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April 20, 2004

Policy Branch
International Bureau
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Via HAND DELIVERY

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

APR 20 2004

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: **Inmarsat Ventures Limited – Compliance With the Open-Market Reorganization for the Betterment of International Telecommunications Act (“ORBIT Act”)**
SAT-MSC-20040210-00027

Dear Ms. Dortch,

Please find enclosed an original plus four copies of the Reply Comments of Stratos Mobile Networks, Inc. and Stratos Communications, Inc. (collectively, “Stratos”). Additional copies are being served on the parties indicated in the certificate of service.

Please contact the undersigned if you have any questions about this pleading.

Yours sincerely,



Alfred Mamlet
Daniel C.H. Mah
*Counsel for Stratos Mobile Networks, Inc. and
Stratos Communications, Inc.*

WASHINGTON

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

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APR 20 2004

In the Matter of)
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INMARSAT VENTURES LIMITED)
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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

File No. SAT-MS-20040210-00027

Received

APR 26 2004

REPLY COMMENTS OF STRATOS MOBILE NETWORKS, INC.

Two Branch
International Bureau

Stratos Mobile Networks, Inc. and Stratos Communications Inc. (collectively, "Stratos"), hereby replies to the opposition and comments filed by Mobile Satellite Ventures Subsidiary LLC ("MSV") and SES Americom, Inc. ("SES") respectively in this proceeding.¹ Stratos supports the request of Inmarsat Ventures Limited ("Inmarsat") for a determination that it has satisfied the independence and initial public offering ("IPO") requirements of the Open-Market Reorganization for the Betterment of International Telecommunications Act ("ORBIT Act").²

Stratos is a leading provider of mobile satellite services ("MSS") to the U.S. government and U.S. industry and is a major purchaser of space segment capacity on satellites

¹ See Opposition of Mobile Satellite Ventures Subsidiary LLC, filed in SAT-MS-20040210-00027 (filed Apr. 5, 2004) ("*MSV Opposition*"); Comments of SES Americom, Inc., filed in SAT-MS-20040210-00027 (filed Apr. 5, 2004) ("*SES Comments*").

² See 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 on March 5, 2004 and assigned file number SAT-MS-20040210-00027. See Public Notice, SAT-00197 (Mar. 5, 2004). Stratos has filed comments in support of the Inmarsat Letter. See Comments of Stratos Mobile Networks, Inc., filed in SAT-MS-20040210-00027 (filed Apr. 5, 2004) ("*Stratos Comments*").

operated by Inmarsat, Iridium LLC (“Iridium”), and MSV for the provision of such services. Stratos and its customers are thus vitally interested in ensuring that the supply of space segment capacity for MSS remains competitive. Inmarsat has privatized in a manner “consistent with” the purposes and intent of the ORBIT Act’s privatization criteria, and should therefore be granted unconditional access to the U.S. market. While assuring Inmarsat access to the U.S. market might not be good for Inmarsat’s competitors (MSV and SES), it would benefit competition and the public interest by increasing consumer choices.

I. THE ORBIT ACT DOES NOT REQUIRE “STRICT COMPLIANCE” WITH THE PRIVATIZATION CRITERIA

MSV and SES argue that Inmarsat has failed to comply with the requirements of the ORBIT Act because it has not conducted an initial public offering (“IPO”) of shares and has not listed its shares on a major stock exchange.³ However, contrary to the assertions of MSV and SES,⁴ the ORBIT Act does not require “precise[]” or “strict compliance” with the privatization criteria set forth in Section 621. Rather, the statutory text and consistent Commission precedent established that the privatization of former intergovernmental organizations (“IGOs”) under the ORBIT Act need only be “consistent with” such criteria.⁵ This

³ *MSV Opposition* at 6-10; *SES Comments* at 10-21.

⁴ *See MSV Opposition* at 5 (“To privatize in the pro-competitive manner required by the ORBIT Act, Inmarsat must comply precisely with the Act’s requirements for an IPO.”); *SES Comments* at 13 (“[T]he Commission should not judge Inmarsat’s compliance with the IPO requirements by any standard other than one of strict compliance . . .”).

⁵ *See* ORBIT Act § 601(b)(2). *See also Applications of Intelsat LLC*, 16 FCC Rcd. 12280, 12288 ¶ 22 (2001) (“*Intelsat Market Access Order*”) (“In the context of 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 which could result from an overly narrow interpretation.”); *Comsat Corp. et al.*, 16 FCC Rcd. 21661, 21682 ¶ 35 (2001) (“*Inmarsat Market Access Order*”) (same).

standard connotes “a degree of flexibility” necessary for the Commission to “avoid frustrating Congressional intent to enhance competition in the U.S. telecommunications market by an overly narrow interpretation.”⁶ Accordingly, the determination of whether Inmarsat’s privatization is consistent with the requirements of the ORBIT Act should be based on whether it achieves the goals of the Act and not on whether there has been letter-perfect compliance with the statutory text, or with the idealized standard urged by Inmarsat’s competition.

II. THE INMARSAT PRIVATIZATION ACHIEVES THE GOALS OF THE ORBIT ACT

The ORBIT Act makes plain that the twin purposes of the IPO and listing requirements were (1) to create an Inmarsat independent of the former signatories through substantial dilution of their ownership interests; and (2) to achieve transparency and effective securities regulation. The Inmarsat privatization is consistent with and has achieved both goals.

A. The Privatized Inmarsat is Independent of the Former Signatories

As explained in the Inmarsat Letter, the public debt offering and related transactions have created a privatized Inmarsat that is not controlled by the former signatories of INMARSAT. Moreover, there is no question that the aggregate ownership of former signatories has been diluted well beyond the level previously held by the Commission to be sufficient to meet the requirements of the ORBIT Act. The transactions have resulted in more than 57% of the shares of Inmarsat being held by non-Signatories, far in excess of the 25% threshold the Commission established in *New Skies*.⁷

⁶ *Id.* at 21682 ¶ 35.

