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Satellite Division  
International Bureau

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

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NOV 10 2005

Federal Communications Commission  
Office of Secretary

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In the Matter of	)	
	)	
Stratos Communications, Inc.	)	File No. SES-LFS-20050826-001175
Application for Title III Blanket License	)	File No. SES-AMD-20050922-01313
to Operate Mobile Earth Terminals with	)	
Inmarsat 4F2 at 52.75° W.L.	)	
	)	
Stratos Communications, Inc.	)	File No. ITC-214-20050826-00351
Application for Section 214 Authorization	)	
to Operate Mobile Earth Terminals with	)	
Inmarsat 4F2 at 52.75° W.L.	)	
_____	)	

To: International Bureau

**OPPOSITION TO MSV PETITION TO HOLD IN ABEYANCE  
OR TO GRANT WITH CONDITIONS**

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November 10, 2005

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To: International Bureau

**OPPOSITION**

Pursuant to Section 25.154(c) of the Commission's Rules, 47 C.F.R. § 25.154(c), Stratos Communications, Inc. ("Stratos") hereby opposes Mobile Satellite Ventures Subsidiary LLC's ("MSV's") Petition to hold in abeyance or to grant with conditions the above-captioned applications of Stratos (collectively referred to as the "Stratos BGAN Application").<sup>1</sup>

<sup>1</sup> See MSV Petition To Hold in Abeyance Or To Grant With Conditions (Oct. 28, 2005) ("MSV Petition"). Concurrently with this Opposition, Stratos is filing a Motion to Strike Portions of the MSV Petition. See Stratos Motion to Strike (filed Nov. 10, 2005). As set forth in that Motion to Strike, the MSV Petition should be dismissed by the Bureau because it contains confidential information and redacted arguments that Stratos has not been given access to by MSV, thereby depriving Stratos of a full and fair opportunity to defend its applications. At a minimum, the Bureau cannot base any decision to hold in abeyance, or grant with conditions, the Stratos BGAN Application on what has been deemed confidential by MSV and withheld from Stratos. As set forth in the Motion to Strike, to do otherwise would run afoul of the Commission's obligations under the Administrative Procedures Act ("APA"). To the extent that Stratos is given access to the confidential information contained in the MSV Petition after this Opposition is filed, Stratos reserves the right to amend this Opposition as necessary.

## I. INTRODUCTION AND SUMMARY

The Stratos BGAN Application seeks authority for Stratos to offer the Inmarsat Broadband Global Area Network ("BGAN") services in the United States through mobile earth terminals ("METs") communicating with a recently (November 8, 2005) launched fourth generation Inmarsat satellite to be located at 52.75° W.L. ("the Inmarsat 4F2 satellite"). Grant of the Stratos BGAN Application is in the public interest because it will allow U.S. consumers to obtain an enhanced Mobile Satellite Services ("MSS") offering (including email, LAN, Internet, video conferencing and voice communications) at data transmission speeds of up to 492 kbps, several times more than current MSS product offerings, and more than 100 times faster than MSV's services.<sup>2</sup> With the launch earlier this year of another fourth generation Inmarsat satellite ("the Inmarsat 4F1 satellite"), customers in Europe, Africa, the Middle East and Asia will have access to Inmarsat's BGAN service by the end of this year. The Inmarsat 4F2 satellite was successfully launched on November 8, 2005. If promptly approved, the Stratos BGAN Application will provide U.S. consumers with the same opportunity to enjoy high speed MSS by early 2006, when testing of the Inmarsat 4F2 satellite is complete.

