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Satellite Division
International Bureau

April 30, 2007

Public Version—Redacted

BY HAND DELIVERY

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW, TW-B204
Washington, DC 20554

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APR 30 2007

Federal Communications Commission
Office of the Secretary

**Re: Response of Inmarsat Ventures Limited to Supplement to Petitions to Hold in
Abeyance and Comments of Mobile Satellite Ventures Subsidiary LLC**

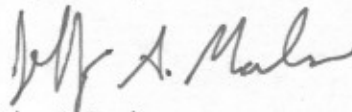
File Nos. Listed on Exhibit A to the Attached Pleading

Dear Ms. Dortch:

Pursuant to the procedures set forth in the Protective Order issued by the Commission in these proceedings (DA 07-737, rel. Feb. 16, 2007), Inmarsat Ventures Limited submits the redacted, public version of its Response to the Supplement submitted by Mobile Satellite Ventures Subsidiary LLC. A non-redacted, confidential version of the Response is being filed under separate cover.

Please direct any inquiries regarding this submission to the undersigned.

Respectfully submitted,



John P. Janka
Jeffrey A. Marks
Counsel for Inmarsat Ventures Limited

cc: See attached service list

Enclosure

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

FILED/ACCEPTED

APR 30 2007

Federal Communications Commission
Office of the Secretary

In the matter of)
)
Telenor Satellite, Inc.) File Nos. included on Exhibit A
Stratos Communications, Inc.)
Satamatics, Inc.)
SkyWave Mobile Communications Corp.)
FTMSC US, LLC)
MVS USA, Inc.)
BT Americas Inc.)
Thrane and Thrane Airtime Ltd.)
Horizon Mobile Communications Inc.)

RESPONSE OF INMARSAT VENTURES LIMITED

Inmarsat Ventures Limited (“Inmarsat”) responds to the April 18, 2007

Supplement to Petitions to Hold in Abeyance and Comments (“Supplement”) of Mobile Satellite Ventures Subsidiary LLC (“MSV”).

A. Background

On January 18, 2006, the Commission granted special temporary authority (“STA”) to certain Inmarsat distributors (the “Licensees”) to enable the continued provision of services over the then-recently-launched Inmarsat 4F2 spacecraft.¹ In those STAs, the Commission requested that a report be submitted explaining why “given the increased capacity of the Inmarsat 4F2 satellite relative to the [predecessor] Inmarsat 3F4 satellite, there would be any discontinuance of, or degradation of the reliability of, existing operations”² if the Licensees did not have continued access to certain segments of the L-band. Each of the Licensees complied by the February 17, 2006 deadline, and Inmarsat also submitted a report to provide the

¹ See, e.g., Stratos Communications, Inc., SES-STA-20051216-01760 (granted Jan. 18, 2006).

² *Id.* (Condition 3).

Commission with confidential information known only to Inmarsat (the "Report"). On February 23, 2007, Inmarsat provided MSV with access to the Report pursuant to a Protective Order adopted one week earlier.³ MSV filed its Supplement almost two months later.

As has been the case historically, the Inmarsat satellite network, including the I-4 spacecraft at 53° W.L. and the I-3 spacecraft at 98° W.L. and 142° W.L., is used to provide essential services to the United States Government ("USG"), among others. The USG users include the Department of Homeland Security (including the Federal Emergency Management Agency (FEMA)), the U.S. Army, U.S. Army Special Operations, U.S. Air Force, the U.S. Navy, the U.S. Coast Guard, the Intelligence Community, United States Special Operations Command, and U.S. Executive Branch and Congressional officials. Moreover, a number of U.S. military allies rely on access to these spacecraft. Demand from USG users has grown steadily since February 2006, when the Report was prepared. As Inmarsat explained in the Report, USG users, as well as commercial users, would be adversely affected if Inmarsat did not have continued access to all of the spectrum it currently is, and historically has been, using.

