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December 20, 2004

By Hand Delivery

The Honorable Michael K. Powell
Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

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Policy Branch
International Bureau

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Federal Communications Commission
Office of Secretary

Re: In the Matter of Mobile Satellite Ventures Subsidiary LLC, Application for
Modification of Space Station License, et al.
File Nos. SAT-MOD-20031118-00333
SAT-AMD-20031118-00332
SES-MOD-20031118-01879

Int'l Bureau

DEC 20 2004

Front Office

Dear Chairman Powell:

I am writing on behalf of Telenor Satellite Services, Inc., Telenor Satellite, Inc., and Telenor Satellite Services Holdings, Inc. (collectively, "Telenor") in support of the Application for Review filed by Inmarsat Ventures Ltd. on December 8, 2004, in the above-referenced proceedings.¹

Telenor, located in Rockville, Maryland, is one the world's leading providers of mobile satellite services ("MSS") and, together with its affiliate Telenor Satellite Services AS of Norway, is the single largest distributor of Inmarsat services in the world. Telenor provides services using its network of owned-and-operated land earth stations in Southbury, Connecticut and Santa Paula, California in the United States and Eik in Norway. Telenor holds a number of licenses and authorizations to provide Inmarsat land mobile and aeronautical services in the United States, licenses that were obtained after literally years of tenacious opposition by MSV as

¹ In the Matter of Mobile Satellite Ventures Subsidiary LLC, Application for Review of Inmarsat Ventures Ltd., File Nos. SAT-MOD-20031118-00333, SAT-AMD-20031118-00332, and SES-MOD-20031118-01879 (filed Dec. 8, 2004) ("Application for Review").

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it desperately attempted to cling to its monopoly hold on domestic MSS.² Now, without regard to the standards carefully established in the ATC Order³ and without following any required procedural rules, the Bureau has eviscerated Telenor's licenses by effectively giving priority to MSV's untested ATC services, which the Commission clearly intended to be secondary and ancillary service to the satellite services for which the L-Band has been primarily allocated.

Using its domestic Inmarsat service licenses, Telenor provides land mobile services to a range of customers throughout the country, in rural, suburban, and urban areas alike. Many of Telenor's customers in the U.S. rely on Inmarsat services as their primary method of providing back-up communications capabilities in time of emergency. As Inmarsat noted in its Application for Review, one of the primary benefits of Inmarsat services is that they operate independent of local telephone and power systems, making them ideally suited to disaster response, emergency communications, and other applications where reliable communications are required regardless of the circumstances.

For this reason, a significant number of public and private organizations throughout the country have purchased terminals under Telenor's domestic blanket licenses, including municipal governments, relief organizations, and news media companies. These customers may require use of these terminals at any location at any time, including in cities and suburban areas as well as in rural locations. Neither the customer nor Telenor can reasonably foresee where the terminals might be needed; indeed, these organizations have purchased these terminals with the reasonable expectation of being able to operate them throughout the license area (*i.e.*, the United States), a very reasonable assumption given that the L-Band frequencies in which the terminals operate are allocated for primary use by Inmarsat services, meaning that coordination with other users is not required and users need not accept harmful interference from others. These users simply cannot accept a situation where use of the terminals in a particular location may be restricted by the implementation of ATC.

Through its grant of waivers to MSV, the Bureau is requiring Telenor to make an affirmative showing that its MSS terminals will be interfered with in order to prevent MSV from constructing high-powered ATC base stations within Telenor's authorized license area. In doing so, the Bureau has effectively modified Telenor's license. It is forcing Telenor to accept otherwise impermissible interference and consigning Telenor at best to a status co-primary with -

² *In the Matter of Comsat Corporation d/b/a Comsat Mobile Communications*, Memorandum Opinion, Order and Authorization, 16 FCC Rcd 21661 (2001); *In the Matter of Lockheed Martin Global Telecommunications et al., Applications for Assignment of Section 214 Authorizations, Private Land Mobile Radio Licenses, Experimental Licenses, and Earth Station Licenses*, Order and Authorization, 16 FCC Rcd 22897 (2001).

³ *In the Matter of Flexibility for Delivery of Communications by Mobile Satellite Service Providers*, Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 1962 (2003) ("ATC Order").

