

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

In the matter of	)	
	)	
MVS USA, Inc.	)	File No. SES-LFS-20051123-01634
Application for Blanket License to Operate	)	(Call Sign E050348)
Mobile Earth Terminals with Inmarsat 4F2	)	
At 52.75° W	)	

To: International Bureau

**MOTION TO STRIKE THE PORTIONS OF THE MSV PETITION WITHHELD FROM  
MVS USA, INC.**

MVS USA, Inc. ("MVS") hereby files this Motion to Strike ("Motion") against the Petition to Hold in Abeyance ("MSV Petition") filed by Mobile Satellite Ventures Subsidiary LLC ("MSV") on January 13, 2006 against the above captioned application (the "MVS BGAN Application").<sup>1</sup> The Bureau should strike those portions of the MSV Petition that rely on allegedly confidential material that MSV refuses to provide to MVS even pursuant to a protective order. Since MVS is unable to respond effectively to these portions of the MSV Petition, any reliance by the Bureau on this confidential information and the redacted arguments would violate the Communications Act, the Administrative Procedures Act ("APA") and MVS's due process rights.<sup>2</sup> Rather than repeating the arguments made by other Broadband Global Area

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<sup>1</sup> In the alternative, MVS requests that MSV disclose the redacted and confidential material pursuant to a protective order.

<sup>2</sup> Concurrently with this Motion to Strike, MVS is filing an Opposition to the MSV Petition based on the non-redacted portions of that pleading. By filing a response, MVS in no way is conceding that it is being afforded an adequate opportunity to respond effectively to the MSV Petition. Further, to the extent that MVS is given access to the confidential portions of the MSV Petition at a later date, MVS reserves the right to supplement its Opposition as necessary.

Network (“BGAN”) applicants, MVS incorporates by reference the other Motions to Strike filed by the BGAN applicants.<sup>3</sup> Below is a brief synopsis of these arguments.

On November 23, 2005, MVS filed an application seeking authority for a blanket license to operate 40,000 mobile earth terminals (“METs”) and provide BGAN services utilizing the new Inmarsat 4F2 satellite, which was launched on November 8, 2005, and has been licensed by the United Kingdom to operate at 52.75° W.L. The BGAN service will allow consumers to obtain enhanced Mobile Satellite Services (“MSS”) at much higher data transmission speeds than current MSS offerings. On January 13, 2006, MSV filed its Petition against MVS’s BGAN Application. Significant portions of that Petition are redacted from the public copy of the filing and the copy served on MVS. MSV has sought confidential treatment of this redacted material because it purportedly relates to the Mexico City Memorandum of Understanding (“Mexico City MOU”) for L-band operations. Although MVS is willing to enter into a protective order, MSV continues to refuse to provide MVS and other BGAN applicants with such an unredacted copy.<sup>4</sup> The redactions in the MSV Petition make it impossible for MVS to effectively respond to the arguments raised in the Petition, and any reliance by the Bureau on the redacted information and arguments would violate the Communications Act, the Administrative Procedures Act (“APA”) and MVS’s due process rights.

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<sup>3</sup> See *Stratos Communications, Inc., Motion to Strike the Portions of the MSV Petition Withheld From Stratos*, File No. SES-MFS-20051122-01614 *et al.*, (filed Jan. 19, 2006); *Stratos Communications, Inc., Motion to Strike Portions of the MSV Petition*, File No. SES-LFS-20050826-00175 (filed Nov. 10, 2005); *Telenor Satellite, Inc., Motion to Strike*, File No. SES-LFS-20050930-01352 (filed Dec. 7, 2005).

<sup>4</sup> See *Telenor Satellite, Inc., Motion to Strike*, File No. SES-LFS-20050930-01352 (filed Dec. 7, 2005). Counsel for MVS communicated with MSV’s counsel, who confirmed that they are taking the same position with MVS as they have the other BGAN applicants.

