

RECEIVED

NOV 28 2005

Satellite Division
International Bureau
In the Matter of

Stratos Communications, Inc.
Application for Title III Blanket License
to Operate Mobile Earth Terminals with
Inmarsat 4F2 at 52.75°W

Stratos Communications, Inc.
Application for Section 214 Authorization
to Operate Mobile Earth Terminals with
Inmarsat 4F2 at 52.75°W

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

ORIGINAL
RECEIVED

NOV 23 2005

Federal Communications Commission
Office of Secretary

)
)
) File No. SES-LFS-20050826-01175
) File No. SES-AMD-20050922-01313

)
)
) File No. ITC-214-20050826-00351
)
)
)
)

OPPOSITION TO MOTION TO STRIKE

Mobile Satellite Ventures Subsidiary LLC (“MSV”) hereby files this Opposition to the
“Motion to Strike Portions of the MSV Petition” filed by Stratos Communications, Inc.

(“Stratos”) on November 10, 2005 in connection with the above-referenced applications.¹

Stratos seeks to strike portions of MSV’s “Petition to Hold in Abeyance or Grant with
Conditions” the above-referenced applications,² which have been kept confidential pursuant to
the terms of the *Mexico City Memorandum of Understanding (“Mexico City MoU”)*, an
international agreement among the five administrations that license L band operators serving

¹ See Stratos Communications, Inc., Motion to Strike Portions of the MSV Petition, File Nos. SES-LFS-20050826-01175; SES-AMD-20050922-01313; ITC-214-20050826-00351 (filed Nov. 10, 2005) (“*Stratos Motion*”).

² See Mobile Satellite Ventures Subsidiary LLC, Petition to Hold in Abeyance or Grant with Conditions, File Nos. SES-LFS-20050826-01175; SES-AMD-20050922-01313; ITC-214-20050826-00351 (filed October 28, 2005) (“*MSV Petition*”). Both confidential and public versions of the Petition were filed with the Commission.

North America.³ As discussed herein, the Bureau should deny the Motion because (i) Stratos has no right to access these confidential materials and (ii) Stratos' interests would not be prejudiced by the Commission's consideration of these confidential materials, since Inmarsat Ventures Limited ("Inmarsat") has access to the materials and is an active participant in the proceeding in support of Stratos' applications.

Background

MSV Petition. On October 28, 2005, MSV filed a "Petition to Hold in Abeyance or Grant with Conditions" the above-referenced applications filed by Stratos to operate terminals with an uncoordinated Inmarsat-4 L band satellite. In the Petition, MSV made reference to the *Mexico City MoU*, a framework agreement executed in 1996 by the five administrations that license L band systems serving North America. Under the *Mexico City MoU*, the five North American L band operators are each assigned certain frequencies to use on their specific satellites. The *Mexico City MoU* provides that the agreement, and certain related materials, are confidential to the parties and operators.⁴ Accordingly, MSV sought confidential treatment of those portions of its Petition (the "Redacted Materials") addressing the *Mexico City MoU* and related materials.

Stratos Request. On November 1, 2005, Stratos contacted MSV to request access to the Redacted Materials. Counsel for MSV informed Stratos that MSV was not at liberty to provide such access. MSV suggested that Stratos contact the Commission directly to obtain assistance.

See Stratos Motion, Declaration of Marc A. Paul.

³ See *Memorandum of Understanding for the Intersystem Coordination of Certain Geostationary Mobile Satellite Systems Operating in the Bands 1525-1544/1545-1559 MHz and 1626.5-1645.5/1646.5-1660.5 MHz* (1996) ("*Mexico City MoU*").

⁴ *Mexico City MoU*; see also *COMSAT Corporation et. al., Memorandum Opinion, Order and Authorization*, 16 FCC Rcd 21661, ¶ 111 (2001) ("*COMSAT Order*") ("The Mexico City Agreement and related coordination documents, such as minutes of coordination meetings, are considered confidential.").

Stratos Motion. On November 10, 2005, Stratos filed a “Motion to Strike Portions of the MSV Petition.” Stratos argues that (i) without access to the Redacted Materials, it cannot fashion an effective response to MSV’s Petition (*Stratos Motion* at 2-3, 5-6); (ii) the Administrative Procedures Act (“APA”) guarantees access to the Redacted Materials (*Stratos Motion* at 3-4); and (iii) in the absence of such access, the Commission must strike the Redacted Materials from the record (*Stratos Motion* at 4-7).

