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

In the Matter of	)	
	)	
Inmarsat Ventures Limited	)	File No. SAT-MSC-20040210-00027
	)	(Report No. SAT-00197)

RESPONSE OF MOBILE SATELLITE VENTURES SUBSIDIARY LLC

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Summary

The requirements of the ORBIT Act could not be more clear. The law requires Inmarsat to conduct a public equity offering and to have its shares listed on an exchange. Inmarsat has done neither.

In light of Inmarsat's disregard for the core requirements of the ORBIT Act, the Commission does not have the discretion to find Inmarsat in compliance with the law. Inmarsat's actions have not been "consistent with" the requirements of the law; rather, they have been directly inconsistent with those requirements. Moreover, even if the Commission were to find that Inmarsat's actions have been consistent with the requirements of the law, it still could not permit Inmarsat to provide the new services the Act defines as "additional services." Therefore, if Inmarsat misses its June 30, 2004 deadline for compliance, as it indicates it has every intention to do, the Commission must prohibit the use of Inmarsat to provide service in the United States, including such new services.

As much as Inmarsat would like to obscure the law and obfuscate the facts, they are both clear. Inmarsat has failed to comply with key ORBIT Act requirements and, regardless of its baseless arguments about meeting the goals of the legislation, the law requires compliance with its terms and nothing less. Inmarsat's last-minute request for an extension must be rejected because, among other things, it has not made the required showing that it could not have complied with the ORBIT Act's requirements. At this point, Inmarsat has no one to blame for that failure other than itself, not market conditions or MSV. Inmarsat chose to flout U.S. law and it must be held to account.

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Mobile Satellite Ventures Subsidiary LLC ("MSV") hereby files this Response to Inmarsat Ventures Limited ("Inmarsat"), Deere & Company ("Deere"), Stratos Mobile Networks, Inc. ("Stratos"), and Telenor Satellite Services, Inc. ("Telenor") in the above-captioned proceeding in which Inmarsat claims to have complied with the requirements of the Open-Market Reorganization for the Betterment of International Telecommunications Act ("ORBIT Act").[1]

Background

On February 10, 2004, Inmarsat filed a letter with the Commission arguing that it has now satisfied its remaining ORBIT Act obligations.[2] Regarding the requirement that Inmarsat conduct a "public offering" that "substantially dilutes" its ownership by former signatories, Inmarsat concedes that instead it conducted a public offering of debt and a private offering of equity. *Inmarsat Letter* at 2-3. Regarding the requirement that Inmarsat have its "shares" listed for trading, Inmarsat concedes that instead it listed nonconvertible debt securities on the Luxembourg Stock Exchange. *Id.* at 8-9.

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[1] Open-Market Reorganization for the Betterment of International Telecommunications Act, Pub. L. No. 106-180, § 2, 115 Stat. 48 (2000) ("ORBIT Act").

[2] Letter from Alan Auckenthaler, Vice President and General Counsel, Inmarsat Inc., to Ms. Marlene H. Dortch, FCC, File No. SAT-MSC-20040210-00027 (February 10, 2004) ("*Inmarsat Letter*") and Attachment B ("*Offering Memorandum*").

The Commission placed Inmarsat's letter on *Public Notice* on March 5, 2004. *See* Report No. SAT-00197. MSV and SES Americom, Inc. ("SES") each opposed Inmarsat's request.[3] Both MSV and SES explained that Inmarsat has not complied with two unambiguous requirements of the ORBIT Act: the requirements to conduct a public equity offering and to have shares listed on an exchange. *MSV Opposition* at 6-12; *SES Comments* at 10-15. MSV noted that the terms of the ORBIT Act are clear on their face and the Commission does not have the discretion to deviate from those terms. *MSV Opposition* at 10-12. SES further explained that Inmarsat has not met the ORBIT Act's goals of substantially diluting Inmarsat's ownership by former signatories and subjecting Inmarsat to transparent and effective securities regulations. *SES Comments* at 15-20. MSV also provided evidence of the extent to which Inmarsat has acted and continues to act in an anticompetitive manner. *MSV Opposition* at 4-5.

