

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

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Federal Communications Commission
Office of Secretary

In the Matter of)
)
Inmarsat Global Limited)
)
Petition for Declaratory Ruling to Provide Mobile)
Satellite Service to the United States Using the)
2 GHz and Extended Ku Bands)

File No. SAT-PPL-20050926-00184

Received

OCT 07 2005

Policy Branch
International Bureau

OPPOSITION TO PETITION FOR DECLARATORY RULING

I. INTRODUCTION

Pursuant to Section 1.45(b) of the Commission's rules, 47 C.F.R. § 1.45(b), ICO Satellite Services G.P. ("ICO") opposes the above-captioned petition ("Petition") of Inmarsat Global Limited ("Inmarsat") seeking authorization to provide 2 GHz mobile satellite service ("MSS") to the United States using a U.K.-authorized satellite at 113° W.L.¹ Serious procedural deficiencies make the Petition unacceptable for filing, and it must be dismissed.²

Section 25.112 of the Commission's rules, 47 C.F.R. § 25.112, authorizes the Commission to dismiss an application as unacceptable for filing if the application "does not substantially comply with the Commission's rules, regulations ... or other requirements."³ The

¹ See Petition at 1 (Sept. 26, 2005).

² Because the Petition must be dismissed for procedural deficiencies, ICO does not address the merits of the Petition.

³ The Petition seeks authorization to provide 2 GHz MSS to the United States and generally must provide the same information required for satellite and earth station applications. See 47 C.F.R. Footnote continues...

Petition is procedurally defective in at least three respects. First, it attempts to circumvent the Commission's satellite processing round requirements by seeking U.S. market access prior to launch of a satellite. Second, it was filed improperly pursuant to procedures that apply only to conventional C-band and Ku-band fixed satellite service ("FSS") systems. Third, it is premature, given the Commission's pending proceedings to redistribute or reallocate returned 2 GHz MSS spectrum.

II. INMARSAT MAY NOT CIRCUMVENT PROCESSING ROUND REQUIREMENTS BY SEEKING U.S. MARKET ACCESS PRIOR TO LAUNCH OF ITS SATELLITE

Nearly six years after withdrawing its request for U.S. market access using a non-U.S.-licensed 2 GHz MSS system, Inmarsat attempts to renew its request by filing a petition for declaratory ruling outside of a 2 GHz MSS processing round. The Commission's rules and regulations, however, do not permit Inmarsat to circumvent the processing round requirements in this manner.

When the Commission originally established its framework in the *DISCO II Order* for allowing non-U.S.-licensed satellites to access the U.S. market, it provided two procedures under which non-U.S.-licensed satellite operators could seek authorization to serve the United States.⁴ The first procedure ("First Procedure") allows a non-U.S.-licensed satellite operator to participate in a satellite processing round by filing either a "letter of intent" ("LOI") or an earth

§ 25.137. Accordingly, the Petition should be subject to the same standard for dismissal as satellite and earth station applications.

⁴ See *Amendment of the Commission's Regulatory Policies to Allow Non-U.S.-Licensed Space Stations to Provide Domestic and International Satellite Service in the United States*, 12 FCC Rcd 24094, ¶¶ 183-88 (1997) ("*DISCO II Order*").

station application by the relevant “cut-off” date established by the Commission.⁵ The second procedure (“Second Procedure”) allows the non-U.S.-licensed satellite operator to obtain access to the U.S. market without participating in a processing round by filing an earth station application “to access a non-U.S. satellite that is already operating and for which the international coordinat[ion] process ... has been initiated.”⁶

On reconsideration of the *DISCO II Order*, the Commission added a third procedure (“Third Procedure”) to allow certain “operators of in-orbit non-U.S. satellites” to obtain access to the U.S. market without participating in a processing round by filing a petition for declaratory ruling on whether the Commission should permit the non-U.S. satellite to serve the United States.⁷ The Commission, however, adopted this procedure for “fixed-satellites offering fixed-satellite service in conventional C-band and Ku-band frequencies.”⁸

In the *Satellite Licensing Reform Order*, the Commission revised its satellite licensing procedures to provide (1) a modified processing round procedure for nongeostationary satellite orbit-like (“NGSO-like”) systems such as MSS systems, and (2) a “first-come, first-served”

⁵ *Id.* ¶ 184.

⁶ *Id.* ¶¶ 1, 186. Under both the First and Second Procedures, requests for U.S. market access, whether through an LOI or earth station application, generally must provide the same information required for satellite license applications under Section 25.114 of the Commission’s rules. The Commission does not require requests for U.S. market access to provide technical information if international coordination has been completed. *Id.* ¶¶ 190, 191.

⁷ See *Amendment of the Commission’s Regulatory Policies to Allow Non-U.S.-Licensed Space Stations to Provide Domestic and International Satellite Service in the United States*, 15 FCC Rcd 7207, ¶ 10 (1999) (“*DISCO II First Reconsideration Order*”).

