

OCT 24 2005

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

Federal Communication 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

NOV 08 2005

Policy Branch  
International Bureau

TO: Chief, International Bureau

**REPLY TO RESPONSE OF INMARSAT GLOBAL LIMITED**

In responding to the objections of TMI/TerreStar and ICO to the Bureau's acceptance of its 2 GHz mobile satellite services ("MSS") application, Inmarsat attempts to manufacture ambiguity concerning the limited circumstances in which a foreign satellite provider may petition the Commission for market access outside of a processing round. In fact, the Commission's rules and policies are quite clear, and they flatly prohibit a prospective MSS operator from filing such an application. If accepted for filing, Inmarsat's unlawful application would also negate the Commission's prior decision to manage redistribution of surrendered 2 GHz MSS spectrum in two pending proceedings. Accordingly, TMI/TerreStar reiterate their request that the Bureau dismiss Inmarsat's application as unacceptable for filing.

**I. THE DISCO II POLICIES PROHIBIT AN MSS OPERATOR FROM FILING A PETITION FOR DECLARATORY RULING TO OBTAIN MARKET ACCESS OUTSIDE OF A PROCESSING ROUND.**

In asking the Commission to consider its request for 2 GHz MSS market access, Inmarsat expressly relies on the "petition for declaratory ruling mechanism" established in the

*DISCO II First Reconsideration Order* (“*Reconsideration Order*”).<sup>1</sup> The *Reconsideration Order*, however, limits the scope of satellite providers eligible to file such a petition. As discussed below, an MSS provider, much less an applicant with an entirely unbuilt satellite, is *not* eligible. Accordingly, Inmarsat cannot file a market access request outside of a processing round.<sup>2</sup>

First, the *Reconsideration Order* allows only providers of “fixed satellites offering fixed-satellite service” to file a petition for declaratory ruling for market access.<sup>3</sup> Thus, not surprisingly, all five cases relied upon by Inmarsat in support of its use of the petition for declaratory ruling mechanism involve conventional Ku- and C-band, GSO FSS market access requests.<sup>4</sup> The *Anik* case involved a Ka-band request in addition to the Ku- and C-band requests, but again in the GSO FSS context.<sup>5</sup>

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<sup>1</sup> See Consolidated Response of Inmarsat Global Limited, File No. SAT-PPL-20050926-00184, at 3 (filed Oct. 17, 2005), citing *Amendment of the Commission’s Regulatory Policies to Allow Non-U.S. Licensed Satellites Providing Domestic and International Service in the United States*, 12 FCC Rcd 24094 (1997) (“*DISCO I*”), on reconsideration, 15 FCC Rcd 7207 (1999) (“*DISCO II First Reconsideration Order*”).

<sup>2</sup> As TMI/TerreStar noted in their initial Objection, once Inmarsat’s satellite has been constructed, launched, and placed into operation, Inmarsat may apply for market access by having a U.S. earth station licensee apply to use Inmarsat’s 2 GHz satellite as a point of communication. 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 (“Had it been upheld, the ruling that TMI’s spectrum reservation was null and void might not have foreclosed all opportunity for provision of 2 GHz MSS in the United States via the proposed CANSAT M-3 satellite. It might still have been possible for TerreStar to obtain a blanket earth-station license authorizing such U.S. service provision -- if it could complete construction of the satellite, launch it, and place it into operation despite the loss of the U.S. spectrum reservation, and if U.S. 2 GHz MSS spectrum were available at that time (which might happen if some of the current 2 GHz MSS licenses are subsequently surrendered, revoked, or become void)”) (emphasis in original).

<sup>3</sup> *DISCO II First Reconsideration Order*, 15 FCC Rcd at 7207 ¶ 1. Moreover, the Commission explained that it was creating the petition for declaratory ruling mechanism to “streamline[s] the process for entry into the U.S. fixed-satellite service market.” *Id.* at 7208 ¶ 2.