Inmarsat, Deere, Stratos, and Telenor filed responses to MSV and SES on April 20, 2004.[4] Inmarsat argues that because Section 621(5)(A) of the ORBIT Act refers to a public offering of "securities," an offering of either equity or debt suffices. *Inmarsat Response* at 16-20. Although Inmarsat has listed debt on an exchange rather than "shares" as required by Section 621(5)(B) of the ORBIT Act, Inmarsat claims that this should not matter because it is sufficient if it has met the goals and purposes of the Act even if it does not comply with the Act's terms. *Inmarsat Response* at 24-30. Inmarsat attaches letters exchanged between Senator

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[3] Opposition of Mobile Satellite Ventures Subsidiary LLC, File No. SAT-MSC-20040210-00027 (April 5, 2004) ("*MSV Opposition*"); Comments of SES Americom, Inc., File No. SAT-MSC-20040210-00027 (April 5, 2004) ("*SES Comments*").

[4] Consolidated Response of Inmarsat Ventures Limited, File No. SAT-MSC-20040210-00027 (April 20, 2004) ("*Inmarsat Response*"); Reply Comments of Deere & Company, File No. SAT-MSC-20040210-00027 (April 20, 2004) ("*Deere Response*"); Reply Comments of Stratos Mobile Networks, Inc., File No. SAT-MSC-20040210-00027 (April 20, 2004) ("*Stratos Response*"); Reply Comments of Telenor Satellite Services, Inc., File No. SAT-MSC-20040210-00027 (April 20, 2004) ("*Telenor Response*").

Conrad Burns and Michael D. Gallagher, National Telecommunications and Information Administration ("NTIA"), purporting to support its view that it has satisfied the goals of the ORBIT Act. *Id.* at Tabs A and B. In any event, Inmarsat, Deere, Stratos, and Telenor all argue that the ORBIT Act does not require strict compliance with its terms. *Inmarsat Response* at 14-16; *Deere Response* at 5-6; *Stratos Response* at 2-3; *Telenor Response* at 2-4. Instead, they argue that Inmarsat need only privatize "consistent with" the requirements of the ORBIT Act. *Id.* Finally, Inmarsat characterizes MSV's recitation of Inmarsat's anticompetitive conduct as "false, scurrilous, and irrelevant." *Inmarsat Response* at 35-38.

Discussion

I. INMARSAT HAS NOT COMPLIED WITH EITHER THE LETTER OR THE SPIRIT OF THE ORBIT ACT

A. Inmarsat Has Failed to Meet the Requirement for a Public Offering of Equity

Inmarsat is wrong when it argues that because one section of the ORBIT Act (Section 621(5)(A)) refers broadly to "securities," that Inmarsat is free to ignore Section 621(2) of the Act, which specifically requires Inmarsat to conduct a public offering of equity to dilute its then-current ownership.[5] Congress was clear in Section 621(2) that Inmarsat must have a public offering of equity. Issuing debt does not dilute ownership. "It is a commonplace of statutory construction that the specific governs the general."[6] In the case of the ORBIT Act, the specific

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[5] 47 U.S.C. § 763(2) ("*Such offering shall* substantially dilute the aggregate *ownership* of [Inmarsat] by such signatories or former signatories." (emphasis added).)

[6] *Morales v. Trans World Airlines*, 504 US 374, 384-385 (1992) (citing, *Crawford Fitting Co. v. J.T. Gibbons, Inc.*, 482 US 437, 445 (1987)); *see also Varity Corp. v. Charles Howe*, 516 U.S. 489, 511 (1996) ("This Court has understood the present canon ('the specific governs the general') as a warning against applying a general provision when doing so would undermine limitations created by a more specific provision.").

requirement of Section 621(2) that Inmarsat's public offering dilute its "ownership" governs the general requirement of Section 621(5)(A) for a public offering of "securities."

It is irrelevant that Inmarsat's public debt offering may be related to its private equity offering. *Inmarsat Response* at 20-21. Nowhere does the ORBIT Act identify a private equity offering as an acceptable alternative to the public equity offering that is mandated.

B. Inmarsat Has Failed to Meet the Requirement to List Shares on an Exchange

Section 621(5)(B) of the ORBIT Act unambiguously requires Inmarsat to have its "shares" listed for trading on a major stock exchange. 47 U.S.C. § 763(5)(B). Inmarsat does not even try to argue that it has complied with this requirement of the ORBIT Act. In fact, Inmarsat admits that its debt securities "technically may not be 'shares.'" *Inmarsat Letter* at 9. The most Inmarsat can muster in its defense is that, under very limited circumstances, the Commission treats debt as an ownership interest in connection with its multiple ownership rules. *Inmarsat Response* at 33. This treatment of debt by the Commission in the context of its multiple ownership rules, however, has no bearing on the plain meaning of the term "shares" which, as MSV and SES have demonstrated, does not include a debt interest. *MSV Opposition* at 9-10; *SES Comments* at 17.