- and at worst secondary to -- MSV's terrestrial cellular-like network.⁴ As Inmarsat correctly notes in the Application for Review, the Commission's unambiguous intent was for ATC to remain a *secondary* service, ancillary to the mobile satellite services for which the L-Band is primarily allocated. The Bureau's actions turn this structure upside down, giving the presumption of interference-free operation to MSV while forcing Telenor to make an affirmative showing of interference potential in order to allow its fully-licensed operations to continue intact and without disruption.

Section 316 Prohibits License Modifications Without a Hearing

The Communications Act provides that station licenses "may be modified" by the Commission, but only after a hearing. Prior to any such modification, the licensee must be "notified in writing of the proposed action and the grounds and reasons therefore," and provided an opportunity to "protest such proposed order."⁵ By its decision to allow a cellular-like network in the L-Band, the Commission has modified Telenor's earth station license without notice to Telenor, and without any opportunity for Telenor to protest.

Permitting MSV to construct thousands of terrestrial cell sites in the L-Band that will generate interference into nearby MSS user terminals effects a license modification under section 316. "It has long been established that [section 316] covers indirect as well as direct modifications of licenses."⁶ Such "indirect modifications" include circumstances where the grant or modification of another license "may create objectionable electrical interference to an existing licensee and the existing licensee is protected by Commission policy or regulation from such interference."⁷ As the Supreme Court stated, "[t]o alter the rules so as to deprive [an existing licensee] of what had been assigned to it and to grant an application which would create interference on the channel given it," would be "in fact and in substance to modify" that license.⁸

To be sure, not every grant of a conflicting application constitutes a license modification. "[A] licensee whose right to use of a frequency is contingent on satisfying specified conditions has no right to use of the frequency when the conditions are not met."⁹ And a licensee has no greater rights than its license, and the relevant rules of the FCC, provide. Thus, a licensee whose

⁴ *In the Matter of Mobile Satellite Ventures Subsidiary LLC*, File Nos. SAT-MOD-20031118-00333, SAT-AMD-20031118-00332, SES-MOD-20031118-01879, Order and Authorization, DA 04-3553 (released Nov. 8, 2004) ("MSV Order").

⁵ 47 U.S.C. § 316(a).

⁶ *Western Broadcasting Co. v. FCC*, 674 F.2d 44, 49 (D.C. Cir. 1982).

⁷ *Id.*

⁸ *FCC v. National Broadcasting Co.*, 319 U.S. 239, 245 (1943).

⁹ *P&R Tremmer v. FCC*, 743 F.2d 918, 927-28 (D.C. Cir. 1984).

authorization is “expressly conditioned upon and made subordinate to” coordination or other spectrum sharing arrangements cannot be heard to complain when it is required actually to coordinate or otherwise share spectrum in accordance with its authorization.¹⁰ But where one radio station is authorized to operate in a way “which will cause interference to [an existing station] within its lawfully protected contour,” that authorization constitutes a modification of the existing station’s license.¹¹ That is the case here. And the Act requires that prior to such modifications the existing licensee be afforded notice and an opportunity to be heard.¹²

The MSV License

There is little question that the Commission’s grant to MSV of authority to construct a terrestrial cellular-like network in the L-Band constitutes a modification of Telenor’s license. Telenor holds a “blanket authority” to provide L-Band-based services throughout the United States. In its 2003 Report and Order authorizing ancillary terrestrial components for certain satellite-based services, the Commission established narrow exceptions to Telenor’s otherwise unconditional rights.¹³ The ATC Order permitted the construction of certain terrestrial facilities within the L-Band on a strict non-interference basis, and subject to power limits designed to mitigate their interference with existing L-Band operations.¹⁴

In the MSV Order, however, the Commission waived and modified those rules in the context of a licensing proceeding that did not involve Telenor. Perhaps most notably, the Commission raised the power limit for terrestrial base station operations by a factor of over 6, thus dramatically increasing the area within which those operations would interfere with existing L-Band uses. According to the Commission’s own studies, that interference contour more than quadrupled in area: from 31,000 square meters per cell site under the ATC Order, to 130,000 square meters per cell site under the MSV Order.¹⁵ Nationally, under the Commission’s analysis this power increase would allow the cumulative area of interference to grow from 53,500,000 square meters to 225,000,000 square meters. Inmarsat has estimated the area of interference to be even greater.¹⁶ Moreover, the non-contiguous nature of the interference renders the problem even worse than these numbers would suggest, as the spots of blanketing will create, as Inmarsat

¹⁰ *AMSC Subsidiary Corp. v. FCC*, 216 F.3d 1154, 1159 (D.C. Cir. 2000); see also *AT&T Wireless Serv’s Inc. v. FCC*, 270 F.3d 959, 964 (D.C. Cir. 2001).

