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June 10, 2004

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

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

Dear Ms. Dortch:

In its *ex parte* presentations in this proceeding, Inmarsat has explained that both the company and its board of directors had obligations under The City Code on Takeovers and Mergers ("U.K. Takeover Code" or "Code")[1] when presented with takeover proposals. The purpose of this letter is to briefly explain the application of the Code in Inmarsat's case, and the means by which the takeover proposal was effectuated.

Inmarsat Ventures was registered in the U.K. as a "plc," a public limited company, in anticipation of its planned initial public offering of securities.[2] In the U.K., all such "public companies," regardless whether they have securities listed on an exchange, are subject to the Code.[3] As a result, Inmarsat Ventures was subject to the Code when approached by private equity firms with takeover proposals.

The Code seeks to establish standards of commercial behavior in the U.K. and provides a framework for the regulation of takeovers. It is designed to ensure fair and equitable

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1 *See* http://www.thetakeoverpanel.org.uk.

2 *See In the Matter of Comsat Corporation d/b/a Comsat Mobile Communications, et al.*, 16 FCC Rcd. 21,661 at ¶ 8 (2001). As part of the U.K. court-approved takeover arrangement described below, and because Inmarsat Ventures became a wholly-owned subsidiary of Inmarsat Investments Limited, it was re-registered as Inmarsat Ventures Limited, a private company, effective as of December 17, 2003. Inmarsat Finance plc, a wholly-owned finance subsidiary of Inmarsat Group Limited, was identified instead as the Inmarsat entity to issue public securities as part of the takeover transaction.

3 Code at A8.

treatment of all shareholders, and to provide an orderly framework in which takeovers are conducted.[4] A principal requirement of the Code is that directors, and their financial advisors, have a duty, above all, to act in the best interests of the shareholders of the company.[5] The Code also mandates that any person who would acquire at least 30% of the voting shares of a company must also make offers to acquire the voting shares of all other shareholders on comparable terms.[6]

The Code provides for an offer to be made only when the offeror has every reason to believe that it will be able to implement its offer, and specifies that this responsibility also applies to the offeror's financial advisor. The Code further requires that an offer be fully funded, and include confirmation by the financial advisor (or another appropriate party) that financial resources are available to satisfy the offer if it is fully accepted.[7]

The Code expressly recognizes that its requirements will impinge on the freedom of boards in their actions related to takeover offers, and that it limits the manner in which the pursuit of the best interests of shareholders can be carried out.[8] Among other things, the Code prohibits taking certain actions during the course of an offer or if a bona fide offer is believed to be imminent, without the approval of shareholders in a general meeting, that could effectively result in any bona fide takeover offer being frustrated, or in the shareholders being denied the opportunity to make their own decision about a takeover offer on the merits.[9]

The panel of experts that administers the Code cooperates with other regulatory bodies in the U.K., such as the Department of Trade and Industry, London Stock Exchange, the Bank of England, and the Financial Services Authority. This cooperation involves reporting breaches of the Code, conducting investigations, and enforcing sanctions.[10] Sanctions can include, among other things, loss of access to the securities markets in the U.K., and loss of access to the services of financial professionals, such as investment bankers.[11]

Thus, in the U.K., under the Code, once Inmarsat's board approved and announced the Apax Partners and Permira final takeover offer, a series of events were set in motion to ensure that shareholders were able to make a prompt and informed decision, that the

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4 Code at A1.

5 Code at B1-2.

6 Code at F1.

7 Code at D5-6.

8 Code at B1.

9 Code at B2.

10 Code at A3.

11 Code at A1-2.

interests of all the shareholders were taken into account, and that the shareholders were able to realize the benefits of that offer if they so choose.

As part of their offer, Apax Partners and Permira established a number of companies that would serve as the vehicle through which they would acquire control of Inmarsat. These entities, known as Duchessgrove Limited, Lavenderview Limited, Grapedrive Limited, and Grapeclose Limited (the latter being the "Takeover Entity" and together known as the "Takeover Entities") are described in greater detail in the *Scheme of Arrangement* previously submitted into the record.[12] The Takeover Entities entered into various contractual commitments (i) establishing the terms of the takeover offer by the Takeover Entity as well as the means by which it would be financed, and (ii) constituting part of the documentation through which the takeover offer was made and the takeover would be effectuated, if approved.

