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October 3, 2006

**Via Hand Delivery**

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

**Re: Reply of Mobile Satellite Ventures Subsidiary LLC to Opposition to MSV's  
Petition to Hold in Abeyance Application of Telenor Satellite, Inc.  
File No. SES-MFS-20060725-01253  
File No. SES-AMD-20060804-01310  
Call Sign E980136**

Dear Ms. Dortch:

Mobile Satellite Ventures Subsidiary LLC ("MSV") hereby files this redacted, public version of a Reply to the Opposition to MSV's Petition to Hold in Abeyance the above-referenced application of Telenor Satellite, Inc. ("Telenor") to operate a fixed earth station with the Inmarsat 3F4 satellite which has recently been relocated to 142°W.<sup>1</sup> As discussed herein, certain information provided in the attached Reply should be treated as confidential.<sup>2</sup>

**47 C.F.R. § 0.459(b)(1) -- Identification of the specific information for which confidential treatment is sought**

MSV requests confidential treatment of information relating to the *Mexico City Memorandum of Understanding* and the on-going international L band frequency coordination process which is confidential to the parties to that coordination, which includes the Commission and MSV.<sup>3</sup> When considering other applications to use Inmarsat satellites in the United States,

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<sup>1</sup> See Telenor Satellite, Inc., Application, File No. SES-MFS-20060725-01253 (Call Sign E980136) (July 25, 2006); Telenor Satellite, Inc., Amendment, File No. SES-AMD-20060804-01310 (Call Sign E980136) (August 4, 2006).

<sup>2</sup> 47 C.F.R. § 0.459(b).

<sup>3</sup> See *Memorandum of Understanding for the Intersystem Coordination of Certain Geostationary Mobile Satellite Systems Operating in the Bands 1525-1544/1545-1559 MHz and 1626.5-1646.5/1646.5-1660.5 MHz*, Mexico City, Mexico, 18 June 1996.

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**47 C.F.R. § 0.459(b)(7) -- Identification of whether the information is available to the public and the extent of any previous disclosure of the information to third parties**

The information for which confidential treatment is sought is not publicly available. Disclosure to third parties of the information for which confidential treatment is sought has been strictly pursuant to non-disclosure agreements.

**47 C.F.R. § 0.459(b)(8) -- Justification of the period during which the submitting party asserts that material should not be available for public disclosure**

The information for which confidential treatment is sought should remain confidential indefinitely or until the parties to the *Mexico City Memorandum of Understanding* agree that it can be made publicly available.

**47 C.F.R. § 0.459(b)(9) -- Any other information that the party seeking confidential treatment believes may be useful in assessing whether its request for confidentiality should be granted**

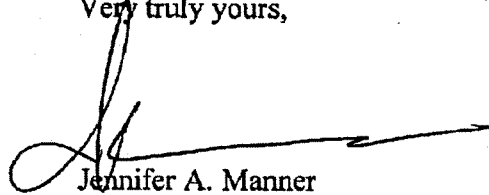
N/A.

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Please contact the undersigned with any questions.

Very truly yours,

A handwritten signature in black ink, appearing to be 'Jennifer A. Manner', with a long horizontal flourish extending to the right.

Jennifer A. Manner

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

In the matter of )  
)  
Telenor Satellite, Inc. )  
)  
Application for Modification of Fixed Earth ) File No. SES-MFS-20060725-01253  
Station License to Operate with Inmarsat ) (Call Sign E980136)  
3F4 at 142°W )  
)  
Amendment to Application for Modification ) File No. SES-AMD-20060804-01310  
of Fixed Earth Station License to Operate ) (Call Sign E980136)  
with Inmarsat 3F4 at 142°W )

**REPLY TO OPPOSITION TO PETITION TO HOLD IN ABEYANCE**

Mobile Satellite Ventures Subsidiary LLC (“MSV”) hereby files this Reply to the Opposition of Inmarsat Ventures Limited (“Inmarsat”) to MSV’s Petition to Hold in Abeyance the above-referenced application.<sup>1</sup> In its application, Telenor seeks to modify a fixed earth station license to permit operation with the Inmarsat 3F4 satellite which has been relocated to 142°W. The license currently authorizes transmit and receive operations using C band frequencies, and receive-only operations using frequencies in the Global Positioning System (“GPS”) band (1574-1576 MHz) and the L band (1545.8-1548 MHz). Operation of the earth station is limited to “digital data and feederlink” operations to support the Federal Aviation Administration’s Wide Area Augmentation System program (“FAA/WAAS”).

