**Before the**
**FEDERAL COMMUNICATIONS COMMISSION**
**Washington, D.C. 20554**



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| In the Matter of | ) | |
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| Inmarsat Ventures Limited | ) | File No. SAT-MSC-20040210-00027 |
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**REPLY OF TELENOR SATELLITE SERVICES, INC.**

Telenor Satellite Services, Inc., on behalf of itself and its affiliates Telenor Satellite, Inc. and Telenor Satellite Services Holdings, Inc. (collectively, "Telenor") hereby files its Reply to the comments in opposition filed in this proceeding by Mobile Satellite Ventures Subsidiary LLC and SES Americom, Inc.[1]

This proceeding was initiated when Inmarsat Ventures Limited filed a letter with the Commission requesting a determination that the recent sale of a majority equity interest in Inmarsat to private investors and the accompanying initial public offering of debt securities to be listed on the Luxembourg Stock Exchange satisfies Inmarsat's remaining obligations under the ORBIT Act.[2] Telenor fully supports Inmarsat's position in this matter, and we believe that the oppositions do little to counter the powerful arguments presented by Inmarsat.

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[1] *Opposition of Mobile Satellite Ventures Subsidiary LLC,* File No. SAT-MSC-2004-210-00027, filed April 5, 2004 ("MSV"); *Comments of SES Americom, Inc.*, File No. SAT-MSC-2004-210-00027, filed April 5, 2004 ("SES Americom").

[2] Letter from Alan Auckenthaler, Inmarsat Ventures Limited, to Marlene H. Dortch, Federal Communications Commission (Feb. 10, 2004) ("Inmarsat Letter"). The Inmarsat Letter was placed on public notice by the Commission in SAT-00197 on March 5, 2004, and assigned file number SAT-MSC-20040210-00027.

**Discussion**

1. The Commission Should Continue To Apply the "Consistent With" Standard of Review.

The central argument in the oppositions filed by MSV and SES Americom is that the language of the ORBIT Act is clear with respect to the particulars of the IPO requirement and that the Commission does not have the discretion to "rewrite the statute," as MSV puts it. MSV argues that there is "no ambiguity" in the ORBIT Act and that Congress has "directly spoken" on the public offering requirement.[3] While MSV's opposition does certainly provide a good summary of the standards of administrative law review, it badly misreads and misstates the actual text of the ORBIT Act. While the choice bits of the ORBIT Act that MSV cherry picks may in isolation seem unambiguous, a reading of the entire Act shows clearly and unambiguously that Congress did prescribe a discretionary standard of review for the Commission, a fact that the Commission has recognized and applied in every ORBIT-related review to date.

Specifically, MSV picks out a few provisions of Section 621 of the ORBIT Act (47 U.S.C. § 763) to discuss in isolation but conveniently omits any discussion of the statutory context within which those provisions fit. The primary operative clause of the ORBIT Act controlling the Commission's review of Inmarsat privatization matters is Subtitle A, Section 601(b)(1)(A)(ii), which requires a determination as to whether Inmarsat has privatized "in a manner that will harm competition in the telecommunications markets of the United States."[4] The Act further states that,

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[3] MSV at 10-11.

[4] 47 U.S.C. § 761(b)(1)(A)(ii).

> In making the determination required by paragraph (1), the Commission shall use the licensing criteria in Sections 621, 622, and 624, and shall determine that competition in the telecommunications markets of the United States will be harmed unless the Commission finds that the privatization referred to in paragraph (1) is consistent with such criteria.[5]

Further, the lead-in paragraph of Section 621 makes clear that the provisions that follow, including the provisions cited by MSV, are the "criteria [that] shall be applied as licensing criteria for purposes of subtitle A."[6]

Thus, it is clear that the language of the IPO provision in Section 621 is not designed to be read in isolation, requiring strict verbatim compliance, as MSV states. Instead, the Act requires the Commission to ensure that Inmarsat's actions are "consistent with" this provision and the other criteria in sections 621, 622, and 624. This is a crucial distinction, and one that the Commission has repeatedly recognized. In the original order reviewing Inmarsat's privatization, for example, the Commission stated that,

> In the context of applying the ORBIT Act criteria, we construe the "consistent with" standard as inferring a degree of flexibility by requiring "congruity or compatibility." This flexibility allows us to avoid frustrating Congressional intent to enhance competition in the U.S. telecommunications market by an overly narrow interpretation.[7]

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[5] 47 U.S.C. § 761(b)(2) (emphasis added).

[6] 47 U.S.C. § 763.

[7] *In the Matter of COMSAT Corporation, Application for authority under Section 753(c) of the International Maritime Satellite Act and Section 214 of the Communications Act of 1934, as amended*, Memorandum Opinion, Order, and Authorization, 16 FCC Rcd 21661 (2001), at ¶ 35 ("Domestic Order").

The Commission went on to state that it disagreed with the argument of Motient (one of MSV's previous iterations) that the ORBIT Act required strict compliance with each and every criteria in the Act, the very argument that MSV repeats in the current proceeding.[8]

2. Inmarsat's Actions Are Consistent With The IPO Requirements of the ORBIT Act.

As Inmarsat stated in its letter to the Commission, its actions with respect to the sale of a majority ownership interest to private investors and its listing of debt securities on the Luxembourg exchange are fully consistent with the IPO criteria in the ORBIT Act.[9] While we believe that it is most appropriate for Inmarsat itself to respond to the comments filed by SES Americom and MSV in this regard, there are several points that Telenor would like to emphasize to the Commission.

