

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

In the matter of)
Motient Services Inc.) File No. SAT-ASG-20010302-00017
And) File No. ITC-ASG-20010302-00137
TMI Communications and Company, LP) File No. ISP-PDR-20010302-00007
Assignors) File No. SES-ASG-20010117-00203
And) File No. SES-ASG-20010302-00514
Mobile Satellite Ventures) File No. SES-ASG-20010116-00099
Subsidiary LLC)
Assignee)

ORDER AND AUTHORIZATION

Adopted: November 21, 2001

Released: November 21, 2001

By the Chief, International Bureau:

I. INTRODUCTION

1. In this Order we grant the applications of Motient Services, Inc. (Motient) and TMI Communications and Company, LP (TMI and, together with Motient, the Assignors) and Mobile Satellite Ventures Subsidiary, LLC (MSV Sub or Assignee and, together with the Assignors, the Applicants) to assign the space and earth station licenses and Section 214 authorizations held or requested by Motient and TMI to MSV Sub. Grant of these applications will serve the public interest because it will enable Motient and TMI, and certain investors, to use their combined resources to develop widespread, competitive, and affordable communication services for the underserved areas of the United States. We will consider in a subsequent proceeding the Applicants' companion requests for authority to allow MSV Sub to launch and operate a next-generation satellite system, and a request for a waiver to deploy terrestrial base stations.

2. As discussed below, we conclude that approval of the Assignment Applications serves the public interest, pursuant to our review under Sections 214(a) and 310(d) of the Communications Act of

1 See Public Notice, International Bureau Sets Deadlines Concerning Motient/TMI Assignment and Transfer of Control Applications, and Motient's Request for Second Generation Satellite/Terrestrial Base Station System; Deadline Extended for TMI's Application to Assign Earth Stations, Report No. SAT-00066 (rel. March 19, 2001). See also Public Notice, Motient/TMI assignment and Modification applications in Public Notice, Report No. SAT-00066, Report No. SPB-165 (rel. April 2, 2001), and 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 Band (IB Docket No. 01-185), Amendment of Section 2.106 of the Commission's Rules to Allocate Spectrum at 2 GHz for Use by Mobile Satellite Service (ET Docket No. 95-18), Notice of Proposed Rulemaking, FCC 01-225 (rel. Aug. 17, 2001).

1934, as amended, (“Communications Act” or “Act”).² We also grant the petition filed by the Federal Bureau of Investigation (FBI) and the U.S. Department of Justice (DoJ) to condition grant of the applications on the Applicants’ compliance with their agreement with DoJ and the FBI regarding, law enforcement, national security and public safety issues.³ In addition, to the extent specified herein, we find that the public interest would not be served by prohibiting the proposed indirect foreign ownership of MSV Sub in excess of twenty-five percent. Finally, we dismiss as moot the Petition to Deny filed by Deere & Company.⁴

II. BACKGROUND

A. The Applicants

1. Motient

3. Motient Corporation (Motient Corp.), the parent of Motient, is a publicly-traded U.S. corporation.⁵ In 1989, the Commission authorized Motient to construct, launch, and operate a three-satellite mobile satellite service (MSS) system in the upper L-band.⁶ Motient launched its first satellite (AMSC-1) in 1995, and it began offering service in 1996. Today, Motient offers land, maritime, and aeronautical mobile satellite services throughout the contiguous United States, Alaska, Hawaii, and the U.S. Virgin Islands.⁷

2. TMI

4. TMI is a Quebec registered limited partnership that is controlled by its general partner, TMI Communications, Inc., a Canadian corporation, which is in turn wholly-owned by BCE Inc., a publicly-traded Canadian communications service provider. TMI operates a Canadian-licensed L-band MSS system, via MSAT-1, its geostationary satellite. In the past two years, the Commission has granted to TMI blanket earth station licenses to provide MSS to mobile terminals located in the United States.⁸ The development of TMI’s satellite system was closely tied to that of Motient’s. The two systems’ satellites

² 47 U.S.C. §§ 214(a), 310(d).

³ See *infra* Section II, G.

⁴ KITComm Satellite Communications Ltd. (KITComm) also says that it opposes the assignments. Our review of KITComm’s pleadings, however, reveals that its concern is with the Applicants’ companion request for authority to allow MSV to launch and operate a next-generation satellite system. See, e.g., KITComm Opposition (April 18, 2001). As mentioned above, we intend to consider this and the Applicants’ other requests in a subsequent proceeding.

⁵ Significant interests in Motient Corp. stock are held by Hughes Electronics (13%), Baron Capital (12%), XM Ventures (6%), AT&T (6%), and Motorola (5%). See Motient Services, Inc. and Motient Satellite Ventures Subsidiary, Application for Assignment of License, File Nos. SAT-ASG-20010302-00017, *et al.*, (filed March 19, 2001); Motient Application at 3.

⁶ *Amendment of Part 2, 22, and 25 of the Commission’s Rules to Allocate Spectrum for and Establish Rules Pertaining to the Use of Radio Frequencies in Land Mobile Satellite Service*, Memorandum Opinion, Order and Authorization, 4 FCC Rcd 6041 (1989); Final Decision on Remand, 7 FCC Rcd 226 (1992); *aff’d sub nom. Aeronautical Radio, Inc. v. FCC*, 983 F.2d 275 (D.C. Cir. 1993).

⁷ Application at 3.

⁸ *TMI Communications and Company, L.P.*, 14 FCC Rcd 20798 (1999).

were jointly procured, and are essentially identical.⁹

B. The Proposed Transaction

5. The Applicants propose to establish a combined Canadian-American regional MSS service. In order to accomplish this task, they intend to form MSV Sub. MSV Sub will be formed as a Delaware limited liability company that will be wholly-owned by Mobile Satellite Ventures L.P., a Delaware limited partnership, (MSV LP). As explained in an amendment to the Application,¹⁰ Motient Corp. will own 48.1 percent of MSV LP, and TMI will own 39.9 percent of MSV LP.¹¹ The remaining ownership interests in MSV LP will be divided among three funds: Columbia Capital LLC (Columbia Capital), Spectrum Equity Investors LP (Spectrum Equity Investors), and Telcom Ventures LLC (Telcom Ventures and, together with Columbia Capital and Spectrum Equity Investors, the Investment Funds). Specifically, the amount of ownership among these funds will approximately be divided in the following manner: 3.8 percent to Columbia Capital, 3.8 percent to Spectrum Equity Investors, and 4.3 percent to Telcom Ventures.¹² Non-U.S. entities hold ownership interests in Motient Corp., TMI, Columbia Capital, and Spectrum Equity Investors.¹³

6. In addition to the equity ownership of MSV LP, the Applicants state that MSV LP will be controlled and managed by a general partner. The general partner is a Delaware corporation, Mobile Satellite Ventures GP (MSV GP). The ownership and voting rights of MSV GP will be held by Motient Corp., TMI, the Investment Funds, and MSV Investors, LLC. MSV Investors, LLC will own 30.8 percent of MSV GP and convertible debt of MSV LP.¹⁴ Motient Corp. will own 33.3 percent and TMI will hold 26.4 percent of MSV GP. Columbia Capital and Spectrum Equity will each own 3 percent of MSV GP, respectively and Telcom Ventures will own 3.4 percent. MSV GP will have a twelve-member board, and each owner will have rights to elect members to the board.¹⁵

7. The Applicants indicate that MSV Sub's foreign ownership may be as high as 45 percent and thus exceeds the 25 percent benchmark for indirect alien ownership set by Section 310(b)(4) of the Act.¹⁶ They request that the Commission find that this level of foreign ownership in MSV Sub is permissible.¹⁷

⁹ Application at 3.

¹⁰ Letter from Lon C. Levin; counsel for Motient, to Magalie Roman Salas, Secretary, FCC (filed October 9, 2001).

¹¹ Originally, Motient Corp.'s and TMI's respective ownership interests of MSV LP were to be 32.8 percent and 27.2 percent. *See* Motient Application at 2.

¹² The contemplated "new investment" from these entities was described by the Applicants in the original application as divided in the following manner: 12.8 percent to Columbia Capital, 12.8 percent to spectrum Equity Investors, and 14.4 percent to Telcom Ventures. Foreign ownership of the funds affiliated with the three new investors is as follows: Columbia Capital, approximately 30 percent; Spectrum Equity Investors, varying from approximately 19 percent to none, depending on the fund; and Telcom Ventures, with no foreign ownership. *Id.* Appendix B, Exhibit B.

¹³ *See* Letter from Lon C. Levin, counsel for Motient, to Magalie Roman Salas, Secretary, FCC (filed October 26, 2001).

¹⁴ *Id.*

¹⁵ *See infra* para. 20.

¹⁶ 47 U.S.C. § 310(b)(4).

¹⁷ Application at 4-5.

8. According to the Applicants, the proposed union of Motient and TMI will provide a platform upon which to develop a next generation MSS network that will employ innovative and spectrum efficient spot-beam satellites coupled with terrestrial base stations to expand coverage substantially, without the need for additional spectrum.¹⁸ The Applicants, therefore, submit that granting the applications will allow them to offer widespread, high-speed, competitive, and affordable communications services, reaching the most rural and remote areas of the nation.¹⁹

9. On March 19, 2001, the International Bureau issued a public notice, announcing that the applications were accepted for filing and establishing a pleading cycle to permit interested parties an opportunity to comment on the applications involved in this and related proposed transactions.²⁰ In response to the public notice, on April 18, 2001, four parties commented on the applications that are the subject of the proceeding.²¹ Deere was the only party that opposed the proposed assignments, contending that grant of the assignment applications would deprive Deere of its only possible alternative to Motient.²² The three other parties, Ericsson Inc (Ericsson), Inmarsat Venture plc (Inmarsat), and Mobile Satellite Users Association (MSUA) expressed their support for the proposed assignments.²³ The Commission also received, on April 18, 2001, a Joint Petition to Defer filed by Motient, TMI, the FBI and DoJ, requesting that the Commission defer grant of the Assignment Applications pending resolution of potential national security, law enforcement, and public safety issues raised by DoJ and the FBI. On October 26, 2001, the Applicants amended the Application to reflect changes in the ownership structure of MSV Sub.²⁴ On November 15, 2001 DoJ and FBI filed a Petition to Adopt Conditions to Authorizations and Licenses.²⁵ The Petition to Adopt Conditions states that DoJ and the FBI have no objection to grant of the applications provided the Commission conditions the assignment of the authorizations and licenses on compliance with an agreement reached between DoJ, FBI, MSV, Motient and TMI on November 14, 2001, and filed with the Petition to Adopt Conditions.²⁶

¹⁸ *Id.* at 6-7.

¹⁹ *Id.* at 13.

²⁰ *See supra* note 1.

²¹ *See* Deere Petition to Deny (April 18, 2001), Ericsson Comments (April 18, 2001), Inmarsat Partial Petition to Deny (April 18, 2001), and MSUA Reply Comments (May 21, 2001).

²² *See* Deere Petition to Deny (April 18, 2001) at 4.

²³ Pleadings were also filed by Cingular Wireless LLC, New ICO Global Communications (Holdings) Ltd., KITComm Satellite Communications Ltd., AT&T Wireless Services, Inc., Aeronautical Radio, Inc., Cellular Telecommunications and Internet Association, Verizon Wireless, and Sprint Corporation. These pleadings, however, concern the Applicants' proposal to launch and operate a new satellite system and to provide terrestrial wireless service, and thus are not germane to this proceeding.