⁸ *Id.* ¶ 1. The Commission required petitions for declaratory ruling filed under the Third Procedure to provide the same information required under Sections 25.114 and 25.137 of the Commission’s rules, 47 C.F.R. §§ 25.114, 25.137, to be included in an earth station application to access a non-U.S. satellite. *Id.* ¶ 10.

procedure for geostationary satellite orbit-like (“GSO-like”) systems such as FSS systems.⁹ In doing so, the Commission re-affirmed its existing regulatory framework for considering U.S. market access requests and determined that it did not need to revise that framework for modified processing rounds.¹⁰ For the first-come, first-served procedure, the Commission decided that LOIs and earth station applications would “continue to be the vehicle for non-U.S.-licensed satellite operators to request access to the United States” and would be placed into the satellite application processing queue together with U.S. satellite applications.¹¹

Because the Commission has not commenced a new processing round for 2 GHz MSS, the First Procedure for considering new requests by non-U.S.-licensed satellite operators to provide 2 GHz MSS to the United States is unavailable. In filing the Petition, Inmarsat apparently seeks to utilize the Third Procedure for obtaining U.S. market access. The Commission, however, repeatedly has affirmed that the procedure for seeking U.S. market access outside a processing round is available only to non-U.S.-licensed satellite operators seeking market access through an “in-orbit” satellite¹² or, in other words, a satellite that is “*already* operating.”¹³ Although Inmarsat cites two International Bureau decisions granting a declaratory ruling petition seeking U.S. market access prior to the launch of the non-U.S. satellite,¹⁴ those decisions did not specifically address whether the Commission’s rules and regulations permit the

⁹ See *Amendment of the Commission’s Space Station Licensing Rules and Policies*, 18 FCC Rcd 10760, ¶¶ 1, 21 (2003) (“*Satellite Licensing Reform Order*”).

¹⁰ *Id.* ¶ 291.

¹¹ *Id.* ¶ 294.

¹² *Id.* ¶ 1; *Satellite Licensing Reform Order*, ¶ 287.

¹³ *DISCO II Order*, ¶ 186 (emphasis added).

¹⁴ See Inmarsat Petition at 19-21.

filing of a petition for declaratory ruling for U.S. market access prior to launch of its satellite without regard to processing round requirements.¹⁵

Moreover, both cases involved non-U.S.-licensed FSS systems. Because FSS systems are no longer subject to processing round requirements, the Commission's rationale for the "in-orbit" requirement would not be undermined by allowing non-U.S.-licensed FSS operators to seek U.S. market access by filing a petition for declaratory ruling outside of a processing round. Specifically, this permissive approach would not allow non-U.S.-licensed FSS operators to circumvent any processing round requirements, because these requirements no longer apply to FSS. Moreover, under the first-come, first-served procedure, non-U.S.-licensed FSS operators already are permitted to seek U.S. market access by filing an LOI at any time even if they have not yet launched a satellite. Thus, Commission policies are not compromised if a non-U.S.-licensed FSS operator files a declaratory ruling petition seeking U.S. market access through an unlaunched satellite.

To the contrary, waiving the "in-orbit" requirement with respect to non-U.S.-licensed MSS systems would compromise Commission policy objectives because MSS systems remain subject to processing round requirements.¹⁶ For NGSO-like services such as MSS, the Commission decided to retain its processing round procedure, with certain modifications, rather than replace it entirely with a first-come, first-served procedure. The Commission rejected a first-come, first-served approach for NGSO-like services because that approach would allow "the

¹⁵ See *Star One S.A.*, 19 FCC Rcd 16334 (Int'l Bur. 2004); *Telesat Canada*, 17 FCC Rcd 25287 (Int'l Bur. 2002).

¹⁶ In any event, the Petition does not seek a waiver of the "in-orbit" requirement.

first qualified applicant [to] request authority in so much of the orbit-spectrum resource that additional market entry would be precluded.”¹⁷

If non-U.S.-licensed MSS operators were permitted to file declaratory ruling petitions at any time, regardless of whether they have launched a satellite, the Commission in effect would be implementing a “first-come, first-served” policy for MSS operations. Granting a waiver would allow non-U.S.-licensed MSS operators such as Inmarsat to ignore at will the Commission’s processing round requirements and the pro-competitive policies underlying those requirements. Specifically, the MSS processing rounds provide the framework for, among other things, equitably allocating scarce spectrum in a given band to licensees that expended substantial time and resources to comply with the Commission’s exacting processing round requirements. The Commission clearly anticipated the issues created by late entrants and wisely required that spectrum reservations be accorded outside of processing rounds only to those operators with launched satellites.

Any other result would allow late entrants, whose milestone completion dates likely would be extended five to six years beyond those applicable to existing processing round licensees,¹⁸ to receive spectrum reservations for systems that may never be constructed. This result would unnecessarily and unfairly deprive existing processing round licensees access to critical spectrum resources. Requiring in-orbit satellites as an essential showing for MSS applications submitted outside a processing round ensures that “paper” satellite applications will

¹⁷ See *Satellite Licensing Reform Order*, ¶ 22.

¹⁸ For ease of reference, the terms “licenses” and “licensees,” with respect to 2 GHz MSS, will refer to FCC authorizations to provide 2 GHz MSS and the parties that hold those authorizations, regardless of whether the authorization is a U.S. satellite license or a letter of intent authorization granting a reservation of spectrum to a foreign-licensed satellite system.

not be entertained. Accordingly, the Petition should be dismissed without delay for failure to meet the in-orbit requirement under the Third Procedure.

