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LATHAM & WATKINS ^{LLP}

May 22, 2006

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BY HAND DELIVERY

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW, TW-B204
Washington, DC 20554

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Federal Communications Commission
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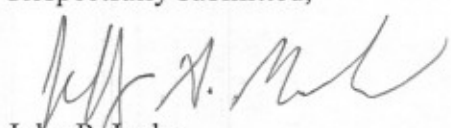
**Re: Inmarsat Ventures Limited, Petition for Reconsideration,
File Nos. SAT-LOA-19980702-00066 (Call Sign S2358); SAT-LOA-20030827-
00174 (Call Sign S2487)**

Dear Ms. Dortch:

Inmarsat Ventures Limited submits a redacted, public version of its Petition for Reconsideration in these proceedings pursuant to the Protective Order issued by the Commission in these proceedings (DA 06-1037, rel. May 15, 2006). A non-redacted, confidential version of the Petition for Reconsideration is being filed under separate cover.

Please direct any inquiries regarding this submission to the undersigned.

Respectfully submitted,



John P. Janka
Jeffrey A. Marks
Counsel for Inmarsat Ventures Limited

cc: CurTrisha Banks, International Bureau
Bruce Jacobs, David Konczal, Tony Lin, *Counsel for MSV*

Enclosures

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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MAY 22 2006

Federal Communications Commission
Office of Secretary

In the matter of)
)
Mobile Satellite Ventures Subsidiary, LLC) File No. SAT-LOA-19980702-00066
) File No. SAT-LOA-20030827-00174

PETITION FOR RECONSIDERATION OF INMARSAT VENTURES LIMITED

Pursuant to Section 1.106 of the Commission's rules, 47 C.F.R. § 1.106, Inmarsat Ventures Limited ("Inmarsat") respectfully requests that the International Bureau reconsider its determination that Mobile Satellite Ventures Subsidiary LLC ("MSV") met its initial milestones for these two authorizations to launch and operate MSS spacecraft at 63.5° W.L. and 101° W.L., with L-Band service links and Ku-Band feeder links.¹ As Inmarsat demonstrates below, the contract submitted by MSV does not satisfy the license condition that MSV enter into a "non-contingent" satellite construction contract. [REDACTED]

[REDACTED] Because the contract fails to demonstrate a firm commitment by MSV to construct, launch and operate its two next-generation spacecraft, the Bureau should reconsider its determination, and find that MSV has not satisfied its initial milestones. Therefore, MSV's authorizations to launch and operate new spacecraft at 63.5° W.L. and 101° W.L. should be deemed null and void, pursuant to the express terms of those authorizations.

INTRODUCTION

On January 10, 2005 and May 23, 2005, the Bureau authorized MSV to launch and operate two new L-Band MSS spacecraft with Ku-Band feeder links at 63.5° W.L. and 101°

¹ Public Notice, Report No. SAT-00356, DA 06-918, at 2 (rel. Apr. 21, 2006).

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W.L.² In doing so, the Bureau took steps to ensure that MSV did not hold “scarce orbit-spectrum resources to the exclusion of other applicants,” and that MSV was both willing and able to proceed with its stated plans.³ Specifically, consistent with longstanding precedent, pursuant to rules codified in the *Space Station Licensing Reform Order*,⁴ these authorizations require, among other things, that MSV “enter into a binding non-contingent contract to construct the licensed satellite system,” by January 11, 2006 for the spacecraft at 63.5° W.L. and by May 26, 2006 for the spacecraft at 101° W.L.⁵ On January 11, 2006, MSV submitted a contract with Boeing Satellite Systems, Inc. for three new spacecraft (the “Boeing Contract”) in an effort to demonstrate that MSV had met its initial milestone in connection with each authorization.⁶

Although the public version of the Boeing Contract was heavily redacted, that redacted version and public securities filings by MSV’s affiliate indicated that the Boeing Contract did not appear to meet the legal standard for a “non-contingent” contract.⁷ Without access to the redacted contract terms, it was not possible for Inmarsat, or any other interested party, to specify the inadequacy of the Boeing Contract. Most notably, MSV had redacted essential terms, such as payment schedules, provisions governing termination for convenience, and termination penalties.⁸ As Commission precedent consistently has found, access to a non-redacted version of a satellite construction contract is necessary to provide a “meaningful

² *MSV*, 20 FCC Rcd 479 (rel. Jan. 11, 2005) (“*MSV 63.5° W.L. Order*”); *MSV*, 20 FCC Rcd 9752 (rel. May 23, 2005) (“*MSV 101° W.L. Order*”).

