

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the matter of)	
)	
SkyTerra Subsidiary LLC)	FCC File Nos. SAT-MOD-20090813-00088
)	SAT-MOD-20090813-00089
Application for Modification of Space Station)	SES-MOD-20090813-00997
and Ancillary Terrestrial Component)	
Authority)	
)	

FINAL CORRECTED COMMENTS OF INMARSAT PLC

Inmarsat plc (“Inmarsat”) files these comments in support of the above-referenced modification applications filed by SkyTerra Subsidiary LLC (“SkyTerra”) on August 13, 2009 (“Applications”).¹ The Applications seek to modify SkyTerra’s existing L-band mobile-satellite service (“MSS”) spacecraft and earth station licenses to facilitate the reuse of certain L-band frequency segments designated for the Mexican MSS satellite operator under the last spectrum sharing agreement pursuant to the Mexico City Memorandum of Understanding (“MoU”).

Although the strict application of the Commission’s ancillary terrestrial component (“ATC”) rules could preclude SkyTerra from reusing these L-band segments terrestrially until that reuse has been formally coordinated with the Mexican operator, Inmarsat agrees with SkyTerra that there is “good cause” to waive these rules as necessary to permit the proposed license modifications. As the Commission is well aware, although Inmarsat, SkyTerra, and SkyTerra (Canada) have successfully coordinated their current and next-generation systems, and have attempted in good faith to coordinate those systems with the Mexican operator, those efforts have not come to a successful conclusion. Moreover, SkyTerra has aptly demonstrated

why its proposed operations would not cause interference into other MSS operations, and that its proposal is fully consistent with its coordination agreement with Inmarsat. Accordingly, Inmarsat fully supports grant of the requested waivers, and of the Applications.

Discussion

Section 25.149(b)(5)(iii) of the Commission’s rules provides that, “[i]n the L-band, MSS ATC is limited to those frequency assignments available for MSS use in accordance with the Mexico City Memorandum of Understanding, its successor agreements or the result of other organized efforts of international coordination.”² Further, Section 25.253(a)(4) provides that “[i]n a band segment in which the applicant has no rights under a coordination agreement, the applicant may not implement ATC in that band.”³ Thus, a strict application of the Commission’s rules could preclude SkyTerra from reusing portions of the L-band last designated for the Mexican satellite operator through a spectrum sharing agreement under the Mexico City MoU, which that operator does not use to serve the United States.

As SkyTerra notes, though, the Commission may waive its rules for “good cause shown.”⁴ The Applications establish that there is “good cause” to waive the Commission’s ATC rules to permit SkyTerra to reuse the requested spectrum in the United States. It is a well-established principle that the Commission will waive its rules where such waiver would serve the public interest without undermining the policies which the rules in question are intended to

¹ The Applications were accepted for filing by public notices released on September 18, 2009 and September 23, 2009.

² 47 C.F.R. § 25.149(b)(5)(iii).

³ 47 C.F.R. § 25.253(a)(4).

⁴ See 47 C.F.R. § 1.3.

serve.⁵ In this case, waiving the ATC rules would not undermine the purposes for which those rules were adopted, but rather would advance those purposes. In contrast, strict application of those rules would be inconsistent with the public interest. Accordingly, grant of the requested waivers is justified.

I. GRANT OF THE REQUESTED WAIVERS WOULD SERVE THE PUBLIC INTEREST

In establishing its ATC rules, the Commission concluded that “MSS licensees may generally seek authorization for MSS ATC only in the bands in which they are authorized to operate an MSS system”⁶ The Commission explained that restricting ATC operations in this fashion would “ensure maximum gains in spectrum efficiency” and “minimal potential for interference and limited regulatory intrusion.”⁷ The Applications establish that the requested waivers would be consistent with these principles.

As an initial matter, SkyTerra explains how it will limit its operations to ensure there is no harmful interference in either the uplink or the downlink directions, and SkyTerra specifically proposes to limit its aggregate uplink power spectral density on the specified L-band frequencies. In addition, SkyTerra details how it will be capable of managing spot beam operations to provide much greater control of emissions beyond the intended beam area, and minimizing potential downlink interference to Mexican terminals near the border. Thus, grant of

⁵ See also *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164 (D.C. Cir. 1990); *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969).

⁶ *Flexibility for Delivery of Communications by Mobile Satellite Service Providers in the 2 GHz Band, the L-Band, and the 1.6/2.4 GHz Bands*, Report and Order, 18 FCC Rcd 1962, at ¶ 93 (2003). With respect to L-band licensees, the Commission limited ATC operations to “those frequency assignments that are available to that MSS operator for MSS use in accordance with the Mexico City MoU.” *Id.*

the requested waivers is fully consistent with the Commission's efforts to ensure "minimal potential for interference" from ATC operations.