The recent natural disasters associated with hurricanes Katrina, Rita and Wilma in the Gulf of Mexico region demonstrate an urgent need for the BGAN offering and prompt approval of the Stratos BGAN Application. In the aftermath of these hurricanes, the current Stratos/Inmarsat service was used by FEMA, the National Guard, the U.S. Army, state and local governments, law enforcement personnel and the petroleum industry to facilitate voice communications and Internet access in the absence of terrestrial networks. Although serving a vital role in the recovery and restoration efforts, the data transmission speeds of Inmarsat's

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<sup>2</sup> See [http://www.msvlp.com/solutions/voice\\_dial\\_service.cfm](http://www.msvlp.com/solutions/voice_dial_service.cfm) (indicating that the MSV "Circuit Switched Data provides 2400 bps. . .and 4800 bps throughput").

current service do not match the high speed terrestrial networks people now rely on and come to expect. With the higher data speeds offered by BGAN, these government "First Responders" and private industry will have available to them a genuine high speed backup to terrestrial Internet and data communications networks when the next natural disaster, or terrorist attack, takes place.

Rather than compete with the BGAN offering in the marketplace, MSV seeks to derail the introduction of these advanced services to U.S. consumers and First Responders. In addition, MSV attempts to use the filing of the Stratos's BGAN Application as leverage to resolve an on-going dispute between MSV and Inmarsat that is not at issue in this proceeding, but should be resolved through the agreed-upon mechanism for international coordination established under the Mexico City Memorandum of Understanding ("Mexico City MoU"). The effect of the MSV Petition is to deprive and delay U.S. consumers and First Responders of a much needed service that virtually the rest of the world will soon have access to. The Bureau should not be distracted by MSV's efforts to use the Stratos BGAN Application as a pawn in its on-going dispute with Inmarsat. The Stratos BGAN Application satisfies the Commission's Rules and should be promptly granted by the Bureau.

Contrary to the claims of MSV, a new international L-band coordination agreement is not needed before the Stratos BGAN Application can be granted. Indeed, two MSV satellite applications (one for a replacement satellite at 101° W.L. and a new satellite at 63.5° W.L.) were granted by the Bureau this year on a non-interference basis and in the absence of a new L-band coordination agreement. There is no justification for treating the Stratos BGAN Application and its proposed use of the Inmarsat 4F2 satellite differently.

Further, the Stratos BGAN application does not contain the three deficiencies claimed by MSV to warrant further "scrutiny" by the Bureau.<sup>3</sup> First, under the Commission's Rules, the proposed Inmarsat 4F2 satellite is properly considered a replacement satellite for the third generation Inmarsat satellite ("Inmarsat 3 satellite") at 54° W.L. because it will cover the same geographic areas as that satellite, and does not seek to use any additional L-band frequencies beyond those currently in use. Second, despite MSV's suggestion otherwise, Section 25.210(j) of the Commission's Rules, 47 C.F.R. § 25.210(j), requiring FSS satellites to operate with +/- 0.05° East-West station keeping, does *not* apply to MSS satellites. Third, as set forth in the Stratos BGAN Application, Stratos has fully satisfied the Executive Branch and FBI that the BGAN METs proposed use in the U.S. will not hinder any law enforcement and national security efforts.

The Bureau should promptly grant the Stratos BGAN Application and allow U.S. consumers to enjoy the same 492 kbps MSS that users in the rest of the world will soon have.

## **II. MSV HAS NOT PROVIDED A LEGITIMATE BASIS FOR CONDITIONING OR DELAYING GRANT OF THE STRATOS BGAN APPLICATION**

Rather than pursuing its spectrum dispute with Inmarsat as part of the established international coordination procedures for the L-band, MSV is attempting to use its Petition against the Stratos BGAN Application as leverage for resolving an on-going and protracted L-band spectrum dispute with Inmarsat. Allowing MSV to do so would be inconsistent with the Commission's obligations under the Mexico City MoU, violate the *DISCO II* principles regarding the treatment of applications for access to foreign satellites licensed by WTO Member countries, and succeed in delaying the introduction to the U.S. of a much needed MSS offering

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<sup>3</sup> See MSV Petition at 10-14.



that the rest of the world will soon have. The Bureau must reject the arguments in the MSV Petition.

**A. Grant of the Stratos BGAN Application Should Not Be Delayed Pending Completion of a New L-band Coordination Agreement**

MSV suggests that the Stratos BGAN Application should be delayed pending the "conclusion of a coordination agreement that results in a more efficient assignment of L-band spectrum among the existing operators, including the assignment of contiguous and wider frequency blocks."<sup>4</sup> The absence of an L-band coordination agreement, however, is not an adequate justification for the Bureau to delay action on the Stratos BGAN Application.

