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

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Re: *Ex Parte* Submission  
 File No. SAT-MSC-20040210-00027

Inmarsat Ventures Limited (“Inmarsat”) hereby supplements its existing showing that an extension of the June 30, 2004 Inmarsat deadline under the Open-market Reorganization for the Betterment of International Telecommunications Act (“ORBIT Act” or “Act”) is warranted under certain circumstances.<sup>1</sup>

At the outset, Inmarsat urges the Commission to reach a prompt and favorable decision in this matter in order to provide certainty to Inmarsat and its users and in order to obviate the need for any extension in the first place. For the reasons expressed in its prior submissions, Inmarsat has fulfilled both the requirements and the purpose of the ORBIT Act. If the Commission, however, determines there are certain unsatisfied requirements, Inmarsat has explained that it would need time to address any such issues in a suitable manner.

In a recent *ex parte* meeting, Commission staff asked Inmarsat to address the impact, if any, of the possibility that the Commission does not issue a decision in this matter by June 30, 2004. As set forth below, the absence of such a decision by June 30, 2004 should have no impact on the authorizations granted to the providers of Inmarsat services in the U.S. Out of an abundance of caution, Inmarsat nonetheless details the market considerations and relevant business factors, among other things, that support the grant of any extension that the Commission may deem necessary or appropriate either (i) to ensure that Inmarsat services in the U.S. are unaffected if the Commission has not issued a determination in this matter by June 30, or (ii) to allow Inmarsat time to address any issues identified by the Commission in the unlikely event that the Commission finds that Inmarsat has not satisfied any of the remaining requirements of the Act.

<sup>1</sup> See Consolidated Response of Inmarsat, File No. SAT-MSC-20040210-00027 at 38 (filed April 20, 2004) (the “Consolidated Response”).

## **I. A Timely Commission Determination Is Critical**

As an initial matter, Inmarsat urges the Commission to conclude its review and, by June 30, 2004, find that Inmarsat has satisfied the remaining ORBIT Act requirements, thereby mooting the question of whether any extension is necessary. The record is very clear about Inmarsat's efforts since ORBIT was enacted in 2000, and the market considerations and relevant business factors that have given rise to the current context. Inmarsat has attempted to conduct a public offering of equity securities five times, at an out-of-pocket cost of over \$10 million for external advisors alone. Each time, its efforts were rebuffed by capricious equity markets. Last fall, Inmarsat was presented with a takeover proposal by funds managed by Apax Partners and Permira that would achieve the goal of substantially diluting the ownership interests of Inmarsat's former Signatory owners, and would be financed in part by Inmarsat issuing public debt securities.

After taking into consideration the continued weakness in the public equity market, fiduciary obligations to its owners who wished to sell their interests, and legal obligations under the U.K. Takeover Code, among other business factors, the Inmarsat Board of Directors recommended that Inmarsat shareholders approve the proposed takeover by funds advised by Apax Partners and Permira and an integrated initial public offering of Inmarsat debt securities.

On February 10, 2004, just one week after closing its offering of public debt securities, and concluding a series of transactions that resulted in a 57% dilution of former Signatory ownership, and four and one-half months before the statutory deadline, Inmarsat made the requisite submission informing the Commission that it had fulfilled the remaining ORBIT requirements.<sup>2</sup>

A swift determination from the Commission is important. Inmarsat has substantially diluted the aggregate ownership interests of its former Signatory owners, is controlled by non-Signatory investors, has its securities listed for trading on a major stock exchange, and is subject to transparent and effective securities regulation. If any other ORBIT Act requirement remains to be satisfied, Inmarsat needs to be promptly apprised so that it can satisfy it, or seek an alternative solution, in a timely fashion.

## **II. No Extension Is Necessary Pending The Commission's Determination**

In 2001, the Commission authorized certain entities to provide Inmarsat mobile satellite services in the U.S.<sup>3</sup> Having granted market access, the ORBIT Act requires that the

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<sup>2</sup> See Inmarsat's February 10, 2004 letter to Marlene H. Dortch, Secretary, Federal Communications Commission, File No. SAT-MS-C-20040210-00027 at 2-5 ("*February 10<sup>th</sup> Letter*").

<sup>3</sup> *In the Matter of Comsat Corporation d/b/a Comsat Mobile Communications, et al.* 16 FCC Rcd. 21,661 (2001) (the "*Market Access Order*").

Commission make an affirmative determination, after due notice and comment, prior to limiting or revoking the previously issued authorizations.<sup>4</sup> Thus, under the ORBIT Act, the mere passage of the June 30, 2004 deadline, while this proceeding remains pending, should have no effect on those existing authorizations to access the Inmarsat system.

