellite Program Test Plan, Exhibit E: Ground Segment Test Plan, Exhibit F: Satellite Product Assurance Plan, Exhibit G: Ground Segment Product Assurance Plan, Exhibit H: Dynamic Satellite Simulator Specification, Exhibit L: Spares Equipment List, and Exhibit M: Certification Letter.

<sup>8</sup> As of May 15, 2006, Inmarsat has not filed a challenge to the milestone determination. Thus, the issuance of this order does not in any way affect the milestone determination and is without prejudice to the legal or procedural positions the Commission may take if the milestone determination is challenged by Inmarsat or any other party.

<sup>9</sup> MSV has informed the Bureau staff in advance that it would not object to the review of the Confidential Submission by certain Outside Counsel of Record for Inmarsat. Email from Tony Lin to Andrea Kelly, William Bell, and Karl Kensinger, sent May 2, 2006 at 11:14 AM.

5. This Order is issued pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), Exception 4 of the Freedom of Information Act, 5 U.S.C. § 552(b)(4), and authority delegated under Sections 0.51 and 0.261 of the Commission's rules, 47 C.F.R. §§ 0.51, 0.261, and is effective upon its release.

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in cursive script, appearing to read "Roderick Porter".

Roderick Porter  
Deputy Chief, International Bureau

In the matter of	)	
	)	
Mobile Satellite Ventures LP	)	Call Sign: S2358
Mobile Satellite Ventures Subsidiary LLP	)	File No. SAT-LOA-19980702-00066
MSV International LLC	)	
Request for Confidential Treatment	)	Call Sign: S2487
	)	File No. SAT-LOA-20030827-00174

### APPENDIX A: PROTECTIVE ORDER

1. *Introduction.* On January 11, 2006, Mobile Satellite Ventures LP, Mobile Satellite Ventures Subsidiary LLC and MSV International, LLC (collectively, "MSV") filed with the Commission an unredacted copy of a satellite construction contract and accompanying exhibits ("MSV Contract") executed between MSV and Boeing Satellite Systems, Inc. The cover letter transmitting the contract requested confidential treatment of the documents submitted. Pursuant to the Commission's rules and policies, MSV also submitted a redacted version of the MSV Contract for the public record. On March 24, 2006, Inmarsat Ventures Limited ("Inmarsat") filed, pursuant to the Freedom of Information Act ("FOIA"),<sup>1</sup> a request to inspect an unredacted copy of the MSV Contract.<sup>2</sup> As a result of the voluntary agreement reached by MSV and Inmarsat, MSV has agreed to provide certain confidential information in the MSV Contract to Inmarsat (hereafter the "Confidential Submission") pursuant to a protective order. Consequently, the International Bureau ("Bureau") has adopted this Protective Order to ensure that "Confidential Information," as defined herein, provided to Inmarsat (hereafter referred to as a "Reviewing Party") is afforded adequate protection. The Protective Order reflects the manner in which Confidential Information is to be treated and is not intended to constitute a resolution of the merits concerning whether any Confidential Information would be released publicly by the Commission upon a proper request under FOIA or other applicable law or regulation, including 47 C.F.R. § 0.442.

2. *Definitions.* As used herein, capitalized terms, not otherwise defined herein, shall have the following meanings:

"Confidential Information" means any information contained in the Confidential Submission or derived therefrom that is not otherwise available from publicly available sources;

"Counsel" means Outside Counsel of Record;

<sup>1</sup> 5 U.S.C. § 522 *et seq.*

<sup>2</sup> See Freedom of Information Act Request, FOIA 2006-281 (filed on March 24, 2006) ("FOIA Request").



“Outside Counsel of Record” means the firm(s) of attorneys, or sole practitioner(s), as the case may be, representing a Reviewing Party;

“Relevant Proceedings” means proceedings that involve the April 21, 2006 International Bureau determination that MSV had met its initial contract execution milestone for both licenses and any administrative or judicial review of the April 21, 2006 determination. See Public Notice, Report No. SAT-00356 (April 21, 2006).<sup>3</sup>

3. *Use of Confidential Information.* Persons obtaining access to Confidential Information under this Protective Order shall use the information solely for preparation and conduct of Relevant Proceedings as delineated in this paragraph and paragraphs 5, 10, and 11, and any subsequent judicial proceeding arising directly from these proceedings and, except as provided herein, shall not use such documents or information for any other purpose, including without limitation business, governmental, or commercial purposes, or in other administrative, regulatory or judicial proceedings.