On September 8, 2006, MSV filed a Petition to hold the Telenor application in abeyance until after (i) Telenor provides a valid justification for its proposed use of Mobile Satellite

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<sup>1</sup> See Telenor Satellite, Inc., Application, File No. SES-MFS-20060725-01253 (Call Sign E980136) (July 25, 2006) (“*Telenor Application*”); Telenor Satellite, Inc., Amendment, File No. SES-AMD-20060804-01310 (Call Sign E980136) (August 4, 2006); see also Inmarsat Ventures Limited, Opposition, File No. SES-MFS-20060725-01253 (Call Sign E980136) et al. (September 21, 2006) (“*Inmarsat Opposition*”).

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Service (“MSS”) L band downlink frequencies (1545.8-1548 MHz); (ii) Inmarsat coordinates with MSV and Mobile Satellite Ventures (Canada) Inc. (“MSV Canada”) its proposed use of the 1545.8-1548 MHz band, which includes frequencies coordinated for MSV and MSV Canada; (iii) Inmarsat coordinates the operation of the Inmarsat 3F4 satellite at 142°W with other L band operators, including MSV and MSV Canada, to mitigate the significant risk of interference; and (iv) Telenor seeks a waiver of the Commission’s longitudinal station-keeping rule.<sup>2</sup>

On September 14, 2006, Telenor filed a letter clarifying that it no longer seeks access to the MSS L band frequencies for operation with the Inmarsat 3F4 satellite at 142°W for the FAA/WAAS program or any other purpose.<sup>3</sup> Accordingly, to the extent the Bureau grants this application, it should authorize operation in the C band and GPS band only, and specifically preclude Inmarsat from transmitting and Telenor from receiving in the MSS L band using the Inmarsat 3F4 satellite at 142°W.

Despite the fact that Telenor has now conceded that it does not seek access to MSS L band frequencies for use with the Inmarsat 3F4 satellite, Inmarsat nonetheless filed an Opposition to MSV’s Petition claiming that it has “fulfilled its obligations to seek coordination” of the Inmarsat 3F4 satellite at 142°W.<sup>4</sup> As discussed below, Inmarsat knows that it has never

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<sup>2</sup> See Mobile Satellite Ventures Subsidiary LLC, Petition to Hold in Abeyance, File No. SES-MFS-20060725-01253 (Call Sign E980136) et al. (September 8, 2006) (“*MSV Petition*”).

<sup>3</sup> See Letter from Keith H. Fagan, Telenor Satellite Inc., to Ms. Marlene H. Dortch, FCC, File No. SES-MFS-20060725-01253 (Call Sign E980136) et al. (September 14, 2006). MSV responded to this letter on September 20, 2006. See Letter from Jennifer A. Manner, MSV, to Ms. Marlene H. Dortch, FCC, File No. SES-MFS-20060725-01253 (Call Sign E980136) et al. (September 20, 2006).

<sup>4</sup> *Inmarsat Opposition* at 2. Inmarsat incorporates by reference various filings submitted in previous proceedings. MSV hereby incorporates by reference the following filings it submitted in those previous proceedings: Letter from Jennifer A. Manner, MSV, to Mr. John Giusti and Mr. Julius Knapp, FCC, Call Sign E010011 et al. (June 20, 2006); Letter from Jennifer A.

