

July 6, 2006

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: ***Joint Response to MSV Request for Conditions
File Numbers Listed on Exhibit A***

Dear Ms. Dortch:

BT Americas Inc., FTMSC US LLC, MVS USA, Inc., Satamatics, Inc., SkyWave Mobile Communications Corp., Stratos Communications, Inc., Telenor Satellite Inc., and Thrane & Thrane Airtime Ltd. (collectively, the "Applicants"), together with Inmarsat Ventures Limited ("Inmarsat"), oppose the letter request of MSV¹ to impose three new conditions when the Commission grants the pending applications, listed on Exhibit A, to provide service using the Inmarsat-4 spacecraft. Inmarsat-4 has successfully been providing service to the United States since January of this year, under various STA grants.

As an initial matter, there is nothing new in the facts or the assertions underlying MSV's request. Rather, MSV merely repeats its prior arguments and slightly "repackages" the relief that it seeks. Instead of asking that the Commission delay grant of full authority to use Inmarsat-4 until certain events occur, MSV now concedes that the Commission can grant full authority prior to entry into a new L-Band spectrum sharing agreement, and MSV instead asks that certain conditions be imposed on the grant of full licenses.

Specifically, MSV asks the Commission to impose three conditions on the grant of full authority: (Condition 1) exclude the ability to use certain band segments that Inmarsat has been using for years, and which MSV now desires to use (the "Disputed Spectrum"); (Condition 2) legislate the imposition of a new international spectrum band plan for the L-Band by requiring that Inmarsat enter into such a plan, based on minimum 5 MHz band segments; and (Condition 3) require that the Applicants provide service over Inmarsat-4 on a "non-interference, unprotected basis" with respect to MSV.

For the reasons set forth below, and in the hundreds of pages of pleadings previously submitted by the Applicants and Inmarsat, the Commission should promptly grant these applications for authority to communicate with Inmarsat-4, without imposing any of the conditions that MSV requests.

Condition 1. The Applicants and Inmarsat have fully briefed on multiple occasions the mistaken premise underlying MSV's proposed Condition 1 – that it is appropriate

¹ Letter from Jennifer Manner, Mobile Satellite Ventures LP, to Marlene H. Dortch, FCC (filed June 20, 2006) ("MSV Letter").

to use Commission licensing processes to resolve the current impasse that exists in the L-Band by excluding the ability to use the Disputed Spectrum from the full authorizations.² As in the two prior cases when the Commission authorized L-Band systems to compete with MSV to serve the United States, there is a pending international spectrum dispute between MSV and its main competitor.³ In those two prior cases, the Commission recognized that those spectrum disputes provided no basis whatsoever for constraining the use of L-Band spectrum in the United States, and they provided no basis for disadvantaging MSV's competitors in the Commission's licensing process.⁴ The same reasoning applies here as well.

As an initial matter, MSV's request is yet another attempt to have the Commission decide a multilateral, international spectrum dispute in MSV's favor (i) that involves the administrations of the United States, Canada, and the United Kingdom, and (ii) that longstanding Commission precedent provides should be resolved in the established international coordination processes, not through the Commission's licensing process.⁵ L-Band spectrum assignments and dispute resolution are governed by the Mexico City Memorandum of Understanding ("MOU"), which the United States championed as a means to resolve the prior impasse that existed in the L-Band.⁶ That is the proper forum for resolving the current dispute surrounding the Disputed Spectrum.

More fundamentally, neither MSV nor Inmarsat has the exclusive right to any particular L-Band spectrum segment. The MOU does not assign specific L-Band frequencies to any operator. Rather, L-Band spectrum assignments are made on a short-term (annual) basis through multilateral agreements, are based on current usage and short-term projections of future need, and expire at the end of the specified one-year term.⁷ The most recent spectrum sharing agreement expired in 1999 when MSV vetoed its continuation in an attempt to improve its position in international spectrum negotiations.⁸ In the absence of an extant agreement assigning

² See, e.g., Oppositions of the Applicants and Inmarsat submitted in the proceedings listed at Exhibit A.

³ *SatCom Systems, Inc., et al.*, 14 FCC Rcd 20798 (1999) ("*TMI*"); *COMSAT Corporation d/b/a Comsat Mobile Communications, et al.*, 16 FCC Rcd 21661 (2001) ("*COMSAT*").