B. The Report Was Accurate and Responsive

In its Supplement, MSV comments on the information provided in the Report and repeats its request that the Commission preclude use of portions of the L-band that are the subject of a longstanding dispute between Inmarsat, MSV, and MSV Canada (the "Disputed Spectrum"). As in the past with similar MSV filings, Inmarsat fundamentally disagrees with MSV's characterization of (i) the Inmarsat Report, (ii) the history of and circumstances surrounding the Disputed Spectrum, (iii) MSV's spectrum needs, (iv) the service demands of existing Inmarsat customers (which alone establish the need for all of the L-band spectrum

³ See *Protective Order*, DA 07-737 (rel. Feb. 16, 2007).

Inmarsat currently is using), and (v) the authority for Inmarsat distributors to use all of the frequencies they currently are using under existing Commission licenses. Inmarsat will not address most of those issues further as they have been briefed multiple times before.⁴

In the Report, Inmarsat provided responsive information based on data about the Inmarsat-4 satellite over which the STA services are being provided. Because those services were transitioned to the Inmarsat-4 spacecraft on January 22, 2006, the February 17, 2006 Report provided measured data about the first few weeks of the commercial operation of that spacecraft.⁵ The Report demonstrates that the Disputed Spectrum is both currently used and needed by Inmarsat, and explains the impact of the January 2006 transition of service from Inmarsat-3 to Inmarsat-4. Although Inmarsat had concerns about providing such information outside the context of international spectrum coordination,⁶ Inmarsat did so in good faith and in the spirit of cooperation. Moreover, Inmarsat offered to answer any questions that the Commission may have regarding the scope or content of the Report.

Inmarsat disagrees with MSV's mischaracterization of the content and relevance of certain aspects of the Report, including the following issues that MSV raises:

1. MSV attempts to contrast [REDACTED]

⁴ For the sake of administrative efficiency, Inmarsat incorporates by reference the following pleadings: Opposition of Inmarsat Ventures Limited, File No. SES-MFS-20060118-00050 *et al.* (filed Mar. 16, 2006); Joint Opposition of Inmarsat and Others to MSV Request to Exclude Disputed Spectrum, Call Sign E010011 *et al.* (filed Jul. 6, 2006).

⁵ *Cf.* MSV Supplement at 9 (noting Inmarsat's provision of data only for the period after January 22, 2007).

⁶ *See Robert J. Butler*, 6 FCC Rcd 5414 (1991) ("*Butler*"). Inmarsat therefore submitted the Report along with a request for confidentiality.

[REDACTED]⁷ Read in context, and without omitting key words (as MSV does), the cited statements are correct and fully consistent. [REDACTED]

[REDACTED]
[REDACTED]⁸ In

contrast, the Report addressed the specifics of [REDACTED]

Specifically, Inmarsat indicated that [REDACTED]

[REDACTED]⁹

Inmarsat then explained that because [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]¹⁰ That

remains true today. In fact, [REDACTED]

[REDACTED]

2. MSV speculates that the [REDACTED] that Inmarsat has reported on Attachment A to the Report could reflect issues other than spectrum constraints.¹¹ That is simply wrong. Those figures were compiled in a way to exclude [REDACTED] due to other reasons.

Specifically, the figures in Attachment A include only [REDACTED]

[REDACTED] In other words, they exclude [REDACTED]

[REDACTED] Moreover, the figures exclude [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 MSV Supplement at 8-9.