²⁴ *See* SPB Public Notice, Report No. SAT-00088 (Nov. 2, 2001); TD Public Notice, Report No.TEL-00459S (Nov. 2, 2001).

²⁵ *See* Petition to Adopt Conditions to Authorizations and Licenses (November 15, 2001) (Petition to Adopt Conditions).

²⁶ *See* Agreement (November 14, 2001) (MSV/Motient/TMI/DoJ/FBI Agreement).

III. PUBLIC INTEREST ANALYSIS

A. Framework for Analysis

10. In considering the assignment applications, the Commission must determine, pursuant to Section 214(a) and Section 310(d) of the Act, whether the proposed assignments will serve the public interest.²⁷ In addition, because of the foreign ownership interests presented in this case, we must also determine whether the proposed assignment of common carrier licenses to MSV Sub is permissible under the foreign ownership requirements of Section 310(b)(4).²⁸

11. The legal standards that govern our public interest analysis for assignment of licenses and authorizations under Sections 214(a) and 310(d) require that we weigh the potential public interest harms against the potential public interest benefits to ensure that, on balance, the proposed transaction will serve the public interest, convenience, and necessity.²⁹ Our analysis considers the likely competitive effects of the proposed assignment and whether such assignment raises significant anti-competitive issues.³⁰ In addition, we consider the efficiencies and other public interest benefits that are likely to result from the proposed assignment.³¹ Further, we consider the issues of national security, law enforcement, and public safety raised by the Executive Branch.³²

B. Qualifications

12. As a threshold matter, we must determine whether the applicants are qualified to hold and assign licenses under Section 310(d) of the Act and Commission rules. In making this determination, we do not, as a general rule, re-evaluate the qualifications of the assignors unless issues related to basic qualifications have been designated for hearing by the Commission or have been sufficiently raised in petitions to warrant the designation of a hearing.³³ No such issues have been raised here that would require us to re-evaluate the basic qualifications of Motient or TMI.

13. Conversely, the analysis of every assignment application requires that we determine whether the proposed assignee is qualified to hold Commission licenses.³⁴ Section 310(d) requires that

²⁷ 47 U.S.C. §§ 214(a) and 310(d).

²⁸ See 47 U.S.C. § 310(b)(4).

²⁹ See, e.g., *Application of VoiceStream Wireless Corporation, Powertel, Inc., Transferors, and Deutsche Telekom AG, Transferee, for Consent to Transfer Control of Licenses and Authorizations Pursuant to Sections 214 and 310(d) of the Communications Act and for Declaratory Ruling Pursuant to Section 310 of the Communications Act*, Memorandum Opinion and Order, 16 FCC Rcd 9779, 9789 (2001) (*VoiceStream/Deutsche Telekom Order*). See also *AT&T Corp., British Telecommunications, plc, VLT Co. L.L.C., Violet License Co. LLC, and TNV [Bahamas] Limited Applications For Grant of Section 214 Authority, Modification of Authorizations and Assignment of Licenses in Connection with the Proposed Joint Venture Between AT&T Corp. and British Telecommunications, plc*, FCC 99-313, Memorandum Opinion and Order, 14 FCC Rcd 19140, 19147 (1999) (*AT&T/BT Order*).

³⁰ See, e.g., *AT&T/BT Order*, 14 FCC Rcd at 19148.

³¹ See, e.g., *VoiceStream/Deutsche Telekom Order*, 16 FCC Rcd at 9789.

³² See *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, Report and Order and Order on Reconsideration, 12 FCC Rcd 23891, 23919-21 (1997) (*Foreign Participation Order*); Order on Reconsideration, 15 FCC Rcd 18158 (2000).

³³ See, e.g., *Voicestream Wireless/Deutsche Telekom Order*, 16 FCC Rcd at 9790.

³⁴ See 47 U.S.C. 308; see also, *AirTouch Communications, Inc.*, 14 FCC Rcd 9430, 9432-34 (Wireless Tel. Bur. 1999).

the Commission consider the qualifications of the proposed assignee as if the assignee were applying for the license directly under Section 308 of the Act.³⁵ In this case, no party has challenged the qualifications of Motient or TMI as assignors or MSV Sub as assignee. We note that the majority of the ownership and voting rights in MSV Sub will be in the hands of Motient Corp. and TMI. Based on our review of the Assignee's ownership, we conclude that MSV Sub is qualified under our rules to hold the respective licenses and authorizations at issue in this proceeding.

C. Regulatory Status

14. TMI holds licenses for mobile earth terminals (METs) that will be assigned to MSV Sub. TMI requests that these METs, once assigned to MSV Sub, be permitted to provide common carrier service. In order to permit greater flexibility for service offerings, and in light of our conclusions below in our discussion of foreign ownership, we permit MSV Sub to provide common carrier service via these METs.³⁶

D. Foreign Ownership

15. Motient Corp. and TMI request that the Commission find permissible, under Section 310(b)(4) of the Act, the indirect foreign ownership of MSV Sub, which will hold common carrier Title III licenses, in excess of the 25 percent benchmark in Section 310(b)(4).³⁷ Specifically, after the closing of the proposed transaction, MSV Sub, the proposed licensee, will be formed as a Delaware limited liability company. MSV Sub will be wholly-owned by MSV LP. Non-U.S. individuals and entities will have substantial indirect ownership interests in MSV Sub in excess of 25 percent.

16. Section 310(b)(4) states that:

(b) No broadcast or common carrier or aeronautical en route or aeronautical fixed radio station license shall be granted to or held by –

(4) any corporation directly or indirectly controlled by any other corporation of which more than one-fourth of the capital stock is owned of record or voted by aliens, their representatives, or by a foreign government, or representative thereof, or by any corporation organized under the laws of a foreign country, if the Commission finds that the public interest would be served by the refusal or revocation of such license.³⁸

17. The Applicants' request to exceed the foreign ownership benchmark in Section 310(b)(4) was placed on public notice,³⁹ and no comments were filed opposing the proposed ownership structure. Though the Applicants have made modifications to the ownership structure of MSV LP because additional expected investment did not occur control and management of MSV LP and the licensee have

³⁵ 47 U.S.C. § 308.

³⁶ See *Satcom Systems, Inc. and TMI Communications and Co.*, 14 FCC Rcd 20798 (1999) (*TMI Order*) aff'd *AMSC Subsidiary Corporation v. FCC*, 216 F.3d 1154 (D.C. Cir. 2000).

³⁷ 47 U.S.C. § 310(b)(4).

³⁸ *Id.*

³⁹ See Public Notice, Motient/TMI Assignment and Modification Applications in Public Notice, Report No. SAT-00066, Report No. SPB-165, April 2, 2001.

not changed from that stated in the original Application.⁴⁰ In addition, as further discussed below, the Executive Branch has reached an agreement with the Applicants concerning national security, law enforcement, and public safety concerns, and has not raised foreign policy and trade concerns associated with this transaction. For the reasons discussed below, we conclude that it would not serve the public interest to prohibit the indirect foreign ownership proposed here.

18. In the *Foreign Participation Order*, the Commission concluded that the public interest would be served by permitting greater investment by entities from World Trade Organization (WTO) Members in U.S. common carrier and aeronautical fixed and en route licensees.⁴¹ Therefore, with respect to indirect foreign investment from WTO Members, the Commission replaced its “effective competitive opportunities,” or ECO, test with a rebuttable presumption that such investment generally raises no competitive concerns.⁴² With respect to non-WTO Members, the Commission continues to apply the ECO test in order to preserve the international public policy goals of: (i) promoting effective competition in the global market for communications services, (ii) preventing anti-competitive conduct in the provision of international services or facilities, and (iii) encouraging foreign governments to open their communication markets.⁴³ In evaluating an applicant’s request for approval of non-U.S. ownership interests under Section 310(b)(4), the Commission uses a “principal place of business” test to determine the nationality or “home market” of foreign investors.⁴⁴ Thus, in light of the policies adopted in the *Foreign Participation Order*, our evaluation of the proposed transaction under Section 310(b)(4) begins with an examination of the indirect foreign investments in MSV Sub and a determination of whether those investments are attributable to entities from WTO Members.

19. According to the Applicants, the indirect foreign ownership and voting interests in MSV Sub would amount to approximately 45 percent, and the majority of the indirect foreign ownership would be Canadian.⁴⁵ TMI would indirectly own approximately 39.9 percent of MSV Sub. TMI in turn is wholly owned by BCE Inc., a Canadian corporation with approximately 0.4 percent non-U.S., non-Canadian foreign ownership.⁴⁶ In addition, Motient Corp., a publicly-traded U.S. corporation, holds a 48.1 percent interest in MSV Sub. The Applicants state that less than 5 percent of Motient Corp.’s interest in MSV Sub, or 2.4 percent, is attributable to non-U.S. entities.⁴⁷ In addition, two of the investment funds, Columbia Capital and Spectrum Equity Investors, have non-U.S. investors. Approximately 30 percent of Columbia Capital’s 3.8 percent ownership interest in MSV Sub, or 1.14 percent, is attributable to foreign investors. With respect to Spectrum Equity Investors, approximately 19 percent of its 3.8 percent interest in MSV Sub, or 0.72 percent, is attributable to foreign investors.

⁴⁰ See Public Notice Report No. TEL-00459S (Nov. 2, 2001).

⁴¹ *Foreign Participation Order*, 12 FCC Rcd 23891 at 23896, para. 9, at 23913, para. 50, and at 23940, paras. 111-12.

⁴² *Foreign Participation Order*, 12 FCC Rcd 23891 at 23896, 23913, 23940.

⁴³ *Id.* at 23894-95, para. 5.

⁴⁴ *Id.* at 23896, 23913, 23940.

⁴⁵ Application at 5.

⁴⁶ See Letter from Gregory C. Staple, counsel for TMI, to Lisa Choi, attorney/advisor, International Bureau, FCC (filed Oct. 30, 2001) (Canadian ownership of BCE Inc. is approximately 88 percent. Of the remaining 12 percent non-Canadian ownership, approximately 11.6 percent of the ownership is attributable to U.S. investors).

⁴⁷ Application at 4. Applying the multiplier, 5 percent of Motient Corp.’s 48.1 percent interest results in a 2.4 percent attributable indirect foreign ownership interest in MSV Sub. See *infra* note 50.