C. Inmarsat Has Failed to Meet the Spirit of the ORBIT Act

While it is irrelevant as a legal matter, since Inmarsat has failed to meet the letter of the law,[7] Inmarsat is also wrong when it argues that it has met the spirit of the ORBIT Act, even if it has done so in ways that are inconsistent with the law. For instance, Inmarsat argues that it has

[7] It is well established that "'when the statute's language is plain, the sole function of the courts - at least where the disposition required by the text is not absurd - is to enforce it according to its terms.'" *Lamie v. United States*, 124 S. Ct. 1023, 1030 (2004) (*quoting Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A.*, 530 U.S. 1, 6 (2000) (internal quotations and citations omitted)). Federal agencies such as the Commission are bound by the same principle.

achieved substantial dilution of its ownership by foreign signatories without issuing public equity. *Inmarsat Response* at 20-21. To the contrary, however, it is at least as reasonable to assume that a public equity offering would have required far more substantial reform of Inmarsat's ownership structure and greater dilution of ownership than is being undertaken through the current arrangement.[8] Similarly, Inmarsat claims that the goal of the ORBIT Act to subject Inmarsat to transparent and effective securities regulations has been achieved by its listing of debt on an exchange. *Inmarsat Response* at 24-30. As SES has shown, however, a public equity offering would have subjected Inmarsat to more meaningful securities regulations than its debt offering. *SES Comments* at 18-20.

The letters that Inmarsat submits from a Member of Congress and the Administration similarly address only whether Inmarsat may have met the spirit of the law, not whether Inmarsat is in compliance with the law. *Inmarsat Response* at 11-12, Tabs A and B. Neither letter even suggests that Inmarsat has complied with the unambiguous terms of the ORBIT Act. As Inmarsat itself notes, when the language of a statute is clear, as it is in this case, statements from Members of Congress or the Administration are legally irrelevant.[9]

In a particularly bizarre bit of obfuscation, Inmarsat suggests that MSV has no basis for being critical of Inmarsat because MSV would not meet the standards of the ORBIT Act. *Inmarsat Response* at 2-3. Inmarsat's observation merely serves to highlight the contrast between the two companies: MSV is a company that has been built on private investment,

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[8] Inmarsat cites examples of other public equity offerings that resulted in 10-25% of new ownership. *Inmarsat Response* at 32. But Inmarsat offers no evidence as to why these examples are analogous to its case. Nor does Inmarsat provide evidence from the financial community of the level of dilution that would have been achieved had it conducted a public equity offering, especially in light of the improved market for public equity offerings. *MSV Opposition* at 7-9.

[9] *Inmarsat Response* at 23 (*citing Davis v. Michigan Dep't of Treasury*, 489 U.S. 803, 808 n.3 (1989) ("legislative history is irrelevant to the construction of an unambiguous statute")).

including at one point being publicly-traded, and has always operated in a highly competitive environment. Inmarsat, by contrast, started as a monopoly with huge government investments and guarantees, a situation that was so difficult to change (despite years of effort by the U.S. government), that ultimately Congress felt compelled to pass the ORBIT Act. The arrogance of Inmarsat's ownership in ignoring the plain language of the ORBIT Act shows that even the will of Congress may not be sufficient to bring about the needed reform.

II. THE COMMISSION CANNOT WAIVE THE CORE REQUIREMENTS OF THE ORBIT ACT

Recognizing that Inmarsat has not complied with the terms of the ORBIT Act, Inmarsat, Deere, Stratos, and Telenor all argue that Section 601(b)(2) of the ORBIT Act does not require strict compliance with its terms and that, instead, Inmarsat need only privatize "consistent with" the requirements of the ORBIT Act. *Inmarsat Response* at 14-16; *Deere Response* at 5-6; *Stratos Response* at 2-3; *Telenor Response* at 2-4.