[REDACTED]

3. MSV wrongly claims Inmarsat has asserted that because [REDACTED]

[REDACTED]

[REDACTED]¹² Rather, Inmarsat expressly indicated: [REDACTED]

[REDACTED]

[REDACTED]¹³ [REDACTED]

[REDACTED]

[REDACTED]¹⁴ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]¹⁵ [REDACTED]

[REDACTED]

[REDACTED]¹⁶

4. MSV postulates without any basis that [REDACTED]

[REDACTED]

[REDACTED]¹⁷ This is wrong. [REDACTED]

[REDACTED]

[REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

Moreover, while MSV may voice dissatisfaction with the data provided in Inmarsat's Report,¹⁸ whether Inmarsat has provided the data that MSV would like to see simply has no bearing on whether Inmarsat actually needs or uses the Disputed Spectrum. As detailed below, that data is properly provided on a multilateral basis in the context of the Mexico City Memorandum of Understanding (the "Mexico City MOU" or the "MOU"). And while MSV claims the needs of other Inmarsat satellites should not be considered,¹⁹ it bears noting that, applying MSV's arguments to itself, (i) MSV's next-generation spacecraft are "uncoordinated,"²⁰ and (ii) MSV's future spectrum need for that "uncoordinated" network is wholly irrelevant.²¹

C. The Additional Information MSV Seeks Should Be Mutually Provided in the Context of the Mexico City MOU

Contrary to what MSV asserts,²² Commission precedent and policy are clear that the additional data (and the reassignment of L-band frequencies) that MSV now seeks in the Supplement are appropriately addressed in the context of international coordination pursuant to the 1996 Mexico City MOU. In this respect, it is significant that the MOU does not assign specific frequencies to any L-band operator (or to any nation). Rather, L-band spectrum assignments to individual operators are to be "*reviewed annually on the basis of actual usage*

¹⁸ MSV Supplement at 9-10.

¹⁹ See MSV Supplement at 11.

²⁰ *MSV Sub. LLC*, 20 FCC Rcd 9752, 9765 ¶ 34 (2005).

²¹ *Cf.* MSV Supplement at 13. Before the Commission considers MSV's assertions about the spectrum needs of its existing spacecraft, MSV Supplement at 12-13, MSV should be required, *in the context of the MOU*, to both (i) quantify and substantiate its existing need for L-band spectrum, and (ii) address the extent to which recent technical anomalies on its spacecraft *have actually reduced* customer demand for MSV services and thus *have reduced* MSV's short-term spectrum needs.

²² MSV Supplement at 14 (referring to the Disputed Spectrum as a "domestic licensing matter").

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and short-term projections of future need.”²³ The most recent annual spectrum sharing agreement (“SSA”), covering the twelve months ended December 1999, expired by its own terms when MSV unilaterally declined to extend it. That SSA is no longer in effect, and it has not been replaced.²⁴ As the Commission has acknowledged, MSV therefore is in no position to complain about the continued absence of an SSA, or MSV’s failure to have had any specific L-band frequency assignments for the past eight years.²⁵

Thus, the Commission has appropriately recognized that, under the MOU, no L-band operator has the exclusive, permanent right to any particular frequency,²⁶ and “no operator can assert any claim with respect to a specific piece of spectrum.”²⁷ Because no operator “owns” any L-band frequency, and because there is no SSA in effect assigning any specific frequency to any operator, (i) no operator today has any spectrum assignment that it can “loan” to another, and (ii) no operator has any spectrum loan today for which it can “demand” the return.²⁸ Even

²³ *Public Notice, FCC Hails Historic Agreement on International Satellite Coordination*, Report No. IN 96-16 (rel. June 25, 1996).

²⁴ *See, e.g.*, pleadings cited *supra* note 4.

²⁵ *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 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). As with any contract, the automatic December 31, 1999 expiration of the 1999 SSA could not have been modified without the express written consent of each party thereto, including MSV’s predecessor, AMSC.

²⁶ *See Flexibility for Delivery of Communications by MSS Providers in the 2 GHz Band, the L-Band, and the 1.6/2.4 GHz Bands*, 20 FCC Rcd 4616, 4629 n.91 (2005) (“In the L-Band, all licensees have equal rights to all channels in the band.”); *COMSAT Corporation et al.*, 16 FCC Rcd 21661, 21670 ¶ 6 (2001) (“*COMSAT Order*”) (the MOU creates a “unique framework to facilitate annual spectrum assignment agreements among the operators”).