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reached a coordination agreement with MSV or MSV Canada with respect to 142°W orbital location. Moreover, Inmarsat's licensing Administration (the United Kingdom) has never notified the United States that it deems the Inmarsat 3F4 satellite at 142°W to be coordinated. Inmarsat's thinly veiled attempt to obtain a Commission authorization based on disingenuous claims of completed coordination would undermine the formal ITU coordination process. In fact, a decision to authorize service at this uncoordinated location would unfairly favor Inmarsat over all of the other satellite operators – both U.S.- and non-U.S. licensed -- that diligently follow the ITU coordination procedures. Such a decision would undermine the Commission's obligations under the World Trade Organization (WTO) Agreement on Basic Telecommunications Services<sup>5</sup> as well as the Commission's own commitments made in the *DISCO II Order* to create a level regulatory playing field among satellite operators.<sup>6</sup>

Inmarsat has failed to reach a coordination agreement with any of the North American L band operators regarding its operation of an Inmarsat-3 satellite at 142°W.

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Manner, MSV, to Mr. John Giusti and Mr. Julius Knapp, FCC, Call Sign E010011 et al. (July 18, 2006); MSV, Petition to Hold in Abeyance, File No. SES-MFS-20060118-00050 et al. (March 3, 2006); Reply of MSV, File No. SES-MFS-20060118-00050 et al. (March 28, 2006); MSV, Petition to Hold in Abeyance, File No. SES-MFS-20051207-01709 et al. (January 20, 2006); Reply of MSV, File No. SES-MFS-20051207-01709 et al. (February 14, 2006).

<sup>5</sup> *Amendment of the Commission's Regulatory Policies to Allow Non-U.S. Licensed Satellites Providing Domestic and International Service in the United States, Report and Order*, 12 FCC Rcd 24094 (1997) ("*DISCO II Order*"), at ¶ 22 (explaining that the "critical aspect" of national treatment analysis under the WTO Basic Telecom Agreement "is whether the treatment accorded modifies the conditions of competition in favor of certain foreign or domestic suppliers").

<sup>6</sup> In the *DISCO II Order*, in which the Commission adopted policies governing the ability of foreign-licensed satellite systems to serve the U.S. market, the Commission was careful to require "non-U.S. satellite operators to comply with all Commission rules applicable to U.S. satellite operators" because "[t]o do otherwise would place U.S. and foreign operators on an uneven competitive footing." See *DISCO II Order* at ¶ 173. The Commission explained that "this overall approach does not violate U.S. national treatment obligations because we will be treating foreign service suppliers identically to U.S. service suppliers with respect to their provision of service within the United States." *Id.*

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In May 2006, MSV requested specific technical information from Inmarsat to enable MSV to further consider the impact of the operation of an Inmarsat-3 satellite at 142°W.<sup>12</sup> Inmarsat has not responded to this request nor has it addressed the concerns expressed previously by MSV and MSV Canada. Accordingly, Inmarsat cannot truthfully contend that it has coordinated, or even made a good faith attempt to coordinate, the operation of the Inmarsat-3 satellite at 142°W. Indeed, Inmarsat's licensing

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<sup>7</sup> **REDACTED**

<sup>8</sup> **REDACTED**

<sup>9</sup> **REDACTED**

<sup>10</sup> **REDACTED**

<sup>11</sup> **REDACTED**

<sup>12</sup> *See* Letter from Dick Evans, MSV, to Jonas Eneberg, Inmarsat Global plc (May 8, 2006).

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Administration (the United Kingdom) has not notified the United States that it considers the satellite to be coordinated.

Grant of this application would support Inmarsat's unilateral coordination strategy and would countenance circumvention of the formal ITU coordination process. Inmarsat's strategy is to offer one-sided coordination proposals to the other North American L band operators in order to create a semblance of an attempt to coordinate. When other operators cannot accept these unreasonable terms, Inmarsat then blames the other L band operators for allegedly stalling the coordination process. Meanwhile, despite the absence of a coordination agreement, Inmarsat commences operation of its uncoordinated satellite, but only in a limited manner in hopes of avoiding discovery of interference to other operators. Inmarsat then disingenuously claims that the absence of discovered interference during the short period in which it operated its uncoordinated satellite at less-than-planned technical parameters justifies its long-term operation pursuant to its planned technical parameters as filed with the ITU.<sup>13</sup> This trial and error strategy, if accepted by the Commission and other licensing Administrations, will render the ITU coordination process utterly meaningless and risk harmful interference to critical satellite services in the process.<sup>14</sup>