Therefore, the combined foreign ownership interest in MSV Sub would be approximately 44.16 percent.⁴⁸

20. In addition to the equity ownership of MSV LP, the Applicants state in a supplemental letter that MSV LP will be controlled and managed by a general partner. The general partner is a Delaware corporation, MSV GP. MSV GP will have a twelve-member board. Motient Corp., TMI, and MSV Investors, LLC will each have the right to appoint three members, and each of the Investment Funds will have the right to elect one member.⁴⁹ As explained in a supplemental letter, the ownership and voting right percentages of MSV GP will differ from the equity and voting interests in MSV LP. Motient Corp. will hold approximately 33.3 percent of MSV GP, 5 percent of which, or 1.69 percent, is foreign. TMI will hold a 26.4 percent attributable foreign ownership interest. A new investor, MSV Investors, LLC, will own 30.8 percent of MSV GP and convertible debt of MSV LP.⁵⁰ The Investment Funds will also hold ownership and voting interests in MSV GP: Columbia Capital and Spectrum Equity will each respectively own 3 percent of MSV GP, and Telcom Ventures will own 3.4 percent. The total foreign ownership attributable to Columbia Capital and Spectrum Equity in MSV GP will therefore be 0.579 percent. The Applicants state that non-U.S. ownership of MSV Investors LLC amounts to less than one percent, or approximately 0.3 percent of MSV GP. Thus, applying the multiplier, the total combined foreign ownership of MSV GP amounts to approximately 28.95 percent.⁵¹

21. We next determine the home market of each of the particular foreign named investors to assess whether the investment should be afforded WTO Member status. TMI has demonstrated in a supplemental letter, using the Commission's five-factor principal place of business test, that Canada is the principal place of business for both TMI and its parent, BCE Inc.⁵² Under the *Foreign Participation Order*, entities from WTO Members are entitled to a rebuttable presumption that no competitive concerns are raised by their proposed indirect foreign ownership of MSV Sub. Therefore, TMI and BCE Inc., each of which has its principal place of business in Canada, are entitled to this presumption. There is no evidence in the record that would rebut this presumption, and as we explain more fully below, the proposed transaction does not raise any significant competitive concerns.⁵³ We also determine that the agreement between the Applicants and the Executive Branch has addressed the national security, law enforcement, and public safety concerns raised by the Executive Branch.⁵⁴

⁴⁸ See Letter from Lon C. Levin, counsel for Motient, to Magalie Roman Salas, Secretary, FCC (filed October 26, 2001).

⁴⁹ *Id.*

⁵⁰ See Letter from Lon C. Levin; counsel for Motient, to Magalie Roman Salas, Secretary, FCC (filed October 26, 2001).

⁵¹ See *BBC License Subsidiary, L.P.*, Memorandum Opinion and Order, 10 FCC Rcd 10968 at 10973-74, paras. 22-26 (1995) (Modifying in part and affirming in part the standard set forth in *Wilner & Scheiner*, 103 FCC 2d at 521-24 and *Wilner & Scheiner II*, 1 FCC Rcd at 13, for calculating both alien voting and ownership interests held in a licensee or its parent where such interests are held through intervening entities.

⁵² See Letter from Ted H. Ignacy, Vice-President, Finance, TMI Communications, Inc. to Magalie Roman Salas, Secretary, FCC, (filed October 17, 2001). See also *Market Entry and Regulation of Foreign-Affiliated Entities*, IB Docket No. 95-22, Report and Order, 11 FCC Rcd 3873 (1995) (*Foreign Carrier Entry Order*) at 3951-52, para. 207. See also *DiGiPH PCS, Inc. and Eliska Wireless Ventures License Subsidiary I, L.L.C.*, Memorandum Opinion and Order, 15 FCC Rcd 24501, 24506-07 (2000) (citing *Global Crossing Ltd. and Frontier Corporation*, *Memorandum Opinion and Order*, 14 FCC Rcd 15911, 15918-19 (1999) (applying the five-factor "principal place of business" test) and *Foreign Participation Order*, 12 FCC Rcd 23891 at 23941.

⁵³ See *infra* Part D.

⁵⁴ See Petition to Adopt Conditions.

22. We therefore conclude, pursuant to Section 310(b)(4) and the Commission's "open entry" standard for indirect investment by WTO Members in U.S. common carrier licensees, that it will not serve the public interest to prohibit the proposed indirect foreign ownership of MSV Sub in excess of the 25 percent benchmark. Specifically, this ruling permits MSV Sub to be owned indirectly by TMI and/or BCE Inc. and their Canadian shareholders in an amount up to and including an equity and/or voting interest of 40 percent. Additional approval would be required under Section 310(b)(4) before TMI or BCE Inc. increases its indirect investment in MSV Sub above this authorized level. MSV Sub shall also seek additional Commission approval before other foreign individuals or entities, including foreign owners of Motient Corp., Columbia Capital, and Spectrum Equity, MSV Investors, LLC, and non-U.S., non-Canadian owners of TMI and BCE Inc., acquire individually and/or in the aggregate a greater than 25 percent indirect equity and/or voting interest in MSV Sub.

E. Competitive Effects

23. Our public interest analysis under Section 214(a) and 310(d) includes an evaluation of the competitive effects of the proposed transaction in both the relevant product markets and the relevant geographic markets. For telecommunications service providers, the Commission has determined that the relevant product markets can include both service to U.S. domestic telecommunications markets and service between the United States and foreign telecommunications markets.⁵⁵

24. Motient and TMI both offer mobile satellite services in North America, including voice, data and dispatch services.⁵⁶ While these systems offer many of the same services that are offered by terrestrial wireless systems, the satellite systems can provide service to some areas that do not have terrestrial coverage, and therefore, some customers will not see terrestrial wireless systems as a suitable substitute for some MSS services. There are, however, a number of other satellite operators that offer or plan to offer mobile satellite services in North America.⁵⁷ These operators include Inmarsat,⁵⁸ Iridium,⁵⁹ ICO Teledesic,⁶⁰ Globalstar,⁶¹ and Orbcomm.⁶² In addition, the Commission recently authorized the 2

⁵⁵ See, e.g., *VoiceStream/Deutsche Telekom Order*, 16 FCC Rcd at 9824, 9833 (citing *Application of WorldCom, Inc., and MCI Communications Corporation for Transfer of Control of MCI Communications Corporation to WorldCom, Inc.*, Memorandum Opinion and Order, 13 FCC Rcd 18025, 18070-71 (1998) (*MCI/WorldCom Order*). See also *MCI/WorldCom Order* at 13 FCC Rcd 18038-39; *Lockheed Martin Corporation, COMSAT Government Systems, LLC, and COMSAT Corporation, Application for Transfer of Control of COMSAT Corporation and its Subsidiaries, Licensees of Various Satellite, Earth Station Private Land Mobile Radio and Experimental Licenses, and Holders of International Section 214 Authorizations*, Order and Authorization, 15 FCC Rcd 22910, 22915 (2000) (*Lockheed/COMSAT Order*); and *Application of General Electric Capital Corporation and SES Global S.A. for Consent to Transfer Control of Licenses and Authorizations Pursuant to Sections 214(a) and 310(d) of the Communications Act and Petition for Declaratory Ruling Pursuant to Section 310(b)(4) of the Communications Act*, Order and Authorization, DA 01-2100 (IB and WTB released Oct. 2, 2001), Supplemental Order, DA 01-2482 (IB and WTB released Oct. 26, 2001).

⁵⁶ Application at 3. See also, <http://www.tmisolutions.com/about/cop-profile.cfm>, and <http://www.motient.com>.

⁵⁷ Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services, Sixth Report, FCC 01-192 17, 2001 at 35-39 and 54.

⁵⁸ Inmarsat offers mobile communications services, including telephony, telex, electronic mail, position reporting and disaster communications. See www.inmarsat.org.

⁵⁹ Iridium offers voice, data, paging and messaging. See www.iridium.com.

⁶⁰ ICO Teledesic plans to offer mobile and fixed satellite voice and data services. New ICO Global Communications Ltd., SEC Form S-4, Sept. 20, 2000 at 91.

⁶¹ Globalstar offers mobile voice and data services via satellite. See www.globalstar.com.

GHz MSS systems, which will be capable of providing mobile voice, data, and other services.⁶³ While the coverage areas for Motient and TMI include only North America and the other systems have broader coverage areas, the other operators can offer or will offer services that could meet the needs of Motient and TMI customers. Given that there are a number of other firms offering or planning to offer MSS services and given that other firms have substantial capacity available for MSS, we find that the proposed transaction raises no significant competitive concerns.

25. Deere argues that grant of the assignment application would eliminate Deere's available service options. Deere explains that it is currently a user customer of Inmarsat for a data transport service, which it accesses through receive-only mobile earth stations mounted on agricultural vehicles, and which it uses to refine global positioning system (GPS) information for a "precision farming" application in Canada, Mexico, and Central and South America.⁶⁴ Because the Commission has not permitted Deere's earth stations to receive the Inmarsat signal in the United States, Deere also states it relies on Motient to provide the means for Deere's U.S. precision farming application.⁶⁵ Deere contends that because it is not satisfied with this service, it has requested authority from the Commission to substitute Inmarsat for Motient. Absent Commission permission to access Inmarsat, Deere submits that TMI is its only potential alternative carrier to Motient. Deere therefore contends that the merger of Motient and TMI would eliminate Deere's only possible alternative service provider, and substantially decrease competition. Consequently, Deere asks that authority to effect the proposed merger be denied.

26. On October 9, 2001, the Commission released the *Inmarsat Authorization Order*,⁶⁶ which permits Deere to access Inmarsat for Deere's precision farming services throughout North America. Accordingly, we find that Deere's concerns are now moot, and its petition to deny is therefore dismissed.

F. Dominant Carrier Safeguards

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⁶² Orbcomm provides two-way monitoring, tracking and messaging services through a low-Earth orbit (LEO) satellite-based data communication system. Orbcomm applications include tracking mobile assets such as trailers, containers, locomotives, rail cars, heavy equipment, fishing vessels, barges and government assets; monitoring fixed assets such as electrical utility meters, oil and gas storage tanks, wells and pipelines and environmental projects; and messaging services for consumers and commercial and governmental entities. See <http://www.orbcomm.com>.

⁶³ On July 17, 2001, the International Bureau released eight orders authorizing MSS systems to provide service in the United States. The systems will be capable of providing mobile voice, data, Internet access and other new satellite communications services to all parts of the country, from urban areas to remote rural communities. The Bureau issued licenses to six U.S. applicants: The Boeing Company; Celsat America, Inc.; Constellation Communications Holdings, Inc.; Globalstar, L.P.; Iridium LLC; and Mobile Communications Holdings, Inc. Orders were issued to two non-U.S.-licensed companies that filed letters of intent for spectrum reservation: ICO Services Ltd. (licensed by the U.K.) and TMI Communications and Company, Limited Partnership (to be licensed by Canada). See http://www.fcc.gov/ib/srd/2ghz_mss/welcome.html.

⁶⁴ See Deere Petition to Deny at 1-2.

⁶⁵ *Id.* at 2.

⁶⁶ See *In the Matter of ComSat Corporation d/b/a Comsat Mobile Communications, Application for authority under Section 753(c) of the International Maritime Satellite Act and Section 214 of the Communications Act of 1934, as amended, to establish channels of communication between land earth stations at Brewster, Washington, Santa Paula, California, Southbury, Connecticut and Clarksburg, Maryland and Inmarsat Third generation satellites in the Atlantic Ocean Region in support of Federal Aviation Administration's Wide Area Augmentation System, et. al.*, Memorandum Opinion and Order, FCC 01-272 (rel. Oct. 9, 2001) (*Inmarsat Authorization Order*).

