

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

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APR 24 2008
Federal Communications Commission
Office of the Secretary

In the matter of)
New ICO Satellite Services G.P.) File No. SES-LIC-20071203-01646
) File No. SES-AMD-20080118-00075
) File No. SES-AMD-20080219-00172

REPLY

Inmarsat Global Limited (“Inmarsat”) replies to the Consolidated Opposition and Response (“Opposition”) of New ICO Satellite Services G.P. (“ICO”), in which ICO responds to the petitions to deny and comments on ICO’s application for an ATC license.

In its Petition to Deny, Inmarsat noted that ICO failed to make a “satisfactory, prospective and substantial showing that [it] will soon meet” the ATC gating criterion that it have a ground spare fully constructed within one year of commencing ATC operations.¹ Specifically, Inmarsat explained: “An unexercised option to construct a spacecraft that will be years away from completion if and when the option is exercised by no means constitutes a ‘substantial showing that [ICO] will soon meet’ the ground spare criterion.”² Inmarsat also explained that it should take ICO at least three years to construct its ground spare.³

ICO does not dispute how long it will take to build a ground spare. Nor does ICO explain how it will satisfy the ground spare requirement in a timely fashion. Rather, ICO simply reasserts that it is “in the final stages of an extensive investigation” with respect to contracting

¹ Inmarsat Petition to Deny at 2 (quoting *Flexibility for Delivery of Communications by Mobile Satellite Service Providers in the 2 GHz Band*, 20 FCC Rcd 4616, 4649, ¶ 89 (2005)).

² *Id.* at 4.

³ *Id.* at 4 n.17.

for a ground spare, and argues that such a vague statement should be adequate under Commission precedent.⁴

As an initial matter, ICO's assertion that it can have a ground spare ready in time for the commencement of ATC service does not square with the facts. ICO explains that it "expects to commence commercial satellite service nationwide as soon as January 2009," and wishes "to commence both satellite and ATC services at the same time."⁵ In order to satisfy the ground spare criterion with this schedule, ICO would need to contract for and construct its ground spare in record time—a mere nineteen months from now. That is about a year and a half sooner than any reasonable construction schedule would allow, and that timeline does not factor in the delay that likely would occur if, as ICO acknowledges is possible, ICO switches satellite manufacturers.⁶ Moreover, ICO has not indicated that it is any closer today to entering into a satellite construction contract than five months ago, when ICO first claimed to be in the "final stages" of its ground spare "investigation."⁷ In fact, ICO's CEO recently confirmed that ICO is not yet ready to order a ground spare satellite.⁸

⁴ ICO Opposition at 2-4. ICO notes that it has received grant of its recent milestone extension requests, which Inmarsat indicated were pending at the time. *Id.* at 2. Stamp-grant occurred just prior to Inmarsat filing its Petition to Deny, and public notice of grant has not occurred.

⁵ ICO Opposition at 7.

⁶ Inmarsat Petition to Deny at 4 n.17.

⁷ ICO Opposition at 3 (quoting New ICO Satellite Services G.P., IB File No. SES-LIC-20071203-01646, Exhibit 1 at 7 (filed Dec. 3, 2007)).

⁸ "If we do order a spare satellite it will be, it will be funded. That is, I think getting a spare satellite is obviously of importance and of interest to ICO but I don't think that it outweighs all of the other things that we are doing on the MSS side in launching the first satellite, getting an alpha trial into operation. So that to the extent we were to move down the road with a spare, I think it would be very likely that we'd expect to have that funded about the same time that we made that order." Comment of J. Timothy Bryan, ICO Chief Executive Officer, General Session: Mobile Satellite Services: MSS Industry Leaders Stake Their Claims, Satellite 2008, Washington, D.C. (Feb. 27, 2008).

In lieu of demonstrating substantial progress toward constructing a ground spare, ICO attempts to liken its situation to that of two other previous ATC applicants—Globalstar and MSV. Those cases are readily distinguishable.

When Globalstar sought ATC authority, it had had *eight* ground spares already constructed and a number of in-orbit satellites that it was attempting to recover from technical anomalies.⁹ Moreover, Globalstar indicated that it planned to launch at least four and as many as eight of its ground spares within approximately 18 months, at which time it would “have multiple in-orbit spares.”¹⁰ That is precisely the type of “substantial showing” that Commission precedent requires, and that ICO’s ATC application lacks.¹¹ Furthermore (unlike ICO), Globalstar had been providing commercial MSS over its fleet *for years* as its “primary” service prior to seeking ATC authority.¹² There was no question that Globalstar was committed to providing MSS.

Similarly, MSV had been providing commercial MSS over its first-generation satellite for years before seeking an ATC license.¹³ MSV sought a “complete waiver” of the ground spare requirement in its ATC application.¹⁴ In granting MSV’s ATC license, the Commission found that “it would [not] serve the public interest to force MSV to delay implementation of ATC” over its MSS system by requiring that MSV build a ground spare for its

⁹ *Globalstar LLC*, 21 FCC Rcd at 411, ¶¶ 35-36 (2006).

¹⁰ *Id.*

¹¹ ICO is thus mistaken when it argues that Globalstar did not have a spare satellite under construction when the Commission granted Globalstar’s ATC license. *See* ICO Opposition at 3-4 (citing *Globalstar LLC*, 21 FCC Rcd 398, 411, ¶ 36).