²⁷ *COMSAT Order*, 16 FCC Rcd at 21699 ¶ 73.

²⁸ *Cf.* MSV Supplement at 2-3.

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MSV's predecessor (AMSC) recognized that, since the expiration of the 1999 SSA, "no country and no system have their own unique L-band frequencies."²⁹ Therefore, the continued use of the L-band to provide Inmarsat services to, from, and within, the United States not only is proper, but also is fully consistent with Commission precedent that allows such operations on a non-harmful interference basis in the absence of an SSA.³⁰

Despite Inmarsat's urging on many occasions,³¹ the MOU process has not been reinitiated, and the international stalemate that has existed since 1999 has continued. In the meantime, Inmarsat's licensing administration, the U.K., has sought to reinitiate the annual meetings of all L-Band operators, and continues to make appropriate ITU filings for the various orbital locations used by the spacecraft in the Inmarsat fleet.

In the meantime, as well, Inmarsat has taken all reasonable steps to continue coordination of its fleet with MSV.³² But international spectrum coordination is a two-way street, based on an information *exchange* between coordinating parties. Unless and until MSV

²⁹ See Final Reply Brief for Appellant (AMSC), *AMSC Subsidiary Corporation v. FCC*, Case No. 99-1513, p. 2 (D.C. Cir. May 17, 2000) (Public Copy); *cf.* MSV Supplement at 13.

³⁰ See, e.g., *COMSAT Order*, 16 FCC Rcd at 21699, ¶ 73 (operations "will be on a non-interference basis until a future operator-to-operator agreement is concluded"); see also *Mobile Satellite Ventures Subsidiary LLC*, 19 FCC Rcd 4672, 4675 ¶ 8 (2004) (in the absence of a continuing annual operator-to-operator coordination agreement . . . operation . . . will be on a non-harmful interference basis.); see also excerpts of eight additional cases cited in Exhibit A to Opposition of Inmarsat Ventures Limited, File No. SES-MFS-20051207-01709 *et al.* (filed Feb. 2, 2006).

³¹ See, e.g., Comments of Inmarsat Ventures, IB Docket No. 01-185, at 23 (filed Oct. 22, 2001); Joint Reply, File No. File No. SES-STA-20060710-01131 *et al.*, at 3 (filed Aug. 26, 2006); see also, e.g., Consolidated Response of Inmarsat Ventures Limited, File No. SES-STA-20051216-01756 *et al.* (filed Jan. 6, 2006) (describing the repeated efforts of Inmarsat and the U.K. government have made since 1999 to re-engage in the MOU process and, separately, that Inmarsat has made to coordinate on a bilateral basis with MSV).

³² See Opposition of Inmarsat Ventures Limited, File No. SES-MFS-20060118-00050 *et al.* (filed Mar. 16, 2006); Consolidated Response of Inmarsat Ventures Limited, File No. SES-STA-20051216-01756 *et al.* (filed Jan. 6, 2006); *cf.* MSV Supplement at 2.

provides data to substantiate MSV's own short-term need for the Disputed Spectrum, in accordance with Commission policy and the MOU, it is not reasonable for MSV to seek access to further confidential data about Inmarsat's business. Commission precedent recognizes that the provision of data that typically would be provided only on a bilateral basis in the context of a coordination could substantially harm an operator, such as Inmarsat.³³

For these reasons, Inmarsat renews its call for the Mexico City MOU process to be reinstated again through a full Operator Review Meeting, in accordance with longstanding principles underlying that process—each party comes to the table with a demonstration of its existing usage and short term need.³⁴ That is the proper forum for L-Band operators to demonstrate their spectrum needs, and to resolve outstanding coordination disputes, including the one at issue here.