27. The Applicants state that MSV Sub may operate as a common carrier.⁶⁷ Accordingly, the Applicants request Commission authority to assign the three facilities-based and resale international Section 214 authorizations from Motient to MSV Sub.⁶⁸ As noted above, TMI is wholly owned by BCE Inc. Upon closing of the proposed transaction, MSV Sub would become affiliated with numerous foreign carriers, as defined in Section 63.09(d)-(e) of the Commission's rules,⁶⁹ in which BCE Inc. holds ownership interests. We find, however, that only on the U.S.-Canada route, where MSV Sub would become affiliated with several incumbent local and long distance carriers, would the foreign affiliation be with carriers possessing market power in a foreign destination market.⁷⁰

28. Under the rules adopted in the *Foreign Participation Order*, we regulate U.S. international carriers as "dominant" on routes where an affiliated foreign carrier has sufficient market power to affect competition adversely in the U.S. market.⁷¹ A U.S. carrier presumptively is classified as non-dominant on an affiliated route if the authorized carrier demonstrates that its foreign affiliate lacks 50 percent market share in the international transport and local access markets on the foreign end of the route,⁷² or that the carrier is authorized to provide service on the route solely through the resale of an unaffiliated U.S. facilities-based carrier's international switched services.⁷³

29. Applicants do not assert that any of the incumbent foreign carriers in Canada with which MSV Sub would become affiliated lacks market power in Canada.⁷⁴ We also note that the international Section 214 authorizations to be assigned to MSV Sub include authorization to provide service on the U.S.-Canada route on a facilities-basis, and not solely through the resale of the switched services of unaffiliated U.S. facilities-based carriers. Accordingly, the Commission's rules and policies require that we classify MSV Sub as a dominant international carrier on the U.S.-Canada route upon closing of the proposed transaction.⁷⁵ MSV Sub warrants regulation as a non-dominant provider of switched services to Canada, however, so long as it provides such service only through the resale of unaffiliated U.S.-authorized carriers' switched services. Otherwise, MSV Sub must comply with the dominant carrier

⁶⁷ Application, Appendix B.

⁶⁸ Application, Appendix C.

⁶⁹ 47 C.F.R. §§ 63.09(d)-(e).

⁷⁰ Application, Attachment A.

⁷¹ *Foreign Participation Order*, 12 FCC Rcd 23891 at 23987-24022, paras. 215-292.

⁷² 47 C.F.R. § 63.10(a)(3)

⁷³ 47 C.F.R. § 63.10(a)(4). *See also Bell Atlantic Communications, Inc.*, Order on Reconsideration, DA 99-1633 (Int'l. Bur. rel. Aug. 17, 1999) (*BACI Reconsideration Order*).

⁷⁴ Application, Appendix C.

⁷⁵ *See BACI Reconsideration Order*. We also note that MSV Sub will be affiliated with Mobile Satellite Ventures (Canada) Inc. that will continue to hold TMI's Canadian license for its first generation satellite (MSAT-1) and will operate that satellite through authority from the Canadian government. *See* Application at 4. As the Commission stated in its 1998 *Section 214 Streamlining Order*, the Commission has not yet been presented with a case where a foreign carrier possessing only mobile wireless facilities (and not wireline facilities) has sufficient market power to affect competition adversely in the U.S. market and, therefore, affiliations with foreign carriers possessing only mobile wireless facilities are unlikely to raise market power concerns on a U.S.-international route. *See In the Matter of 1998 Biennial Regulatory Review – Review of International Common Carrier Regulations*, IB Docket No. 98-118, Report and Order, 14 FCC Rcd 4909 (1998) (*Section 214 Streamlining Order*) at 4922, para. 29 (noting that the Commission reserves the right to revisit the conclusion should mobile wireless units in foreign markets expand so rapidly that foreign wireless carriers may be able to exercise bottleneck control over terminating international telecommunications).

regulations as required in Section 63.10 of the Commission's rules.⁷⁶

30. Based upon our foregoing discussion, we find that the application for assignment of the Section 214 authorizations from Motient to MSV Sub serves the public interest, convenience and necessity. Therefore, we grant the assignment application to permit MSV Sub to become a facilities-based and resale-based international common carrier.⁷⁷ Accordingly, we modify the international Section 214 authorizations to be assigned to MSV Sub to classify MSV Sub as a dominant carrier, as specified in Section 63.10 of the Commission's rules,⁷⁸ in its provision of service on the U.S.-Canada route.

G. National Security, Law Enforcement, Foreign Policy and Trade Policy Concerns

31. When analyzing any transfer of control or assignment application, in which foreign ownership is an issue, we also consider any national security, law enforcement, foreign policy, and trade policy concerns raised by the Executive Branch.⁷⁹ In the *DISCO II* decision, the Commission identified these concerns as part of the public interest analysis for determining whether a non-U.S. licensed satellite should be permitted to provide service in the United States market.⁸⁰

32. On April 18, 2001, the FBI and the DoJ filed a joint petition requesting deferral of action on the applications filed by Motient and TMI "pending resolution by the Parties of those aspects of the applications that the FBI and DoJ believe may raise potential national security, law enforcement, and public safety issues."⁸¹ The FBI and DoJ noted that they were "engaged in negotiations [with the Applicants] to reach an agreement that would ensure that national security, law enforcement and national safety concerns were adequately addressed."⁸² On November 15, 2001, the FBI and the DoJ filed a Petition to Adopt Conditions.⁸³ It states that the FBI and the DoJ have reached an agreement that "in intended to ensure that the FBI and the DoJ and other entities with responsibility for enforcing the law, protecting the national security and preserving the public safety can proceed in a legal, secure and confidential manner to satisfy these responsibilities." In the Petition to Adopt Conditions, the FBI and DoJ further state they have no objection to grant of the assignment, provided the Commission conditions such on compliance with the terms of the agreement and that the DoJ and the FBI are authorized to state that Motient, MSV Sub and TMI do not object to grant of the Petition.⁸⁴ The petition requests that the Commission dismiss the April 18, 2001 Joint Petition to Defer and condition the grant of the instant applications on compliance with the terms of the MSV/Motient/TMI/DoJ/FBI Agreement.

33. In assessing the public interest, we take into account the record and accord the

⁷⁶ 47 C.F.R. § 63.10. See *BACI Reconsideration Order*.

⁷⁷ See 47 C.F.R. §§ 63.21, 63.22, 63.23.

⁷⁸ 47 C.F.R. § 63.10.

⁷⁹ *Foreign Participation Order*, 12 FCC Rcd 23891 at 23918-21.

⁸⁰ See, e.g., *Amendment of the Commission's Regulatory Policies to Allow Non-U.S. Licensed Space Stations to Provide Domestic and International Satellite Service in the United States*, IB Docket No. 96-111, Report and Order, 12 FCC Rcd 24094 (1997) (*DISCO II*).

⁸¹ Motient, TMI, FBI and DoJ Joint Petition to Defer (April 18, 2001).

⁸² Joint Petition to Defer (April 18, 2001).

⁸³ See *supra* note 24.

⁸⁴ See Petition to Adopt Conditions at 3-4.

appropriate level of deference to Executive Branch expertise on national security and law enforcement issues.⁸⁵ We recognize that, separate from our licensing process, the FBI, DoJ, Motient, TMI, and MSV Sub have entered into the Agreement, and that the Agreement expressly states that the Executive Branch will not object to grant of the pending Motient and TMI applications, provided that the Commission approves the agreement and conditions grant of the Motient and TMI Applications on compliance with the Agreement.⁸⁶

34. We note that the Agreement contains provisions relevant to this transaction that, if broadly applied, would have significant consequences for the telecommunications industry. These provisions, if viewed as a precedent for other service providers and potential investors, would warrant further inquiry on our part, and we will consider any subsequent agreements on a case-by-case basis. Notwithstanding these concerns about the broader implications of the Agreement, however, we see no reason to modify or disturb the agreement of the parties on this matter. Therefore, in order to address the concerns raised by the DoJ and the FBI, we condition our grant of the applications on compliance with the MSV/Motient/TMI/DoJ/FBI Agreement.

IV. CONCLUSION

35. In evaluating the public interest benefits of the proposed transaction, we consider the Applicants' claims that the proposed assignments will yield several tangible public interest benefits. The Applicants submit that granting the applications, and thus allowing Motient and TMI to combine their principal MSS assets will preserve the benefit of mobile satellite services for both U.S. and Canadian customers. Several parties filed comments in support of the applications.⁸⁷ One of these parties, MSUA, submits that the financial strength resulting from the merger of Motient and TMI will enable MSV Sub to solidify its market position, which will benefit users who rely on the continuation of MSS in the L-band for service and for markets for MSS equipment. We agree with the Applicants and with the three parties that support allowing the merger of Motient and TMI to go forward will further these important goals. Accordingly we find that granting the applications will likely yield tangible public interest benefits.⁸⁸

V. ORDERING CLAUSES

36. IT IS ORDERED that, pursuant to Sections 4(i) and (j), 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§154(i), 154(j), 309, 310(d), the Petition to Deny filed by Deere & Company, filed April 18, 2001, IS DISMISSED.

37. IT IS FURTHER ORDERED that, pursuant to Sections 4(i) and (j), 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§154(i), 154(j), 309, 310(d), the applications filed by Motient Services Inc., TMI Communications and Company, LP, and Mobile Satellite Ventures Subsidiary LLC in the above-captioned proceeding ARE GRANTED to the extent specified in this Order and Authorization.

⁸⁵ *Foreign Participation Order*, 12 FCC Rcd 23891 at 23919, paras. 61-66.

⁸⁶ *See infra* Appendix.

⁸⁷ *See* MSUA Reply Comments, Inmarsat Partial Petition to Deny, and Ericsson Comments.

⁸⁸ *See also* Letter from Bruce Jacobs to Magalie Roman Salas, Secretary, FCC (filed November 19, 2001) (indicating that tracking, telemetry and control stations for AMSC-1 will remain in the United States, that the licensee will retain the ability through actions initiated using its United States facilities to prevent mobile terminals from communicating using its system, and indicating that the communications ground segment for its next generation system will be located in the United States).

38. IT IS FURTHER ORDERED that, pursuant to Section 310(b)(4) of the Communications Act of 1934, as amended, 47 U.S.C. § 310(b)(4), the Petition for Declaratory Ruling filed by Motient Services Inc. and TMI Communications and Company, LP IS GRANTED to the extent specified in the Order. In addition, Mobile Satellite Ventures Subsidiary LLC is authorized to accept indirect foreign ownership in excess of the 25 percent benchmark in Section 310(b)(4) of the Communications Act to the extent specified in this Order.

39. IT IS FURTHER ORDERED that, pursuant to Section 214 of the Communications Act, as amended, 47 U.S.C. § 214, and Section 63.10 of the Commission's rules, 47 C.F.R. § 63.10, that Mobile Satellite Ventures Subsidiary LLC shall be regulated as a dominant carrier on the U.S.-Canada route and shall comply with the requirements of paragraph (c) of that section, except as provided in paragraph 28 of this Order.

40. IT IS FURTHER ORDERED that, pursuant to Sections 4(i) and (j), 214(a) and (c), 309 and 310(b) and (d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), and (j), 214(a) and (c), 309, 310(b) and (d), the Petition to Adopt Conditions to Authorizations and Licenses filed by the Department of Justice and the Federal Bureau of Investigation on November 15, 2001, IS GRANTED, and that the authorizations and licenses related thereto that are to be assigned as a result of this Order and Authorization are subject to compliance with provisions of the Agreement between Motient Services, Inc., TMI Communications and Company, LP, and Mobile Satellite Ventures Subsidiary LLC, and the Department of Justice and the Federal Bureau of Investigation dated November 15, 2001 and attached hereto as Appendix A, which Agreement is designed to address the national security, law enforcement, and public safety concerns of the Department of Justice and the Federal Bureau of Investigation regarding the authority granted herein, is fully binding upon Motient Services, Inc., TMI Communications and Company, LP, and Mobile Satellite Ventures Subsidiary LLC and those subsidiaries, successors and assigns thereof that provide telecommunications services within the United States. Nothing in the Agreement is intended to limit any obligation imposed by Federal law or regulation including, but not limited to 47 U.S.C. §§ 222(a) and (c)(1) and the Commission's implementing regulations.

