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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

DEC - 7 2005

Federal Communication Commission
Bureau / Office

In the Matter of)	
)	
TELENOR SATELLITE, INC.)	File No. SES-LFS-20050930-01352
)	File No. SES-AMD-20051111-01564
Application for Title III Blanket License)	
to Operate BGAN Mobile Earth Terminals)	
with Inmarsat 4F2 at 52.75° W.L.)	
)	
TELENOR SATELLITE, INC.)	File No. ITC-214-20051005-00395
)	
Application for Section 214 Authorization)	
to Provide BGAN Mobile Satellite Service)	
via Inmarsat 4F2 at 52.75° W.L.)	

To: International Bureau

OPPOSITION

Telenor Satellite, Inc. ("Telenor") hereby opposes the Petition to Hold in Abeyance or to Grant with Conditions ("Petition") filed by Mobile Satellite Ventures Subsidiary LLC ("MSV") in this proceeding.¹

I. INTRODUCTION AND SUMMARY

The Applications at issue in this proceeding seek authority for Telenor to offer Inmarsat Broadband Global Area Network ("BGAN") services in the United States through the Inmarsat 4F2 satellite, which was launched on November 8, 2005, and will be deployed at the 52.75° W.L. orbital location.² Grant of Telenor's Applications is in the public interest because it will

¹ See MSV Petition to Hold in Abeyance or to Grant with Conditions (Nov. 23, 2005). Concurrently with this Opposition, Telenor is filing a Motion to Strike portions of the MSV Petition. As set forth in that Motion, the MSV Petition should be stricken because it contains redacted material that MSV refuses to disclose to Telenor even under a protective order, thus depriving Telenor of a full opportunity to respond. At a minimum, the Bureau should not rely on any of this redacted material in making its decision.

² Telenor has filed both a Title III application, File No. SES-LFS-20050930-01352 (filed Sept. 30, 2005), seeking a blanket license for up to 20,000 BGAN mobile earth terminals ("METs") and a Title II application, File No. ITC-214-20051005-03395 (filed Oct. 5, 2005) seeking to offer BGAN service on a common carrier basis.

give U.S. customers access to a next-generation Mobile Satellite Services ("MSS") offering, including e-mail, LAN, Internet, videoconferencing and voice communications. BGAN offers transmission speeds of up to 492 kbps, which is several times faster than current MSS offerings, including those of MSV. Moreover, the BGAN METs for which Telenor seeks blanket licensing are one-third the price, size and weight of those in use today with the Inmarsat system.

BGAN will facilitate the extension of broadband communications to parts of the United States that are currently unserved or underserved by terrestrial networks. In addition, it will restore broadband connectivity when natural disasters or other events disrupt terrestrial networks, and thus will be an invaluable tool in the effort to promote U.S. homeland security. Customers in Europe, Africa, the Middle East and Asia will have access to Inmarsat's BGAN services by the end of this year. If its Applications are approved promptly, Telenor will provide U.S. customers with the same opportunity to enjoy high-speed MSS by early 2006, when testing of the Inmarsat 4F2 satellite is complete.

MSV, in accordance with its longstanding practice of using the regulatory process to forestall competition, seeks to delay the introduction of BGAN services in the U.S. rather than compete with those offerings in the marketplace. In addition (and again true to form), MSV seeks to use this proceeding as leverage in its ongoing dispute with Inmarsat over the use of L-band frequencies. That dispute, however, should be resolved through the coordination mechanism established by the Mexico City Memorandum of Understanding ("Mexico City MOU"). Contrary to MSV's claims, a new international L-band coordination agreement is not needed before Telenor's Applications can be granted. Indeed, two MSV satellite applications were granted this year on a non-interference basis and in the absence of a new coordination agreement. There is no reason to treat the Telenor Applications differently.

Moreover, the Telenor Applications do not contain the alleged additional deficiencies identified by MSV. First, Inmarsat 4F2 is properly considered a replacement satellite for the Inmarsat 3 satellite at 54° W.L. because it will cover the same geographic area in the U.S. as that satellite and will not use any additional L-band frequencies beyond those currently authorized. Second, the station-keeping rules relied on by MSV do not apply to MSS satellites, and MSV has not alleged any grounds for examining this issue on an *ad hoc* basis. Third, the Applications do not raise national security or law enforcement concerns, because Telenor has a valid National Security Agreement on file with the Commission, and has agreed with the Executive Branch on an amended implementation plan that includes BGAN services.

