

555 Eleventh Street, N.W., Suite 1000  
Washington, D.C. 20004-1304  
Tel: +1.202.637.2200 Fax: +1.202.637.2201  
www.lw.com

# LATHAM & WATKINS LLP

January 28, 2015

**VIA IBFS**

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

FIRM / AFFILIATE OFFICES  
Abu Dhabi Milan  
Barcelona Moscow  
Beijing Munich  
Boston New Jersey  
Brussels New York  
Century City Orange County  
Chicago Paris  
Doha Riyadh  
Dubai Rome  
Düsseldorf San Diego  
Frankfurt San Francisco  
Hamburg Shanghai  
Hong Kong Silicon Valley  
Houston Singapore  
London Tokyo  
Los Angeles Washington, D.C.  
Madrid

Re: *Ex Parte* Submission of Inmarsat Mobile Networks, Inc., FCC File Nos. SES-LIC-20120426-00397; SES-AMD-20120823-00781; SES-AMD-20150114-00008; Call Sign E120072

Dear Ms. Dortch:

Inmarsat Mobile Networks, Inc. (“Inmarsat”) submits this letter to address the *ex parte* submissions made by Eutelsat, S.A. (“Eutelsat”) on January 22 and 26, 2015<sup>1</sup> with respect to Inmarsat’s application for authority to serve the United States in the Ka band with the Inmarsat-5 F2 (“I5F2”) satellite at 55° W.L. (the “Application”). As I5F2 literally sits on the launch pad, ready for a February 1 launch, Eutelsat suddenly appears to ask that the Commission (i) deny or “decline to grant” the Application, or (ii) impose conditions that would facilitate Eutelsat’s engaging in spectrum brinkmanship through French ITU filings.

As an initial matter, Eutelsat’s submissions should be dismissed as inexplicably tardy and otherwise procedurally defective. Eutelsat appears for the first time in this proceeding well over two years after the pleading cycle closed in October 2012, making arguments based on alleged facts that were known or knowable as far back as 2010, but in any event are not substantiated by affidavit, as required by Commission rules.<sup>2</sup> Commission policies simply do not countenance

---

<sup>1</sup> Eutelsat, S.A., Notice of *Ex Parte* Communication, FCC File Nos. SES-LIC-20120426-00397, *et seq*; Call Sign E120072 (filed Jan. 22, 2015) (“Eutelsat *Ex Parte* Notice”); Eutelsat, S.A., Comments, FCC File Nos. SES-LIC-20120426-00397, *et seq*; Call Sign E120072 (filed Jan. 26, 2015).

<sup>2</sup> 47 C.F.R. § 25.154 (requiring petitions to deny to include an affidavit to support the specific allegations of fact).

this type of abuse of its processes, and do not allow late-filed pleadings without a compelling reason being provided along with the late filing.<sup>3</sup>

While Eutelsat has been lying in wait, (i) Inmarsat has invested hundreds of millions of dollars to deploy I5F2, and (ii) a wide variety of U.S. commercial, government, military and public safety agencies have made plans to use this satellite to serve the United States once it comes on-line at 55° W.L. All of this has occurred against a backdrop of discussions between Inmarsat and Eutelsat, in which Inmarsat told Eutelsat that Inmarsat planned to operate in the Ka band at 55° W.L.

Eutelsat's request is based on asserted ITU priority at 55.2° W.L., under an ITU filing that apparently will expire in about ten months, on December 9, 2015.<sup>4</sup> Notably, Eutelsat (i) only vaguely suggests that it might temporarily operate some satellite at 55° W.L. for some unspecified time period, (ii) provides no indication that it is committed to actually constructing and launching a satellite into 55° W.L., and (iii) does not even suggest that it intends to seek U.S. market access for, or otherwise serve the United States with, any such satellite. The absence of any such identified plans is particularly remarkable considering the imminent expiration of Eutelsat's ITU filing.

Fortunately, Commission policy does not support Eutelsat's request that the Commission either deny the Application or impose conditions that would stack the ITU deck in Eutelsat's favor.

As an initial matter, it is simply absurd for Eutelsat to allege that it somehow would "conserve administrative resources" if the Commission—three years into this proceeding—somehow denied the Application instead of granting it. To the contrary, doing so almost certainly would result in an even more protracted proceeding before the agency.