⁴ *Id.*

⁵ *TMI*, 14 FCC Rcd at 20813 ¶ 30 (denying MSV's request that the Commission require foreign operators to relinquish spectrum to MSV in order to enter the U.S. market).

⁶ *FCC Hails Historic Agreement on International Satellite Coordination*, Rep. No. IN 96-16 (rel. Jun. 25, 1996) ("Spectrum allocations to individual operators will be reviewed annually on the basis of actual usage and short-term projections of future need.").

⁷ *Id.*; Opposition of Inmarsat, File Nos. SES-MFS-20051207-01709 *et al.*, at 15-20 (Feb. 2, 2006) ("Inmarsat February 2 Opposition").

⁸ See Brief for Appellee (FCC), *AMSC Subsidiary Corporation v. FCC*, Case No. 99-1513, p. 34-35 (D.C. Cir. May 17, 2000) (Public Copy) ("One is reminded of the man who killed his parents and asked for mercy because he was an orphan. As AMSC acknowledges in its brief . . . it was AMSC that vetoed the proposed extension of the operating agreement, despite the

portions of L-Band spectrum to any particular operator, there are no L-Band spectrum blocks reserved for any particular operator. Thus, neither MSV nor any other L-Band operator has any specific spectrum blocks that it can “own,” “loan” or “recall.” Indeed, in its 2001 order granting U.S. market access over the Inmarsat system, the Commission expressly provided that, in the absence of an L-Band spectrum sharing agreement: (i) “no operator can assert any claim with respect to a specific piece of spectrum;” and (ii) users of the Inmarsat system would not be constrained to using specific spectrum segments identified for Inmarsat’s use in the expired 1999 agreement.⁹

Moreover, imposing the condition that MSV seeks would unjustifiably treat the Applicants and Inmarsat differently than the Commission treated MSV last year, when the Commission licensed two next-generation MSV spacecraft. In neither of those cases did the Commission constrain MSV from operating in any particular portion of the L-Band, even when the Commission acknowledged that MSV’s new spacecraft had not yet been coordinated.¹⁰ The Commission is obligated to treat similarly situated parties similarly.¹¹

That the Applicants have been able to commence providing BGAN under STA without using the Disputed Spectrum is not a reason to exclude access to the Disputed Spectrum from the grant of full authority. To the contrary, artificially constraining the bands in which Inmarsat-4 service can be provided on a permanent basis would unnecessarily constrain the ability to maximize use of the limited L-Band spectrum resource, and to continue to provide existing Inmarsat services, while also supporting the growing demand for BGAN.

Rather than grant MSV’s requested relief, the Commission should encourage MSV to participate in the Mexico City MOU coordination process and fulfill its obligations under Commission policy, as Inmarsat has requested on numerous occasions.

Condition 2. There is no valid basis for the Commission to mandate a specific way to reband L-Band spectrum, by conditioning full authority on Inmarsat and MSV rebanding the L-Band “into minimum 5 MHz assigned band segments for each satellite system.”¹² To be sure, changes in the way that the L-Band is shared on a global basis could provide benefits for everyone involved. However, there is no record basis on which to conclude that imposing a 5 MHz band segmentation plan is the appropriate way to accommodate new MSS services. And MSV’s proposal does not even begin to address the practical limitations on (and costs of) rebanding that are imposed by the essential safety and other services that are relied on daily by hundreds of thousands of L-Band MSS users.

absence of any immediate interference problem, believing it was better strategically to force the issue of how to deal with the spectrum shortage.”) (emphasis supplied).

⁹ COMSAT, 16 FCC Rcd at 21698-21699 ¶¶ 71-73.

¹⁰ See *MSV Sub. LLC*, 20 FCC Rcd 9752 (2005) (“*MSV 101° Order*”); *MSV Sub. LLC*, 20 FCC Rcd 479 (2005) (“*MSV 63.5° Order*”).

¹¹ See, e.g., *Melody Music, Inc. v. FCC*, 345 F.2d 730 (D.C. Cir. 1965).

¹² MSV Letter at 2.