II. MSV'S SPECTRUM DISPUTE WITH INMARSAT DOES NOT PROVIDE A BASIS FOR DELAYING OR CONDITIONING TELENOR'S APPLICATIONS.

MSV's Petition seeks to use this proceeding as additional leverage in its ongoing dispute with Inmarsat over L-band spectrum. The Bureau should not accede to MSV's request to delay or condition these Applications because that would be inconsistent with the Commission's treatment of previous L-band applications, including those of MSV itself. In addition, granting MSV's Petition would violate *DISCO-II* principles governing the treatment of foreign satellites licensed to WTO member countries, and would deny U.S. consumers access to needed MSS services that will soon be available in other parts of the world. Accordingly, the Bureau should reject MSV's tired arguments and act promptly to grant Telenor's Applications.

A. A New L-band Coordination Agreement Is Not a Prerequisite to a Grant of Telenor's Applications.

MSV asserts that action on Telenor's Applications should be delayed "until the conclusion of a coordination agreement that results in a more efficient assignment of L-band

spectrum among the existing operators.”³ However, the absence of such an agreement is no bar to action on pending L-band applications, as MSV’s own experience demonstrates. In the past twelve months, the Bureau has granted two MSV applications to operate in the L-band – one for a replacement satellite at 101° W.L., and the other for a new satellite (not contemplated by the Mexico City MOU) at 63.5° W.L.⁴ Rather than delay action on either application, the Bureau granted both on a non-interference basis.⁵ Telenor merely asks that the Bureau treat its Applications in a similar manner.

Inmarsat 4F2 is licensed by the United Kingdom, a WTO Member. Therefore, the Commission must afford the same treatment to Inmarsat service providers such as Telenor that it does to MSV. To do otherwise would be a violation of U.S. market access commitments in the WTO Agreement. In 1999 and again in 2001, the Commission declined to exact coordination concessions favorable to MSV as the price for U.S. market access, because to do so would violate U.S. WTO commitments.⁶ The same principle applies with equal force today.

MSV asserts that Inmarsat 4F2 presents spectrum management issues that are “fundamentally different” from those considered in previous proceedings.⁷ In particular, it claims that Inmarsat 4F2 has higher power and wider carriers that will make it more likely both to cause interference to and to suffer interference from other L-band systems. Once again, MSV

³ Petition at 1; *see also id.* at 7-14.

⁴ *Mobile Satellite Ventures Subsidiary LLC*, DA 05-50 (rel. Jan. 10, 2005) (“*MSV 101° Order*”); *Mobile Satellite Ventures Subsidiary LLC*, DA 05-1492 (rel. May 23, 2005) (“*MSV 63.5° Order*”).

⁵ *MSV 101° Order* at ¶ 59; *MSV 63.5° Order* at ¶ 39.

⁶ *See Satcom Systems, Inc., et al.*, 14 FCC Rcd 20798, 20813 (1999) (“*TMI Market Access Order*”); *COMSAT Corp. d/b/a COMSAT Mobile Communications et al.*, 16 FCC Rcd. 21661, 21669 (rel. Oct. 9, 2001) (“*Inmarsat Market Access Order*”). *See also Amendment of the Commission’s Regulatory Policies to Allow Non-U.S. Licensed satellites to Provide Domestic and International Satellite Services in the United States*, 12 FCC Rcd. 24094, 24104 (1997) (“*DISCO-IP*”).

⁷ Petition at 9.

is asking the Bureau to apply a double standard. The MSV satellites authorized earlier this year also have higher power and (much) wider carriers than MSV's existing satellites, and one of them will be deployed at an entirely new orbital location. Nevertheless, the Bureau did not hold those applications in abeyance; it simply required MSV to operate on a non-harmful interference basis until coordination is completed. The Bureau should apply the same standard here.