Discussion

I. STRATOS HAS NO RIGHT TO ACCESS THE REDACTED MATERIALS

Stratos claims that the APA – and more specifically, the procedures specified therein for formal adjudications – entitles it to access the Redacted Materials. *Stratos Motion* at 3-4. In fact, however, the Commission’s licensing proceedings are not formal adjudications under the APA and, as such, are not subject to these procedural requirements.⁵ Stratos implicitly concedes as much by suggesting that a protective agreement – which would necessarily restrict Stratos’ access to the Redacted Materials – would be an appropriate option in the instant proceeding. *Stratos Motion* at 7.

Moreover, the Freedom of Information Act (“FOIA”) affirmatively grants the Commission the right to withhold certain materials – including materials that address sensitive matters of foreign relations, administration bargaining positions, and international coordination –

⁵ *An Inquiry Into the Use of the Bands 825-845 MHz and 870-890 MHz for Cellular Communications Systems; and Amendment of Parts 2 and 22 of the Commission's Rules Relative to Cellular Communications Systems*, 86 FCC 2d 469, at ¶ 67 (1981); see also, e.g., *AT&T Corp.* 16 FCC Rcd 13636, at ¶ 61 (2001) (finding that the “fact that Congress did not in Section 214 require an oral hearing ... is evidence that Congress was leaving it to the discretion of the Commission to decide what procedure to use”); *Long Island Lighting Company*, 14 FCC Rcd 16521, at ¶ 15 (1999) (finding that “Applicants’ reliance on the APA in this instance is misplaced [as] Section 556 by its own terms is applicable only in proceedings which require resolution by a hearing on the record.”).

from public inspection.⁶ Pursuant to FOIA, the Commission already has afforded confidential status to the *Mexico City MoU* and related documents.⁷ Further, under FOIA, the Commission may restrict access to confidential documents even if those documents would assist a party in prosecuting its interests before the Commission; the applicability of the FOIA exemptions is not dependent on the particular circumstances of a FOIA requester or its litigation or other needs.⁸

Stratos ignores the confidential nature of the *Mexico City MoU*, and consequently relies on precedent that is inapplicable to the instant proceeding. Stratos relies principally on the Commission's *CPUC Report and Order* and the D.C. Circuit's decision in *U.S. Lines, Inc. v. Federal Maritime Commission*. In the *CPUC Report and Order*, the Commission refused to consider the results of a study which relied on data which had not been provided to other parties to the proceeding, even though the submitting party had the legal authority to do so.⁹ In *U.S. Lines*, the D.C. Circuit rejected a Federal Maritime Decision which relied upon certain "reliable data reposing in the files of the Commission" that had not been placed in the record.¹⁰ Critically, however, the data in these cases was not subject to an international agreement requiring that it be kept confidential.

⁶ See 5 U.S.C. §552; 47 C.F.R. § 0.45.

⁷ See *COMSAT Order*, 16 FCC Rcd 21661, at ¶ 111 (2001) ("The Mexico City Agreement and related coordination documents, such as minutes of coordination meetings, are considered confidential."); see also *Robert J. Butler*, 6 FCC Rcd 5414, at ¶ 17 (1991).

⁸ See *Robert J. Butler*; see also *Reporters Committee for Freedom of the Press v. Department of Justice*, 109 S. Ct. 1468, 1480 (1989); *North v. Walsh*, 881 F.2d 1088, 1096 (D.C. Cir. 1989).

⁹ See *Petition of the State of California and the Public Utilities Commission of the State of California to Retain Regulatory Authority over Intrastate Cellular Service Rates*, 10 FCC Rcd 7486 (1995) ("*CPUC Report and Order*").

¹⁰ *U.S. Lines v. Federal Maritime Commission*, 548 F.2d 519 (D.C. Cir. 1978).

