

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

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 Mobile Earth Terminals with Inmarsat 4F2 at 52.75°W	)	
	)	
Telenor Satellite, Inc.	)	File No. ITC-214-20051005-00395
	)	
Application for Section 214 Authorization to Operate Mobile Earth Terminals with Inmarsat 4F2 at 52.75°W	)	
	)	

**OPPOSITION TO MOTION TO STRIKE**

Mobile Satellite Ventures Subsidiary LLC (“MSV”) hereby files this Opposition to the “Motion to Strike” filed by Telenor Satellite, Inc. (“Telenor”) on December 7, 2005 in connection with the above-referenced applications.<sup>1</sup> Telenor seeks to strike portions of MSV’s “Petition to Hold in Abeyance or Grant with Conditions” the above-referenced applications,<sup>2</sup> 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

<sup>1</sup> See Telenor Satellite, Inc., Motion to Strike Portions of the MSV Petition, File Nos. SES-LFS-20050930-01352; SES-AMD-20051111-01564; ITC-214-20051005-00395 (filed Dec. 7, 2005) (“*Telenor Motion*”).

<sup>2</sup> See Mobile Satellite Ventures Subsidiary LLC, Petition to Hold in Abeyance or Grant with Conditions, File Nos. SES-LFS-20050930-01352; SES-AMD-20051111-01564; ITC-214-20051005-00395 (filed November 23, 2005) (“*MSV Petition*”). Both confidential and public versions of the Petition were filed with the Commission.

that license L band operators serving North America.<sup>3</sup> As discussed herein, the Bureau should deny the Motion because (i) Telenor has no right to access these confidential materials and (ii) Telenor's 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 Telenor's applications.

### Background

*MSV Petition.* On November 23, 2005, MSV filed a "Petition to Hold in Abeyance or Grant with Conditions" the above-referenced applications filed by Telenor 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.<sup>4</sup> Accordingly, MSV sought confidential treatment of those portions of its Petition (the "Redacted Materials") addressing the *Mexico City MoU* and related materials.

*Telenor Request.* On November 28, 2005, Telenor contacted MSV to request access to the Redacted Materials. Counsel for MSV informed Telenor that MSV was not at liberty to

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<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 1626.5-1645.5/1646.5-1660.5 MHz* (1996) ("*Mexico City MoU*").

<sup>4</sup> *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.*").

provide such access. MSV suggested that Telenor contact the Commission directly to obtain assistance. See *Telenor Motion*, Declaration of Keith H. Fagan.

*Telenor Motion*. On December 7, 2005, Telenor filed a "Motion to Strike," arguing that that (i) without access to the Redacted Materials, it cannot fashion an effective response to MSV's Petition (*Telenor Motion* at 1-2); (ii) the Administrative Procedures Act ("APA") and the Due Process Clause guarantee access to the Redacted Materials (*Telenor Motion* at 2); and (iii) in the absence of such access, the Commission must strike the Redacted Materials from the record (*Telenor Motion* at 3).

### Discussion

#### I. TELENOR HAS NO RIGHT TO ACCESS THE REDACTED MATERIALS

Telenor claims that it has a right to access the Redacted Materials to the extent necessary to effectively respond to the arguments raised by MSV. *Telenor Motion* at 2. Telenor's sole support for this claim is a quote from a Commission decision broadly stating that the APA and the Due Process Clause "generally entitle parties in administrative proceedings to have access to the documents necessary for effective participation in those proceedings."<sup>5</sup> The Commission, however, has made clear that in narrow circumstances, competing policy objectives may require the Commission to limit a party's access to confidential materials. Tellingly, the only case cited by Telenor establishes this point,<sup>6</sup> and Telenor itself suggests that a protective agreement –

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<sup>5</sup> *Telenor Motion* at 2 (quoting *In the Matter of Open Network Architecture Tariffs of Bell Operating Companies*, 10 FCC Rcd 1619 at ¶ 14 (1995) ("ONA Tariff Order")) (emphasis added).