Just this year, the Bureau granted two MSV applications to operate in the L-band -- one for a replacement satellite at 101° W.L. and one for a new satellite (*i.e.*, a satellite not contemplated by the Mexico City MoU) at 63.5° W.L.<sup>5</sup> Rather than delaying action on either application pending the completion of a new L-band coordination agreement, both applications were granted on a "non-harmful interference basis to other mobile-satellite service systems operating in the L-band."<sup>6</sup> Stratos simply asks that the Bureau treat the Stratos BGAN Application similarly. Indeed, since the UK is a WTO Member, the U.S. has an obligation to do so.<sup>7</sup>

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<sup>4</sup> MSV Petition at 1.

<sup>5</sup> See *In the Matter of Mobile Satellite Ventures Subsidiary LLC*, DA 05-50 (rel. Jan. 10, 2005) ("*MSV 63.5° W.L. Order*"); *In the Matter of Mobile Satellite Ventures Subsidiary LLC*, DA 05-1492 (rel. May 23, 2005) ("*MSV 101° W.L. Order*").

<sup>6</sup> See *MSV 63.5° W.L. Order* at ¶ 39; *MSV 101° W.L. Order* at ¶ 59.

<sup>7</sup> See *SatCom Systems, Inc. et al.*, 14 FCC Rcd. 20798, 20813 (1999) ("*TMI Market Access Order*") (rejecting the attempt of AMSC to preclude other L-band systems from serving the U.S. until AMSC had completed coordination of 20 MHz of spectrum because doing so "would be inconsistent with U.S. market access commitments in the WTO Agreement"); *Amendment of the Commission's Regulatory Policies to Allow Non-U.S. Licensed Satellites*

MSV suggests that the Stratos BGAN Application should be treated differently because the Inmarsat 4F2 satellite will use "wide band" carriers which will result in an increased risk of harmful interference to other L-band operators.<sup>8</sup> According to MSV, a new L-band coordination agreement is needed to eliminate the risk of such interference.<sup>9</sup> MSV's claims of increased risk of interference due to the use of "wide band" carriers are not accurate for several reasons. First, the Inmarsat 4F2 satellite does not use "wide band" carriers. Indeed, the widest carriers set forth in the application are 200 kHz.<sup>10</sup> Conveniently, MSV fails to note that the widest carriers of its own recently approved replacement satellite at 101° W.L. are 5 MHz.<sup>11</sup> However, despite carriers 25 times wider than those on the Inmarsat 4F2 satellite, the Bureau granted MSV's application without requiring completion of a new L-band coordination agreement. There is no reason to treat Stratos's application for the Inmarsat BGAN service any differently.

Second, MSV fails to substantiate its claims that the Inmarsat 4F2 satellite will cause "harmful interference" to other L-band operators.<sup>12</sup> The Inmarsat 4F2 satellite contains numerous technical advancements for reducing interference when compared to the Inmarsat 3 satellite that it will replace, including narrower spot beams with steeper antenna side lobes which will reduce interference to adjacent areas. Because the BGAN METs operate at one-tenth the

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*Providing Domestic and International Service in the United States*, 12 FCC Rcd. 24094, 24104(1997) ("*DISCO II*") (recognizing the US commitment "to provide market access to all basic telecommunications services and national treatment to service suppliers of WTO members").

<sup>8</sup> See MSV Petition at 7-8.

<sup>9</sup> *Id.*

<sup>10</sup> See Stratos BGAN Application (Title III) at Attachment A (Technical Narrative), pp. 21-37.

<sup>11</sup> See File No. SAT-AMD-20031118-00335 at Appendix A, p.23.