These are the types of reasons why the Commission previously recognized that “spectrum limitation concerns are best addressed in the L-band coordination process.”¹³ Unfortunately, as noted above, MSV has repeatedly declined Inmarsat’s requests to reengage in the Mexico City process. Moreover, just seven months ago, the Commission decided not to explore optimal “channelization schemes” in the 2 GHz MSS band, finding that the analysis would be inherently subjective.¹⁴ MSV does not provide an objective basis for its 5 MHz channelization plan proposal, and there is no good reason why the L-Band should be subject to the type of Commission-mandated channelization plan that the Commission previously declined to adopt. To the contrary, the Commission has endorsed the Mexico City MOU as the appropriate forum for establishing L-Band spectrum concerns, and there is no valid reason to change that longstanding Commission policy.¹⁵

Even if there were a basis for MSV’s proposal, the solution is nowhere near as simple as MSV makes it seem. The L-Band is shared by twenty different spacecraft around the world, and a change in how the spectrum is used in one region of the world (*i.e.*, over North America) can have profound effects on L-Band systems that operate in Europe, Asia and Africa, and require the consent of those systems. Neither Inmarsat nor the Applicants can unilaterally require a host of other operators to change the way they use the L-Band, simply to accommodate MSV’s business needs.

Condition 3. MSV proposes as Condition 3 that the Commission require that operators provide Inmarsat services “on a non-interference, unprotected basis with respect to MSV’s previously coordinated satellites and replacement satellites.”¹⁶ As an initial matter, MSV’s pejorative characterization of Inmarsat’s network as “uncoordinated” ignores the facts and governing law. A 1992 bilateral coordination between the United States and the United Kingdom established the envelope of technical operating parameters that have enabled the successful co-existence of Inmarsat spacecraft with MSV spacecraft for over a decade, without harmful interference. Inmarsat intends to continue to operate within that technical envelope (including providing BGAN) until Inmarsat and MSV enter into an agreement that establishes new technical spectrum sharing parameters.

Moreover, the “non-interference basis” standard that MSV seeks is more stringent than the standard that the Commission historically has imposed before in the L-Band, and in fact is more stringent than the standard applied to MSV twice last year.¹⁷ Under longstanding L-Band precedent, and in the absence of a spectrum sharing agreement, the Commission historically requires operators to provide service on a *non-harmful interference* basis, consistent

¹³ *COMSAT*, 16 FCC Rcd at 21699 ¶ 72.

¹⁴ *Use of Returned Spectrum in the 2 GHz Mobile Satellite Service Frequency Bands*, FCC 05-204, IB Docket Nos. 05-220, 05-221, at ¶¶ 58-60 (rel. Dec. 9, 2005).

¹⁵ *FCC Hails Historic Agreement on International Satellite Coordination*, Rep. No. IN 96-16 (rel. Jun. 25, 1996).

¹⁶ MSV Letter at 4.

¹⁷ *See MSV 101° Order*, 20 FCC Rcd at 9773 ¶ 59; *MSV 63.5° Order*, 20 FCC Rcd at 492 ¶ 39.

with ITU Radio regulation 4.4.¹⁸ The Applicants and Inmarsat have no objection to the Commission granting these applications pursuant to this customary condition, which both the Commission and the United States Court of Appeals for the District of Columbia have found is “sufficiently clear” and provides ample protection to MSV.¹⁹ MSV has failed to provide any rationale for imposing a different standard here. As the Commission repeatedly has done in the past, the Commission should grant new authorizations to provide Inmarsat services conditioned only on provision of service on a non-harmful interference in the absence of a new spectrum sharing agreement.

¹⁸ See Inmarsat February 2, 2006 Opposition at Exhibit A (providing 10 examples of L-Band authorizations conditioned on operations on a non-harmful interference basis in the absence of a spectrum sharing agreement).

¹⁹ *COMSAT*, 16 FCC Rcd at 21698-21699 ¶ 72; *AMSC v. FCC*, 216 F.3d 1154, 1159 (D.C. Cir. 2000) (citing the Commission’s enforcement authority, 47 U.S.C. § 312).

* * * * *

For the foregoing reasons, the Commission should deny MSV's request to impose conditions.

Respectfully submitted,

_____/s/
Linda J. Cicco
BT AMERICAS INC.
11440 Commerce Park Drive
Reston, VA 20191

_____/s/
Eric Fishman
Holland & Knight LLP
2099 Pennsylvania Avenue, NW
Washington, DC 20006
Counsel to Thrane & Thrane Airtime Ltd.