III. FCC RULES DO NOT ALLOW INMARSAT TO FILE A PETITION FOR DECLARATORY RULING TO PROVIDE 2 GHz MSS TO THE UNITED STATES

The Petition also is procedurally defective because it seeks to utilize the Third Procedure to obtain U.S. market access through a satellite that will provide 2 GHz MSS and operate extended Ku-band feeder links. The Third Procedure is applicable only to “fixed-satellites offering fixed-satellite service in conventional C-band and Ku-band frequencies,”¹⁹ and not to any other satellite services. In fact, the Ordering Clauses of the *DISCO II First Reconsideration Order* expressly limit the use of petitions for declaratory ruling under the Third Procedure to “fixed-satellite services in the conventional C- and Ku-bands.”²⁰

In adopting the Third Procedure to allow petitions for declaratory ruling only for conventional C-band and Ku-band FSS systems, the Commission explained that “[t]here exists an established operating environment for these systems and it is possible to maintain acceptable levels of interference to other systems operating in the same environment when a licensee offering these services switches from one satellite to another.”²¹ In contrast, “for services such as MSS ... service rules are either non-existent or recently adopted by the Commission.”²² The Commission thus reasoned that the “operating environment for these services [including MSS] is

¹⁹ *DISCO II First Reconsideration Order*, ¶ 1.

²⁰ *Id.* ¶ 28.

²¹ *Id.* ¶ 6 n.19.

²² *Id.*

continuing to evolve and could substantially change if an earth station licensee providing these services were to switch from one satellite to another without prior Commission authorization.”²³

Given the distinction between conventional C-band/Ku-band FSS systems and other satellite systems such as MSS, the Commission expressly declined to permit non-U.S.-licensed MSS and other non-C-band/Ku-band FSS systems to submit declaratory ruling petitions to access the U.S. market under the Third Procedure. Consequently, because the Petition seeks to provide 2 GHz MSS to the United States using a non-U.S. satellite, it is prohibited under the Commission’s *DISCO II First Reconsideration Order* and should be dismissed on that ground alone.

IV. FCC PROCESSING OF THE PETITION IS PREMATURE IN VIEW OF THE PENDING PROCEEDINGS TO ADDRESS THE REDISTRIBUTION OR REALLOCATION OF RETURNED 2 GHz MSS SPECTRUM

Importantly, any Commission consideration of the Petition would be premature, given that the Commission has not yet resolved the pending proceedings addressing the redistribution or reallocation of returned 2 GHz MSS spectrum.²⁴ In evaluating requests for U.S. market access, the Commission is required to conduct a public interest analysis that considers various factors, including spectrum availability.²⁵ Specifically, the Commission may deny U.S. market access if, for example, there is insufficient spectrum to accommodate new entrants in a particular frequency band.²⁶ Until the Commission resolves the crucial issue of whether and how to

²³ *Id.*

²⁴ See FCC Public Notice, *Commission Invites Comments Concerning Use of Portions of Returned 2 GHz Mobile Satellite Service Frequencies*, FCC 05-133 (June 29, 2005); FCC Public Notice, *Commission Invites Comments Concerning Use of Portions of Returned 2 GHz Mobile Satellite Service Frequencies*, FCC 05-134 (June 29, 2005).

²⁵ See *DISCO II Order*, ¶¶ 146-50.

²⁶ See *id.* ¶ 147.

redistribute or reallocate the returned 2 GHz MSS spectrum, it cannot possibly determine how much 2 GHz MSS spectrum may be available for Inmarsat's use and therefore cannot assess the merits of the Petition.

Immediate Commission resolution of the pending 2 GHz spectrum redistribution proceedings is critical to expediting the provision of 2 GHz MSS to the United States. For too long, the future of 2 GHz MSS has been clouded by regulatory uncertainty regarding the amount of spectrum available for each 2 GHz MSS system. Recent local and national emergencies affecting the capabilities of terrestrial wireline and wireless systems have demonstrated that spectrum is desperately needed now to enable next-generation MSS systems to satisfy public safety and homeland security demands. Inmarsat is not expected to launch a 2 GHz MSS satellite until 2010, if at all, while existing 2 GHz MSS licensees are ready to launch their systems by July 2007. It is therefore imperative that the Commission resolve the spectrum needs of existing 2 GHz MSS licensees, rather than waste time and resources to address the speculative spectrum needs of a late entrant.

V. CONCLUSION

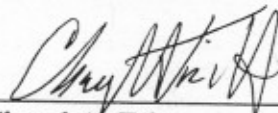
Based upon the foregoing, ICO urges the Commission immediately to dismiss the Petition as unacceptable for filing.

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October 6, 2005

Respectfully submitted,

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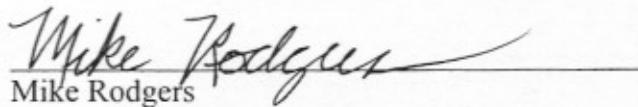
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