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Satellite Policy Branch
International Bureau

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Mr. Donald H. Gips, Chief
International Bureau
Federal Communications Commission
Room 800, Stop Code 0800
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Washington, DC 20554

148-SAT-MISC-96

**Re: Application of National Telecom Satellite Communications, Inc.
("NATSAT") to Provide U.S. Domestic Land and Aeronautical
1.6/2.4 GHz Mobile Satellite Services ("MSS")**

Dear Mr. Gips:

On behalf of National Telecom Satellite Communications, Inc. ("NATSAT"), I write to express our views on why NATSAT's above-referenced application, now pending before the International Bureau, should be granted immediately. This letter also provides a compelling regulatory and public policy argument as to why the Commission must license resellers of Mobile Satellite Services ("MSS") in the United States if the proposed ECO-Sat test is to have any practical effect and enforcement capability.

A. Background of NATSAT

NATSAT, a Delaware corporation, is a minority-owned "designated entity" (DE) which was formed in May 1996 to participate in the burgeoning and exciting new world of MSS.¹ On July 15, 1996, NATSAT filed its application to offer land and aeronautical MSS in the continental United States, Alaska, Hawaii, Puerto Rico, U.S. Virgin Islands, Guam, Northern Mariana Islands and American Samoa, as well as their respective coastal waters.

Specifically, NATSAT's application seeks authority to use space segment, space stations and earth stations of any and all Big LEO providers, foreign and domestic, to provide land and aeronautical MSS in the United States. NATSAT plans to provide these services by reselling the Big LEO MSS infrastructure of the various Big LEO providers.

In essence, NATSAT seeks to provide voice, data, facsimile and other switched MSS to, from and within the United States through resale and use of Big LEO carriers' space segment, space stations and earth stations. It is important to note that NATSAT seeks only resale, as opposed to facilities-based, MSS operating authority.

Since NATSAT's application necessarily raises matters of first impression before the International Bureau,² I want to address first the critical need for the International Bureau to license MSS resellers in the United States, and then focus on why the public interest requires that NATSAT's application be granted as quickly as administratively possible.

¹ NATSAT's principals were early commenters and participants in PCS, and successfully participated in auctions of PCS licenses conducted by the Wireless Telecommunications Bureau.

² NATSAT assumes that it is the first applicant to seek licensed MSS reseller authority in the United States.

B. The Critical Need for the Commission to License MSS Resellers

1. The MSS Industry

The MSS industry may be the most important industry to dawn in the 20th century, for it will truly bring seamless worldwide communications to every corner of the globe. By providing portable handheld wireless service around the world, MSS will bring a new dimension to global personal communications. It will offer a new level of efficiency to international business travel, will be indispensable to disaster relief organizations for use in damage assessment and coordination of resources, and will quickly bring the underdeveloped world into the 21st century by providing heretofore unavailable seamless global communications capability.

At present, it appears that there will be at least four Big LEO systems offering MSS throughout the world. They are (1) Iridium; (2) Globalstar; (3) Odyssey; and (4) ICO (using Inmarsat space segment and operating in the U.S. on its own or through COMSAT, subject to FCC approval). All of the Big LEO systems will operate in substantially similar fashion utilizing a number of satellites in low- or medium-earth orbit and providing voice, fax, data and paging services from anywhere in the world to anywhere in the world.³ The MSS handset, expected to cost upwards of \$3,000 initially, will be a dual-mode handset that uses the terrestrial wireless service (cellular/PCS) where available and automatically uplinks the user to the satellite if such terrestrial service is not available or is incompatible with the MSS handset.⁴

³ Although several regional systems are expected to offer MSS using GEO satellites (such as ACeS, AMSC, AsiaSat, etc.), NATSAT does not believe that GEO systems will be competitive with the planned LEO and MEO MSS systems, primarily due to the very perceptible 250+ millisecond voice delay inherent in GEO systems.

⁴ Some MSS systems will use TDMA/GSM, while others will use CDMA.

Because MSS systems will be interconnected to the PSTN and to terrestrial wireless systems, an MSS user will be able to place and receive calls from another MSS handset, a cellular/PCS handset, or a regular "old" landline telephone. Thus, an MSS user can place a call around the world just as easily as she can around the corner!