The Commission, however, has used the "consistent with" standard to allow Inmarsat only two very minor deviations from the terms of the ORBIT Act.[10] First, while the ORBIT Act required Inmarsat to privatize by July 2000, the Commission relied on the "consistent with" standard to allow Inmarsat into the United Sates market even though it did not complete one step (restructuring of its Board) until after this date. *Inmarsat Entry Order* ¶ 46. Second, while the ORBIT Act forbids Inmarsat's officers and managers from having ownership interests in former signatories unless those interests are held in a blind trust, the Commission relied on the

[10] The Commission did not rely on the "consistent with" language in authorizing Inmarsat to provide service in the United States prior to its public equity offering. Rather, there is a separate statutory provision (Section 601(b)(1)(D) of the ORBIT Act) that authorized the Commission to take that action. *Inmarsat Entry Order* ¶ 37.

"consistent with" standard to waive the blind trust requirement for *de minimis* financial interests. *Id.* ¶ 47.

In authorizing Inmarsat to provide service in the United States, however, the Commission clearly stated that the authorizations to use Inmarsat "are subject to limitation or revocation . . . should Inmarsat fail to conduct an IPO *in compliance with* the requirements of Section 621 of the ORBIT Act." *Inmarsat Entry Order* ¶ 112 (emphasis added). The Commission never stated that anything less than strict compliance with the public equity offering mandated by the ORBIT Act would suffice.[11]

Inmarsat is now asking the Commission to rewrite the core requirements of the ORBIT Act based on the "consistent with" standard. But under no reasonable interpretation of the term "consistent with" can the Commission find that Inmarsat has complied with the ORBIT Act by (i) conducting a private equity offering instead of a public equity offering and (ii) listing debt rather than shares on an exchange. Neither Congress nor the Commission have ever stated or implied that the "consistent with" standard could be read so broadly as to eviscerate these core requirements of the ORBIT Act.

Even if the Commission were to find that Inmarsat has privatized "consistent with" the requirements of the ORBIT Act, the "consistent with" standard does not apply to Inmarsat's

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[11] Inmarsat notes that in a previous decision, the International Bureau stated that if Inmarsat does not achieve "substantial dilution" through an "IPO *or other means*," Inmarsat's authorizations will be limited or revoked. *Inmarsat Response* at 21 (citing *Inmarsat Ventures plc, Order*, File No. SAT-MSC-20020925-00187 (International Bureau, December 17, 2002), at ¶ 11). Inmarsat claims that this means that the Commission contemplated substantial dilution occurring in a few different ways. *Id.* The International Bureau's statement, however, is legally irrelevant because the Bureau was not asked and was not briefed in that proceeding as to whether something other than a public equity offering would satisfy the ORBIT Act. Moreover, the Bureau provided no basis in the text of the ORBIT Act for stating that something other than an IPO would satisfy the requirements of the Act.

provision of "additional services," which includes services on Inmarsat-4 satellites.[12] Section 602(a) of the ORBIT Act clearly states that until Inmarsat is privatized "in accordance with" the requirements of the ORBIT Act, it "shall not be permitted to provide additional services." 47 U.S.C. § 761a(a).[13] The "consistent with" phrase does not appear in Section 602(a). Thus, whatever the Commission's interpretation of its discretion with respect to other provisions of the Act, until Inmarsat complies with the specific requirements of the ORBIT Act, the Commission cannot lawfully authorize it to provide services on Inmarsat-4 satellites.[14]

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[12] The ORBIT Act defines "additional services" as "non-maritime or non-aeronautical mobile services in the 1.5 and 1.6 GHz band on planned satellites or the 2 GHz band." 47 U.S.C. § 769(a)(12)(A).

[13] *See Loral and Intelsat, Order and Authorization*, DA 04-357 (International Bureau, February 11, 2004), at ¶¶ 58-63, 66 (holding that, although Intelsat was previously found to have privatized "consistent with" the ORBIT Act, Intelsat is prohibited from providing "additional services" pursuant to Section 602(a) until the Commission finds that Intelsat has conducted an IPO that "fully complied" with Section 621 of the ORBIT Act).