In any event, MSV's allegations about potential interference are unsubstantiated and wrong. The higher available spacecraft power on Inmarsat 4F2 (relative to Inmarsat 3) is used to support additional MSS users, and to support the provision of BGAN service in addition to the Inmarsat services being provided today on Inmarsat 3. Significantly, the EIRP spectral density of the BGAN carriers on Inmarsat 4F2 will be no higher than that of the carriers on Inmarsat 3 with the highest EIRP spectral density. Thus, Inmarsat will be able to ensure that the interference from Inmarsat 4F2 is no greater than that from Inmarsat 3F4.

Likewise, the interference *to* Inmarsat 4F2 should be no greater than the interference to Inmarsat 3. The global beams on both satellites have the same receive sensitivity, and the spot beams on Inmarsat 4F2 have better receive performance, as well as better side-lobe roll-off, than those on Inmarsat 3. For all these reasons, Inmarsat is confident that it can provide service over Inmarsat 4F2 that is no more susceptible to interference than service over Inmarsat 3.

B. Telenor Should Be Allowed to Use All Available Inmarsat Spectrum on a Non-Interference Basis.

MSV suggests that if the Telenor Applications are granted, there should be a condition preventing Telenor's BGAN METs from accessing Inmarsat 4F2 via frequencies that were allegedly "loaned" by MSV to Inmarsat.⁸ Telenor opposes any such condition. The BGAN METs should be free to use all of the frequencies available to Inmarsat, on a non-harmful

⁸ Petition at 14-17.

interference basis, subject to the outcome of any international coordination. MSV's reliance on the Mexico City MOU is unavailing. While the precise terms of that MOU are confidential, it is public knowledge that the MOU did not assign any L-band frequency to any nation or any operator. Rather, it contemplated a series of one-year operating agreements that assigned frequencies to individual operators only for that discrete period of time, and the most recent of those agreements expired in 1999.⁹ Given that set of circumstances, both the Commission and the courts have consistently held that all MSS operators and service providers may use the entire range of L-band frequencies on a non-harmful interference basis.¹⁰ The Bureau should not treat Telenor differently now. If a new international agreement changes the spectrum available to Inmarsat, Telenor will modify the operation of its BGAN METs. In the absence of such an agreement, however, there is no reason to condition these Applications.

III. MSV'S ADDITIONAL ISSUES ARE WITHOUT MERIT.

A. The Inmarsat 4F2 Is Properly Regarded as a Replacement Satellite.

MSV suggests that there is insufficient evidence in the record to support Telenor's assertion that the Inmarsat 4F2 should be treated as a replacement satellite.¹¹ As a threshold matter, the "bond posting" rule that MSV cites in support of this argument, 47 C.F.R. § 25.165(e), is inapplicable because the Inmarsat 4F2 has already been launched. In any event, Telenor will use the Inmarsat 4F2 to serve CONUS, Puerto Rico and the U.S. Virgin Islands. These are the same areas that Telenor currently serves via the Inmarsat 3F4 satellite at 54°W.L., and even if they were not, the Commission has previously treated MSV's satellites as

⁹ *TMI Market Access Order*, 14 FCC Rcd at 20814, *aff'd sub nom. AMSC Subsidiary Corp. v. FCC*, 216 F.3d 1154, 1159-60 (D.C. Cir. 2000) ("*AMSC v. FCC*").

¹⁰ *TMI Market Access Order*, 14 FCC Rcd at 20814; *AMSC v. FCC*, 216 F.3d at 1159-60; *Inmarsat Market Access Order*, 16 FCC Rcd at 21698-21699; *MSV 63.5§ Order* at ¶ 23; *MSV 101° Order* at ¶ 34.

¹¹ Petition at 17.

replacements even though they proposed to serve additional areas,¹² so MSV is once again asking the Commission to treat a competitor more stringently than MSV itself. The Inmarsat 4F2 will also use the same service link frequencies as the Inmarsat 3F4, and will be located only 1.25° from the current location of the Inmarsat 3F4. Thus, Inmarsat 4F2 will serve as an operational substitute to, and will operate within the umbrella of the technical parameters previously coordinated for, its predecessor, Inmarsat 3F4. Moreover, contrary to MSV's claim,¹³ there is no inconsistency between Telenor's applications and Inmarsat's recent SEC filings regarding the future deployment of the Inmarsat 3s; Telenor's application merely stated that the Inmarsat 3 at 54° W.L. would be retired from service *at that location*, not that it would be entirely decommissioned. For all these reasons, the Inmarsat 4F2 can properly be considered as a replacement satellite under the Commission's Rules.