The Commission has already licensed Iridium, Globalstar and Odyssey to provide Big LEO service.⁵ Both COMSAT and ICO, currently unlicensed in the United States, seek authority to use Inmarsat and/or INTELSAT space segment to provide MSS in the United States. The pending DISCO II proceeding, and the International Bureau's proposed ECO-Sat test, will determine the extent to which ICO and COMSAT can offer MSS in the United States, if at all.⁶

2. Unless MSS Resellers are Licensed, the ECO-Sat Test Will Become Nothing but a "Toothless Tiger"

The International Bureau has correctly proposed the ECO-Sat test to ensure that foreign markets provide effective competitive opportunities for U.S. satellite systems. However, due to the inherent mobility of earth stations used in the MSS context, it is going to be virtually impossible for the International Bureau to police regulation of MSS services with earth station licensing, as currently proposed. Rather, **the only way for the Commission to adequately police compliance with the ECO-Sat test is to have market-based players be the policemen!**

As a simple example, let's assume that Inmarsat does not meet the ECO-Sat test (in whatever final form it ultimately takes), but that an ICO customer based in Pakistan places a call using Inmarsat space segment directly to an ICO customer based in London but who is traveling in the Grand

⁵ The applications of MCHI and Constellation were recently denied for failing to make the requisite financial showing.

⁶ NATSAT filed comments and reply comments in the DISCO II proceeding.

Canyon when he receives the call. The transmission was made over unauthorized foreign space segment to the United States, without any involvement whatsoever from an FCC-licensed U.S. earth station. Although the call is illegal, there may be nothing that the International Bureau can do about it (assuming the Bureau is even made aware of the call in the first place).

Here's an even more distressing example. A distributor of ICO handsets in the United States ostensibly markets ICO's services to U.S. consumers for use overseas, but actually (and quietly) markets such ICO services for use by U.S. consumers within the United States. The distributor knows that such use of ICO/Inmarsat space segment within the U.S. is illegal, but the distributor doesn't care as long as he rings up a sale! By the same token, the U.S. consumer, who is likely not to be cognizant of the fact that use of ICO in the U.S. is illegal, will continue to use his handset illegally until "caught or captured."

In both of these simple examples (there are many others, those both known and yet to be invented by unscrupulous promoters), the policies and purposes of the ECO-Sat test are completely subverted as entities and/or nations which fail the ECO-Sat test are nevertheless allowed to compete against U.S.-licensed MSS providers here in the United States.⁷

This is why the Commission **must** license MSS resellers in the United States, in order to provide a "police force" of licensed resellers who will detect and drive out illegal and unscrupulous operators. For example, if NATSAT becomes a licensed MSS reseller, then NATSAT will have an extremely strong economic incentive to seek out and uncover those distributors who market illegal MSS products in the United States.

⁷ Unlawful use of Inmarsat space segment akin to the second example is already occurring in the U.S., but on a very small scale because of the high cost of today's satellite devices (\$10-\$15K). However, when MSS handsets arrive at \$3K and below within the next 12-18 months, this type of "black market" dealing may well increase exponentially.

By the same token, facilities-based MSS providers may not have such a strong incentive to root out illegal MSS distributors because the providers will not want to offend key players in their distribution system. For example, Iridium, Globalstar and Odyssey (whom NATSAT has dubbed the "Gang of Three" in its DISCO II comments), plan to use existing cellular/PCS distributors to sell their MSS products. If some of these distributors sell the MSS offerings of the Gang of Three as well as ICO, and ICO is not licensed to offer U.S domestic MSS, how strenuously will the Gang of Three object to this arrangement? Particularly if the distributor is an important Gang of Three distributor.

Unleashing the NATSATs of the world (licensed resellers) into the MSS industry will be the International Bureau's best defense against unlawful and unauthorized use of MSS provided by entities which do not meet the ECO-Sat test!

Also, by licensing MSS resellers, the International Bureau will have a database of who is out there in the marketplace providing MSS to the American consumer. This will become important as MSS grows and customer complaints begin to inundate the Commission (as they inevitably do with any new service).