41. IT IS FURTHER ORDERED that, pursuant to Section 25.118(b) of the Commission's rules, 47 C.F.R. § 25.118(b), TMI Communications and Company, LP's request to change its U.S.-licensed mobile earth terminals operation from private carrier basis to common carrier status IS GRANTED.

42. This Order is issued pursuant to Section 0.261 of the Commission's rules on delegated authority, 47 C.F.R. § 0.261, and is effective upon release. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's rules, 47 C.F.R. §§ 1.106, 1.115, may be filed within 30 days of the date of the release of this Order. (*See* 47 C.F.R. § 1.4(b)(2))

FEDERAL COMMUNICATIONS COMMISSION

Donald Abelson
Chief, International Bureau

APPENDIX**AGREEMENT**

This Agreement is made as of the date of the last signature affixed hereto, (“Effective Date”) by and between: Mobile Satellite Ventures LLC (“MSV LLC”), Mobile Satellite Ventures Subsidiary LLC (“MSV Sub”), Motient Corporation (“Motient”) and TMI Communications and Company, Limited Partnership (“TMI”) and the U.S. Department of Justice (“DOJ”) and the Federal Bureau of Investigation (“FBI”) (collectively with all other parties hereto, the “Parties”).

RECITALS

WHEREAS, U.S. communication systems are essential to the ability of the U.S. government to fulfill its responsibilities to the public to preserve the national security of the United States, to enforce the laws, and to maintain the safety of the public;

WHEREAS, the U.S. government has an obligation to the public to ensure that U.S. communications and related information are secure in order to protect the privacy of U.S. persons, to preserve the security of the nation and to enforce the laws of the United States;

WHEREAS, it is critical to the well being of the nation and its citizens to maintain the viability, integrity, and security of the communication system of the United States (*see, e.g.*, Presidential Decision Directive 63 on Critical Infrastructure Protection);

WHEREAS, protection of Classified, Controlled Unclassified, and Sensitive Information is also critical to U.S. national security;

WHEREAS, TMI, a Canadian entity, previously entered into an agreement, made September 10, 1999 (with amendments following thereafter), with the DOJ and the FBI to address national security, public safety and law enforcement concerns related to TMI’s Federal Communications Commission (“FCC”) application (File No. 730-DSE-P/L-98; SES-LIC-19980330-00339) to operate up to 100,000 satellite mobile earth terminals (“METs”) through a Canadian-licensed satellite (MSAT-1) and a Canadian-licensed gateway earth station and associated communications ground segment (“CGS”) located in Canada (the “TMI Agreement”); and

WHEREAS, the TMI Agreement requires, among other obligations, that TMI establish a United States Point of Presence (“TMI U.S. POP”) and, thereafter, make available the Electronic Communications, Wire Communications, Call Associated Data, Transactional Data and Subscriber Information of U.S. METs at the TMI U.S. POP; and

WHEREAS, on November 30, 1999, the FCC granted TMI’s aforesaid blanket license application subject to, and conditioned on TMI’s compliance with, the terms of the TMI Agreement, agreement (*see* SatCom Systems, Inc. et al, Order and Authorization, FCC99-344, released November 30, 1999); and

WHEREAS, the FCC subsequently granted TMI an additional blanket earth station license and certain license modification applications to operate U.S METs with its Canadian-licensed satellite, subject to, and conditioned on TMI’s compliance with, the terms of the TMI Agreement (*see* File Nos.

SES-LIC-19990318-00435; SES-MOD-20000307-00345; SES-MOD-2000719-01180; SES-MOD-2000731-01232); and

WHEREAS, Motient Services Inc. (“MSI”), a 100% subsidiary of Motient (a Delaware corporation with its headquarters in Reston, Virginia), currently holds various FCC licenses and authorizations to operate a mobile satellite system, which includes a U.S. space segment (AMSC-1), a U.S. gateway earth station, an associated communications ground segment (“CGS”), and certain U.S. METs; and

WHEREAS, TMI and Motient have entered into an agreement to: (a) combine their U.S. mobile satellite businesses; (b) decommission for strictly *bona fide* commercial reasons MSI’s existing U.S. CGS (but not the MSV U.S. POP); and (c) transfer the FCC licenses and authorizations related to the TMI and MSI U.S. mobile satellite businesses to a wholly owned subsidiary of MSV LLC named Mobile Satellite Ventures Subsidiary LLC (“MSV Sub”); and

WHEREAS, TMI and Motient have represented that: (a) MSV Sub, prospective assignee of the FCC licenses, is a wholly owned subsidiary of Mobile Satellite Ventures LLC (MSV LLC), a Delaware limited liability company; (b) at present MSV LLC is owned 80% by Motient and 20% by certain other U.S. investors; (c) upon approval from the FCC of the assignment of the FCC licenses to MSV Sub, MSV LLC will be converted into a limited partnership, Mobile Satellite Ventures L.P. (“MSV LP”), which will have equity ownership of at least 60% by U.S. entities (including at least 48% by Motient) with the remaining approximately 40% owned by TMI; (d) MSV LP will be controlled and managed by a corporate general partner, Mobile Satellite Ventures GP Inc. (MSV GP), which will be owned 73% by U.S. entities (including at least 33% by Motient) with the remaining approximately 27% interest held by TMI; and

WHEREAS, TMI and MSI have filed applications with the FCC to assign their U.S. mobile satellite licenses to MSV Sub (TMI Application for Modification and Assignment of Licenses to Operate Mobile Earth Terminals for Mobile Satellite Services, File Nos. SES-ASG-20010116-00099 et al.; MSI Application for Assignment of Licenses and for Authority to Launch and Operate a Next-Generation Satellite Service System, File Nos. SAT-ASG-20010302-0017 et al.); and

WHEREAS, on April 18, 2001, the Parties asked the FCC to defer action on the foregoing FCC assignment applications pending resolution of national security, law enforcement and public safety concerns raised by the DOJ and the FBI; and

WHEREAS, representatives of Motient, MSI, MSV, TMI, the FBI and the DOJ have met to discuss the proposed transaction and services. In these meetings Motient, MSI, MSV and TMI represented to the FBI and the DOJ that:

- (a) if the transaction were to be completed as proposed, MSV would employ an existing satellite gateway earth station and associated CGS located in Canada, (and currently used, owned and controlled by TMI,) to download from and upload to the servicing satellites Domestic Communications (this satellite gateway earth station and associated CGS are hereinafter referred to as the “Canadian-Based Domestic Communications Infrastructure”);

- (b) the decision by MSV to use the Canadian-Based Domestic Communications Infrastructure is based strictly on *bona fide* commercial reasons weighing in favor of using the Canadian-Based Domestic Communications Infrastructure;
- (c) notwithstanding MSV's proposed use of the Canadian-Based Domestic Communications Infrastructure, in accordance with the *Implementation Plan*, MSV will route all Domestic Communications through a Point of Presence physically located in the United States ("MSV U.S. POP"), which shall consist of a Nortel DMX switch with an MTX-08, or later, software load currently located at 10802 Parkridge Boulevard, Reston, Virginia 20191; and
- (d) U.S. METs currently serviced by TMI are uniquely identified so that traffic to and from U.S. METs will be routed via a U.S. POP;
- (e) U.S. METs serviced by MSV will be uniquely identifiable so that traffic to and from U.S. METs will be routed via a U.S. POP; and

NOW, THEREFORE, the Parties are entering into this Agreement to address national security, law enforcement, and public safety concerns.

ARTICLE I FACILITIES, INFORMATION STORAGE AND ACCESS

- 1.1 Except to the extent and under conditions concurred in by the FBI and the DOJ in writing:
- (a) Point of Presence: Domestic Communications shall be routed through the MSV U.S. POP in accordance with the Implementation Plan so that, pursuant to Lawful U.S. Process, Electronic Surveillance can be conducted. MSV will provide any technical or other assistance required to accomplish such Electronic Surveillance.
 - (b) Domestic Communications Infrastructure: Except strictly for *bona fide* commercial reasons weighing in favor of using foreign-located Domestic Communications Infrastructure, all Domestic Communications Infrastructure shall be located in the United States. Domestic Communications Infrastructure shall be directed, controlled, supervised and managed by MSV Sub.
 - (c) Communications of a U.S. MET: Except strictly for *bona fide* commercial reasons and in accordance with the Implementation Plan, no communications of a U.S. MET shall be routed outside the United States.
 - (d) Communications of a Non-U.S. MET: MSV shall configure its network such that, pursuant to Lawful U.S. Process, Electronic Surveillance of a Non-U.S. MET can be conducted in accordance with the MSV Implementation Plan.
- 1.2 MSV Implementation Plan: Certain of the rights and obligations of the Parties are set forth in further detail in the Implementation Plan adopted by MSV in accordance with this Agreement and which is consistent with this Agreement. MSV shall comply with the Implementation Plan, which may be amended from time to time pursuant to Section 7.7.

- 1.3 CPNI: MSV shall comply with all applicable FCC rules and regulations governing access to and storage of Customer Proprietary Network Information (“CPNI”), as defined in 47 U.S.C. § 222(h)(1).
- 1.4 Compliance with Lawful U.S. Process: MSV shall take all practicable steps to configure its Domestic Communications Infrastructure such that MSV is capable of complying, and MSV employees in the United States will have unconstrained authority to comply, in an effective, efficient, and unimpeded fashion, with Lawful U.S. Process, the orders of the President in the exercise of his/her authority under § 706 of the Communications Act of 1934, as amended (47 U.S.C. § 606), and under § 302(e) of the Aviation Act of 1958 (49 U.S.C. § 40107(b)) and Executive Order 11161 (as amended by Executive Order 11382), and National Security and Emergency Preparedness rules, regulations and orders issued pursuant to the Communications Act of 1934, as amended (47 U.S.C. § 151 *et seq.*).
- 1.5 Information Storage and Access: MSV shall make available in the United States:
- (a) stored Domestic Communications, if such communications are stored by or on behalf of MSV for any reason;
 - (b) any Wire Communications or Electronic Communications (including any other type of wire, voice or electronic communication not covered by the definitions of Wire Communication or Electronic Communication) received by, intended to be received by, or stored in the account of an MSV U.S. MET user, or routed to an MSV U.S. POP and stored by or on behalf of MSV for any reason;
 - (c) Transactional Data and Call Associated Data relating to Domestic Communications if such information is stored by or on behalf of MSV for any reason;
 - (d) billing records relating to MSV customers or subscribers for its U.S. METs, MSV customers and subscribers domiciled in the United States, and MSV customers and subscribers who hold themselves out as being domiciled in the United States, as well as billing records related to any call routed through an MSV U.S. POP, if such information is stored by or on behalf of MSV for any reason, for so long as such records are kept and at a minimum for as long as such records are required to be kept pursuant to applicable U.S. law, and this Agreement and Implementation Plan; and
 - (e) Subscriber Information concerning MSV customers or subscribers for its U.S. METs, MSV customers or subscribers domiciled in the United States, and MSV customers or subscribers who hold themselves out as being domiciled in the United States, as well as Subscriber Information related to any call routed through an MSV U.S. POP if such information is stored by or on behalf of MSV for any reason.
- 1.6 Storage Pursuant to 18 U.S.C. § 2703(f): Upon a request made pursuant to 18 U.S.C. § 2703(f) by a Governmental Authority within the United States to preserve any of the information enumerated in Section 1.5, MSV shall store such preserved records or other evidence in the United States.
- 1.7 Mandatory Destruction: MSV shall ensure that the data and communications described in Section 1.5 of this Agreement are stored in a manner not subject to mandatory destruction under any foreign laws. MSV shall further ensure that the data and communications described in Section 1.5 of this Agreement shall not be stored by or on behalf of MSV outside of the United

States unless such storage is strictly for *bona fide* commercial reasons weighing in favor of storage outside the United States.