Significantly, SkyTerra establishes that the proposed modifications would facilitate a more efficient use of L-band spectrum in the United States. In particular, SkyTerra explains that the proposed modifications would allow it to reuse certain L-band spectrum resources within the United States. At the same time, SkyTerra demonstrates that the proposed modifications would not disrupt the operations of Mexican spacecraft. Accordingly, grant of the requested waivers would help to "ensure maximum gains in spectrum efficiency."

II. GRANT OF THE REQUESTED WAIVERS WOULD BE CONSISTENT WITH COMMISSION PRECEDENT

Notably, grant of the requested waivers would be consistent with Commission precedent, which makes clear that, notwithstanding the Commission's preference in favor of coordination, the successful negotiation of an international coordination agreement is not a prerequisite to operating in the L-band in any given band segment. To the contrary, since 1999 the Commission has implemented an L-band policy of simply requiring, in the absence of a valid spectrum sharing agreement under the Mexico City MoU, that service be provided on a non-harmful interference basis.⁸ In other words, the Commission has recognized that there is no

⁷ *Id.*

⁸ *See, e.g., SatCom Systems, Inc., et al.*, 14 FCC Rcd 20798, at ¶¶ 33-34 (1999) (concluding that "[i]n the absence of any continuing operator-to-operator agreement in the L-band, SatCom and TMI's operations . . . [would] be on a non-interference basis until a future operator-to-operator agreement is reached."). *See also, e.g., COMSAT Corporation d/b/a Comsat Mobile Communications, et al.*, 16 FCC Rcd 21661, at ¶¶ 71-73 (2001); *National Systems & Research Co.*, 17 FCC Rcd 12011, at ¶¶ 11-12 (2002); *Vistar Data Communications, Inc.*, 17 FCC Rcd 12899, at ¶¶ 17-18 (2002); *Infosat Communications, Inc.*, 17 FCC Rcd 1610, at ¶¶ 14-15 (2002); *Richtec Inc.*, 18 FCC Rcd 3295, at ¶ 17 (2003); *SkyWave Mobile Communications*, FCC File No. SES-LIC-20030311-00353, Special

binding international obligation—under the Mexico City MoU or otherwise—that would preclude operations on a non-harmful-interference basis, as enforced through appropriate license conditions.

In many of these cases—including cases involving SkyTerra’s predecessor-in-interest, Mobile Satellite Ventures—while the Commission generally required the licensee to limit L-band operations to those band segments coordinated pursuant to the Mexico City MoU, the Commission also provided the flexibility to operate in other parts of the L-band on a non-harmful-interference basis “in the absence of a continuing annual operator-to-operator agreement.”⁹ In so doing, the Commission recognized implicitly that permitting a licensee to use any portion of the L-band on a non-harmful-interference basis is fully consistent with a general directive that the licensee otherwise operate pursuant to a coordination agreement. In light of this precedent, grant of the requested waivers to facilitate SkyTerra’s reuse of the requested spectrum on a non-interference basis would be fully consistent with Commission policy and precedent. Indeed, the Commission consistently has applied this same policy across all MSS bands.¹⁰

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Condition 5899 (2004); *Satamatics, Inc*, FCC File No. SES-MFS-20051202-01665, Special Condition 5899 (2005).

⁹ See, e.g., *Mobile Satellite Ventures Subsidiary LLC*, 17 FCC Rcd 12894 at ¶¶ 9-10 (2002). See also *Mobile Satellite Ventures Subsidiary LLC*, 19 FCC Rcd 4672, 4675 ¶¶ 7-8 (2004); *Mobile Satellite Ventures Subsidiary LLC*, 20 FCC Rcd 479, at ¶ 39 (2005); *Mobile Satellite Ventures Subsidiary LLC*, 20 FCC Rcd 9752, at ¶ 59 (2005).

¹⁰ See *Amendment of the Commission’s Rules to Establish Rules and Policies Pertaining to MSS in the 1610-1626.5/2483.5-2500 MHz Frequency Bands*, 9 FCC Rcd 5936, at ¶ 211 (1994) (Big LEO band); *Establishment of Policies and Service Rules for MSS in the 2 GHz Band*, 15 FCC Rcd 16127, at ¶ 148 (2000) (2 GHz Band).

For the foregoing reasons, the Commission should grant the requested waivers and SkyTerra's modification applications on an expedited basis.

Respectfully submitted,

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