

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

In the matter of)	
)	
MVS USA, Inc.)	
Application for Blanket License to)	File No. SES-LFS-20051123-01634
Operate Mobile Earth Terminals with)	(Call Sign E050348)
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 the Portions of the MSV Petition Withheld from MVS USA, Inc." ("MVS Motion") filed by MVS USA, Inc. ("MVS") on January 26, 2006 in connection with the above-referenced application.¹ MVS seeks to strike portions of MSV's Petition to Hold in Abeyance,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 North America.³ As discussed herein, the Bureau should deny the Motion because (i) MVS has no right to access these confidential materials and (ii) MVS'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 the MVS applications.

¹ See MVS USA, Inc., "Motion to Strike the Portions of the MSV Petition withheld from MVS USA, Inc.," File No. SES-LFS-20051123-01634 (Call Sign E050348) (filed January 26, 2006) ("MVS Motion").

² See MSV, Petition to Hold in Abeyance MVS Application, File No. SES-LFS-20051123-01634 (Call Sign E050348) (filed January 13, 2006) ("MSV Petition"). Both confidential and public versions of the Petition were filed with the Commission.

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 1626.5-1646.5/1646.5-1660.5 MHz*, Mexico City, Mexico, 18 June 1996 ("Mexico City MoU").

Background

MSV Petition. On January 13, 2006, MSV filed a Petition to Hold in Abeyance the above-referenced application filed by MVS 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. Pursuant to procedures established in 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. After MSV filed its Petition, MVS contacted MSV to request access to the Redacted Materials. MSV informed MVS that MSV was not at liberty to provide such access.

MVS Motion. On January 26, 2006, MVS filed a “Motion to Strike the Portions of the MSV Petition Withheld from MVS USA, Inc.” *See MVS Motion.* MVS argues that (i) without access to the Redacted Materials, it cannot fashion an effective response to MSV’s Petition; (ii) the Administrative Procedures Act (“APA”) guarantees access to the Redacted Materials; and (iii) in the absence of such access, the Commission must strike the Redacted Materials from the record (*MVS Motion at 3-4*).

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.”).

Discussion

I. MVS HAS NO RIGHT TO ACCESS THE REDACTED MATERIALS

MVS claims that the APA – and more specifically, the procedures specified therein for formal adjudications – entitles it to access the Redacted Materials. *MVS Motion* at 3. 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 Tellingly, MVS does not cite a single case demonstrating that the APA’s requirements for formal adjudications do apply, and MVS itself has suggested that a protective agreement – which would necessarily restrict MVS’s access to the Redacted Materials – would be an appropriate option in the instant proceeding. *MVS Motion* at 2 n.4.

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 – 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

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.”).

⁶ See 5 U.S.C. §552; 47 C.F.R. § 0.457.

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).

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

MVS ignores the confidential nature of the *Mexico City MoU*, and consequently relies on precedent that is inapplicable to the instant proceeding. MVS 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.

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

Although it is clear that MVS has no legal right to the Redacted Materials, it is also worth noting that MVS's interests are not prejudiced by the materials remaining undisclosed, since Inmarsat, which MSV has provided with a copy of the non-redacted Petition, is an active participant in this proceeding.¹¹ MVS can safely rely on Inmarsat, the entity that provides the space segment of the service proposed by MVS, to address the issues presented in the Redacted

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).

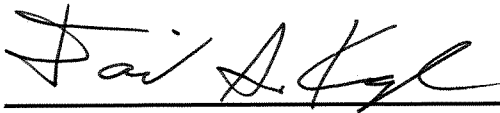
¹¹ See Inmarsat Ventures Limited, Response, File No. SES-MFS-20051123-01634 (January 26, 2006).

Materials. Inmarsat has a strong incentive to vigorously prosecute MVS's application and to respond to MSV's positions in the Redacted Materials, as Inmarsat would benefit from MVS'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 MVS could provide any relevant information with respect to the Redacted Materials that Inmarsat has not already provided.¹²

Conclusion

For the foregoing reasons, MSV respectfully requests that the Commission deny the MVS "Motion to Strike Portions of the MSV Petition Withheld from MVS USA, Inc."

Respectfully submitted,



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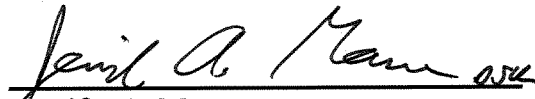
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¹² As noted above, the Commission need not afford MVS access to the Redacted Materials – either to comply with the APA or to protect MVS's interests. However, should the Commission determine that it cannot consider the Redacted Materials without disclosing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

CERTIFICATE OF SERVICE

I, Sylvia A. Davis, a secretary with the law firm of Pillsbury Winthrop Shaw Pittman LLP, hereby certify that on this 7th day of February, 2006, I served a true copy of the foregoing by first-class United States mail, postage prepaid, upon the following:

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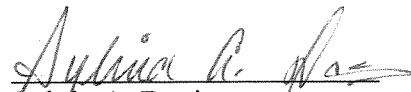
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