- 1.8 Billing Records: MSV shall store for at least eighteen (18) months all billing records generated that relate to U.S. METs.
- 1.9 Compliance with U.S. Law: Nothing in this Agreement or the Implementation Plan shall excuse Motient, MSI, MSV or TMI from any obligation it may have to comply with U.S. legal requirements for the retention, preservation, or production of information or data.

ARTICLE II NON-OBJECTION BY DOJ AND FBI TO GRANT OF LICENSES TO MSV

- 2.1 Non-Objection to Current Application: Upon the execution of this Agreement by all of the Parties and adoption of the Implementation Plan by MSV, the FBI and the DOJ shall jointly and promptly notify the FCC that, provided the FCC adopts a condition substantially the same as set forth in Exhibit A attached hereto (the “Condition to FCC Licenses”), the FBI and DOJ have no objection to the FCC’s grant or approval of the underlying applications (TMI Application for Modification and Assignment of Licenses to Operate Mobile Earth Terminals for Mobile Satellite Services, File Nos. SES-ASG-20010116-00099 et al.; MSI Application for Assignment of Licenses and for Authority to Launch and Operate a Next-Generation Satellite Service System, File Nos. SAT-ASG-20010302-0017 et al.).
- 2.2 Non-Objection to Future Applications: The FBI and DOJ agree not to object, formally or informally, to the grant of any other FCC application of MSV for a license or other authority under Titles II and III of the Communications Act of 1934, as amended, to provide service to and to operate U.S. METs, provided that such application makes clear that the terms and conditions of this Agreement and the Implementation Plan shall apply to any license or other authority issued pursuant to that application. Nothing in this Agreement or the Implementation Plan shall preclude the DOJ or the FBI from opposing, formally or informally, any FCC application by MSV to transfer its license(s) to a third party or for other authority. The FBI and the DOJ reserve the right to seek additional or different terms that would, consistent with the public interest, address any threat to their ability to enforce the laws, preserve the national security and protect the public safety raised by the transactions underlying such applications or petitions.

ARTICLE III SECURE FACILITY

- 3.1 Location of Secure Facility: MSV shall maintain an appropriately secure facility within the United States within which MSV shall:
- (a) take appropriate measures to prevent unauthorized access to data or facilities that might contain Classified Information or Sensitive Information;
 - (b) assign U.S. citizens, who meet high standards of trustworthiness for maintaining the confidentiality of Sensitive Information, to positions that handle or that regularly deal with information identifiable to such person as Sensitive Information;

- (c) upon request from the DOJ or FBI, provide the name, social security number, and date of birth of each person who regularly handles or deals with Sensitive Information;
 - (d) require that personnel handling Classified Information, if any, shall be eligible for appropriate security clearances;
 - (e) provide that the points of contact described in Section 3.6 shall have sufficient authority over any of MSV's employees who may handle Classified Information, if any, or Sensitive Information to maintain the confidentiality and security of such information in accordance with applicable U.S. legal authority, and the terms of this Agreement and Implementation Plan; and
 - (f) maintain appropriately secure facilities (e.g., offices) for the handling and storage of any Sensitive Information and Classified Information, if any.
- 3.2 Measures to Prevent Improper Use or Access: MSV shall take all practicable measures to prevent the use of or access to MSV's equipment or facilities to conduct Electronic Surveillance in violation of any U.S. federal, state, or local law or the terms of this Agreement or the Implementation Plan. These measures shall include technical, organizational, personnel-related policies and written procedures, necessary implementation plans, and physical security measures.
- 3.3 Access by Foreign Government Authorities: Without the prior express written consent of the DOJ or the authorization of a court of competent jurisdiction in the United States, MSV shall not, directly or indirectly, disclose or permit disclosure of, or provide access to Domestic Communications, Call Associated Data, Transactional Data, or Subscriber Information, if such information is stored in the United States, to any person if the purpose of such disclosure or access is to respond to the legal process or the request of or on behalf of a foreign government, identified representative, or a component or subdivision thereof. Any such requests or submission of legal process described in this Section 3.3 shall be reported to the DOJ as soon as possible and in no event later than five (5) business days after such request or legal process is received by and known to MSV, unless the disclosure of the request or legal process would be in violation of an order of a court of competent jurisdiction within the United States. MSV shall take reasonable measures to ensure that it will promptly learn of all such requests or submission of legal process described in this Section 3.3.
- 3.4 Disclosure to Foreign Government Authorities: MSV shall not, directly or indirectly, disclose or permit disclosure of, or provide access to:
- (a) Classified Information or Sensitive Information, or
 - (b) Subscriber Information, Transactional Data, Call Associated Data, or a copy of any Wire Communication or Electronic Communication, intercepted or acquired pursuant to Lawful U.S. Process

to any foreign government, identified representative, or a component or subdivision thereof without satisfying all applicable U.S. federal, state and local legal requirements pertinent thereto, and obtaining the express written consent of the DOJ or the authorization of a court of competent jurisdiction in the United States. MSV shall notify the DOJ of any requests or any legal process submitted to MSV by a foreign government, identified representative, or a component or subdivision thereof for communications, data or information identified in this paragraph. MSV shall provide such notice to the DOJ as soon as possible and in no event later than five (5)

- business days after such request or legal process is received by and known to MSV, unless the disclosure of the request or legal process would be in violation of an order of a court of competent jurisdiction within the United States. MSV shall take reasonable measures to ensure that it will promptly learn of all such requests or submission of legal process described in this Section 3.4.
- 3.5 Notification of Access or Disclosure Requests from Foreign Non-Governmental Entities: MSV shall notify DOJ in writing of legal process or requests by foreign non-governmental entities for access to or disclosure of Domestic Communications unless the disclosure of the legal process or requests would be in violation of an order of a court of competent jurisdiction within the United States. MSV shall provide such notice to the DOJ no later than ninety (90) days after such request or legal process is received by MSV.
- 3.6 Points of Contact: Within thirty (30) days after the Consummation Date, MSV shall designate points of contact within the United States with the authority and responsibility for accepting and overseeing compliance with Lawful U.S. Process. The points of contact will be available twenty-four (24) hours per day, seven (7) days per week and shall be responsible for accepting service and maintaining the security of Sensitive and Classified Information, if any, and any Lawful U.S. Process for Electronic Surveillance in accordance with the requirements of U.S. federal, state or local law or regulations. MSV will immediately notify in writing the DOJ and the FBI of such designation, and thereafter shall promptly notify the FBI and DOJ of any change in that designation. The points of contact shall be resident U.S. citizens who are eligible for appropriate U.S. security clearances. If necessary to receive or handle Sensitive or Classified Information, MSV shall cooperate with any request by a government entity within the United States that a designated point of contact be available for a background check and/or a security clearance process.
- 3.7 Security of Lawful U.S. Process: MSV shall protect the confidentiality and security of all Lawful U.S. Process served upon it and the confidentiality and security of Classified Information, if any, and Sensitive Information in accordance with U.S. federal and state law or regulations.
- 3.8 Access to Classified or Sensitive Information: Nothing contained in this Agreement or Implementation Plan shall limit or affect the authority of a Government Authority within the United States to grant, deny, modify or revoke MSV's access to Classified and Sensitive Information under that agency's jurisdiction.

ARTICLE IV AUDITING, REPORTING AND NOTICE

- 4.1 Notice of Obligations: MSV shall instruct appropriate officials, employees, contractors and agents as to their obligations under this Agreement and Implementation Plan (including the reporting requirements under Section(s) 3.3, 3.4, 3.5, 3.6, 4.2, 4.3, 4.4, 4.5, 4.9, and 4.10 of this Agreement) and issue periodic reminders to them of such obligations.
- 4.2 Reporting of Incidents: MSV shall take all practicable steps to ensure that, if any MSV official, employee, contractor or agent acquires any information that reasonably indicates: (i) a breach of this Agreement or the Implementation Plan; (ii) Electronic Surveillance conducted in violation of U.S. federal, state or local law or regulation; (iii) access to or disclosure of CPNI or Subscriber Information in violation of U.S. federal, state or local law or regulation (except for violations of FCC regulations relating to improper use of CPNI); or (iv) improper access to or disclosure of Classified Information or Sensitive Information, then MSV shall notify the FBI and DOJ. This

report shall be made promptly and in any event no later than ten (10) calendar days after MSV acquires such information. MSV shall lawfully cooperate in investigating the matters described in this Section. MSV need not report information where disclosure of such information would be in violation of an order of a court of competent jurisdiction within the United States.

- 4.3 Notice of Decision to Store Information Outside the United States: MSV shall provide to the FBI and DOJ thirty (30) calendar days advance written notice if MSV (or any entity with which MSV has contracted or made other arrangements for data or communications processing or storage) plans to store outside of the United States Domestic Communications, Transactional Data, Call Associated Data, Subscriber Information or billing records. Such notice shall, at a minimum: (a) include a description of the type of information to be stored outside the United States, (b) identify the custodian of the information if other than MSV, (c) identify the location where the information is to be stored, and (d) identify the factors considered in deciding to store the information outside of the United States (see Section 1.7)
- 4.4 Notice of Decision to Use Foreign-Located Domestic Communication Infrastructure: MSV shall provide to the DOJ and the FBI thirty (30) days advance written notice if MSV plans to provide, direct, control, supervise or manage Domestic Communications through any facilities located outside of the United States (except only the use of the Canadian-Based Domestic Communications Infrastructure). Such notice shall, at a minimum, (a) include a description of the facilities to be located outside the United States, and a description of the functions of the facilities, (b) identify the location where the facilities are to be, and (c) identify the factors considered in making the decision. (See Section 1.1(b)).
- 4.5 Outsourcing Third Parties: If MSV outsources any function covered by this Agreement or Implementation Plan to third parties, MSV shall take reasonable steps to ensure that those third parties comply with the applicable terms of this Agreement and Implementation Plan. Such steps shall include: (a) MSV shall include in the contracts of such third parties written provisions requiring that such third parties comply with all applicable terms of the Agreement and Implementation Plan (or take other reasonable, good-faith measures to ensure that such third parties are aware of, agree to comply with and are bound by the applicable obligations under this Agreement and Implementation Plan), (b) if MSV learns that an outsourcing third party or the outsourcing third party's employee has violated a provision of this Agreement or Implementation Plan, MSV will notify the DOJ and the FBI promptly, and (c) with consultation with the DOJ and the FBI, MSV will take the steps necessary to rectify the situation, which steps may (among others) include terminating the arrangement with the outsourcing third party, initiating and pursuing litigation or other remedies at law and equity, and/or assisting and cooperating with the DOJ and the FBI in pursuing legal and equitable remedies.
- 4.6 Access to Information: In response to reasonable requests made by the FBI or the DOJ, MSV shall provide access to information concerning technical, physical, management, or other security measures and other reasonably available information needed by the DOJ or the FBI to assess compliance with the terms of this Agreement and Implementation Plan.
- 4.7 Visits and Inspections: Upon reasonable notice and during reasonable hours, the FBI and the DOJ may visit and inspect any part of MSV's Domestic Communications Infrastructure and secure facilities for the purpose of verifying compliance with the terms of this Agreement and Implementation Plan. MSV may have appropriate MSV employees accompany U.S. government representatives throughout any such inspection.