Inmarsat also claims that Commission precedent holds that Inmarsat's failure to coordinate the operation of its Inmarsat-3 satellite at 142°W with MSV, MSV Canada, and other L band operators does not preclude the Bureau from authorizing operation of the satellite using L band frequencies. *Inmarsat Opposition* at 3. In fact, Commission precedent holds that the

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<sup>13</sup> Neither the United Kingdom nor Inmarsat has made a binding commitment that the uncoordinated satellite will operate only at less-than-planned technical parameters.

<sup>14</sup> MSV and MSV Canada provide communication services for safeguarding of human life and property, and endangering such services is defined as harmful interference. *See* ITU Radio Regulation Nos. 1.59 and 1.169.



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Bureau will not license an uncoordinated satellite if there is evidence that harmful interference will result.<sup>15</sup> Such is the case with the Inmarsat 3F4 satellite at 142°W, which presents a significant risk of interference to the MSS operations of MSV and MSV Canada, including safety communications, absent prior coordination (as MSV explained in its Petition and Inmarsat fails to refute in its Opposition<sup>16</sup>). Despite Inmarsat's contention, the Bureau's decision to license MSV's next-generation satellites conditioned on operation on a non-harmful interference basis does not serve as precedent for grant of the present earth station application to operate with the launched-but-uncoordinated Inmarsat 3F4 satellite. *Inmarsat Opposition* at 3. In the cases involving MSV's next-generation satellites, no entity claimed that the satellites would cause interference, thus it was reasonable for the Bureau to conclude that harmful interference would

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<sup>15</sup> See Letter from Thomas S. Tycz, FCC, to Joseph A. Godles, Counsel for PanAmSat, File No. SAT-STA-19980902-00057 (September 15, 1998) (refusing to permit PanAmSat to operate C band payload until after coordinating with affected Administrations); *Loral Orion Services, Inc., Order and Authorization*, DA 99-2222, 14 FCC Rcd 17665, ¶ 10 (October 18, 1999) (refusing to permit Loral to provide commercial service because coordination had not yet been completed and harmful interference would occur absent coordination); *BT North America Inc., Order*, DA 00-162, 15 FCC Rcd 15602 (February 1, 2000) (granting earth station applications to operate with foreign-licensed satellite only after foreign-licensed satellite operator reached a coordination agreement with affected U.S.-licensed operator); see also *AfriSpace, Inc., Order and Authorization*, DA 06-4, ¶ 12 (Chief, International Bureau, January 3, 2006) (“[T]he Commission will not authorize new systems that would cause interference to licensed U.S. systems.”); *Mobile Satellite Ventures Subsidiary LLC, Order and Authorization*, DA 05-50 (January 10, 2005), at ¶ 8 (stating that the Commission “will not consider applications for new systems where the new system’s operations would cause interference to licensed systems”).

<sup>16</sup> *MSV Petition* at 6-7. Inmarsat's claim that it has operated an Inmarsat-2 at 142°W for years without causing interference is irrelevant. *Inmarsat Opposition* at 2. As MSV explained in its Petition, and Inmarsat fails to refute in its Opposition, (i) Inmarsat never coordinated the Inmarsat-2 satellite at 142°W with MSV, MSV Canada, or other L band operators; (ii) there is no established and agreed-to technical basis for the operation of the Inmarsat-2 satellites after the *Mexico City Memorandum of Understanding* among the five North American L band MSS operators and their respective Administrations; and (iii) the Inmarsat 3F4 satellite is materially different from a technical perspective than the Inmarsat-2 satellite it is allegedly replacing and is more likely both to cause interference to and to suffer interference from MSV, MSV Canada, and other L band systems relative to the Inmarsat-2 satellite. *MSV Petition* at 6-7.