<sup>6</sup> *ONA Tariff Order* at ¶ 14 (1995) (denying MCI's claim that its rights were violated by the Commission's decision to restrict access to confidential materials, and finding that "the Commission must reach its own determination of the relative weight to be accorded the need for disclosure and the need to protect confidentiality, under applicable federal statutes and regulations").

which would necessarily restrict Telenor's access to the Redacted Materials – would be an appropriate option in the instant proceeding. *Telenor Motion*, Declaration of Keith H. Fagan.

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 – from public inspection.<sup>7</sup> Pursuant to FOIA, the Commission already has afforded confidential status to the *Mexico City MoU* and related documents.<sup>8</sup> 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.<sup>9</sup>

Nor is the Commission required to ignore the Redacted Materials because Telenor cannot access them. Telenor's attempts to prove otherwise are unavailing. Telenor first cites *U.S. Lines, Inc. v. Federal Maritime Commission*, in which the D.C. Circuit overturned a Federal Maritime Decision which relied upon certain “reliable data reposing in the files of the Commission” that the Commission had excluded from the record without justification.<sup>10</sup> Critically, however, this data was not subject to an international agreement requiring that it be kept confidential, but was apparently withheld as a matter of administrative convenience. As such, *U.S. Lines* has no bearing on whether the Commission may consider the Redacted Materials in the instant proceeding. Next, Telenor cites the Commission's 2001 *COMSAT Order*

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<sup>7</sup> See 5 U.S.C. § 552; 47 C.F.R. § 0.457.

<sup>8</sup> 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).

<sup>9</sup> 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).

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

granting Inmarsat access to the U.S. market. In that order, however, contrary to Telenor's contention, the Commission did not *ignore* the confidential information submitted by MSV in the course of the underlying proceeding, but simply chose not to *credit* that information after reviewing it fully. If anything, the *COMSAT Order* establishes the Commission's authority to review confidential material even if access is not granted to all parties to the relevant proceeding.

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

Although it is clear that Telenor has no legal right to the Redacted Materials, it is also worth noting that Telenor's 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.<sup>11</sup> Telenor can safely rely on Inmarsat, the entity that provides the space segment of the service proposed by Telenor, to address the issues presented in the Redacted Materials. Inmarsat has a strong incentive to vigorously prosecute Telenor's application and respond to MSV's claims in the Redacted Materials, as Inmarsat would benefit from Telenor's 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 Telenor could provide any relevant information with respect to the Redacted Materials that Inmarsat has not already provided.<sup>12</sup>

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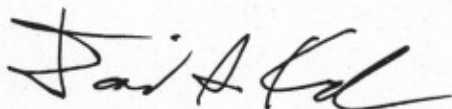
<sup>11</sup> See Inmarsat Ventures Limited, Response, File Nos. SES-LFS-20050930-01352; SES-AMD-20051111-01564; ITC-214-20051005-00395 (Dec. 7, 2005).

<sup>12</sup> As noted above, the Commission need not afford Telenor access to the Redacted Materials – either to comply with the APA or to protect Telenor's interests. However, should the Commission determine that it cannot consider the Redacted Materials without disclosing those materials to Telenor, disclosure pursuant to a protective order would be preferable to striking the Redacted Materials from the record.

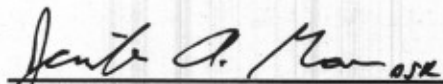
**Conclusion**

For the foregoing reasons, MSV respectfully requests that the Commission deny the Telenor "Motion to Strike."

Respectfully submitted,



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Dated: December 19, 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 19<sup>th</sup> day of December 2005, served a true copy of the foregoing by first-class United States mail, postage prepaid, upon the following:

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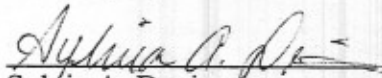
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