<sup>12</sup> See MSV Petition at 7-9.



power of existing high speed data METs using the Inmarsat 3 satellite at 54° W.L., the level of interference generated by the BGAN service will be less, not more, than what is currently experienced in the L-band.<sup>13</sup> As the Bureau recognized, the current L-band operators have been operating "interference-free" for some time.<sup>14</sup> MSV has not provided any evidence to suggest that this "interference-free" operation will change with the launch and operation of the Inmarsat 4F2 satellite. Like the MSV satellites, the Stratos BGAN Application seeking use of the Inmarsat 4F2 satellite should be granted by the Bureau on a non-harmful interference basis and without waiting for a new international L-band coordination agreement. As the Commission has clearly stated, "[w]ithout an agreement assigning each of the five systems to specific operating frequencies, *all systems* must operate on a non-interference basis consistent with the ITU Radio Regulations."<sup>15</sup>

**B. Stratos Should Not Be Prevented From Using Any Available Inmarsat Spectrum**

MSV also suggests that if the Stratos BGAN Application is granted, it should be conditioned on the BGAN METs and the Inmarsat 4F2 satellite not using any frequencies that were "loaned" by MSV to Inmarsat.<sup>16</sup> Stratos opposes such a condition. If MSV has a dispute

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<sup>13</sup> See Stratos BGAN Application at Schedule B; see Stratos Call Signs E010047, E010048 and E010080.

<sup>14</sup> See *MSV 63.5° W.L. Order* at ¶ 23 ("While the most recent annual operator-to-operator agreement has not been renewed since 1999, the five parties have continued to coordinate their operations informally and have been operating interference-free."); *MSV 101° W.L. Order* at ¶ 34.

<sup>15</sup> *TMI Market Access Order*, 14 FCC Rcd. at 20814. *In the Matter of COMSAT Corporation d/b/a COMSAT Mobile Communications et al.*, 16 FCC Rcd. 21661, 21699 (rel. Oct. 9, 2001) ("*Inmarsat Market Access Order*") ("[W]e conclude that the absence of an annual operator-to-operator agreement is not a sufficient basis upon which to deny the applications presented here.").

<sup>16</sup> See MSV Petition at 9.

over the current distribution and coordination of L-band spectrum, it should bring this dispute with Inmarsat in accordance with the agreed-upon procedures for international coordination, not in this application proceeding.<sup>17</sup> The BGAN METs in the Stratos BGAN Application should be free to use all of the L-band frequencies used by Inmarsat, subject to the outcome of any international coordination. Subject to a non-interference condition, the Commission has consistently held that MSV, TMI, Stratos and others could use the entire range of L-band frequencies in the absence of a coordination agreement.<sup>18</sup> There is no reason to treat Stratos differently now. If international coordination changes the spectrum available to Inmarsat, Stratos will modify the operations of its BGAN METs accordingly. Until that time, however, there is no reason to delay approval of this application and the introduction of the Inmarsat BGAN service to the U.S.

**C. The Inmarsat 4F2 Satellite Is Properly Regarded As A Replacement Satellite**

Citing the Commission's bond posting rule (47 C.F.R. § 25.165(e)), MSV suggests that the Inmarsat 4F2 satellite is not properly regarded as a replacement satellite because it is unclear whether the Inmarsat 4F2 satellite will serve the same geographic areas as the satellite it is replacing.<sup>19</sup> As a threshold matter, the Commission's bond posting rule is not applicable here since the Inmarsat 4F2 satellite was launched on November 8, 2005, and the bond requirement does not apply to satellites that have been launched. Regardless, the Inmarsat

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<sup>17</sup> Despite what MSV may imply, the Bureau acknowledges in the *MSV 63.5° W.L. Order* and *MSV 101° W.L. Order* that "informal" arrangements now govern the coordination of L-band spectrum, not the 1999 coordination agreement. See *MSV 63.5° W.L. Order* at ¶ 23; *MSV 101° W.L. Order* at ¶ 34.

<sup>18</sup> See *MSV 101° W.L. Order* at ¶ 34; See *MSV 63.5° W.L. Order* at ¶ 23; *Inmarsat Market Access Order*, 16 FCC Rcd. at 21712; *TMI Market Access Order*, 14 FCC Rcd. at 20814.