With respect to Eutelsat's "condition" request, it bears emphasis that the Commission recently has declined to facilitate this type of spectrum arbitrage.<sup>5</sup> Specifically, in recent cases

---

<sup>3</sup> See, e.g., *WWC Holding Co, Inc.*, Opinion, 16 FCC Rcd 72 ¶ 3 (2000) (denying a late-filed petition to deny submitted two months after the deadline where petitioner offered no reasonable excuse for its lateness); see also *DWKAJ(AM), Little Falls, N.Y.*, Opinion 27 FCC Rcd 6386, 6389 (2012) (denying a late-filed waiver request supported by sufficient public interest showing but not demonstrating unusual circumstances justifying the late filing), citing *NetworkIP, LLC v. FCC*, 548 F.3d 116, 127 (D.C.Cir. 2008) (federal court has repeatedly discouraged the Commission from entertaining late-filed pleadings "in the absence of extremely unusual circumstances"; failure to enforce strict deadlines cannot be sanctioned because "therein lie the seeds of destruction of the orderliness and predictability which are the hallmarks of lawful administrative action").

<sup>4</sup> See MM55.2W, API/A/5457 BRIFIC 2638/24.02.09 (ITU receipt Dec. 9, 2008), CR/C/2480 BRIFIC 2663/23.02.10 (ITU receipt Oct. 19, 2009).

<sup>5</sup> Where the Commission has already granted U.S. market access to an unlaunched system with ITU priority, and is considering a subsequent U.S. market access application by an

with similar circumstances, the Commission has declined to shackle an operator with demonstrated plans to serve the United States, to favor a company with inchoate plans, who arguably sought to use the Commission's licensing process as leverage for ITU purposes. Faced with such circumstances twice in the past few years, the Commission has declined to impose the types of conditions that Eutelsat requests,<sup>6</sup> finding that such conditions would "inject elements of the ITU coordination process into any grant of market access,"<sup>7</sup> and thus provide advantages in a manner not contemplated by Commission policy. Eutelsat ignores this recent precedent, and instead relies on a 12-year-old case that arose under the pre-2003 satellite licensing paradigm, and thus is readily distinguishable.<sup>8</sup>

For these reasons, Inmarsat respectfully requests that the Commission disregard both of Eutelsat's last-minute requests at obstruction and instead grant the Application expeditiously. As it has done in similar cases, the Commission should "decline to specify detailed conditions concerning possible scenarios that may arise if the two companies and their respective Administrations do not complete coordination,"<sup>9</sup> and thereby avoid having its processes used as leverage for ITU purposes.

---

operator with lower ITU priority, the Commission has indicated that it may grant U.S. market access to the lower priority system, and require that system to cease serving the United States if it does not successfully coordinate with the higher priority network once launched that previously had been granted U.S. market access. *Amendment of the Commission's Space Station Licensing Rules and Policies*, First Report and Order, 18 FCC Rcd 10,760 ¶ 296 (2003) ("*Space Station Licensing Reform Order*"). Those circumstances—where the details of the "higher ITU priority" system had been fully vetted and approved by the Commission—before another system sought market access are not present here.

<sup>6</sup> See *Hughes Network Systems, LLC, Letter of Intent Seeking Access to the United States Market*, Declaratory Ruling, 26 FCC Rcd 8521 ¶ 26 (2011) ("*Hughes Declaratory Ruling*") (declining to impose conditions requested by Ciel on a grant of market access authority to Hughes, including a condition that Hughes cease service to the U.S. upon launch and operation of a satellite with higher ITU priority prior to the completion of the coordination process); Inmarsat Hawaii Inc., IBFS File No. SAT-LOI-20140326-00034, Call Sign S2923, Conditions n.3 (granted Sept. 18, 2014) (declining "to specify detailed conditions" concerning scenarios in which companies with differing ITU priority at the same nominal location are unable to resolve the matter).

<sup>7</sup> *Hughes Declaratory Ruling* ¶ 24.

<sup>8</sup> See Eutelsat *Ex Parte* Notice at 3 n.5 (citing *Loral Spacecom Corporation, Petition for Declaratory Ruling to Add Telesat 13 to the Permitted Space Station List*, SAT-PDR-20020315-00025, Order, DA 03-2624 (rel. Aug. 8, 2003)).

<sup>9</sup> *Hughes Declaratory Ruling* ¶ 26.

LATHAM & WATKINS<sup>LLP</sup>

Respectfully submitted,

/s/

John P. Janka  
Elizabeth R. Park

cc: Renee Gregory  
Jose Albuquerque  
Brian Weimer