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not result.<sup>17</sup> Moreover, at licensing, the MSV-1 and MSV-SA satellites were still years away from launch. Where launch of a satellite is years away, it is reasonable for the Commission to conclude that any interference issues that might arise will be resolved through coordination prior to actual operation.<sup>18</sup>

Inmarsat also contends that Telenor was not required to seek a waiver regarding the proposed  $\pm 0.1^\circ$  East-West station-keeping tolerance of the Inmarsat 3F4 satellite because there is not a Commission rule requiring MSS satellites to comply with  $\pm 0.05^\circ$  East-West station-keeping tolerance. *Inmarsat Opposition* at 3-4. As an initial matter, because the only applications pending before the Bureau to operate with the Inmarsat 3F4 satellite are for fixed

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<sup>17</sup> See *MSV-1, Order*, DA 05-1492 (May 23, 2005); *MSV-SA, Order*, DA 05-50 (January 10, 2005). In the *Big LEO* case Inmarsat cites, the Commission specifically stated that “until [Big LEO operators] successfully complete coordination, they cannot cause harmful interference.” See *Inmarsat Opposition* at 3 n.3 (citing *Amendment of the Commission’s Rules to Establish Rules and Policies Pertaining to MSS in the 1610-1626.5/2483.5-2500 MHz Frequency Bands*, 9 FCC Rcd 5936, ¶ 211 (1994)). The Bureau cannot impose such a condition in the case of Inmarsat 3F4 given the significant risk that operation on a non-harmful interference basis is not possible in the absence of prior coordination. See *MSV Petition* at 6-7.

The *SatCom Systems* case Inmarsat cites presents far different facts than those presented here. See *Inmarsat Opposition* at 3 n.3 (citing *SatCom Systems, Inc.*, 14 FCC Rcd 20798 (1999)). In that case, it was reasonable for the Commission to conclude that operation on a non-harmful interference basis was possible because the satellites at issue had been coordinated, the operators had committed to using specific frequencies, and the terms of the earth station licenses limited the operators to those frequencies. By contrast, in this case, Inmarsat is proposing to operate a satellite (i) at an orbital location that is not covered by any coordination agreement; (ii) with technical parameters that are different than those of the satellite previously operating at the proposed orbital location; and (iii) that has never been analyzed by MSV and MSV Canada at the orbital location requested. Thus, the proposed operation of the Inmarsat 3F4 satellite at  $142^\circ\text{W}$  presents a far different question than that presented in the *SatCom Systems* case.

<sup>18</sup> Similarly, in the *1993 AMSC Order*, which Inmarsat cites in its *Opposition* (*Inmarsat Opposition* at 3 n.3), the satellite at issue was years away from actual operation, meaning that it was reasonable for the Commission to conclude that interference issues would be resolved through coordination prior to actual operation. See *AMSC Subsidiary Corp., Memorandum Opinion and Order*, 8 FCC Rcd 4040 (June 14, 1993).

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earth stations,<sup>19</sup> the Inmarsat 3F4 satellite will operate only in the Fixed-Satellite Service (“FSS”), not the MSS, and therefore is unquestionably subject to the  $\pm 0.05^\circ$  East-West station-keeping tolerance requirement mandated by the Commission’s rules. 47 C.F.R. § 25.210(j). In any event, in authorizing MSV to launch and operate a next-generation MSS satellite, the Bureau held that MSV was required to satisfy the standard for a waiver in seeking authority to operate its MSS satellite with  $\pm 0.1^\circ$  East-West station keeping.<sup>20</sup> MSV has sought reconsideration of this decision, asking the Bureau to clarify that the rule requiring satellites to operate with  $\pm 0.05^\circ$  East-West station keeping does not apply to MSS satellites.<sup>21</sup> While Inmarsat in its Opposition attempts to explain how Telenor could justify a waiver of the  $\pm 0.05^\circ$  East-West station-keeping rule, this misses the point entirely. *Inmarsat Opposition* at 5. MSV’s concern here is only that the Bureau apply the Commission’s rules consistently. Thus, to the extent the Bureau authorizes the Inmarsat 3F4 satellite for service in the United States with  $\pm 0.1^\circ$  East-West station keeping without requiring Telenor to seek a waiver, the Bureau must afford similar treatment to other

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<sup>19</sup> See Lockheed Martin Corporation, Application, File No. SES-MFS-20060615-01010 (June 15, 2006).