4. *Non-disclosure of Confidential Information.* Except with the prior written consent of MSV, or as hereinafter provided under this Protective Order, no Confidential Information may be disclosed by a Reviewing Party to any person other than the Commission and its staff.

5. *Permissible Disclosure.* Subject to the requirements of paragraph 8, Confidential Information may be reviewed by Counsel. Subject to the requirements of paragraph 8, Counsel may disclose Confidential Information to: (1) outside consultants or experts retained for the purpose of assisting Counsel in these proceedings, *provided that* the outside consultants or experts are not involved in the analysis underlying the business decisions of any competitor of MSV nor do they participate directly in those business decisions; (2) paralegals or other employees of such Counsel not described in clause 3 of this paragraph 5 assisting Counsel in this proceeding; (3) employees of such Counsel involved solely in one or more aspects of organizing, filing, coding, converting, storing, or retrieving documents or data or designing programs for handling data connected with these proceedings, or performing other clerical or ministerial functions with regard to documents connected with these proceedings; and (4) employees of third-party contractors performing one or more of the functions set forth in clause 3 of this paragraph 5. Individuals who have obtained access to Confidential Information in accordance with the provisions of this paragraph 5 and paragraph 8 may discuss and share the contents of the Confidential Information with any other person who has also obtained access in accordance with the provisions of this paragraph 5 and paragraph 8, and with Commission and its staff.

6. *Protection of Confidential Information.* Persons described in paragraph 5 shall have the obligation to ensure that access to Confidential Information is strictly limited as prescribed in this Protective Order. Such persons shall further have the obligation to ensure that (1) Confidential Information is used only as provided in this Protective Order; and (2) the documents are not duplicated except as necessary for filing at the Commission under seal as provided in paragraph 10 below.

<sup>3</sup> As of May 15, 2006, Inmarsat has not filed a challenge to the milestone determination. Thus, the issuance of this order does not in any way affect the milestone determination and is without prejudice to the legal or procedural positions the Commission may take if the milestone determination is challenged by Inmarsat or any other party.

7. *Prohibited Copying.* If, in the judgment of MSV, the documents contain information so sensitive that it should not be copied by anyone, the relevant pages of the documents shall bear the legend "Copying Prohibited," and no copies of such pages, in any form, shall be made. Application for relief from this restriction against copying may be made to the Commission, with notice to MSV.

8. *Procedures for Obtaining Access to Confidential Information.* In all cases where access to Confidential Information is permitted pursuant to paragraph 5, before reviewing or having access to any Confidential Information, each person seeking such access shall execute the Acknowledgment of Confidentiality ("Acknowledgment") (see Appendix B) and file it with the Bureau, on behalf of the Commission, and serve it upon MSV so that the Acknowledgment is received by MSV at least five business days prior to such person's reviewing such Confidential Information. Where the person seeking access is one described in either clause 3 or 4 of paragraph 5, the Acknowledgment shall be delivered promptly prior to the person obtaining access. MSV shall have an opportunity to object to the disclosure of the documents to any such persons. Any objection must be filed at the Commission and served on Counsel representing, retaining or employing such person within three business days after receiving a copy of that person's Acknowledgment (or where the person seeking access is one described in either clause 3 or 4 of paragraph 5, such objection shall be filed and served as promptly as practicable after receipt of the relevant Acknowledgment). Until any such objection is resolved by the Commission and, if appropriate, any court of competent jurisdiction prior to any disclosure, and unless such objection is resolved in favor of the person seeking access, persons subject to an objection from MSV shall not have access to Confidential Information. Upon receipt of an Acknowledgment and upon there being no objection by MSV to the person seeking access, MSV shall deliver a copy of the documents to such person.

9. *Requests for Additional Disclosure.* If any person requests disclosure of Confidential Information outside of the terms of this Protective Order, requests will be treated in accordance with Sections 0.442 and 0.461 of the Commission's rules.

10. *Filings with the Commission.* Persons described in paragraph 5 may, in any documents that they file in this proceeding, reference Confidential Information, but only if they comply with the following procedure:

a. Any portions of the pleadings that contain or disclose Confidential Information must be physically segregated from the remainder of the pleadings;

b. The portions of pleadings containing or disclosing Confidential Information must be covered by a separate letter to the Secretary of the Commission referencing this Protective Order;

c. Each page of any party's filing that contains or discloses Confidential Information subject to this order must be clearly marked: "Confidential Information included pursuant to Protective Order, DA 06-1037, File Nos. SAT-LOA-19980702-00066 and SAT-LOA-20030827-00174;" and

d. The confidential portion(s) of the pleading shall be served on the Secretary of the Commission, the Bureau, and MSV. Such confidential portions shall be served under seal, and shall not be placed in the Commission's public file. A party filing a pleading containing Confidential Information shall also file redacted copies of the pleading containing no

Confidential Information, which copies shall be placed in the Commission's public files. Parties should not provide courtesy copies of pleadings containing Confidential Information to Commission Staff unless the Bureau so requests. Any courtesy copies shall be submitted under seal.