¹² *Globalstar LLC*, 21 FCC Rcd at 399, 411, ¶¶ 5, 35 (describing Globalstar’s MSS service and NGSO fleet).

¹³ *MSV*, 19 FCC Rcd 22144, 22145-46, ¶ 5 (2004) (describing MSV’s MSS operations).

¹⁴ *Id.* at 22151-52, ¶ 23.

aging in-orbit spacecraft. The Commission found that it would likely be “infeasible and would, in any event, be economically wasteful, for MSV to construct a spare satellite replicating the obsolete design of” that existing satellite.¹⁵ However, the Commission obligated MSV to have a ground spare for its second-generation “MSV-1” satellite ready soon after MSV launched MSV-1.¹⁶ In lieu of building a ground spare for MSV-1, MSV has since received a waiver to use the second-generation spacecraft operated by MSV Canada as its in-orbit backup.¹⁷ In justifying its subsequent waiver, MSV demonstrated, among other things, that the MSV Canada in-orbit spare was under construction and subject to the contractual requirement that it be delivered within six months of delivery of MSV-1.¹⁸ These facts are not present here, and ICO has provided no basis for waiving the ground spare gating criterion (nor has it even sought a waiver).

Thus, while Globalstar and MSV have satisfied the policy underlying the ground spare requirement, ICO simply has not done so. ICO easily could have contracted for a duplicate of its state-of-the-art spacecraft to serve as a ground spare, but ICO chose not to do so.

As a final matter, precedent is clear that Inmarsat has standing as a competitor of ICO to participate in this proceeding. ICO has launched and is currently bringing into service an MSS spacecraft to compete with Inmarsat.¹⁹ Moreover, contrary to ICO’s claim,²⁰ Inmarsat

¹⁵ *Id.* at 22152-53, ¶ 25.

¹⁶ *Id.*

¹⁷ *MSV*, 22 FCC Rcd 20548 (2007).

¹⁸ *Id.* at 20551, ¶ 11.

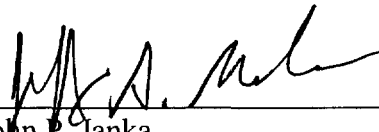
¹⁹ *FCC v. Sanders Brothers Radio Station*, 309 U.S. 470, 471, 476-77 (1940) (“*Sanders*”) (current operator has standing to challenge authorization of a new competitor); *Use of Returned Spectrum in the 2 GHz Mobile Satellite Service Frequency Bands*, 20 FCC Rcd 19696, 19711, ¶¶ 33-34 (2005) (ICO competes with *all* MSS operators). *Sevier Valley Broadcasting, Inc.*, 10 FCC Rcd 9795, 9796, ¶ 6 (1995), which ICO cites, stands for a proposition not relevant here: a “mere applicant” not currently participating in the marketplace may not have standing to file a petition to deny in certain circumstances.

“does not need to demonstrate that it will suffer a direct injury from grant’ of an application where standing is based on status as a competitor in the same market.”²¹ If the Commission nevertheless finds that Inmarsat does not have “standing,” Inmarsat respectfully requests that the Commission take Inmarsat’s concerns into account as “informal objections.”²²

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For the foregoing reasons, and those set forth Inmarsat’s Petition to Deny, the Commission should deny ICO’s ATC application.

Respectfully submitted,



John P. Janka
Jeffrey A. Marks
LATHAM & WATKINS LLP
555 Eleventh Street, N.W.
Suite 1000
Washington, D.C. 20004
Telephone: (202) 637-2200

Counsel for Inmarsat Global Limited

Diane J. Cornell
Vice President, Government Affairs
INMARSAT, INC.
1101 Connecticut Avenue, NW
Suite 1200
Washington, DC 20036
Telephone: (202) 248-5155

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²⁰ ICO Opposition at 2 n.4.

²¹ *Waterman Broadcasting Corporation of Florida*, 17 FCC Rcd 15742 n.2 (2002) (quoting *American Mobilephone, Inc.*, 10 FCC Rcd 12297, 12298, ¶ 8 (1997)). *Hispanic Information and Telecommunications Network, Inc.*, 18 FCC Rcd 23872, ¶ 19 (2003), which ICO cites, involved an applicant-petitioner who was not a participant in the marketplace, and whose pending application was dismissed.

²² 47 C.F.R. § 25.154(b).

CERTIFICATE OF SERVICE

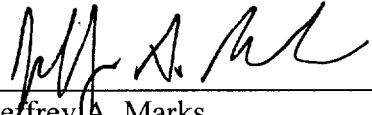
I, Jeffrey A. Marks, hereby certify that on this 24th day of April, 2008, I caused to be served a true copy of the foregoing Reply by first class mail, postage prepaid, upon the following:

Cheryl A. Tritt
Morrison & Foerster LLP
2000 Pennsylvania Ave., NW
Suite 5500
Washington DC 20006
(202) 887-1500

Lawrence R. Krevor
Vice President-Spectrum
Trey Hanbury
Director, Government Affairs
Sprint Nextel Corporation
2001 Edmond Halley Drive
Reston, VA 20191

Suzanne Hutchings Malloy
ICO Global Communications
815 Connecticut Avenue, NW
Suite 610
Washington, DC 20006
(202) 330-4005

Joseph A. Godles
Goldberg, Godles, Wiener & Wright
1229 Nineteenth Street, N.W.
Washington, DC 20036



Jeffrey A. Marks