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

Federal Communications Commission

BUREAU/OFFICE

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 11 2005

Policy Branch
International Bureau

TO: Chief, International Bureau

OBJECTION TO ACCEPTANCE OF APPLICATION FOR FILING

The above-captioned application of Inmarsat Global Limited ("Inmarsat") improperly seeks to obtain U.S. authority to operate a new U.K.-based mobile satellite service ("MSS") space station in the 2 GHz band.¹ As described below, Inmarsat's application cannot lawfully be accepted for filing under the Commission's satellite licensing rules and spectrum management policies. Accordingly, TMI Communications and Company Limited Partnership and its affiliate, TerreStar Networks Inc. (collectively, "TMI/TerreStar")² respectfully request that the Commission dismiss Inmarsat's application.

¹ See Inmarsat Global Limited, Application for Satellite Space Station Authorizations, File No. SAT-PPL-20050926-00184 (filed Sept. 26, 2005) ("Inmarsat Application"). TMI/TerreStar have cited the file number of Inmarsat's application for ease of reference. However, under Section 25.150 of the Commission's rules, "Neither the assignment of a file number and/or other identifier nor the listing of the application on public notice as received for filing indicates that the application has been found acceptable for filing or precludes the subsequent return or dismissal of the application if it is found to be defective or not in accordance with the Commission's rules." 47 C.F.R. § 25.150.

² TerreStar is the prospective assignee of TMI's 2 GHz MSS authorization and, pursuant to an agreement with TMI, has contracted with Space Systems/Loral Inc. for a satellite that will operate in this band.

A. Inmarsat's Application Must Be Dismissed As Untimely.

Inmarsat filed the above-captioned application on September 26, 2005. Yet as Inmarsat is well aware, the deadline for participating in the Commission's 2 GHz MSS processing round expired *eight years* earlier, on September 26, 1997. No second processing round has been initiated by the Commission.³

Although Inmarsat previously tendered a timely LOI application prior to the 1997 cut-off date, on November 21, 2001, following adoption of service rules for the 2 GHz MSS, Inmarsat asked the Commission to dismiss its application "without prejudice."⁴ The Commission promptly did so and, on November 29, 2000, issued a Public Notice to "confirm" that Inmarsat's Letter of Intent application "has been dismissed without prejudice to its seeking authorization to provide 2 GHz Mobile Satellite Service *in a subsequent processing round.*"⁵

³ *Extension of Cut-Off Dates for Applications, Letters of Intent, and Amendment to Applications in the 2 GHz and 36-51.4 GHz Frequency Bands*, FCC, Public Notice, Report No. SPB-99 (rel. Sept. 4, 1997). The Commission's original cut-off notice for the only 2 GHz MSS processing round to date clearly stated that, pursuant to Section 25.155 of the Rules (47 C.F.R. Section 25.155, applications that are not complete as of the cut-off date "will be dismissed as unacceptable for filing." *Cut-Off Established For Additional Space Station Application, Letters of Intent, And Amendments To Pending Applications In The 2 GHz Frequency Band*, Public Notice, Report No. SPB-88 (rel. July 22 1997), at 3. Likewise, the Commission's August 2000 Order adopting final rules for the 2 GHz MSS also clearly stated that any then pending applications, such as Inmarsat's, must be amended "no later than 30 days after a summary of this Report and Order is published in the Federal Register to receive continued consideration." *Policies and Service Rules for MSS in the 2 GHz Band*, IBDok.99-81, *Report and Order*, 15 FCC Rcd 16127,16129 (2000), at ¶ 2. Publications occurred on October 4, 2000 (*See* 65 Fed.Reg.59140) and, as noted elsewhere, instead of complying with the new rules by November 4, 2000, Inmarsat chose to dismiss its application shortly thereafter.

⁴ *See* Letter from Kelly Cameron, Powell, Goldstein, Frazer & Murphy LLP, counsel to Inmarsat, to Magalie Roman Salas, Secretary, FCC (Nov. 21, 2000).