<sup>20</sup> See *MSV-1 Order* ¶ 21. Inmarsat claims that the Commission in the *Orbital Debris Mitigation Order* retained the discretion to impose a condition on station-keeping tolerance on a case-by-case basis, and that the Bureau did so in acting on MSV’s application. *Inmarsat Opposition* at 4 (citing *Orbital Debris Mitigation Order*, 19 FCC Rcd 11567, 11587 ¶ 47 (2004)). In fact, the Commission reserved such discretion only with respect to non-geostationary satellites. *Orbital Debris Mitigation Order* ¶ 47 (“We retain discretion in any specific case, based upon any concerns arising in the licensing process, to include any needed conditions concerning the tolerance within which *an NGSO spacecraft* maintains its orbit.”) (emphasis added). Moreover, the Bureau in licensing MSV-1 held MSV to the standard for a waiver set forth in Section 1.3 of the Commission’s rules. See *MSV-1 Order* ¶ 21. The Bureau never stated or implied that it was relying on any discretion to act on a case-by-case basis that Inmarsat alleges the Commission retained in the *Orbital Debris Mitigation Order*.

<sup>21</sup> See MSV, Petition for Clarification and Partial Reconsideration, File Nos. SAT-LOA-19980702-00066 et al (June 22, 2005).

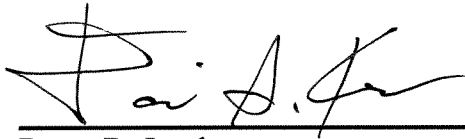
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MSS satellites proposing to serve the U.S. market, such as MSV's satellite.<sup>22</sup> Conversely, if the Bureau on reconsideration of the *MSV-1 Order* upholds its decision that MSS satellites are subject to the rule mandating  $\pm 0.05^\circ$  East-West station keeping, the Telenor application must be dismissed for failing to seek a waiver of this rule.<sup>23</sup>

**Conclusion**

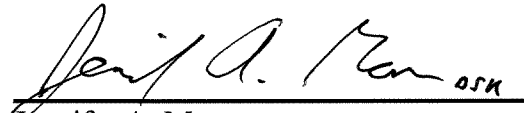
Based on the foregoing, the Bureau should limit Telenor's operations pursuant to this license to transmitting or receiving C band and GPS frequencies only.

Respectfully submitted,



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Bruce D. Jacobs  
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Dated: October 3, 2006

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<sup>22</sup> See *Melody Music, Inc. v. FCC*, 345 F.2d 730, 732 (D.C. Cir. 1965).

<sup>23</sup> See Letter from Thomas S. Tycz, FCC, to John K. Hane, Pegasus Development Corporation, DA 03-3665 (November 19, 2003) (dismissing application for failing to seek waiver of Commission's East-West station-keeping rule).

### **Technical Certification**

I, Richard O. Evans, Senior Engineer of Mobile Satellite Ventures Subsidiary LLC, certify under penalty of perjury that:

I am the technically qualified person with overall responsibility for the technical information contained in this Reply. I am familiar with the Commission's rules, and the information contained in the Reply is true and correct to the best of my knowledge and belief.

  
Richard O. Evans

Dated: October 3, 2006

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**CERTIFICATE OF SERVICE**

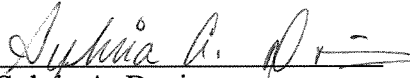
I, Sylvia A. Davis, a secretary with the law firm of Pillsbury Winthrop Shaw Pittman LLP, hereby certify that on this 3rd day of October 2006, I served a true copy of the foregoing by first-class United States mail, postage prepaid, upon the following:

Diane J. Cornell  
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