³ *MSV 101° W.L. Order*, 20 FCC Rcd at 9772 ¶ 53.

⁴ *Amendment of the Commission’s Space Station Licensing Rules and Policies*, 18 FCC Rcd 10760, ¶¶ 181-185 (2003) (“*Space Station Licensing Reform Order*”); 47 C.F.R. § 25.164(c).

⁵ See *MSV 63.5° W.L. Order*, 20 FCC Rcd at 494 ¶ 57; *MSV 101° W.L. Order*, 20 FCC Rcd at 9776 ¶ 78.

⁶ Letter from Vice President, Regulatory Affairs, MSV, to Marlene Dortch, File No. SAT-LOA-19980702-00066, et al. (Jan. 11, 2006) (“*MSV Milestone Submission*”).

⁷ See Letter from Counsel to Inmarsat, to Managing Director, FCC, Mar. 24, 2006 (“*Inmarsat FOIA Request*”) (citing the publicly available Boeing Contract and Motient’s SEC Form 8-K).

⁸ Inmarsat FOIA Request at 2.

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opportunity to comment” on the legal sufficiency of the contract.⁹ Thus, Inmarsat submitted a Freedom of Information Act (“FOIA”) request in these proceedings in which it preliminarily identified issues of concern and also sought access to a non-redacted version of the Boeing Contract.¹⁰ In its FOIA Request, Inmarsat preliminarily identified the following issues:

First, MSV’s down payment of just 0.3% of the total contract price of approximately \$1.1 billion is miniscule and thus appears inadequate. Second, MSV has indicated that its liability if it terminates for convenience may be as low as \$3 million. Third, over the first year of the agreement, MSV is obligated to make payments amounting to a mere 5.5% of the contract price. Fourth, Motient’s recent SEC filing indicates that MSV is not fully committed to completing construction of the MSV-SA satellite because MSV may terminate the construction of that spacecraft for convenience if certain favorable business conditions do not develop in the future.¹¹

As Inmarsat noted at the time, this publicly available information indicated that the Boeing Contract appeared more like an option than the type of binding, non-contingent contract that is required to satisfy the initial license milestones under Commission precedent.¹²

On April 21, 2006, prior to making any determination on Inmarsat’s FOIA request, and without even acknowledging the issues Inmarsat raised, the Bureau issued a public notice, indicating without further elaboration that MSV had met the initial milestone for each spacecraft.¹³ Over three weeks later, on May 16, 2006, Inmarsat was able to access additional

⁹ See, e.g., *Pegasus*, 20 FCC Rcd 14661, 14662 ¶ 2 (2005); *PanAmSat*, 17 FCC Rcd 4639, 4640 ¶ 5 (2002); *GE American Communications*, 16 FCC Rcd 17607, 17608 ¶ 4 (2001).

¹⁰ Inmarsat FOIA Request at 1.

¹¹ *Id.* at 2 (footnotes omitted) (citing MSV Milestone Submission; Motient Corp., Form 8-K at 35, 43 (filed Mar. 13, 2006) (“Motient Corp. Form 8-K”). The data in the unredacted Boeing Contract is slightly different from previously available public information. For example, the contract price for three spacecraft appears to be [REDACTED] than the \$1.1 Billion specified in Motient’s 8-K (compare Boeing Contract at [REDACTED] with Motient 8-K at 35). Thus, MSV’s payment obligation over the first year [REDACTED] divided by [REDACTED] Inmarsat has not been able to reconcile this difference in fixed total contract price. The differences do not appear to be material under Commission precedent.