II. STRATOS' INTERESTS WOULD NOT BE PREJUDICED BY THE COMMISSION'S CONSIDERATION OF THE REDACTED MATERIALS

Although it is clear that Stratos has no legal right to the Redacted Materials, it is also worth noting that Stratos' interests are not prejudiced by the materials remaining undisclosed, since Inmarsat, which does have access to the non-redacted Petition, is an active participant in this proceeding.¹¹ Stratos can safely rely on Inmarsat, the entity that provides the space segment of the service proposed by Stratos, to address the issues presented in the Redacted Materials.¹² Inmarsat has a strong incentive to vigorously prosecute Stratos' application and respond to MSV's claims in the Redacted Materials, as Inmarsat would benefit from Stratos' provision of service in the U.S., and the Redacted Materials pertain entirely to Inmarsat's failure to abide by its obligations under the *Mexico City MoU*. Under these circumstances, it is unlikely that Stratos could provide any relevant information with respect to the Redacted Materials that Inmarsat has not already provided.¹³

¹¹ See Inmarsat Ventures Limited, Response, File Nos. SES-LFS-20050826-01175, SES-AMD-20050922-01313, ITC-214-20050826-00351 (November 10, 2005).

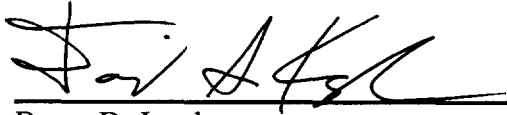
¹² Stratos attempts to forestall this obvious alternative to striking the Redacted Materials from the record by citing the Commission's determination that it normally will not recognize "third-party standing." *Stratos Motion* at 5-6, n.18. The Commission's "third-party standing" precedent, however, addresses only whether a party may claim standing based on the interests of another party. This precedent does not restrict a party from prosecuting the interests of another party if standing is not in issue, particularly where the interests of the two parties coincide. Thus, Stratos' attempts to draw parallels between the Commission's "third-party standing" precedent and the instant proceeding are misguided.

¹³ As noted above, the Commission need not afford Stratos access to the Redacted Materials – either to comply with the APA or to protect Stratos' interests. However, should the Commission determine that it cannot consider the Redacted Materials without disclosing those materials to Stratos, disclosure pursuant to a protective order would be preferable to striking the Redacted Materials from the record.

Conclusion

For the foregoing reasons, MSV respectfully requests that the Commission deny the Stratos "Motion to Strike Portions of the MSV Petition."

Respectfully submitted,



Bruce D. Jacobs

David S. Konczal

Jarrett S. Taubman *

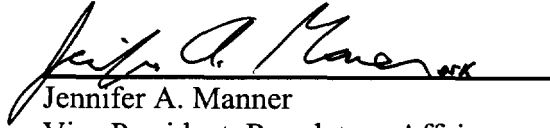
PILLSBURY WINTHROP

SHAW PITTMAN LLP

2300 N Street, NW

Washington, DC 20037-1128

(202) 663-8000



Jennifer A. Manner

Vice President, Regulatory Affairs

MOBILE SATELLITE VENTURES

SUBSIDIARY LLC

10802 Parkridge Boulevard

Reston, Virginia 20191

(703) 390-2700

*Admitted in NY. Not admitted in DC. Supervised by members of the DC Bar.

Dated: November 23, 2005

CERTIFICATE OF SERVICE

I, Sylvia A. Davis, a secretary with the law firm of Pillsbury Winthrop Shaw Pittman LLP, hereby certify that on this 23rd day of November 2005, served a true copy of the foregoing by first-class United States mail, postage prepaid, upon the following:

Roderick Porter*
International Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Gardner Foster*
International Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

James Ball*
International Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Cassandra Thomas*
International Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Karl Kensinger*
International Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Fern Jarmulnek*
International Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Robert Nelson*
International Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Howard Griboff*
International Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Andrea Kelly*
International Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Scott Kotler*
International Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

JoAnn Ekblad*
International Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Alfred M. Mamlet
Phillip L. Malet
Marc A. Paul
Steptoe & Johnson LLP
1330 Connecticut Avenue N.W.
Washington, D.C. 20036
Counsel for Stratos Communications, Inc.

Diane J. Cornell
Vice President, Government Affairs
Inmarsat, Inc.
1100 Wilson Blvd, Suite 1425
Arlington, VA 22209

John P. Janka
Jeffrey A. Marks
Latham & Watkins LLP
555 Eleventh Street, N.W.
Suite 1000
Washington, DC 20004


Sylvia A. Davis

*By Electronic Mail