B. The Station-Keeping Rule Cited by MSV Does Not Apply to MSS Satellites.

Despite MSV's assertions to the contrary,¹⁴ the Commission has now made clear that its +/- 0.05 east-west station-keeping rule, 47 C.F.R. § 25.210(j), does *not* apply to MSS satellites. Specifically, in its 2004 decision on orbital debris mitigation, the Commission "decline[d], 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 stations."¹⁵ Accordingly, Telenor is not required to seek a waiver of this rule. And while the Commission reserved the right to impose station-keeping conditions on a case-by-case basis,¹⁶ MSV has not asserted any reason why these

¹² *MSV 101°W.L. Order* at ¶¶ 13-14.

¹³ Petition at 17-18.

¹⁴ Petition at 18-19.

¹⁵ *Mitigation of Orbital Debris*, 19 FCC Rcd 11567, 11586 (2004).

¹⁶ *Id.* at 11587.

conditions would be appropriate at 52.75°W.L. (as opposed to, for example, 101° W.L., the much more congested area where MSV operates). In any event, Inmarsat has coordinated the operation of Inmarsat 4F2 with adjacent operators and has ensured that the station-keeping boxes do not overlap. In short, the Telenor Applications do not raise any station-keeping concerns.

C. Telenor Has Met Its National Security and Law Enforcement Obligations to the Satisfaction of the Executive Branch.

MSV suggests that Telenor's Applications should be subjected to further scrutiny because "while Telenor states that it has reached a revised agreement with the Executive Branch to address the admitted national security and law enforcement concerns presented by operation of the BGAN terminals, it has not filed this agreement in the record," thus "depriv[ing] interested parties of vital information needed to assess whether grant of the application will serve the public interest."¹⁷ MSV's assertion both misreads Telenor's Applications and misconstrues MSV's role with respect with the national security aspects of those Applications.

Telenor's national security agreement with the Executive Branch was filed with the Commission when Telenor acquired COMSAT Mobile Communications in 2001. That agreement is applicable to BGAN and has not changed. What *has* changed to incorporate BGAN, following negotiations with the Executive Branch, is Telenor's implementation plan pursuant to that agreement.¹⁸ For obvious reasons, that implementation plan is not publicly available, so MSV would not have an opportunity to comment upon it in any event. Simply stated, Telenor's arrangements with the Executive Branch are not a matter for public comment by competitive MSS providers.

¹⁷ Petition at 19-20.

¹⁸ See BGAN MET Application, Additional Response to Item 43 at 6-7.

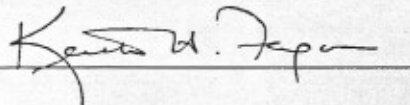
The Bureau should also reject MSV's attempt to delay processing of these applications because of alleged concerns about BGAN's ability to comply with E911 requirements.¹⁹ As MSV knows, MSS providers are not now subject to these requirements. When and if that situation changes, Telenor will take immediate action to address the Commission's concerns.

IV. CONCLUSION

Telenor's proposed BGAN service promises to bring about a new era in MSS communications. With BGAN, U.S. customers will have access to a wide array of broadband offerings that are not currently available in the United States from any MSS provider. The Bureau should not countenance MSV's efforts to forestall competition from this exciting new service. Rather, for the reasons stated above, the Bureau should dismiss or deny the MSV Petition and should promptly grant the Telenor Applications.

Respectfully submitted,

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By 

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December 7, 2005

¹⁹ Petition at 20.

CERTIFICATE OF SERVICE

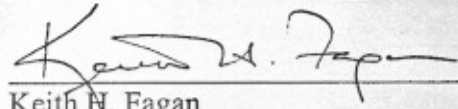
I, Keith H. Fagan, hereby certify that on this 7th day of December, 2005, I served a copy of the foregoing "Opposition" by first class mail, postage prepaid, upon the following:

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