The Communications Act provides that “[t]he applicant shall be given an opportunity to file a reply [to a petition against its application].”<sup>5</sup> However, MVS cannot effectively reply to MSV’s arguments raised against its BGAN Application because the MSV Petition has significant redactions throughout the pleading that may go to the heart of MSV’s arguments to deny the application. It is not possible for MVS to determine the meaning of certain arguments raised by MSV as they are substantially and/or entirely redacted. For example, MSV claims that “MVS states that Inmarsat 4F2 will have inefficient L band global beams, [rest of sentence and footnote redacted].”<sup>6</sup> As it is impossible to rebut MSV’s claims as is its right under the Communications Act, any redacted arguments should be stricken.

MVS’s rights under the APA would also be violated by the FCC’s reliance on confidential information that has been withheld from MVS. The APA governs MVS’s rights in an adjudicative proceeding like a license application stating that “a party is entitled to present his case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts.”<sup>7</sup> In similar circumstances where confidential material has not been made available subject to a protective order, the Commission has struck such material from the record.<sup>8</sup> While the parties involved in the CPUC case had access to the underlying data, MVS is not aware of all the arguments being

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<sup>5</sup> 47 U.S.C. §309(d)(1).

<sup>6</sup> See MVS Petition at 9.

<sup>7</sup> 5 U.S.C. § 556(d).

<sup>8</sup> See *In the Matter of the People of the State of California and the Public Utilities Commission of the State of California to Retain Regulatory Authority over Intrastate Cellular Service Rates, Report and Order*, 10 FCC Rcd 7486, 7506-08, (“CPUC Report and Order”). See also *In the Matter of the People of the State of California and the Public Utilities Commission of the State of California to Retain Regulatory Authority over Intrastate Cellular Service Rates*, Motion by California to Strike Ex Parte Filings Made by Airtouch (Mar. 16, 1995)(with the FCC stating that the “study relies on materials not made part of the record or provided to other parties, and to that extent will not be considered”).

made against its application. This inability of MVS to prepare a meaningful response is a more serious impediment and is grounds for striking the redacted language.

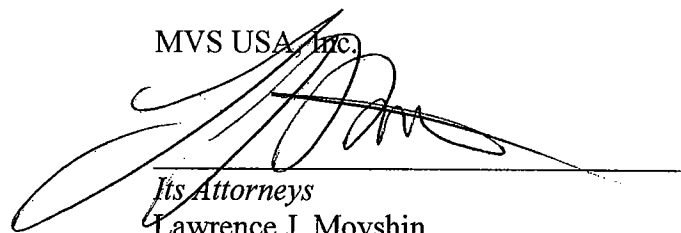
The Bureau should also strike the portions of the MSV Petition that are based on confidential information not provided to MVS because the Bureau itself cannot rely on such information as a basis for its decision in the MVS BGAN Application. In previous FCC and D.C. Circuit Court decisions, parties cannot be deprived of the “opportunities guaranteed them by statute meaningfully to participate.”<sup>9</sup> MVS cannot rely on the confidential information not subject to “adversarial comment” by MVS as a basis for its decision on the MVS BGAN Application and it is appropriate to strike those portions of the MSV Petition that rely on such information.

### CONCLUSION

For the foregoing reasons, and those already stated by Telenor, FTMSC and Stratos, MVS requests that the Bureau strike any parts of the MSV Petition that rely on redacted or confidential information that has not been provided to MVS.

Respectfully Submitted,

MVS USA, Inc.



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January 26, 2006

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<sup>9</sup> See *U.S. Lines, Inc. v. Federal Maritime Comm.*, 584 F.2d 519, 534 (D.C. Cir. 1978) (“*U.S. Lines*”); *Air Products & Chemicals, Inc. v. FERC*, 650 F.2d 687 (5<sup>th</sup> Cir. 1981) (following *U.S. Lines*).

## CERTIFICATE OF SERVICE

I, LaVon E. Nickens, hereby certify that on this 26<sup>th</sup> day of January, 2006, I caused copies of the foregoing "Motion to Strike the Portions of the MSV Petition Withheld From MVS USA, Inc." to be sent via first class U.S. mail, postage pre-paid (unless otherwise noted) to the following:

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