The license condition imposed in the *Market Access Order* is consistent with this requirement of the Act. In the *Market Access Order*, the Commission provided that “the authorizations for non-core services issued herein are subject to limitation or revocation pursuant to Section 601(b)(1) of the ORBIT Act and Title III of the Communications Act of 1934, 47 U.S.C. 301 et. seq., should Inmarsat fail to conduct an IPO in compliance with the requirements of Section 621 of the ORBIT Act.”<sup>5</sup> No revocation or limitation of those authorizations granted is even contemplated should the June 30, 2004 deadline pass without the Commission having acted on Inmarsat’s pending showing. Instead, by their own terms, the authorizations are subject only to a specific *condition subsequent* --- an express Commission determination whether Inmarsat has satisfied the remaining requirements of the Act.

The Commission has the authority to limit the existing authorizations to provide Inmarsat service to the U.S., but only if it makes an affirmative determination that Inmarsat has not complied with the Act. Until a decision is rendered with respect to the transaction described in the *February 10<sup>th</sup> Letter*, the authorizations granted Inmarsat’s service providers should continue in full force and effect. Thus, even if the Commission has not issued a decision by the June 30, 2004 deadline, there should be no impact on the already authorized provision of Inmarsat services in the U.S.

## II. An Extension Of The June 30, 2004 Deadline Would Be Warranted Under Any Circumstance

The ORBIT Act grants the Commission broad discretion to extend the June 30, 2004 deadline at its discretion. The Act provides that the initial public offering of securities “shall be conducted, for the successor entities of Inmarsat, not later than June 30, 2004, except that the Commission may extend this deadline to not later than December 31, 2004.”<sup>6</sup> The ORBIT Act originally directed the Commission to consider “market conditions and relevant business factors relating to the timing of an initial public offering,” but in 2001 Congress struck this language with respect to Inmarsat.<sup>7</sup> Thus, through the 2001 amendment, Congress significantly broadened the scope of the Commission’s discretion in determining whether it could grant Inmarsat an extension of the initial public offering deadline. For the following

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<sup>4</sup> See ORBIT Act § 601(b)(1)(B).

<sup>5</sup> *Market Access Order* at ¶112.

<sup>6</sup> 47 U.S.C. § 763(5)(A)(ii).

<sup>7</sup> See 47 U.S.C. § 763(5)(A)(ii) *cf.* ORBIT Act § 621(5)(A)(ii). The extension provision with respect to Intelsat, however, retains the limiting language. See 47 U.S.C. § 763(5)(A)(i).

reasons, an extension of the June 30, 2004 deadline would be warranted, as appropriate, (i) to the extent the Commission deems necessary to ensure that Inmarsat services in the U.S. are unaffected if the Commission has not issued a determination in this matter by June 30, as well as (ii) to allow Inmarsat time to address the issues identified by the Commission in the unlikely event that the Commission finds that Inmarsat has not complied with a remaining requirement of the Act. Even if the Commission chose to focus only on "market conditions and relevant business factors," there is more than an adequate basis for an extension in either such case.

As an initial matter, under no circumstances should Inmarsat or its service providers be constrained or otherwise disadvantaged due to the length of the Commission's review process regarding the *February 10<sup>th</sup> Letter*. Thus, even if the Commission disagrees with Inmarsat's analysis above and believes that an extension of the June 30 deadline is necessary to ensure the continued provision of Inmarsat services in the U.S. pending a decision in this proceeding, an extension would be warranted.

Until the Commission issues a decision in this proceeding, it would be unreasonable to expect Inmarsat to engage in further ORBIT Act-related activities. As discussed extensively in this proceeding, Inmarsat has conducted a public offering of securities that funded the dilution of the aggregate ownership of former Inmarsat Signatories. This integrated transaction satisfies ORBIT Act requirements. The Administration and two key Senators agree that the goals of the ORBIT Act have been met, and Inmarsat awaits a confirmatory decision from the Commission. In this context, there is no reason for Inmarsat to pursue other activities, such as a further public offering. Such an offering would cost millions of dollars in advisor fees alone and take approximately three to four months to effectuate. During this period, Inmarsat's management would be distracted from daily operations and instead would need to focus on preparing for the offering, road shows, and investor concerns. Moreover, even if Inmarsat conducted such a further offering, there is no assurance that such an offering (i) would be necessary as a legal matter or (ii) if necessary, would be adequate to address any potential "deficiencies" raised by SES or MSV in this proceeding, which the Commission has yet to validate. Indeed, in the absence of a Commission decision, Inmarsat simply would be guessing about what additional steps would be warranted, all at the expense of its investors and its business.

A much more reasonable approach from a policy, equitable, and business perspective is to allow the Commission to complete its review of Inmarsat's transaction and issue detailed findings. If the Commission determines that Inmarsat has satisfied the requirements of the Act, then no further action by Inmarsat is legally necessary or appropriate as a business matter. In the event that the Commission identifies some deficiency, it should issue a decision that explains any aspect of the ORBIT Act that has not been met, and provide Inmarsat time to address the issue.