<sup>19</sup> See MSV Petition at 10.

4F2 satellite is properly regarded as a replacement satellite. Through the Inmarsat 3 satellite at 54° W.L., Stratos currently provides Inmarsat services to the continental U.S., Puerto Rico and the U.S. Virgin Islands. Although 1.25° further east, the Inmarsat 4F2 at 52.75° W.L. will also serve the continental U.S., Puerto Rico and the U.S. Virgin Islands, as well as operate over the same L-band service link frequencies that are authorized for use on the Inmarsat 3 satellite at 54° W.L.. Despite what MSV may imply, Stratos does not seek FCC authority to use the BGAN METs in conjunction with the Inmarsat 4F2 satellite in any regions of the U.S. which are not presently served by the Inmarsat 3 satellite. Accordingly, under the Commission's Rules, the Stratos BGAN Application and proposed use of the Inmarsat 4F2 satellite can be considered a replacement satellite. This was precisely the Bureau's treatment of MSV's satellite application at 101° W.L. -- the Inmarsat 4F2 satellite should not be treated any differently.<sup>20</sup>

**D. The Commission's FSS Station Keeping Rule Does Not Apply to MSS Satellites**

The MSV Petition states that it is not clear whether the Commission's Rule, 47 C.F.R. § 25.210(j), requiring FSS satellites to operate with +/- 0.05° East-West station keeping

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<sup>20</sup> See *MSV 101° W.L. Order* at ¶¶ 13-14. In fact, MSV's satellite at 101° W.L. increased its geographic coverage area from the satellite it replaced by adding parts of South America to its coverage area, but it was still regarded as a replacement satellite by the Bureau. Compare *MSV 101° W.L. Order* at ¶ 1 ("The satellite will provide MSS on a common carrier basis within the United States, and between the United States and North America, Central America, the northern part of South America, and the Caribbean.") with *Amendment of Parts 2, 22, 25 of the Commission's Rules to Allocate Spectrum for and to Establish Rules and Policies Pertaining to the Use of Frequencies in a Land Mobile Satellite Service for the Provision of Various Common Carrier Services*, Memorandum Opinion and Order and Authorization, 4 FCC Rcd. 6041, 6053 (1989) ("The proposed beam coverage areas for the MSS network include the continental United States (CONUS), Alaska, Hawaii, Puerto Rico, Virgin Islands, Canada, parts of Mexico and Central America, including the Gulf of Mexico, and U.S. coastal areas up to 200 miles off-shore.").

applies to MSS satellites.<sup>21</sup> However, the Commission's Rule and subsequent decisions are very clear on this point -- Section 25.210(j) does not apply to MSS satellites. The Commission clearly enunciated this in its 2004 decision concerning the mitigation of orbital debris: "We decline, at this time, to adopt changes to Section 25.210(j) to specify a longitudinal tolerance of +/-0.05° for all space stations, including MSS and remote sensing space stations."<sup>22</sup> Indeed, in filing a Petition for Clarification or Partial Reconsideration of its 101° W.L. authorization, MSV acknowledged that "there is no rule requiring MSS satellites to operate with a +/- 0.05° East-West station keeping box."<sup>23</sup> Section 25.210(j) is not applicable to the Inmarsat 4F2 satellite, and accordingly, a waiver of this rule by Stratos is not required for the Stratos BGAN Application.<sup>24</sup>

**E. Stratos Has Satisfied Its Obligations Under *DISCO II* For National Security, Law Enforcement and Public Safety Concerns**

MSV suggests that the Stratos BGAN Application should be subject to further "scrutiny" because it fails to include a copy of its revised agreement with the Executive Branch

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<sup>21</sup> See MSV Petition at 11.

<sup>22</sup> *In the Matter of Mitigation of Orbital Debris*, 19 FCC Rcd. 11567, 11586 (2004).