¹² Inmarsat FOIA Request at 2.

¹³ Public Notice, Report No. SAT-00356, DA 06-918, at 2 (rel. Apr. 21, 2006).

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portions of the Boeing Contract pursuant to a protective order negotiated with MSV.¹⁴ This newly available information validates the serious deficiencies in the Boeing Contract that Inmarsat preliminarily had identified before. Now, for the first time, Inmarsat is able to meaningfully comment on the Boeing Contract, and specifically substantiate its legal inadequacy. Inmarsat therefore seeks reconsideration of the Bureau's determination regarding the Boeing Contract.¹⁵

ARGUMENT

The Commission recently affirmed its policy on milestones:

Milestones are intended to ensure that licensees provide service to the public in a timely manner, to prevent warehousing of scarce orbit and spectrum resources by licensees that are unwilling or unable to proceed with their plans. Such warehousing could hinder the availability of services to the public at the earliest possible date by blocking entry by other entities willing and able to proceed immediately with the construction and launch of their satellite systems.¹⁶

The Commission has recognized that the initial license milestone is "especially important because it provides an early objective indication of whether a licensee is committed to proceeding with implementation of its proposal."¹⁷ Most relevant here, the Commission characterized a similarly sized down payment (as a percentage of the total contract price) as

¹⁴ MSV, Order to Disclose Pursuant to Protective Order, File Nos. SAT-LOA-19980702-00066, *et al.*, DA 06-1037 (rel. May 15, 2006).

¹⁵ Inmarsat has standing because it has a vested interest in whether MSV has met its milestones and whether MSV will deploy its spacecraft. First, Inmarsat and MSV are direct MSS competitors in the L-Band. *FCC v. Sanders Brothers Radio Station*, 309 U.S. 475, 477 (1940). Moreover, MSV has asserted the need to access additional L-Band spectrum in order to implement the two satellites that are the subject of these milestones, claiming that MSV's spectrum access should come at the expense of Inmarsat. *See, e.g.*, MSV, Petition to Hold In Abeyance, File No. SES-MFS-20060118-00050, *et al.* (filed Mar. 3, 2006). Thus, Inmarsat is adversely affected by the Bureau's determination and has standing to petition for reconsideration. 47 C.F.R. § 1.106(b)(1). Furthermore, Inmarsat's inability to view essential portions of the Boeing Contract prior to its release pursuant to protective order provides "good reason why it was not possible" for Inmarsat to fully participate before. *Id.*; *see also* cases cited *supra* note 9 (access to non-redacted contract necessary to have a meaningful opportunity to comment).

¹⁶ *Space Station Licensing Reform Order*, 18 FCC Rcd at 10827 ¶ 173.

¹⁷ *TMI Communications and Company, Limited Partnership and TerreStar Networks Inc. Application for Review and Request for Stay*, 19 FCC Rcd 12603, 12605 ¶ 4 (2004) ("TMI").

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“miniscule,”¹⁸ and the Commission has confirmed that initial payments that are not “significant,”¹⁹ and an ability to “cancel construction of the satellite without significant penalty,”²⁰ are indications that a satellite contract may not be sufficiently “non-contingent” to meet the construction commencement milestone. The Boeing Contract *fails on all of these counts*,²¹ and thus does not demonstrate a firm commitment by MSV to construct, launch and operate its next-generation spacecraft.²²

At the outset, it is important to recognize a significant additional limitation on MSV’s commitment to proceed as required by its milestones. The Boeing Contract provides that

[REDACTED]

¹⁸ *Applications of Mobile Communications Holdings, Inc. and ICO Global Communications (Holdings) Limited for Transfer of Control*, 18 FCC Rcd 1094, 1100 ¶ 17 (2003) (“MCHF”).

¹⁹ *EchoStar*, 7 FCC Rcd 1765, 1769, ¶ 19 (1992). The Commission has found that the standard of review related to DBS due diligence requirements is also applicable to contract execution milestone determinations, and that DBS milestone precedent is relevant. *Space Station Licensing Reform Order*, 18 FCC Rcd at 10831 n.433.