To the extent that the Commission looks to other business factors and market conditions, there is ample support in the record to justify an extension. As explained above, the circumstances that have given rise to the current context are the result of years of adverse market conditions and business factors that have quashed Inmarsat's prior ORBIT compliance efforts, on which Inmarsat has expended over \$10 million in out-of-pocket costs alone.

More fundamentally, as the Administration recognized, the public equity market was weak in the fall of 2003, when Inmarsat and its shareholders decided to pursue the transaction that is the subject of this proceeding.<sup>8</sup> Inmarsat and its shareholders were faced with the choice of (i) pursuing a public offering of debt securities to fund a transaction that would substantially dilute the former Signatory ownership interests in Inmarsat, or (ii) gambling that the public equity market would improve prior to June 30, 2004 to the point where a sufficiently large equity public offering would be viable. Having endured years of capricious equity markets and with no sure improvement in sight, Inmarsat commenced the transaction that is the subject of the *February 10<sup>th</sup> Letter*. As a result, Inmarsat conducted a public offering of debt securities that financed a transaction that resulted in 57% dilution of the aggregate ownership interests of former Signatories. The transaction was executed in the timeframe prescribed by the ORBIT Act and satisfies the requirements and purpose of the Act as well: (i) causing substantial dilution of the aggregate ownership interests of its former Signatory owners, (ii) having Inmarsat securities listed for trading on a major stock exchange, and (iii) having Inmarsat subject to transparent and effective securities regulation.

The decision of Inmarsat and its shareholders was prudent at the time and is further justified in hindsight by the continued instability and weakness of today's public equity market. One of the leading members of Congress has recently recognized the current adverse conditions of the market, and the impact on U.S. investors of a public offering of a satellite company in today's market. Representative John Dingell concluded:

At the very least, however, the Government should not be forcing companies to go public when market conditions are unfavorable. Unfortunately, that is exactly what is now happening, unless we approve the bill before us. The ORBIT Act requires INTELSAT to complete its IPO by June 30--just two short months away. And while we all hope that our economy is on the upswing by then, forcing INTELSAT to conduct an IPO next month is bad policy and will cost INTELSAT's owners, including many U.S. investors, hundreds of millions of dollars.<sup>9</sup>

Congressman Dingell made this statement only three weeks ago in the context of amending the ORBIT Act to extend the deadline for Intelsat. Since then, market indicators such as the Dow Jones Industrial Average and the NASDAQ Composite remain highly volatile. Regardless of SES's views on Representative Dingell's expertise,<sup>10</sup> it is Congress who drafts and passes legislation, and the views of its members are useful in guiding the Commission in the exercise of its discretion under the ORBIT Act. Representative Dingell has made clear that he believes that an extension for INTELSAT at this time is justified by the weak state of the market.

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<sup>8</sup> See *Consolidated Response* at Exhibit A.

<sup>9</sup> Congressional Record H2600 (House of Representatives – May 5, 2004).

<sup>10</sup> See Reply Comments of SES AMERICOM, Inc., IB Docket No. 04-158, Report No. SPB-206 at 4, n.9 (filed May 14, 2004).

For the same reasons expressed by Representative Dingell, were Inmarsat forced to conduct an equity public offering at this time, it likely would cost Inmarsat's owners many millions of dollars. On a combined basis, over 40% of the capital in the Apax Partners and Permira funds is derived from U.S. investors. Moreover, Lockheed Martin Corporation, through Comsat owns approximately 14% of Inmarsat. Thus, the substantial economic interests of U.S. investors in Inmarsat could be adversely affected by any precipitous actions. For this reason, the same justification for passing the Intelsat extension should suffice for the Commission's purposes in this context.

LATHAM & WATKINS<sup>LLP</sup>

Inmarsat urges the Commission to reach a prompt and favorable decision in this matter in order to provide certainty to Inmarsat and its users and in order to obviate the need for any extension. For the reasons set forth above, however, if an extension becomes necessary, allowing an extension of the initial public offering deadline is well within the authority of the Commission and also would serve the public interest.

Respectfully submitted,



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## CERTIFICATE OF SERVICE

I hereby certify that on this 26<sup>th</sup> day of May, 2004, I caused a true copy of the foregoing “*Ex Parte* Submission” to be served by first-class mail and, where noted, by hand (\*) on the following:

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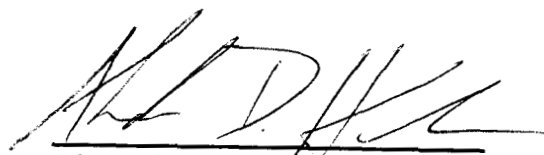
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