<sup>23</sup> MSV Petition for Clarification or Partial Reconsideration, filed in File No. SAT-LOA-19980702-00066 et al. (June 22, 2005). This is not an unsettled point of law as MSV argues. As the MSV Petition for Clarification or Partial Reconsideration makes clear, MSV's own request for a waiver of Section 25.210(j) for its replacement satellite at 101° W.L. (and its new satellite at 63.5° W.L.) was filed because when those applications were filed there was a proposal to apply 25.210(j) to MSS. See *id.* at 2. However, as the 2004 Orbital Debris Mitigation Order makes clear, this proposal to modify 25.210(j) was never adopted by the Commission.

<sup>24</sup> If Section 25.210(j) were applicable to MSS, which it is not, the Inmarsat 4F2 satellite would be in a better position than MSV to receive such a waiver. Unlike the orbital positions where MSV is authorized to operate, the 52.75° W.L. orbital location for the Inmarsat 4F2 is not nearly as congested, thereby mitigating the need for a strict station keeping rule with a longitudinal tolerance of +/-0.05°. See *MSV 63.5° W.L. Order* at ¶ 12; *MSV 101° W.L. Order* at ¶¶ 20-21.

that addresses national security and law enforcement concerns.<sup>25</sup> Stratos, however, has already satisfied the Executive Branch's national security and law enforcement concerns.

As set forth in the Stratos BGAN Application, Stratos's current National Security Agreement with the Department of Justice and the FBI already covers the proposed BGAN services. This Agreement is already a matter of public record -- included as Appendix E to the 2001 *Inmarsat Market Access Order*.<sup>26</sup> It has not been modified because it is applicable to BGAN. Earlier this year, Stratos, the FBI, the Department of Justice, and the Department of Homeland Security amended the confidential Implementation Plan for this National Security Agreement in order to facilitate the lawful intercept of the proposed BGAN services.<sup>27</sup> In 2001 (at the time of the *Inmarsat Market Access Order*) the Implementation Plan was not made part of the public record at the request of the Executive Branch for obvious security reasons. Similarly, the modified Implementation Plan has not been made part of the public record in this proceeding at the request of the Executive Branch. If there were legitimate security concerns, then the Commission would hear from the Executive Branch rather than a private entity seeking delay for competitive advantage. Accordingly, MSV's concerns and request for greater "scrutiny" on this point should be rejected by the Bureau.

The Commission should also reject MSV's suggestion that there is a public safety issue with the Stratos BGAN Application because the European location of the gateway earth stations will hinder compliance with E911 for MSS.<sup>28</sup> As MSV is well aware, E911 is not applicable to MSS -- in fact, a formal proposal to make it applicable to MSS has not even been

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<sup>25</sup> See MSV Petition at 12.

<sup>26</sup> See *Inmarsat Market Access Order* at Appendix E.

<sup>27</sup> Stratos BGAN Application at Attachment 3, p.7.

<sup>28</sup> See MSV Petition at 13.

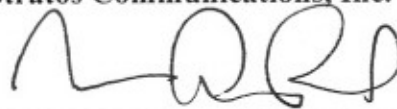
made.<sup>29</sup> If there is a proceeding to apply E911 to MSS and such a rule is adopted, Stratos and Inmarsat will make the necessary modifications to their network to ensure compliance. In the absence of E911 rules for MSS, however, there is no basis to deny or delay approval of the Stratos BGAN Application.

### III. CONCLUSION

For the reasons stated above, Stratos respectfully requests that the Bureau dismiss or deny the MSV Petition and promptly grant the Stratos BGAN Application as set forth therein.

Respectfully submitted,

**Stratos Communications, Inc.**



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November 10, 2005

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<sup>29</sup> See *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, Second Report and Order, FCC 04-201 (2004) at ¶ 7 (establishing an MSS call-center requirement but referring other E911 issues for further study to the Network Reliability and Interoperability Council).



## CERTIFICATE OF SERVICE

I, Marc A. Paul, an attorney with the law firm of Steptoe & Johnson LLP, hereby certify that on this 10th day of November, 2005, served a true copy of the foregoing "Opposition," by first class mail, postage pre-paid (or as otherwise indicated) upon the following:

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