Without market-based policing of the MSS industry, it is going to be exceedingly difficult for the International Bureau to enforce its various edicts rendered under the ECO-Sat test. Furthermore, there will be no incentive for a foreign country to open its markets to U.S. providers if (1) that country knows that it can subvert U.S. policy merely by letting the unmonitored U.S. market sell the foreign country's services on its own; or (2) if the foreign country is receiving false data regarding the status of MSS service and usage patterns in the U.S. by virtue of unlicensed and unmonitored MSS distributors skewing the data.

It is abundantly clear to NATSAT that the only way for the United States to police its "satellite borders" is for licensed MSS resellers to do the

policing! Thus, without licensing of MSS resellers by the Commission, the ECO-Sat test will become nothing but a “toothless tiger.”

3. MSS Resellers Can Be Licensed Using the Section 214 Analogy

Currently, the International Bureau processes Section 214 applications to provide international resale of switched long distance services from the United States to international points. In fact, the Bureau just recently granted the application of TeleGlobe USA to provide such “international resale” in the United States.

The TeleGlobe proceeding provides an easy-to-follow road map regarding the Commission’s authority to license resellers and, therefore, to grant NATSAT a similar license.

In fact, the same Section 214 or a similar process can be used to grant applications to resell MSS to, from and within the United States. Supporting this idea is the International Bureau’s own question posed in the DISCO II NPRM, where the International Bureau asks whether it could “apply some or all of the ECO-Sat test to Section 214 applications to provide international MSS on non-U.S. satellites”?

NATSAT submits that the International Bureau may use its existing Section 214 authority and apparatus to license MSS resellers in the United States, without any undue administrative burden or excessive cost.

C. The Public Interest Requires That NATSAT Be Licensed ASAP

The Gang of Three have been licensed now for more than a year and plan to begin service before the turn of the century. They are spending billions of dollars to design, construct, launch and operate their MSS systems. However, given the glacial pace at which the world’s countries have been

moving towards “open skies” in the MSS context, the Gang of Three could be “all dressed up with nowhere to go” by the time they are ready to offer U.S. consumers global MSS capability in that they may not yet have sufficient foreign approvals to do so.

This explains why the public interest requires that NATSAT be licensed immediately. As a licensed reseller of Big LEO space segment provided by foreign and/or domestic MSS providers, NATSAT will be in a position to help “jump start” the MSS industry here in the United States. NATSAT can establish its marketing and distribution channels concurrently with those being established by the Gang of Three. The result will be robust competition in the MSS industry right out of the starting gate, as opposed to other industries such as long distance and cellular, where large companies had a several year “head start” over the resellers and locked up most of the distribution channels.⁸

In other words, NATSAT’s immediate licensing as an MSS reseller will bring high-quality and relatively low cost MSS to U.S. consumers **immediately**, instead of several years down the road!

Additionally, but for the fact that the Gang of Three filed their MSS applications with the Commission prior to the Commission receiving auction authority from Congress in 1993, the Gang of Three’s licenses, which have been granted to them **for free**, would instead have been auctioned to the highest bidder. Thus, the Commission has a responsibility to allow DEs such as NATSAT the opportunity to enter the MSS industry as a way to foster competition in what is already a three-legged oligopoly consisting of billion-dollar players.

In Section 309(j) of the Communications Act, Congress mandated that the Commission “ensure that small businesses, rural telephone companies,

⁸ There is a long line of cases and rulemakings which have affirmed the Commission’s view that resale is essential to the creation and maintenance of a competitive marketplace.

and businesses owned by members of minority groups and women are given the opportunity to participate in the provision of spectrum-based services.”⁹ Thus, the Commission should ensure that small businesses and minority entrepreneurs have the opportunity to “obtain licenses and provide [spectrum based] services.”¹⁰

To achieve this goal, the statute requires the Commission to “consider the use of tax certificates, bidding preferences, and other procedures.” NATSAT contends that granting it a license to resell in the United States MSS provided by domestic and/or foreign MSS operators qualifies as an “other procedure” by which the Commission can satisfy its Congressional directive to promote “economic opportunity for a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by minorities and women.”¹¹

Thus, it is clear that Congress has given the Commission authority to maximize the opportunities for small minority-owned businesses, like NATSAT, to provide MSS. And given the huge amounts of capital required (at least \$2 billion)¹² to construct, launch and operate an MSS system, it will be virtually impossible for a minority-owned small business such as NATSAT to compete in the MSS industry against multi-billion dollar behemoths like the Gang of Three without some kind of regulatory assistance, in the form of speedy licensing as a reseller, with which to attract capital and offer high-quality and affordable MSS to the American public.