²⁰ *Space Station Licensing Reform Order*, 18 FCC Rcd at 10831 ¶ 184.

²¹ See Inmarsat FOIA Request at 2 (raising concerns related to the size of MSV’s down payment, payments over the first year, and termination liability based on publicly available information, and stating that these three issues “make the Boeing Contract appear more like an option than the type of binding and non-contingent contract that is required to satisfy the initial license milestones for MSV’s two next-generation spacecraft.”).

²² See Inmarsat FOIA Request at 2.

²³ Boeing Contract at [REDACTED]

²⁴ *Id.*

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As is demonstrated below, when viewed in its entirety, the Boeing Contract amounts [REDACTED]

[REDACTED] If, for any reason whatsoever, MSV chooses not to proceed with Boeing [REDACTED]

[REDACTED] Thus, the Boeing Contract affords MSV [REDACTED]

[REDACTED] and therefore does “not demonstrate sufficient commitment to proceed with system implementation”²⁵ to satisfy the contract execution milestone requirement.

Under these circumstances, [REDACTED]

[REDACTED] down payment and initial payments are inadequate under Commission precedent. In a context where a licensee did not otherwise demonstrate a commitment to implement its licensed system, the Commission characterized a down payment of less than 0.5% as “miniscule” and indicative that the contract was not satisfactory in meeting the initial license milestone.²⁶ MSV’s down payment of \$3 Million amounts to [REDACTED] of the total contract price, well below that 0.5% threshold.²⁷

Commission precedent further mandates that “initial payments” under a construction contract must be “significant,” as a percentage of total contract price, which is not the case here.²⁸ Here, MSV is obligated to pay only [REDACTED]

²⁵ *Joint Application for Review of Constellation et al*, 19 FCC Rcd 11631, ¶¶ 19, 26 (2004).

²⁶ *MCHI*, 18 FCC Rcd at 1100 at ¶ 17 (“The down-payments were miniscule, however, relative to the total purchase price that . . . each agreed to pay More precisely, each down-payment comprised less than one-half of one percent of the total purchase price specified in each contract”).

²⁷ See *Inmarsat FOIA Request* at 2 (noting that “MSV’s down payment of just 0.3% of the total contract price . . . is miniscule and thus appears inadequate”).

²⁸ *Inmarsat FOIA Request* (noting the inadequacy of MSV’s total payment obligation over the first year).

²⁹ Boeing Contract at [REDACTED]

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[REDACTED] Thus, [REDACTED] of the total contract price could be paid over [REDACTED] of a contract that provides for spacecraft to be delivered on a four to five year time horizon.³¹ This amount pales in comparison to initial payments that the Commission has found adequate. For example, in *EchoStar*, the Commission found payments equaling 23.87% of the total contract price over the first 10 months of a 40-month contract to be “significant” for milestone purposes.³² MSV’s obligation to pay [REDACTED] of the total contract price over [REDACTED] does not even come close to that level.

These modest initial payment obligations, when viewed in light of MSV’s [REDACTED] [REDACTED], make clear the contingent nature of MSV’s commitment to implement its licensed system during the early part of the Boeing Contract. MSV has [REDACTED] [REDACTED] [REDACTED] in the event of a termination for convenience in MSV’s discretion does not meet the requirement that cancellation by the licensee result in a “significant penalty” to the licensee.³⁴ Specifically, MSV is contractually committed to pay only [REDACTED] [REDACTED]

³⁰ Boeing Contract at [REDACTED]

³¹ [REDACTED]

³² *EchoStar Satellite Corporation*, 7 FCC Rcd 1765, 1769 ¶ 19 (1992).

³³ Boeing Contract at [REDACTED]

³⁴ *Space Station Licensing Reform Order*, 18 FCC Rcd at 10831 ¶ 184; *Columbia Communications Corporation*, 16 FCC Rcd 10867, 10871, 10872 ¶¶ 11, 15 (2001) (“*Columbia*”).