<sup>4</sup> See Inmarsat Response at 5-6, citing *European Telecommunications Satellite Organization (EUTELSAT)*, 16 FCC Rcd 15961 (2001); *Spacecom Satellite Communications Services S.C.C.* (continued...)

Second, the satellite to which market access would be granted must be “in-orbit.”<sup>6</sup> As the Commission explained in *Anik*, “the purpose of our requirement that a satellite be ‘in-orbit’ is to avoid spending Commission resources on ‘speculative’ applications.”<sup>7</sup> There, Telesat expressly requested, and the Commission granted, a waiver of that requirement because Telesat offered evidence that “its satellite is nearing completion and is scheduled to be launched.”<sup>8</sup> Inmarsat, however, has refused to even request a waiver of the in-orbit requirement,<sup>9</sup> and has presented no evidence (nor could it) that the 2 GHz satellite which is the subject of its application is “about to be launched.”

In light of the unambiguous language of the *Reconsideration Order*, Inmarsat’s insistence that “nothing in Section 25.137 of the Commission’s rules” expressly limits the filing of a petition for MSS market access outside of a processing round is a red herring.<sup>10</sup> Inmarsat is correct in stating that Section 25.137 does not address a provider’s eligibility to file a market access petition,<sup>11</sup> but it wrongly asserts that the Commission therefore has *no* policy addressing the issue. Like all Commission Orders of general applicability and future effect, published in the

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*Ltd.*, 18 FCC Rcd 14433 (2003); *Loral Skynet do Brazil*, 18 FCC Rcd 26751 (2003); *Star One S.A.*, 19 FCC Rcd 16334 (2004); *Telesat Canada*, 17 FCC Rcd 25287 (2002) (“*Anik*”).

<sup>5</sup> *Anik*, 17 FCC Rcd at 25294 ¶ 22.

<sup>6</sup> *DISCO II First Reconsideration Order*, 15 FCC Rcd at 7207 ¶ 1.

<sup>7</sup> *Anik*, 17 FCC Rcd at 25294 ¶ 20.

<sup>8</sup> *Id.*

<sup>9</sup> See Inmarsat Response at 6, n. 15.

<sup>10</sup> *Id.* at 4.

<sup>11</sup> Sections 25.137(a)-(b) merely specify the information to be included in a proper market access request, and Section 25.137(c) states simply that a foreign operator like Inmarsat may participate in an NGSO-like processing round and be considered contemporaneously with other U.S. NGSO-like systems.

Federal Register<sup>12</sup> in accordance with the Administrative Procedure Act, 5 U.S.C. § 553, the eligibility restrictions established in the *Reconsideration Order* have binding legal effect even if not specifically codified in the Code of Federal Regulations. Inmarsat is subject to the *Reconsideration Order*, and cannot make an end run around it by requesting market access for its hypothetical MSS satellite outside of a processing round.<sup>13</sup>

## II. CONSIDERATION OF INMARSAT'S APPLICATION WOULD UNDERMINE THE COMMISSION'S EFFORTS IN TWO PENDING PROCEEDINGS.

The Commission has opened two proceedings, IB Docket Nos. 05-220 and 05-221, to manage the distribution of surrendered 2 GHz MSS spectrum. It has already tentatively concluded in IB Docket No. 05-220 that certain spectrum should be redistributed to TMI/TerreStar and ICO, and it is still deciding among three options in IB Docket No. 05-221, only one of which would distribute the remaining surrendered spectrum via a second processing round.<sup>14</sup> Acceptance of Inmarsat's application would initiate a new proceeding with the potential

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<sup>12</sup> See 64 Fed. Reg. 61,791-01 (Nov. 15, 1999).