¹¹ *WBEN, Inc. v. FCC*, 290 F.2d 743, 744 (D.C. Cir. 1961)

¹² *Id.*

¹³ See generally, ATC Order.

¹⁴ ATC Order at ¶ 104.

¹⁵ MSV Order at ¶ 81 (expanding interference radius from 100 meters to 204 meters).

¹⁶ See Application for Review, Technical Appendix at 2-9.

calls it, a "swiss cheese" MSS coverage area, riddled with anomalous pockets of terrestrial interference -- places where MSS terminals no longer will work.

Just as important, the MSV Order appeared to establish a new priority within the L-Band. By the terms of its license, Telenor was authorized to provide L-Band services on a primary basis: no harmful interference to Telenor's operations would be tolerated. The ATC Order expressly retained this scheme, providing that if an "MSS or other operator does receive harmful interference from ATC operations, either from base stations or mobile terminals, the ATC operator must resolve such interference."¹⁷ The MSV Order, however, turns this scheme on its head. The MSV Order establishes a presumption that interference from MSV's cell sites is acceptable, and it requires L-Band satellite service providers to bear the burden of "convincingly show[ing]" that they actually will have users operating in the vicinity of those cell sites who will be adversely affected by that interference. Moreover, the MSV Order appears to establish an extremely restrictive "statute of limitations" for such objections: the L-Band operators must object "within 30 days" of receiving notice from MSV that it is commencing operations at the enhanced power level in a particular location.¹⁸ Finally, in areas where the MSV Order concludes that there will be an interference problem into MSS service, it simply dismisses the issue as one to be "worked together" between MSV and the affected satellite service provider,¹⁹ thereby elevating the formerly secondary ATC service to a co-primary status.

The thirty-day procedural cut-off has the further, substantive, effect of freezing into place the L-Band operators' systems as of the date such notice is given. Though interference might not exist when MSV first builds a cell site, operators like Telenor inevitably will later want to introduce new services and serve new users who would suffer interference from ATC base stations. Any failure (based on existing technology, services, or customers) to object within 30 days, however, would foreclose the opportunity for those L-Band operators to bring those objections in the future.

These substantive changes constitute a modification of Telenor's license. The MSV Order dramatically expands the interference contour of terrestrial L-Band operations beyond that which was authorized by the FCC's rules, as established in the ATC Order. And the MSV Order effects a substantive re-prioritization of the L-Band, even while freezing the technological *status quo* and otherwise creating procedural obstacles to the enforcement of those priorities. Plainly, MSV's terrestrial cellular-like network "may create objectionable electrical interference" with the uses that are otherwise allowed under Telenor's current license and the relevant rules and regulations of the FCC.²⁰ The FCC's order authorizing construction and operation of that

¹⁷ ATC Order at ¶ 104.

¹⁸ MSV Order at ¶ 81.

¹⁹ MSV Order at ¶ 82.

²⁰ *Western Broadcasting*, 674 F.2d at 49-50.

network constitutes a "modification" of Telenor's license, and is therefore prohibited absent notice and a hearing.²¹

This failing is no mere technicality, devoid of substance. On the contrary, the FCC has introduced a scheme that will cause significant interference with Telenor's current services, and could dramatically curtail its ability to expand and introduce new services in the future. As reflected in Telenor's blanket license to provide MSS throughout the United States, ubiquitous service is a hallmark of MSS, and MSS subscribers therefore expect that their terminals will work anywhere they need them to work. As discussed above, they do not expect to find Telenor's service area riddled with pockets of interference where they cannot receive service.

For the reasons discussed herein, the Commission should grant Inmarsat's Application for Review and reverse the action of the Bureau in this proceeding.

Respectfully submitted,



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Assistant General Counsel

cc: Commissioner Kathleen Q. Abernathy
Commissioner Michael J. Copps
Commissioner Kevin J. Martin
Commissioner Jonathan S. Adelstein
Ed Thomas, Chief, Office of Engineering and Technology
Donald Abelson, Chief, International Bureau
Marlene Dortch, Secretary

²¹ See 47 U.S.C. § 316(a).