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[REDACTED] If MSV had cancelled the Boeing Contract right after signing it, [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Thus, [REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] and thereby maintain its spectrum reservations at 101° W.L. and 63.5° W.L. Both common sense and Commission precedent dictate that a contract cannot be “non-contingent” where the licensee can terminate [REDACTED]

[REDACTED]³⁶ Indeed, Commission precedent recognizes that contracts that appear to be accommodations to meet regulatory requirements are not sufficient to satisfy license milestones.³⁷ Motient, MSV’s affiliate, admitted in its recent SEC Form 8-K that MSV is not, even at this early stage, fully committed to constructing the MSV satellite licensed for 63.5° W.L.³⁸ Moreover, the Commission has recognized that a construction contract will not be sufficient where “obligations under the contract are . . . contingent upon future performance of an elective action by the licensee.”³⁹ [REDACTED]
[REDACTED]

³⁵ Boeing Contract at [REDACTED]
[REDACTED]

³⁶ *Cf. EchoStar*, 7 FCC Rcd at 1769 ¶ 18 (for termination for convenience, Echostar was required to pay termination charges up to the total contract cost of the contract, plus the satellite manufacturer’s direct and indirect costs reasonably incurred for its termination and settlement with vendors and subcontractors, plus a profit of 12.5% through month 24 and 15% thereafter). *See Columbia*, 16 FCC Rcd at 1087 ¶ 11.

³⁷ *TMI*, 19 FCC Rcd at 12619 ¶ 43.

³⁸ Motient Corp., Form 8-K at 43 (filed Mar. 13, 2006) (noting that MSV may terminate for convenience its contract to construct this spacecraft to serve South America unless certain favorable business conditions develop in the future).

³⁹ *TMI*, 19 FCC Rcd at 12606 ¶ 7.

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[REDACTED]

[REDACTED] It is not a non-contingent contract that meets the Commission's standards.

The Boeing Contract *may* mature into a non-contingent [REDACTED]

[REDACTED] But that

is not relevant. The Boeing Contract did not meet that legal standard when it was filed, and it

does not meet that standard today. A contract that [REDACTED]

[REDACTED] cannot be viewed as a non-contingent contract.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] To be sure, the [REDACTED]

payments that MSV may make to Boeing [REDACTED] provide significant value to

MSV, and in no way can be viewed as a "penalty" for terminating. With each payment to

Boeing, MSV may hope to extend the validity of its authorization to build its next-generation

⁴⁰ Boeing Contract at [REDACTED]

⁴¹ [REDACTED]

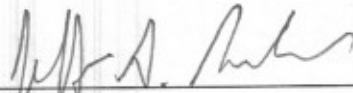
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system, keep its reservation for scarce and valuable Ku-Band feeder-link spectrum in the congested orbital arc at 101° W.L., and thereby preclude others from using that valuable orbit-spectrum resource in the meantime.⁴² Viewed in this context, MSV's obligations under the [REDACTED] Boeing Contract do not constitute the type of "significant" initial payment and termination penalty provisions that Commission precedent has recognized as essential for purposes of defining a non-contingent contract.⁴³

CONCLUSION

For these reasons, the Commission should reconsider its determination and find that MSV did not satisfy the initial milestones for its two next-generation spacecraft at 63.5° W.L. and 101° W.L.

Respectfully submitted,



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May 22, 2006

⁴² *MSV 101° W.L. Order*, 20 FCC Red at 9772 ¶ 53.

⁴³ Inmarsat FOIA Request at 2.

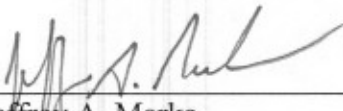
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CERTIFICATE OF SERVICE

I, Jeffrey A. Marks of Latham & Watkins, LLP, do hereby certify that on this 22nd day of May, 2006, I caused to be served a true and correct copy of the foregoing Petition for Reconsideration by U.S. Mail, postage pre-paid (unless otherwise noted) to the following:

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Jeffrey A. Marks