⁵ *See Satellite Policy Branch Information*, Public Notice, Report No. SAT-00061 (rel. Nov. 29, 2000), at 2 (emphasis added). The Commission completed its 2 GHz MSS processing round on July 17, 2001, at which time it granted eight 2 GHz MSS authorizations. *See The Boeing Company*, Order and Authorization, 16 FCC Rcd 13691 (Int'l Bur. 2001); *Celsat America, Inc.*, Order and Authorization, 16 FCC Rcd 13712 (Int'l Bur. 2001); *Constellation* (continued...)

Inmarsat did not contest the Commission's determination that "without prejudice" meant that a 2 GHz application could not be re-filed unless and until the Commission opened a second processing round, and the time for bringing such a challenge has passed. Accordingly, Inmarsat's application cannot be accepted for filing because it would conflict with the Commission's earlier determination to accept additional applications solely pursuant to a second processing round.⁶

In addition to being inconsistent with the cut-off dates set in the only 2 GHz MSS processing round initiated by the Commission, Inmarsat's application runs afoul of the policies and rules adopted in 2003 by the Commission's *Space Station Licensing Reform Order*. There, the Commission decided to continue using processing rounds to license NGSO-like satellites, such as MSS systems, and decided that once a processing round is initiated, only timely filed applications will be considered.⁷

Further, under the rules adopted in the same *Space Station Licensing Reform Order*, where all the available spectrum for an NGSO-like system has previously been assigned

Communications Holdings, Inc., Order and Authorization, 16 FCC Rcd 13724 (Int'l Bur./OET 2001); *Globalstar, L.P.*, Order and Authorization, 16 FCC Rcd 13739 (Int'l Bur./OET 2001); *ICO Services Limited*, Order, 16 FCC Rcd 13762 (Int'l Bur./OET 2001); *Iridium LLC*, Order and Authorization, 16 FCC Rcd 13778 (Int'l Bur. 2001); *Mobile Communications Holdings, Inc.*, Order and Authorization, 16 FCC Rcd 13794 (Int'l Bur./OET 2001); *TMI Communications and Company, Limited Partnership*, Order, 16 FCC Rcd 13808 (Int'l Bur. 2001).

⁶ Moreover, as TMI/TerreStar and other parties have documented, there is no basis for the opening of a second processing round. See, e.g., Reply Comments of TMI/TerreStar, IB Docket No. 05-221 (Aug. 15, 2005); Letter from Gregory C. Staple and Jonathan D. Blake to Marlene H. Dortch, IB Docket No. 05-221 (filed Sept. 14, 2005) (responding to reply comments of Inmarsat).

⁷ See *Amendment of the Commission's Space Station Licensing Rules*, IB Docket 02-34, 18 FCC Rcd. 10760 ¶ 48 (2003) ("We will review applications filed by the cut-off date to determine whether they are acceptable for filing, and if so, we will place those applications on public notice."). See also Section 25.155 and 25.157 of the Commission's rules, 47 C.F.R. § 25.155 and 25.157.

in a prior processing round, as is the case here (*see* note 5, *infra*), a party cannot initiate a second processing round *sua sponte* by filing an application for licensed spectrum that has been surrendered by one or more parties. Rather, Section 25.157(g)(2) of the Commission's rules makes clear that a second processing round for an NGSO-like system may be opened only by the issuance of a public notice establishing a cut-off date for such applications.⁸ And the Commission will only issue such a notice if it determines that the surrendered spectrum would not be efficiently put to use by the remaining NGSO-like licensees in the band.⁹ Of course, no such determination has been made and thus no public notice opening a second processing round has been issued.¹⁰ There is accordingly no merit to Inmarsat's claim that the Commission has "provided an open invitation for post-first-2 GHz band-processing-round applications" following surrender of a 2 GHz MSS license.¹¹

⁸ See 47 C.F.R. § 25.157(g)(2).