[14] Inmarsat contends that the Commission has already authorized Inmarsat to provide "additional services" because it previously found that Inmarsat privatized "consistent with" the ORBIT Act. *Inmarsat Response* at 5 n.10 (*citing Inmarsat Entry Order* ¶ 60). In fact, the Commission stated that Inmarsat could provide "additional services" only "subject to Inmarsat's conducting an IPO *in compliance with* Section 621" of the ORBIT Act. *Inmarsat Entry Order* ¶ 60 (emphasis added). As discussed herein, because Inmarsat has not conducted a public equity offering, it has not conducted an IPO "in compliance with" Section 621. Moreover, in that proceeding the Commission was not asked to consider an application to provide "additional services" with Inmarsat. The Commission was never briefed on the issue of whether Inmarsat could provide "additional services" prior to full compliance with each of the requirements of the ORBIT Act. The Commission never considered the difference between the "consistent with" standard used in Section 601(b)(2) pertaining to general licensing criteria for "non-core services" and the "in accordance with" standard used in Section 602(a) pertaining to "additional services." *Compare* 47 U.S.C. § 761(b)(2) (ORBIT Act Section 601(b)(2)) *with* 47 U.S.C. § 761a(a) (ORBIT Act Section 602(a)). The "specific" clause of 602(a) pertaining to licensing of "additional services" governs the general licensing clause in 601(b)(2) pertaining to "non-core" services. *See Morales v. Trans World Airlines*, 504 US 374, 384-385 (1992) (citing, *Crawford Fitting Co. v. J.T. Gibbons, Inc.*, 482 US 437, 445 (1987)); *see also Varity Corp. v. Charles Howe*, 516 U.S. 489, 511 (1996) ("This Court has understood the present canon ('the specific governs the general') as a warning against applying a general provision when doing so would undermine limitations created by a more specific provision.").

III. INMARSAT'S CONTINUED ANTICOMPETITIVE CONDUCT DEMONSTRATES THE CONTINUED NEED FOR REFORM

The Commission has acknowledged that the ORBIT Act "reflects Congress's concern that the Commission only allow a pro-competitive privatized Inmarsat into the U.S. market." *Inmarsat Entry Order* ¶ 34. Despite its claim to the contrary, Inmarsat still does not behave like a "pro-competitive commercial entity." *Inmarsat Response* at 6. Instead, as MSV noted in its Opposition, Inmarsat continues to act in an anticompetitive manner and tries to maintain the market share it achieved during its time as a legal monopoly. *MSV Opposition* at 4-5.

In its Opposition, MSV explained that (i) Inmarsat's monopolistic behavior has hampered MSS providers in their ability to compete with Inmarsat; (ii) Inmarsat has frustrated MSV's efforts to coordinate access to L-band spectrum and, as a result, MSV is still unable to gain access to sufficient spectrum on a stable basis; (iii) despite an obligation to do so pursuant to the Inmarsat Convention, Inmarsat has denied MSV access to certain intellectual property that would enable MSV to use its facilities to provide a competitive service to Inmarsat customers in North America; and (iv) Inmarsat has continued to unreasonably oppose MSV in its efforts to develop a more spectrum efficient and valuable satellite service through deployment of ancillary terrestrial facilities in the L-band to provide improved coverage. *MSV Opposition* at 4-5.

Inmarsat's attempts to refute MSV's showings regarding Inmarsat's anticompetitive conduct fail. First, Inmarsat's claim that it was never a "monopoly" is completely absurd. *Inmarsat Response* at 35-36. Inmarsat was established as a legal monopoly, owned largely by governmental entities, was the recipient of enormous government investments, and for over fifteen years was the only MSS system in operation. While Inmarsat states that it now faces "substantial competition" in MSS markets throughout the world, this statement is belied by its own *Offering Memorandum* in which Inmarsat boasts about its dominant market position.

Inmarsat states that it is first in market share in the three primary MSS markets (maritime, land, and aeronautical); its revenues in 2002 in the maritime sector were in excess of **thirty times** those of its nearest competitor;[15] and its revenues in 2002 in the market for high-speed data services to the maritime and land sectors were in excess of **fifteen times** those of its nearest competitor. *Offering Memorandum* at 83-84. And Inmarsat apparently is not content with its already dominant position, as it admits that it plans to leverage "its leading position in the maritime sector by cooperating with its master distributors to encourage existing enterprise-level users to take up additional services." *Id.* at 3. The Commission is more than familiar with the detrimental impact leveraging of market power has on consumers and competition.[16]

Inmarsat admits that it was required to license its intellectual property to other MSS systems pursuant to the Inmarsat Convention but claims that MSV refused to pay royalties. *Inmarsat Response* at 37. In fact, Inmarsat demanded unreasonable terms and conditions for such licenses. MSV incorporates by reference its previous submissions to the Commission detailing Inmarsat's unreasonable refusal to license intellectual property to MSV.[17] While Inmarsat may no longer be obligated by the Inmarsat Convention to license its intellectual

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[15] Moreover, Inmarsat notes the following: "Our market-leading position in the maritime sector is underpinned by our role as the sole provider of satellite services required for the operation of the Global Maritime Distress and Safety System, or GMDSS, and by maritime sector regulations that require all cargo vessels over 300 gross tons and all passenger vessels, irrespective of size, which travel in international waters to carry distress and safety terminals that use our services." *Offering Memorandum* at 2, 84.