- 4.8 Access to Personnel: Upon reasonable notice from the FBI or the DOJ, MSV will make available for interview officers or employees of MSV, and will seek to require contractors to make available appropriate personnel located in the United States who are in a position to provide information to verify compliance with this Agreement and Implementation Plan.
- 4.9 Annual Report: On or before the last day of January of each year, a designated senior corporate officer of MSV shall submit to the FBI and the DOJ a report assessing MSV's compliance with the terms of this Agreement and Implementation Plan for the preceding calendar year. The report shall include:
- (a) a copy of the policies and procedures adopted to comply with this Agreement and the Implementation Plan;
 - (b) a summary of the changes, if any, to the policies and procedures, and the reasons for those changes;
 - (c) a summary of any known acts of non-compliance with the terms of this Agreement and Implementation Plan, whether inadvertent or intentional, with a discussion of what steps have been or will be taken to prevent such acts from occurring in the future; and
 - (d) identification of any other issues that could affect the effectiveness of or compliance with this Agreement or the Implementation Plan.
- 4.10 Control of MSV: MSV shall promptly provide to the FBI and DOJ written notice and copies of any filing with the FCC or any other governmental agency relating to the *de jure* or *de facto* control of MSV, except for filing with the FCC for assignments or transfers of control to any U.S. subsidiary of MSV that are *pro forma*.
- 4.11 Notices: All written communications or other written notices relating to this Agreement or Implementation Plan, such as a proposed modification, shall be deemed given: (i) when delivered personally; (ii) if by facsimile, upon transmission with confirmation of receipt by the receiving Party's facsimile terminal; (iii) if sent by documented overnight courier service, on the date delivered; or (iv) if sent by mail, five (5) business days after being mailed by registered or certified U.S. mail, postage prepaid, addressed to the Parties' designated representatives at the addresses shown below, or to such other representatives at such other addresses as the Parties may designate in accordance with this Section:

U.S. Department of Justice
Assistant Attorney General
Criminal Division
950 Pennsylvania Ave., N.W.
Washington, D.C. 20530

Federal Bureau of Investigation
Assistant Director
National Security Division
935 Pennsylvania Ave., N.W.
Washington, D.C. 20535

Federal Bureau of Investigation
Office of General Counsel

935 Pennsylvania Ave., N.W.
Washington, D.C. 20535

Motient Corporation
General Counsel
10802 Parkridge Boulevard
Reston, Virginia 20191

With a copy to:

Shaw Pittman
2300 N Street, N.W.
Washington, D.C. 20037
Attention: Bruce Jacobs

TMI Communications and Company, L.P.
Law Department
1601 Telesat Court
Gloucester, Ontario K1B 5P4, Canada

With a copy to:

Vinson & Elkins L.L.P.
1455 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
Attention: Gregory C. Staple

ARTICLE V FREEDOM OF INFORMATION ACT

- 5.1 Protection from Disclosure: The DOJ and FBI shall take all reasonable measures to protect from public disclosure all information submitted by MSV to the DOJ or FBI in connection with this Agreement and clearly marked with the legend “Confidential; Subject to Protection Under 5 U.S.C Section 553 (b); Not to be Released Without Notice to MSV” or similar designation. Such markings shall signify that it is MSV’s position that the information so marked constitutes “trade secrets” and/or “commercial or financial information obtained from a person and privileged or confidential,” or otherwise warrants protection within the meaning of 5 U.S.C. § 552(b)(4). If a request is made under 5 U.S.C. § 552(a)(3) for information so marked, and disclosure of any information (including disclosure in redacted form) is contemplated, the DOJ or FBI, as appropriate, shall notify MSV of the intended disclosure as provided by Executive Order 12600, 52 Fed. Reg. 23781 (June 25, 1987). If MSV objects to the intended disclosure and its objections are not sustained, the DOJ or FBI, as appropriate, shall notify MSV of its intention to release (as provided by Section 5 of Executive Order 12600) not later than five (5) business days prior to disclosure of the challenged information.
- 5.2 Use of Information for U.S. Government Purposes: Nothing in this Agreement or the Implementation Plan shall prevent the DOJ or the FBI from lawfully disseminating information as appropriate to seek enforcement of this Agreement or Implementation Plan, provided that the DOJ and FBI take all reasonable measures to protect from public disclosure the information marked as described in Section 5.1.

ARTICLE VI DISPUTE

- 6.1 Informal Resolution: The Parties shall use their best efforts to resolve any disagreements that may arise under this Agreement or the Implementation Plan. Disagreements shall be addressed by the Parties, in the first instance, at the staff level by their designated representatives. Any disagreement that has not been resolved at that level shall be submitted promptly to higher authorized officials, unless the DOJ or the FBI believe that important national interests can be protected, or the Parties believe that paramount commercial interests can be resolved, only by resorting to the measures set forth in Section 6.2 below. If, after meeting with higher authorized officials, any Party determines that further negotiations would be fruitless, then any Party may resort to the remedies set forth in Section 6.2 below. If resolution of a disagreement requires access to Classified Information, the Parties shall designate a person or persons possessing the appropriate security clearances.
- 6.2 Enforcement of Agreement and Implementation Plan: Subject to Section 6.1 of this Agreement, if any Party believes that any other Party has breached or is about to breach this Agreement or the Implementation Plan, that Party may bring an action against the other Party for appropriate judicial relief. Subject to Article II, nothing in this Agreement or the Implementation Plan shall limit or affect the right of a U.S. Government Authority to:
- (a) seek revocation by the FCC of any license, permit, or other authorization granted or given by the FCC to MSV, or seek any other action by the FCC regarding MSV; or
 - (b) seek civil sanctions for any violation of any U.S. law or regulation or term of this Agreement or the Implementation Plan; or
 - (c) pursue criminal sanctions against Motient, MSI, MSV, TMI, or any of their respective directors, officers, employees, representatives or agents, or against any other person or entity, for violations of the criminal laws of the United States.
- 6.3 Forum Selection: Any civil action for judicial relief with respect to any dispute or matter whatsoever arising under, in connection with, or incident to, this Agreement or the Implementation Plan shall be brought, if at all, in the United States District Court for the District of Columbia.
- 6.4 Irreparable Injury: Motient, MSI, MSV and TMI agree that the United States would suffer irreparable injury if for any reason MSV failed to perform any of its significant obligations under this Agreement or the Implementation Plan, and that monetary relief would not be an adequate remedy. Accordingly, Motient, MSI, MSV and TMI agree that, in seeking to enforce this Agreement or the Implementation Plan, the FBI and DOJ shall be entitled, in addition to any other remedy available at law or equity and pursuant to a valid court order, to specific performance and injunctive or other equitable relief.

ARTICLE VII OTHER

- 7.1 Right to Make and Perform Agreement: Motient, MSI, MSV and TMI represent that they have and shall continue to have throughout the term of this Agreement and the Implementation Plan

the full right to enter into this Agreement and the Implementation Plan, and perform their respective obligations hereunder, and that this Agreement and the Implementation Plan are legal, valid and binding obligations enforceable in accordance with their terms.

- 7.2 Waiver: The availability of any civil remedy under this Agreement or the Implementation Plan shall not prejudice the exercise of any other civil remedy under this Agreement, the Implementation Plan or under any provision of law, nor shall any action taken by a Party in the exercise of any remedy be considered a waiver by that Party of any other rights or remedies. The failure of any Party to insist on strict performance of any of the provisions of this Agreement or the Implementation Plan, or to exercise any right they grant, shall not be construed as a relinquishment or future waiver, rather, the provision or right shall continue in full force. No waiver by any Party of any provision or right shall be valid unless it is in writing and signed by the Party.
- 7.3 Headings: The article and section headings and numbering in this Agreement and the Implementation Plan are inserted for convenience only and shall not affect the meaning or interpretation of this Agreement or the Implementation Plan.
- 7.4 Other Laws: Nothing in this Agreement or the Implementation Plan is intended to limit or constitute a waiver of (a) any obligation imposed by any U.S. federal, state or local law or regulation on the Parties, (b) any enforcement authority available under any U.S. federal, state or local law or regulation, (c) the sovereign immunity of the United States, or (d) any authority that U.S. Government Authorities may possess over MSV's activities or facilities wherever located.
- 7.5 Statutory References: All references in this Agreement to statutory provisions shall include any future amendments to such statutory provisions.
- 7.6 Non-Parties: Nothing in this Agreement or Implementation Plan is intended to confer or does confer any rights or obligations on any Person other than the Parties and any other Governmental Authority in the United States authorized to effect Electronic Surveillance pursuant to Lawful U.S. Process.
- 7.7 Modification: This Agreement and the Implementation Plan may only be modified by written agreement signed by all of the Parties. Any substantial modification to this Agreement or the Implementation Plan shall be reported to the FCC within thirty (30) days after approval of the modification in writing by the Parties.
- 7.8 Partial Invalidity: If any portion of this Agreement or the Implementation Plan is declared invalid by a U.S. court of competent jurisdiction, this Agreement or Implementation Plan shall be construed as if such portion had never existed, unless such construction would constitute a substantial deviation from the Parties' intent as reflected in this Agreement or Implementation Plan.
- 7.9 Good Faith Negotiations: The DOJ and FBI agree to negotiate in good faith and promptly with respect to any request by MSV for modification of this Agreement if the obligations imposed on it under this Agreement become unduly burdensome to MSV or adversely affect MSV's competitive position, or are substantially more restrictive than those imposed on other U.S. and foreign licensed service providers in like circumstances in order to protect U.S. national security, law enforcement, or public safety concerns. If the DOJ or the FBI find that the terms of this Agreement or the Implementation Plan are inadequate to address national security, law enforcement, and public safety concerns presented by an acquisition by MSV in the United States

after the date that all the Parties have executed this Agreement, MSV shall negotiate in good faith to modify this Agreement or the Implementation Plan to address those concerns.