⁹ *Id.*

¹⁰ On the contrary, the Commission is still in the midst of considering whether the public interest is better served by distribution of the remaining 13.34 MHz of surrendered spectrum to the existing 2 GHz licensees. See *Commission Invites Comments Concerning Use of Portions of Returned 2 GHz Mobile Satellite Service Frequencies*, Public Notice, FCC 05-134, IB Docket No. 05-221 (rel. June 29, 2005) ("Second Redistribution Notice"). In a filing in that proceeding, Inmarsat itself has acknowledged that a 2 GHz MSS application could only be validly filed if the Commission were to first open a new processing round. See Letter from John P. Janka, Counsel to Inmarsat to Marlene H. Dortch, Secretary, FCC (filed Aug. 24, 2005), at 2 (requesting that the Commission "open a processing round soliciting 2 GHz MSS system applications").

¹¹ Inmarsat Application, Ex. E at 23, citing *TMI Communications and Company, Limited Partnership and TerreStar Networks, Inc., Application for Review and Request for Stay*, 19 FCC Rcd 12603, 12621 ¶ 52 & n.97 (2004). The blanket license procedures, moreover, may be invoked only if U.S. spectrum is available at the time the space station becomes operational. *Id.*

The Commission precedent cited by Inmarsat in support of its attempt to open a new processing round is wholly inapposite.¹² For example, in the *Anik* case on which Inmarsat primarily relies, the Commission added a Canadian GSO satellite, Anik F2, to the Permitted Space Station List, even though it had previously granted a license to KaStarCom to launch and operate a domestic Ka-band GSO satellite at the 111.0° W.L. orbit location. Telesat's market entry was achieved not pursuant to a new processing round, but rather to a condition expressly placed on the KaStarCom license *at the time of grant*. Specifically, when the Commission licensed the KaStarCom satellite, it noted that Canada's Ka-band ITU filing at 111.1° had date priority relative to the U.S. Ka-band ITU filing at 111.0° W.L. Accordingly, the Commission conditioned KaStarCom's Ka-band authorization "on coordination with any non-U.S. satellite within two degrees of the KaStarCom satellite having filing date priority at the ITU."¹³ Inmarsat does not make, nor can it, any such claim concerning the TMI/TerreStar and ICO spectrum reservations granted pursuant to the 2 GHz MSS processing round. Thus, *Anik* is entirely inapposite with respect to Inmarsat's application.¹⁴

¹² See *Telesat Canada, Petition for Declaratory Ruling for Inclusion of Anik F2 on the Permitted Space Station List, Petition for Declaratory Ruling to Serve the U.S. Market Using Ka-band Capacity on Anik F2*, 17 FCC Rcd 25287 (2002) ("*Anik*").

¹³ *Anik*, 17 FCC Rcd at 25296 (2002) citing *In re KaStarCom World Satellite LLC*, 16 FCC Rcd.14322, 14330 (Int'l Bur. 2001). In *KaStarCom*, the Commission emphasized that KaStar's license was "subject to the outcome of the international coordination process, and that the Commission is not responsible for the success or failure of the required international coordination." *Id.*

¹⁴ Moreover, *Anik* involved a request to add a GSO satellite to the Permitted Space Station List, whereas, despite Inmarsat's positioning of its application as a "Petition for Declaratory Ruling to be Added to the Permitted List," such requests generally are not applicable in the NGSO-like context. Similarly, the other cases cited by Inmarsat – *Star One S.A.*, 19 FCC Rcd 16334 (2004) and *Loral Spacecom Corp.*, 18 FCC Rcd 16374 (2003) – are irrelevant to the acceptance for filing of a NGSO-like application to use 2 GHz MSS spectrum. These two cases, like *Anik*, involved GSO-like space stations which are subject to different processing rules and (continued...)

In sum, the plain meaning of the Commission's prior public notices and orders regarding the 2 GHz MSS licensing proceeding, as well as the text of the Commission's general satellite licensing rules, clearly bars the Commission from accepting Inmarsat's application for authority to use the MSS spectrum previously licensed to TMI, ICO and others unless the Commission initiates a new satellite system processing round.