_____/s/
Keith H. Fagan
Senior Counsel
TELENOR SATELLITE, INC.
1101 Wootton Parkway
10th Floor
Rockville, MD 20852

_____/s/
Lawrence J. Movshin
Lee J. Rosen
WILKINSON BARKER KNAUER, LLP
2300 N Street, N.W., Suite 700
Washington, D.C. 20037
Counsel to MVS USA, Inc.

_____/s/
William K. Coulter
DLA PIPER RUDNICK GRAY CARY LLP
1200 19th Street, N.W.
Washington, DC 20036
Counsel to FTMSC US, LLC

_____/s/
Diane J. Cornell
Vice President, Government Affairs
INMARSAT, INC.
1100 Wilson Blvd, Suite 1425
Arlington, VA 22209

_____/s/
Alfred M. Mamlet
Marc A. Paul
Brendan Kasper
STEPTOE & JOHNSON LLP
1330 Connecticut Avenue, NW
Washington, D.C. 20036
*Counsel to Satamatics, Inc., SkyWave Mobile
Communications Corp., and Stratos
Communications, Inc.*

Exhibit A

Pending Applications to Provide Earlier Generation Services with Inmarsat 4F2

Applicant	File Number
Stratos Communications Inc.	SES-MFS-20051122-01614 (Call Sign E000180) SES-MFS-20051122-01615 (Call Sign E010050) SES-MFS-20051122-01616 (Call Sign E010048) SES-MFS-20051122-01617 (Call Sign E010049) SES-MFS-20051122-01618 (Call Sign E010047)
Telenor Satellite, Inc.	SES-MFS-20051123-01626 (Call Sign KA312) SES-MFS-20051123-01627 (Call Sign KA313) SES-MFS-20051123-01629 (Call Sign WA28) SES-MFS-20051123-01630 (Call Sign WB36) SES-MFS-20060118-00050 (Call Sign E000280) SES-MFS-20060118-00051 (Call Sign E000282) SES-MFS-20060018-00052 (Call Sign E000283) SES-MFS-20060018-00053 (Call Sign E060025) SES-LIC-20060130-00175 (Call Sign E060025)
SkyWave Mobile Communications Corp.	SES-MFS-20051207-01709 (Call Sign E030055)
Satamatics, Inc.	SES-MFS-20051202-01665 (Call Sign E020074)

Pending Applications to Provide BGAN Services with Inmarsat 4F2

Applicant	File Number
Stratos Communications Inc.	SES-LFS-20050826-01175 (Call Sign E050249) SES-AMD-20050922-01313 (Call Sign E050249) SES-AMD-20051117-01590 (Call Sign E050249)
Telenor Satellite, Inc.	SES-LFS-20050930-01352 (Call Sign E050276) SES-AMD-20051111-01564 (Call Sign E050276) SES-AMD-20060109-00019 (Call Sign E050276) SES-AMD-20060607-00942 (Call Sign E050276)
FTMSC US, LLC	SES-LFS-20051011-01396 (Call Sign E050284) SES-AMD-20051118-01602 (Call Sign E050284) SES-AMD-20060605-00926 (Call Sign E050284)
MVS USA, Inc.	SES-LFS-20051123-01634 (Call Sign E050348) SES-AMD-20060329-00540 (Call Sign E050348)
BT Americas Inc.	SES-LFS-20060303-00343 (Call Sign E060076) SES-AMD-20060316-00448 (Call Sign E050284)
Thrane & Thrane Airtime Ltd.	SES-LFS-20060522-00852 (Call Sign E060179)

CERTIFICATE OF SERVICE

I, Jeffrey A. Marks, hereby certify that on this 6th day of July, 2006, I caused to be served a true copy of the foregoing, by first class mail, postage pre-paid (or as otherwise indicated) upon the following:

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

Stephen Duall*
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

Richard Engelman*
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

Howard Griboff*
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

Andrea Kelly*
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

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

John Martin*
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


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

Bruce D. Jacobs
David S. Konczal
Pillsbury Winthrop Shaw Pittman LLP
2300 N Street, N.W.
Washington, DC 20037-1128

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

Jennifer A. Manner
Vice President, Regulatory Affairs
Mobile Satellite Ventures Subsidiary LLC
1002 Park Ridge Boulevard
Reston, Virginia 20191

**Via Electronic Mail*



Jeffrey A. Marks