- 7.10 Successors and Assigns: This Agreement and the Implementation Plan shall inure to the benefit of, and shall be binding upon, Motient, MSI, MSV, TMI, DOJ, and FBI and their respective successors and assigns, including, for MSV, MSV GP and MSV LP. This Agreement and the Implementation Plan shall apply in full to any entity or asset, whether acquired before or after the Effective Date, over which MSV, including its successors or assigns, has the power or authority to exercise *de facto* or *de jure* control.
- 7.11 Joint Ventures. MSV has entered into or may enter into joint ventures or other arrangements under which a joint venture or another entity may provide Domestic Communications services. If MSV has the power or authority to exercise *de facto* or *de jure* control over such entity, then MSV will ensure that entity shall fully comply with the terms of this Agreement and the Implementation Plan. To the extent MSV does not have such power or authority over such an entity, Motient, MSI, MSV and TMI shall in good faith endeavor to have such entity comply with this Agreement and the Implementation Plan and shall consult with the FBI or the DOJ about the activities of such entity.
- 7.12 Effective Date of Agreement. Except as otherwise specifically provided in the provisions of this Agreement, the obligations imposed and the rights conferred by this Agreement and the Implementation Plan, shall take effect upon the Effective Date.
- 7.13 Termination of TMI Agreement: The TMI Agreement made on September 10, 1999, and as subsequently amended, by and between TMI, on the one hand, and the DOJ and the FBI, on the other hand, shall terminate upon, and only upon, the happening of all the following events: (a) the Parties, and each of them, execute this Agreement, (b) MSV adopts the Implementation Plan, (c) the FCC adopts the Condition to FCC Licenses and (d) Motient, TMI and all other necessary parties successfully and fully consummate the assignment to MSV Sub of the TMI and Motient U.S. mobile satellite licenses as proposed in the applications with the FCC (TMI Application for Modification and Assignment of Licenses to Operate Mobile Earth Terminals for Mobile Satellite Services, File Nos. SES-ASG-20010116-00099 et al.; MSI Application for Assignment of Licenses and for Authority to Launch and Operate a Next-Generation Satellite Service System, File Nos. SAT-ASG-20010302-0017 et al.).
- 7.14 This Agreement may be executed in one or more counterparts, including by facsimile, each of which shall together constitute one and the same agreement.

ARTICLE VIII DEFINITIONS

As used in this Agreement and the Implementation Plan:

- 8.1 “Call Associated Data” means any information relating to a communication or relating to the sender or recipient of that communication and may include without limitation subscriber identification, called party number or other identifier, calling party number or other identifier, start time, end time, call duration, feature invocation and deactivation, feature interaction, registration information, user location, diverted to number, conference party numbers, post-cut-through dialed digits, in-band and out-of-band signaling, and party add, drop and hold, and any other “call identifying information,” as defined in 47 U.S.C. § 1001(2).

- 8.2 “Canadian-Based Domestic Communications Infrastructure” has the meaning given it in the Recitals.
- 8.3 “CGS” has the meaning given it in the Recitals.
- 8.4 “Classified Information” means any information that has been determined pursuant to Executive Order 12958, or any predecessor or successor Executive Order, or the Atomic Energy Act of 1954, or any statute that succeeds or amends the Atomic Energy Act, to require protection against unauthorized disclosure
- 8.5 “Consummation Date” means the date on which MSV consummates the assignment of the TMI and MSI FCC licenses that are covered by the FCC applications referenced in Section 2.1.
- 8.6 “De facto” and “de jure” control have the meaning provided in 47 C.F.R. § 1.2110.
- 8.7 “DOJ” has the meaning given it in the Preamble.
- 8.8 “Domestic Communications” means (i) Wire Communications or Electronic Communications (whether stored or not) between one U.S. location and another U.S. location, and (ii) the U.S. portion of a Wire Communication or Electronic Communication (whether stored or not) that originates from or terminates at a U.S. location.
- 8.9 “Domestic Communications Infrastructure” means (a) the transmission and switching equipment (including software and upgrades) used by or on behalf of MSV to provide, process, direct, control, supervise or manage Domestic Communications (including, without limitation, the Canadian-Based Domestic Communications Infrastructure), (b) facilities and equipment used by or on behalf of MSV that are physically located in the United States, and (c) the facilities and equipment used by or on behalf of any MSV U.S. subsidiaries to control the equipment or facilities described in (a) and (b) above.
- 8.10 “Effective Date” has the meaning given it in the Preamble.
- 8.11 “Electronic Communication” has the meaning given it in 18 U.S.C. § 2510(12).
- 8.12 “Electronic Surveillance” means (i) the interception of wire, oral, or electronic communications as defined in 18 U.S.C. §§ 2510(1), (2), (4) and (12), respectively, and electronic surveillance as defined in 50 U.S.C. § 1801(f); (ii) access to stored wire or electronic communications, as referred to in 18 U.S.C. § 2701 *et seq.*; (iii) acquisition of dialing or signaling information through pen register or trap and trace devices or other devices or features capable of acquiring such information pursuant to law as defined in 18 U.S.C. § 3121 *et seq.* and 50 U.S.C. § 1841 *et seq.*; (iv) acquisition of location-related information concerning a telecommunications service subscriber; (v) preservation of any of the above information pursuant to 18 U.S.C. § 2703(f); and (vi) including access to, or acquisition or interception of, communications or information as described in (i) through (v) above and comparable State laws
- 8.13 “FBI” has the meaning given it in the Preamble.
- 8.14 “FCC” has the meaning given it in the Recitals.
- 8.15 “Foreign”, where used in this Agreement, whether capitalized or lower case, means non-U.S.

- 8.16 “Governmental Authority” or “Governmental Authorities” means any government, any governmental, administrative, or regulatory entity, authority, commission, board, agency, instrumentality, bureau or political subdivision and any court, tribunal, judicial or arbitral body.
- 8.17 “Intercept,” “Interception” or “Intercepted” has the meaning defined in 18 U.S.C. § 2510(4).
- 8.18 “Lawful U.S. Process” means U.S. federal, state or local Electronic Surveillance orders or authorizations, and other orders, legal process, statutory authorizations and certifications for interception of, access to or disclosure of Domestic Communications, and Call Associated Data, Transactional Data or Subscriber Information authorized by U.S. federal, state or local law.
- 8.19 “MET” means a mobile earth terminal, a hand-held telephone, mobile unit, fixed or mobile earth station and any other telecommunications device that allows for the transmission or receipt of Wire Communications or Electronic Communications, in whole or in part, through the satellites that are used by MSV or its successors, assigns or affiliates.
- 8.20 “Motient” has the meaning given it in the Preamble.
- 8.21 “MSI” has the meaning given it in the Recitals.
- 8.22 “MSV” means collectively and individually MSV LLC and MSV Sub.
- 8.23 “MSV Sub” has the meaning given it in the Recitals.
- 8.24 “MSV U.S. POP” means a MSV point of presence in the continental United States that complies with the MSV Implementation Plan. The MSV U.S. POP shall include, but need not be limited to, termination equipment physically located in the continental United States, connected to the Canadian-Based Domestic Communications Infrastructure in such a manner as to provide real-time routing of all Domestic Communications over MSV’s network to the public switched telephone network in the United States, and meeting all other applicable requirements of this Agreement and the MSV Implementation Plan.
- 8.25 “Non-U.S. MET” means a MET that is not licensed by the Federal Communications Commission.
- 8.26 “Parties” has the meaning given it in the Preamble.
- 8.27 “Pro forma assignments” or “pro forma transfers of control” are transfers or assignments that do not “involve a substantial change in ownership or control” of the licenses as provided in 47 U.S.C. § 309(c)(2)(B).
- 8.28 “Sensitive Information” means information that is not Classified Information regarding (i) the persons or facilities that are the subjects of Lawful U.S. Process, (ii) the identity of the government agency or agencies serving such Lawful U.S. Process, (iii) the location or identity of the line, circuit, transmission path, or other facilities or equipment used to conduct Electronic Surveillance, (iv) the means of carrying out Electronic Surveillance, (v) the type(s) of service, telephone number(s), records, communications, or facilities subjected to Lawful U.S. Process, and (vi) other information that is not Classified Information designated in writing by an authorized official of a federal, state or local law enforcement agency or a U.S. intelligence agency as “Sensitive Information.”

- 8.29 “Subscriber Information” means information of the type referred to and accessible subject to procedures specified in 18 U.S.C. § 2703(c) or (d) or 18 U.S.C. § 2709. Such information shall also be considered Subscriber Information when it is sought pursuant to the provisions of other Lawful U.S. Process.
- 8.30 “TMI” has the meaning given it in the Preamble.
- 8.31 “TMI Agreement” has the meaning given it in the recitals.
- 8.32 “Transactional Data” means:
- (a) any “call identifying information,” as defined in 47 U.S.C. § 1001(2), including without limitation the telephone number or similar identifying designator associated with a communication;
 - (b) Internet address or similar identifying designator associated with a communication;
 - (c) the time, date, size and duration of a communication;
 - (d) any information relating specifically to the identity and physical address of a subscriber, user, or account payer;
 - (e) to the extent associated with such subscriber, user or account payer, any information relating to telephone numbers, Internet addresses, or similar identifying designators; the physical location of equipment if known and if different from the location information provided under (f) below; types of service; length of service; fees; and usage, including billing records; and
 - (f) any information indicating as closely as possible the physical location to or from which a communication is transmitted.
- 8.33 “TMI U.S. POP” has the meaning given it in the TMI Agreement
- 8.34 “United States” or “U.S.” means the United States of America including all of its States, districts, territories, possessions, commonwealths, and the territorial and special maritime jurisdiction of the United States.
- 8.35 “U.S. MET” means a MET that is licensed by the Federal Communications Commission.
- 8.36 “Wire Communication” has the meaning given it in 18 U.S.C. § 2510(1).
- 8.37 Other Definitional Provisions: Other capitalized terms used in this Agreement and the Implementation Plan and not defined in this Article IV shall have the meanings assigned them elsewhere in this Agreement. The definitions in this Agreement are applicable to the singular as well as the plural forms of such terms and to the masculine as well as the feminine and neuter genders of such term. Whenever the words “include,” “includes,” or “including” are used in this Agreement, they shall be deemed to be followed by the words “without limitation.”

This Agreement is executed on behalf of the Parties:

United States Department of Justice

Date: _____

By: _____

Printed Name: _____

Title: _____

Federal Bureau of Investigation

Date: _____

By: _____

Printed Name: _____

Title: _____

Mobile Satellite Ventures LLC

Date: _____

By: _____

Printed Name: _____

Title: _____

Mobile Satellite Ventures Subsidiary LLC

Date: _____

By: _____

Printed Name: _____

Title: _____

Motient Corporation

Date: _____

By: _____

Printed Name: _____

Title: _____

**TMI Communications, Inc.,
On behalf of TMI Communications
and Company, Limited Partnership**

Date: _____

By: _____

Printed Name: _____

Title: _____

Exhibit A**CONDITION TO FCC LICENSES**

IT IS FURTHER ORDERED, that the authorizations and licenses related thereto are subject to compliance with the provisions of the Agreement attached hereto between Mobile Satellite Ventures LLC, Motient Satellite Ventures Subsidiary LLC, Motient Corporation and TMI Communications and Company, Limited Partnership, on the one hand, and the U.S. Department of Justice (the "DOJ") and the Federal Bureau of Investigation (the "FBI") on the other, dated _____, 2001, which Agreement is designed to address national security, law enforcement and public safety issues of the DOJ and the FBI regarding the authority and licenses granted herein. Nothing in this Agreement is intended to limit any obligation imposed by Federal law or regulation including, but not limited to, 47 U.S.C. § 222(a) and (c)(1) and the FCC's implementing regulations.