First, certain of the Takeover Entities executed financing arrangements with various lenders to fund the proposed acquisition, the adequacy of which was confirmed by their financial advisor.[13] Among those executed arrangements was the Mezzanine Loan Facility, dated October 10, 2003, with Credit Suisse First Boston, and other institutions.[14] That agreement provided for the $365 million bridge loan that would be used to fund, in part, the proposed takeover. That agreement also contractually committed the Takeover Entities to refinance the bridge loan through a public offering of high yield notes (debt securities) that would be managed by the lenders.[15] To ensure the lenders received the benefit of their bargain, that agreement imposed significant financial consequences if the Takeover Entities did not effectuate such a public offering of securities.[16] As mentioned above, this funding was required by the Code to be in place on the making of the firm offer by Apax Partners and Permira.

Second, the Takeover Entities and Inmarsat Ventures plc (now Inmarsat Ventures Limited), among others, executed a Shareholders Agreement, on October 16, 2003,[17] which committed Inmarsat Ventures plc to take the various actions required by the financing

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12 *See* Inmarsat Scheme of Arrangement at 20 attached to *Ex parte* Submission, File No. SAT-MSC-20040210-00027 (filed May 26, 2004) ("*Scheme of Arrangement*"). These entities were renamed Inmarsat Group Holdings Limited, Inmarsat Holdings Limited, Inmarsat Group Limited, and Inmarsat Investments Limited, respectively.

13 *See Scheme of Arrangement* at 91-92.

14 *See* Mezzanine Loan Facility Agreement attached to *Ex parte* Submission, File No. SAT-MSC-20040210-00027 (filed June 8, 2004) ("*Mezzanine Loan Facility*").

15 *Mezzanine Loan Facility* §§ 21.3 and 21.4.

16 *Mezzanine Loan Facility* § 11.2.

17 *See* Shareholders Agreement attached to *Ex parte* Submission, File No. SAT-MSC-20040210-00027 (filed May 26, 2004) (the "*Shareholders Agreement*").

arrangements, including the Mezzanine Loan Facility,[18] and specifically required Inmarsat Ventures plc to comply with the covenants regarding the issuance of the high yield notes.[19]

Next, consistent with this established U.K. process, within a week after having established the terms of the Apax Partners and Permira offer, on October 22, 2003, the Inmarsat Board provided the requisite notice to its shareholders, describing the terms of the takeover, and expressing its determination that, upon advice from Morgan Stanley & Co. Limited, the price offered was fair. A requisite court meeting was set for December 1, 2003 at which the shareholders had the opportunity pass a resolution approving, or disapproving, the takeover offer. Following that court meeting, an extraordinary general meeting of Inmarsat shareholders was scheduled where the shareholders needed to pass a special resolution if they approved the takeover offer. The requisite shareholder consent was received in each case. About two weeks thereafter, on December 16, 2003, a formal court hearing was held approving the means by which the takeover would be implemented. On December 30, 2003, the transaction fully funded, and funds under the Mezzanine Loan Facility, together with other funds sources, were drawn down to pay the consideration due under the terms of the takeover. Five weeks later, on February 3, 2004, Inmarsat fulfilled its obligations regarding the Mezzanine Loan Facility by repaying its bridge loan with the proceeds from its sale of high yield notes,[20] which were listed for trading on the Luxembourg Stock Exchange as of February 27, 2004.

The Inmarsat Board was unable, however, to make a full assessment of the ORBIT Act issues, and meaningful guidance from the Commission could not be obtained, until early 2004, because all of the relevant details would not be known until such time as the Inmarsat shareholders decided whether to approve the transaction and whether to reinvest in new Inmarsat, after the U.K. court approval was obtained, and after the terms of the Inmarsat public debt securities were finally established. Until then, the Inmarsat Board could not know the level of dilution that would be achieved,[21] or be sure about the stock exchange on which the

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18 *See Shareholders Agreement* § 3.16.

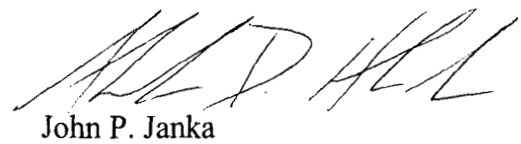
19 *See Shareholders Agreement* § 2.4.9.

20 *See* Inmarsat's February 10, 2004 letter to Marlene H. Dortch, Secretary, Federal Communications Commission, File No. SAT-MSC-20040210-00027, Attachment B at 36.

21 Prior to the planned December 2003 vote, three shareholders had given irrevocable undertakings and statements of intent to support the takeover offer, subject to certain conditions. But they did not commit to sell their shares if the offer was not approved by the other shareholders. The offer provided that they retained the option to "rollover" their interests into new Inmarsat, as one of those three did.

forthcoming debt securities would be listed, or the nature of securities regulation to which Inmarsat would be subject. All of this information was promptly provided to the Commission in Inmarsat's February 10, 2004 letter informing the Commission of this transaction.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of June, 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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