11. *Client Consultation.* Nothing in this order shall prevent or otherwise restrict Counsel from rendering advice to their clients relating to the conduct of this proceeding and any subsequent judicial proceeding arising therefrom and, in the course thereof, relying generally on examination of Confidential Information; *provided, however,* that in rendering such advice and otherwise communicating with such client, Counsel shall not disclose Confidential Information.

12. *No Waiver of Confidentiality.* Disclosure of Confidential Information as provided herein by any person shall not be deemed a waiver by MSV of any privilege or entitlement to confidential treatment of such Confidential Information. Reviewing parties, by viewing this material agree: (1) not to assert any such waiver; (2) not to use Confidential Information to seek disclosure in any other proceeding; and (3) that accidental disclosure of Confidential Information by MSV shall not be deemed a waiver of any privilege or entitlement as long as MSV takes prompt remedial action.

13. *Subpoena by Courts, Departments or Agencies.* If a court, or a federal or state department or agency issues a subpoena or orders production of the documents or any Confidential Information that a party has obtained under terms of this Protective Order, such party shall promptly notify MSV of the pendency of such subpoena or order. Consistent with the independent authority of any court, department or agency, such notification must be accomplished such that MSV has a full opportunity to oppose such production prior to the production or disclosure of the documents or Confidential Information.

14. *Violations of Protective Order.* Should a person that has properly obtained access to Confidential Information under this Protective Order violate any of its terms, that person shall immediately convey that fact to the Commission and to MSV. Further, should such violation consist of improper disclosure of Confidential Information, the violating person shall take all necessary steps to remedy the improper disclosure. The Commission retains its full authority to fashion appropriate sanctions for violations of this Protective Order, including but not limited to suspension or disbarment of Counsel from practice before the Commission, forfeitures, cease and desist orders, and denial of further access to Confidential Information in this or any other Commission proceeding. Nothing in this Protective Order shall limit any other rights and remedies available to MSV at law or in equity against any person using Confidential Information in a manner not authorized by this Protective Order.



15. *Termination of Proceeding.* The provisions of this Protective Order shall not terminate at the conclusion of the relevant proceeding. Within two weeks after conclusion of the relevant proceeding and any administrative or judicial review, persons described in paragraph 5 shall destroy or return to MSV the documents and all copies of the same. No material whatsoever derived from may be retained by any person having access thereto, except Counsel (as described in paragraph 5) may retain, under the continuing strictures of this Protective Order, two copies of pleadings (one of which may be in electronic format) containing Confidential Information prepared on behalf of the party. All Counsel shall make certification of compliance herewith and shall deliver the same to Counsel for MSV not more than three weeks after conclusion of this proceeding. The provisions of this paragraph 15 regarding retention of Stamped Confidential Documents and copies of same shall not be construed to apply to the Commission or its staff.



## APPENDIX B

## Acknowledgment of Confidentiality

I hereby acknowledge that I have received and read a copy of the foregoing Protective Order in the above-captioned proceedings, and I understand it. I agree that I am bound by the Protective Order and that I shall not disclose or use Confidential Information except as allowed by the Protective Order. I acknowledge that a violation of the Protective Order is a violation of an order of the Federal Communications Commission.

Without limiting the foregoing, to the extent that I have any employment, affiliation or role with any person or entity other than a conventional private law firm (such as, but not limited to, a lobbying or public interest organization), I acknowledge specifically that my access to any information obtained as a result of the order is due solely to my capacity as Counsel or consultant to a party or other person described in paragraph 5 of the foregoing Protective Order and that I will not use such information in any other capacity nor will I disclose such information except as specifically provided in the Protective Order.

I acknowledge that it is my obligation to ensure that: (1) Confidential Information is used only as provided in the Protective Order; and (2) the documents are not duplicated except as specifically permitted by the terms of paragraph 10 of the Protective Order, and I certify that I have verified that there are in place procedures, at my firm or office, to prevent unauthorized disclosure of Confidential Information.

Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Protective Order.

Executed at \_\_\_\_\_ this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
[Name]

[Position]

[Address]

[Telephone]