<sup>13</sup> Inmarsat's suggestion that the *Reconsideration Order* somehow created a loophole for prospective, foreign licensed MSS applicants to obtain market access when a U.S. provider would have to wait for a new processing round to open would stand the basic purpose of the *DISCO II* proceeding on its head. *DISCO II* was initiated to ensure that, consistent with the WTO Basic Telecommunications Agreement, foreign licensed satellite operators from WTO signatories would enjoy market access rights in the U.S. *equivalent* to the rights enjoyed by U.S. licensees. The Commission plainly did not intend to grant foreign licensed operators in the MSS or any other service *superior* market access rights, as Inmarsat now proposes. If Inmarsat's reading of the *Reconsideration Order* were correct, the Commission's carefully constructed processing rules in Section 25.157 and the 2 GHz MSS docket would become irrelevant, as prospective MSS operators could simply apply for a foreign license of convenience, as Inmarsat has done, and end-run these rules.

<sup>14</sup> 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); *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).

to usurp the Commission's role in those pending proceedings.<sup>15</sup> In light of the obvious jurisdictional conflict that substantive evaluation of Inmarsat's application would create, there is no merit to Inmarsat's claim that acceptance of its application for filing would "ensur[e] a complete record" in those proceedings.<sup>16</sup>

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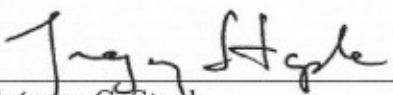
<sup>15</sup> In arguing that the adjudicatory proceeding it would have the Bureau open would not conflict with IB Docket Nos. 05-220 and 05-221, Inmarsat misleadingly cites to TMI/TerreStar's request that the Commission resolve those proceedings prior to taking up Globalstar's petition for reconsideration of the decision to revoke its 2 GHz MSS license. See Inmarsat Response at 14 n. 41, citing Reply Comments of TMI and TerreStar, IB Docket No. 05-220, at 21-22 (filed July 25, 2005) ("TMI/TerreStar's concerns should be belied by their confidence in the Commission's ability to consider Globalstar's pending petition for reconsideration of its 2 GHz MSS license cancellation in parallel with consideration of the proposed redistribution of returned spectrum."). Unlike Inmarsat's application, Globalstar's petition does not raise the question of whether spectrum should be made available to a third party outside of a new processing round, but only whether spectrum rights granted to a party that participated in the only processing round to date were properly forfeited. Thus, even if Globalstar were ultimately to prevail, no new application would be considered by the Bureau. Nor would any new processing round be required. Rather, Globalstar's previous authorization would simply be reinstated.

<sup>16</sup> Inmarsat Response at 13. Like any party, Inmarsat is free to file an *ex parte* presentation in IB Docket No. 05-221 concerning the 2 GHz application it allegedly would file if the Commission were to open a second processing round. It cannot, however, require the Bureau to substantively evaluate a request, which, if granted, would necessarily prejudge the outcome of pending Commission proceedings.


CONCLUSION

Despite Inmarsat's attempt to sow confusion about the rules and policies governing MSS market access petitions, the Commission's standards are quite clear: an MSS applicant – much less a would-be MSS applicant with no satellite, no satellite construction contract, and no launch agreement – cannot file a petition for declaratory ruling for market access outside of a processing round. In addition to violating the Commission's market access and processing round rules, acceptance of Inmarsat's application for filing would open a new proceeding at odds with the Commission's prior decision to manage redistribution of surrendered 2 GHz spectrum in two ongoing proceedings. Accordingly, the Bureau should dismiss Inmarsat's application as unacceptable for filing.

Respectfully submitted,

  
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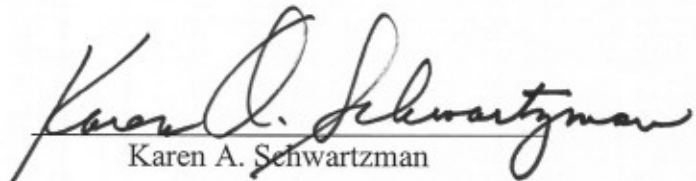
  
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**CERTIFICATE OF SERVICE**

I, Karen A. Schwartzman, a secretary at the law firm of Covington & Burling, do hereby certify that on this 24th day of October, 2005, I caused a copy of the foregoing "Reply to Response of Inmarsat Global Limited" to be sent via hand delivery to the following:

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