B. Alternatively, It Is Premature For Inmarsat To Apply For 2 GHz MSS System Authority Outside Of A Processing Round.

To the extent that Inmarsat is relying on the Commission's procedures for filing market access applications outside the context of a processing round, its filing is premature. As the Commission stated in the *TMI/TerreStar Reinstatement Order* cited by Inmarsat, these procedures are not available in connection with a non-U.S. licensed space station until the space station has been constructed, launched, and placed into operation.¹⁵ Inmarsat has taken *none* of these steps.

C. Acceptance of Inmarsat's Application Would Unlawfully Prejudice The Outcome Of Two Pending Commission Proceedings.

In addition to flouting the Commission's established satellite and earth station licensing procedures, Inmarsat's 2 GHz application blatantly attempts to make an end run around the proceedings opened by the Commission to determine the future of surrendered 2 GHz MSS spectrum. As Inmarsat is well aware, the Commission has opened a proceeding, IB Docket No.

implicate different interference and coordination issues. For example, in the *Loral* case, the applicant's fixed C-band satellite was only added to the Permitted Space Station List to the extent it would not interfere with any previously authorized U.S. satellite and was subject to international coordination.

¹⁵ See *TMI Communications and Company, Limited Partnership and TerreStar Networks, Inc., Application for Review and Request for Stay*, 19 FCC Rcd 12603, 12621 ¶ 52 & n.97 (2004).

05-221, in which it has stated that a second 2 GHz MSS processing round is only one of three options under consideration for distribution of 13.34 MHz of surrendered 2 GHz spectrum.¹⁶ Furthermore, the Commission has already announced, by public notice in IB Docket No. 05-220, its intent to redistribute 10.67 MHz of surrendered 2 GHz spectrum to the existing 2 GHz licensees.¹⁷

Inmarsat's application disregards both of these outstanding proceedings and even misleadingly asserts that the collective 24 MHz of surrendered spectrum at issue in the two proceedings is "currently available" for its use.¹⁸ Consequently, if the Bureau were to accept Inmarsat's application for filing, it would also unlawfully prejudge the issues raised in IB Docket No. 05-221 and would directly conflict with the Commission's stated spectrum redistribution plan in IB Docket Nos. 05-220.

¹⁶ See *Second Redistribution Notice*.

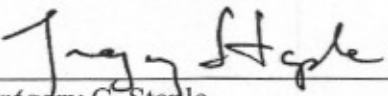
¹⁷ See *Commission Invites Comments Concerning Use of Portions of Returned 2 GHz Mobile Satellite Service Frequencies*, Public Notice, FCC 05-133, IB Docket No. 05-220 (rel. June 29, 2005).

¹⁸ Inmarsat Application, Ex. E at 22.

CONCLUSION

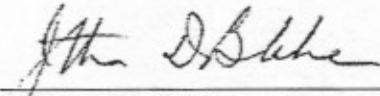
Inmarsat's application for U.S. authority to use 2 GHz MSS spectrum is untimely and must be dismissed. The application represents an unlawful attempt to file a 2 GHz MSS application outside of a processing round in direct contravention of the terms of the Commission's prior Public Notice dismissing Inmarsat's 1997 2 GHz MSS application, and the Commission's general satellite licensing rules. Acceptance of Inmarsat's application would also undermine the Commission's two ongoing proceedings regarding the distribution of surrendered 2 GHz MSS spectrum. To protect the integrity of the Commission's rules and its spectrum management prerogatives, the Bureau should dismiss Inmarsat's application as unacceptable for filing.

Respectfully submitted,



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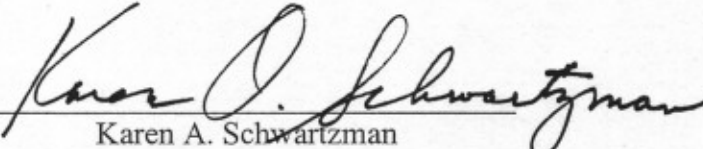
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CERTIFICATE OF SERVICE

I, Karen A. Schwartzman, a secretary at the law firm of Covington & Burling, do hereby certify that on this 6th day of October, 2005, I caused a copy of the foregoing "Objection to Acceptance of Application for Filing" to be sent via hand delivery to the following:

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