First, there is no basis whatsoever to the contention by SES Americom that the sale of the majority of ownership in Inmarsat did not achieve a "substantial dilution" of ownership in the company by former Signatories. SES Americom's argument is that, although Inmarsat has transferred approximately 57 percent of its ownership to parties who are not former Signatories, it has done so by "narrowing, rather than widening" its number of shareholders.[10] But there is nothing whatsoever in the ORBIT Act that requires diversified majority ownership; the Act provides only that there be substantial dilution of ownership by "signatories or former signatories," which even SES Americom

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[8] Id.

[9] *See* Inmarsat Letter at 6-15.

[10] SES Americom at 15.

admits has occurred.[11] For years while Inmarsat was an intergovernmental organization, its competitors complained to the Commission about the ownership of the organization by its Signatories, many of whom were foreign PTTs, claiming that this relationship could give Inmarsat competitive advantages in the PTTs' home markets.[12] The IPO criteria in ORBIT were designed to address this specific issue, as the Commission has previously recognized.[13]

Inmarsat's actions as described in the Inmarsat Letter have resulted in the elimination of the ownership interest by the vast majority of former Signatories, and non-Signatory entities now own 57 percent of the company and a majority controlling interest.[14] Realizing that Inmarsat has obviously met the "substantial dilution" criteria, SES Americom is attempting to invent from whole cloth a new requirement -- to "diversify" ownership -- that would impose ownership restrictions on Inmarsat that no other commercial entity faces. Indeed, even New Skies Satellites, which the Commission declared had achieved "substantial dilution" of Signatory ownership under the ORBIT

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[11] Id. *See* ORBIT Act § 621(2).

[12] Even today, MSV still raises this specter of Signatory ownership, stating that "Inmarsat was established in 1976 as a legal monopoly owned largely by foreign government post, telephone, and telegraph ("PTT") administrations." MSV at 2.

[13] Domestic Order at ¶ 39.

[14] It is worth noting that, of the remaining 43 percent, approximately 14 percent of the company is owned by Lockheed Martin Corporation, which itself was never an Inmarsat Signatory.

Act, had only *30 percent* of its ownership interest, far less than a majority, held by non-Signatories when the Commission made its determination.[15]

The second point that Telenor wishes to emphasize is the incongruity of MSV's continued complaints about Inmarsat's so-called "continuous anticompetitive behavior."[16] MSV has simply cut-and-pasted the same tired arguments against Inmarsat that it and its predecessor entities have made countless times in numerous proceedings, and every single allegation has been addressed and rejected by the Commission previously.[17] Why MSV continues to raise the same arguments that the Commission has already dismissed is not clear, but they have no relevance or value in this proceeding and should be disregarded by the Commission.[18]

Finally, as one of the entities authorized by the Commission to provide Inmarsat services in the United States, Telenor believes that is important for the Commission to take into full consideration the vital role that Inmarsat services play to the United States Government and throughout the U.S. economy. Inmarsat's single largest customer

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[15] *In the Matter of New Skies Satellites, N.V. Request for Unconditional Authority to Access The U.S. Market*, Memorandum Opinion and Order, 16 FCC Rcd. 7482 (2001) at ¶ 17.

[16] MSV at 4.

[17] *See, e.g.*, Domestic Order at ¶¶ 62-107.

[18] It is worth noting that prior to the Commission's 2001 Order authorizing Telenor (then Comsat Mobile Communications), Stratos, and others to provide Inmarsat services in the United States, MSV (nee Motient, nee AMSC) enjoyed a regulatory monopoly on the provision of mobile satellite services in the United States. For all of MSV's fanciful talk of Inmarsat as a "legal monopoly" (MSV at 2), it was the Commission's authorization of Inmarsat services in the United States (which MSV fought tooth and nail for nearly a decade) that finally gave U.S. customers a choice in domestic MSS providers.

throughout the world is the U.S. Government, including all branches of the military, the Department of Homeland Security, the State Department, the FBI, the Coast Guard, the U.S. Customs Service, the DEA, as well as myriad state and local government agencies. Notably, Inmarsat-based services have taken on a large role in homeland security applications since September 11, 2001. Inmarsat services are also heavily depended upon by private entities as well. Most of the remote battlefield reporting broadcast on U.S. television by embedded journalists during the Iraq campaign was carried via the Inmarsat system. Many other segments of the economy, including the oil and gas, shipping, and fishing industries, also depend on Inmarsat services for reliable remote communications. Clearly, the public interest would not be advanced if the Commission were to limit the availability of Inmarsat services to U.S. customers in any way as MSV and SES Americom advocate.

**Conclusion**

For the reasons discussed herein, the Commission should disregard the oppositions filed by MSV and SES Americom and grant Inmarsat's request to declare that its privatization is now fully consistent with the criteria in the ORBIT Act.

Respectfully submitted,
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April 20, 2004

**Certificate of Service**

The undersigned certifies that a true and complete copy of the accompanying Reply of Telenor Satellite Services, Inc. was sent on this date by U.S. Mail, postage prepaid, to the following:

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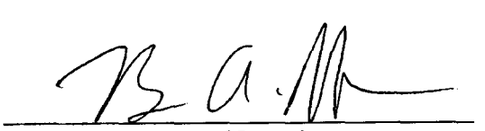

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