[16] *See, e.g, Rules and Policies on Foreign Participation in the U.S. Telecommunications Market, Report and Order and Order on Reconsideration*, 12 FCC Rcd 23891, ¶ 145 (November 26, 1997) ("[W]e are concerned that a foreign carrier with market power in an input market on the foreign and of a U.S. international route has the ability to exercise, or leverage, that market power into the U.S. market to the detriment of competition and consumers.").

[17] *See* Affidavit of Lon C. Levin, AMSC, attached as Exhibit A to Comments of AMSC Subsidiary Corporation on Applications of Lockheed Martin Corporation/Regulus, LLC, File No. SAT-ISP-19981016-00072 (Nov. 23, 1998).

property to competing systems, its past refusal to comply with this requirement is partly responsible for Inmarsat's dominance of the MSS market today. Indeed, had Inmarsat provided MSV with access to certain intellectual property on reasonable terms as required by the Inmarsat Convention, MSV would have been able to use its facilities to provide a competitive service to Inmarsat customers in North America. In its *Offering Memorandum*, Inmarsat bluntly admits the anticompetitive impact of its practices, stating "We believe this relatively large installed base of terminals contributes to stable revenues, particularly in the maritime market, because the cost and time required to switch to a competing system could be substantial." *Offering Memorandum* at 84.

Inmarsat does not dispute that it continues to make unreasonable demands for access to spectrum or that it impedes regional L-band systems from accessing sufficient spectrum.[18] Instead, Inmarsat claims that any issues MSV has with Inmarsat's unreasonable demands for L-band spectrum should be dealt with in the context of international coordination, where MSV has consistently met with intransigence on Inmarsat's part. *Inmarsat Response* at 36.

Finally, Inmarsat claims that its opposition to MSV's proposal regarding an Ancillary Terrestrial Component ("ATC") is motivated by genuine concerns regarding interference. *Inmarsat Response* at 37. This claim is belied by the absurd arguments Inmarsat has consistently made in the ATC proceeding, including the claim that as few as 12 mobile terminals operating in the terrestrial mode in the United States would cause interference to an Inmarsat satellite providing service over the Atlantic Ocean.[19] Inmarsat knows that if MSV is unable to secure

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[18] *MSV Opposition* at 5 (incorporating by reference previous MSV filings detailing Inmarsat's anticompetitive behavior).

[19] Inmarsat, Petition for Reconsideration and Clarification, IB Docket No. 01-185 (July 7, 2003), at 4 n.7. The Commission ultimately found that at least tens of thousands of mobile terminals could operate simultaneously on MSV's system without causing interference to Inmarsat. *See*

sufficient flexibility for its terrestrial component and is unable to deploy a replacement system, Inmarsat would benefit by being able to take over the spectrum that MSV now uses.

In an attempt to deflect the Commission's attention from its own anticompetitive practices, Inmarsat claims that MSV has acted in an anticompetitive manner. But these claims are without merit and certainly have no relevance to this proceeding. First, Inmarsat claims that prior to 2000 MSV had a monopoly in the land mobile market. *Inmarsat Response* at 35. In fact, MSV has always faced fierce competition from rural cellular providers as well as Big LEO MSS providers, as demonstrated by the financial struggles of MSV's predecessors. Second, Inmarsat claims that the Commission has "protected" MSV from U.S. MSS competitors by allowing MSV to access up to 20 MHz of L-band spectrum before licensing another U.S. system in the L-band. *Inmarsat Response* at 36. The Commission adopted this policy not to protect MSV from competition but because it found that this was the minimum amount of spectrum needed for a viable MSS system, an exercise that is no different from the ones it conducts when deciding how much spectrum to allocate to cellular or PCS licensees.[20] Moreover, far from "protecting" MSV from competition, since MSV was licensed the Commission has licensed MSS providers in the L-band, Big LEO, and 2 GHz bands. Third, Inmarsat claims that MSV does not use all of its coordinated spectrum. *Inmarsat Response* at 36. Inmarsat offers no evidence to support this claim, which is blatantly false. Finally, Inmarsat charges that MSV refuses to participate in L-band coordination negotiations. *Id.* at 36. This again is inaccurate.