⁷ *See New Skies Satellites, N.V.*, 16 FCC Rcd. 7482 (2001).

MSV and SES assert that this is nevertheless not consistent with the ORBIT Act's privatization criteria because ownership of Inmarsat's shares are not broadly held by the public. They have invented a new requirement not found in the statute. The ORBIT Act requires "substantial dilution," not "broad distribution." The purpose of the substantial dilution requirement is to ensure that the privatized entities are independent of the former signatories.⁸ This purpose is better fulfilled if a few investors control a majority of shares than if a minority of shares is widely dispersed.

Indeed, the International Bureau recently decided not to investigate New Skies' share buy-back program under the ORBIT Act, because it had the effect of further diluting the ownership interests of former INTELSAT signatories in New Skies, even if the share buy-back also narrowed private ownership of New Skies.⁹

B. The Listing of Inmarsat's Debt Securities Subjects Inmarsat to Transparent and Effective Securities Regulation

As fully explained in the Inmarsat Letter, the listing of Inmarsat's debt securities on the Luxembourg Stock Exchange and registration with the U.S. Securities Exchange Commission ("SEC") will subject the privatized Inmarsat to transparent and effective securities regulation, consistent with Section 621(5)(B) of the ORBIT Act.¹⁰ The ORBIT Act does not require an "IPO of equity securities in the United States," as SES suggests.¹¹ Inmarsat can fulfill the listing requirement through a listing on any "major stock exchange with transparent and

⁸ ORBIT Act § 621(2).

⁹ See *New Skies Satellites, N.V. Continuing Access to the U.S. Market*, 18 FCC Rcd. 18501, at ¶ 9 (2003).

¹⁰ Inmarsat Letter at 4-5, 9-15.

¹¹ *SES Comments* at 19.

effective securities regulation.”¹² Inmarsat is already trading on the Luxembourg Stock Exchange and is subject to European Union securities regulation. Further, Inmarsat has also filed a registration statement with the U.S. Securities and Exchange Commission to be listed in the U.S. PORTAL Market managed by the National Association of Securities Dealers. Inmarsat is required to make regular disclosures under European Union and the U.S. Securities Exchange Act of 1934. If these disclosures are deemed sufficient to protect European and U.S. investors, then they should also be sufficient for meeting the transparency requirements of the ORBIT Act.¹³ Since Inmarsat will be required to report changes in ownership, management and control,¹⁴ any increased participation by former Signatories will be readily detected.

III. COMPETITION WILL NOT BE ENHANCED BY DENYING OR DELAYING INMARSAT UNCONDITIONAL ACCESS TO THE U.S. MARKET

As the Commission has explained, the reason for avoiding an unduly narrow interpretation of the ORBIT Act’s privatization criteria is to “avoid frustrating Congressional intent to enhance competition in the U.S. telecommunications market”¹⁵ In this case, Congress’s intent would be frustrated if Inmarsat were to be denied unconditional access to the U.S. market simply because the IPO was debt securities instead of equity. To require Inmarsat to

¹² ORBIT Act § 621(5)(B).

¹³ SES argues that listing on the Luxembourg Stock Exchange would not subject Inmarsat to certain corporate governance requirements in the listing rules of the New York Stock Exchange and NASDAQ. *SES Comments* at 19-20. However, there is nothing to indicate that “transparent and effective securities regulation” in the ORBIT Act means regulation that is the same as the rules for a company listed on these specific exchanges. In any event, the listing rules referred to by SES – NYSE Listing Rules 3.03.01(A), 303A and NASDAQ Listing Rule 4350 – were only adopted recently in response to the Sarbanes-Oxley Act of 2002, P.L. 107-204, and so such requirements were not even contemplated by Congress at the time it passed the ORBIT Act.

¹⁴ Inmarsat Letter at 14.

¹⁵ *Inmarsat Market Access Order* at 21682 ¶ 35.

go further and issue shares to the public could deprive U.S. consumers of unconditional access to Inmarsat without any guarantee that Inmarsat would be any more independent or that the ownership of former signatories would be any more diluted than is the case now.

MSV rehashes a litany of supposedly anti-competitive conduct actions as a predicate for its conclusion that “Inmarsat must comply precisely with the Act’s requirements for an IPO.”¹⁶ The Commission has previously rejected similar claims in this very proceeding.¹⁷ Even if the MSV complaints had any merit, requiring “precise compliance” would not remedy MSV’s longstanding complaints.

Delaying Inmarsat’s full access to the U.S. market may be good for the competitors of Inmarsat, such as MSV and SES. However, such delay would not be good for competition in the U.S., nor would it be good for purchasers of MSS such as Stratos and its customers.

¹⁶ MSV Comments at 4-5.

¹⁷ *Inmarsat Market Access Order* at ¶¶ 69-76.

IV. CONCLUSION

For the reasons stated above, the Commission should determine that Inmarsat has satisfied all remaining requirements of the ORBIT Act and is now entitled to unconditional access to the U.S. market.

Respectfully submitted,



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Date: April 20, 2004

CERTIFICATE OF SERVICE

I, Chung Hsiang Mah, hereby certify that on this 20th day of April, 2004, copies of the Reply Comments of Stratos Mobile Networks, Inc. were sent by hand-delivery (*) and by first class, postage pre-paid mail, to the following:

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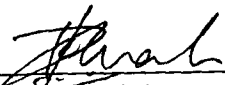
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