⁹ 47 U.S.C. § 309(j)(4)(D).

¹⁰ Fifth Report and Order, PP Docket No. 93-253, 9 FCC Rcd 5532 at ¶ 93 (1994).

¹¹ 47 U.S.C. § 309(j)(4)(C).

¹² Report and Order, CC Docket No. 92-166, 9 FCC Rcd 5936 at ¶ 30 (1994) (“*Big LEO Order*”).

The Commission can satisfy its Congressional mandate of giving companies like NATSAT an opportunity to participate in spectrum-based services such as MSS by licensing NATSAT as an MSS reseller forthwith.¹³

Over the past several years, Commission policy increasingly has been marked by the resolution to open both domestic and international markets to competition and the broadest range of competitors. The Commission has concluded time and again that competition serves to lower prices, increase consumer choices, and further develop the national and global information infrastructures. Entry into the MSS marketplace by resellers, such as NATSAT, will foster competition with an entrepreneurial spirit generally lacking with the Gang of Three, Comsat, ICO and the IGOs, none of which are small or minority-owned businesses.

In light of the recent Commission actions to open up markets to competition, and given the recent enactment of the Telecommunications Act of 1996, it is clear that licensing MSS resellers is in the public interest. Such licensing will serve to make the MSS marketplace more competitive and expand consumer choice, lower prices, and help develop the national and global information infrastructures; while at the same time assist small businesses owned by minorities and women to play an active role in the MSS industry and provide a much-needed safeguard for consumers against unscrupulous operators.

By licensing MSS resellers, the Commission will also ensure that the Gang of Three is "kept honest," thereby resulting in more high-quality services at lower prices for consumers. For example, the Gang of Three may not want to "rock the competitive boat" by offering advanced services quickly at low prices, absent some "spirited" entrepreneurial competition from resellers.

¹³ In fact, the Commission has noted that there are presently no small businesses in the MSS industry, in that only six applications were filed to operate Big LEO MSS systems and "none of the applicants qualifies as small, minority-owned or women-owned." *Big LEO Order* at ¶ 80. With the recent denial of the MSS applications of Constellation and MCHI, the need for the presence of DEs, such as NATSAT, in the MSS industry has become even more acute.

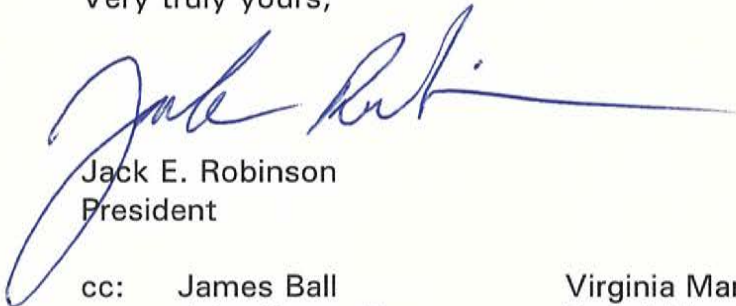
However, if licensed resellers like NATSAT are capable of offering MSS in the United States, then the Gang of Three will always know that they run the risk of NATSAT or any other licensed reseller beating them on price, technology, customer service, etc.

Finally, the Commission has already stated that, at least with respect to DEs such as NATSAT, the only way for them to participate in the MSS industry is as a reseller "by leasing space segment capacity . . . or by offering services to end users."¹⁴ However, the ability to do this cost-effectively will be determined by the ability of DEs to access space segment of any and all MSS providers. This goal will be furthered if DEs, such as NATSAT, are licensed as resellers as quickly as possible.

I hope this has provided a more detailed understanding of NATSAT's position with respect to why MSS resellers should be licensed and why NATSAT's application should be granted as soon as possible. We would be more than happy to meet and discuss these issues with you and members of your staff as soon as your schedule permits.

Thank you and we look forward to discussing these issues with you and your staff at your earliest convenience.

Very truly yours,



Jack E. Robinson
President

cc: James Ball
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¹⁴ *Big LEO Order* at ¶ 80, note 93.