Flexibility for Delivery of Communications by MSS Providers, Report and Order, IB Docket No. 01-185, 18 FCC Rcd 1962 (February 10, 2003) ("*ATC Order*").

[20] *See Establishing Rules and Policies for the use of Spectrum for Mobile Satellite Services in the Upper and Lower L-band, Order*, FCC 02-24, IB Docket No. 96-132 (Feb. 7, 2002). In its pending Petition for Clarification and Partial Reconsideration, MSV has demonstrated that the Commission is required to allow MSV to access up to 28 MHz of L-band spectrum. *See* MSV, Petition for Clarification and Partial Reconsideration, IB Docket No. 96-132 (September 6, 2002).

MSV has initiated and diligently pursued bilateral negotiations with other L-band operators, including Inmarsat, which it views as a reasonable predicate to constructive multilateral meetings.

IV. INMARSAT FAILS TO JUSTIFY ITS REQUEST FOR AN EXTENSION OF ITS DEADLINE FOR CONDUCTING A PUBLIC EQUITY OFFERING

Inmarsat brazenly states that it "has no plans, or ability" to conduct a public equity offering by the June 30, 2004 deadline and belatedly asks for an extension. *Inmarsat Response* at 38. The ORBIT Act, however, permits the Commission to extend the June 30, 2004 public offering deadline only "in consideration of market conditions and relevant business factors relating to the timing" of the offering. 47 U.S.C. § 763(5)(A)(ii). Unlike in its past extension requests, Inmarsat does not even attempt to provide any evidence of current "market conditions" or "business factors" that warrant an extension. To the contrary, the unrebutted evidence in the record demonstrates that economic conditions in general and the market for public equity offerings in particular have improved dramatically since Inmarsat's last extension request was granted. *MSV Opposition* at 7-9; *see also SES Comments* at 14 n.51. Inmarsat's decision to flout the requirements of the ORBIT Act is a circumstance of its own making and does not serve as a basis for extending its IPO deadline.[21]

Inmarsat and Telenor, one of the former foreign signatories that continues to own a substantial portion of Inmarsat, claim that it is Inmarsat's customers who will ultimately be harmed should the Commission find that Inmarsat has failed to comply with the ORBIT Act.

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[21] The Commission does not afford parties an extension of time to complete acts due to circumstances that were within the party's control. *See, e.g., Loral SpaceCom Corp., Memorandum Opinion, Order and Authorization*, 18 FCC Rcd 6301, ¶ 9 (Int'l Bur. 2003) ("Milestone extensions are granted only when the delay in implementation is due to circumstances beyond the licensee's control.").

Inmarsat Response at 5; *Telenor Response* at 6-7. This is like the man who is accused of killing his parents asking for the mercy of the court because he's an orphan. If Inmarsat and Telenor were truly concerned with the plight of their customers, they would have complied with these unambiguous requirements. At the very least, Inmarsat would have sought this declaratory ruling prior to taking the course it has chosen.[22]

[22] While Inmarsat claims to have a number of United States government customers, these customers should not be impacted should the Commission find that Inmarsat has not complied with the ORBIT Act. The ORBIT Act applies to licenses granted by the FCC to use Inmarsat. United States government users do not need an FCC license and, in fact, have been permitted to use Inmarsat for United States service even prior to its privatization.

Conclusion

For the foregoing reasons, the Commission must find that Inmarsat has not satisfied the requirements of the ORBIT Act and must prohibit Inmarsat from providing service in the United States, including services that would be provided on Inmarsat-4 satellites.

Respectfully submitted,

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Dated: April 30, 2004

CERTIFICATE OF SERVICE

I, Sylvia A. Davis, a secretary with the law firm of Shaw Pittman LLP, hereby certify that on this 30th day of April 2004, served a true copy of the foregoing "Response" by first class United States mail, postage prepaid, upon the following:

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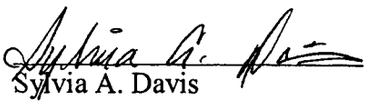

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