D. Conclusion

In sum, MSV's protestations provide no basis to constrain the continued provision of new and innovative Inmarsat services to the American public. Commission policy and precedent wisely provide that achieving mutually acceptable spectrum coordination among *competing operators* is not a condition precedent to providing MSS in the United States.³⁵ In fact, MSV's request that the Commission foreclose the use of the Disputed Spectrum for

³³ See *Butler*, 6 FCC Rcd at 5414.

³⁴ See *supra* note 28 (citing prior requests to re-engage in the MOU process).

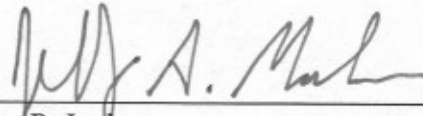
³⁵ *Establishment of Policies and Service Rules for MSS in the 2 GHz Band*, 15 FCC Rcd 16127, 16192 ¶ 148-49 (2000); *SatCom Systems, Inc.*, 14 FCC Rcd 20798, 20813 ¶ 30 (1999); *Amendment of the Commission's Rules to Establish Rules and Policies Pertaining to MSS in the 1610-1626.5/2483.5-2500 MHz Frequency Bands*, 9 FCC Rcd 5936, 6018 ¶ 211 (1994); *AMSC Sub. Corp.*, 8 FCC Rcd 4040, 4043 ¶ 17 (1993).

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Inmarsat services and “not defer resolution of this issue to international coordination”³⁶ is flatly inconsistent with Commission policy and precedent.

For these reasons, the Commission should grant the pending applications without delay, and should not preclude use of the Disputed Spectrum to provide Inmarsat services, as MSV requests. Moreover, the Commission should, consistent with its longstanding policy, require MSV to fully participate in the Mexico City MOU process.

Respectfully submitted,



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April 30, 2007

³⁶ MSV Supplement at 14.

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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) SES-STA-20070309-00327 (Call Sign E010050) SES-STA-20070309-00328 (Call Sign E010049) SES-STA-20070309-00329 (Call Sign E010048) SES-STA-20070309-00330 (Call Sign E010047) SES-STA-20070309-00331 (Call Sign E000180)
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-20060118-00052 (Call Sign E000283) SES-MFS-20060118-00053 (Call Sign E000285) SES-LIC-20060130-00175 (Call Sign E060025) SES-STA-20070220-00253 (Call Sign WB36) SES-STA-20070220-00250 (Call Sign KA313) SES-STA-20070220-00249 (Call Sign E000280) SES-STA-20070220-00247 (Call Sign E000283) SES-STA-20070220-00246 (Call Sign E000285) SES-STA-20070220-00252 (Call Sign E000284) SES-STA-20070220-00248 (Call Sign E000282)
SkyWave Mobile Communications Corp.	SES-MFS-20051207-01709 (Call Sign E030055) SES-STA-20070309-00326 (Call Sign E030055)
Satamatics, Inc.	SES-MFS-20051202-01665 (Call Sign E020074) SES-STA-20061221-02209 (Call Sign E020074)

Pending Applications to Provide BGAN Services with Inmarsat 4F2

Applicant	File Number
Stratos Communications Inc.	SES-LFS-20050826-01175 <i>et al.</i> (Call Sign E050249)
Telenor Satellite, Inc.	SES-LFS-20050930-01352 <i>et al.</i> (Call Sign E050276)
FTMSC US, LLC	SES-LFS-20051011-01396 <i>et al.</i> (Call Sign E050284)
MVS USA, Inc.	SES-LFS-20051123-01634 <i>et al.</i> (Call Sign E050348)
BT Americas Inc.	SES-LFS-20060303-00343 <i>et al.</i> (Call Sign E060076)
Thrane and Thrane Airtime Ltd.	SES-LFS-20060522-00852 (Call Sign E060179)
Horizon Mobile Communications, Inc.	SES-LFS-20070109-00042 (Call Sign E070006)

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CERTIFICATE OF SERVICE

I, Jeffrey A. Marks, hereby certify that on this 30th day of April, 2007, 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:

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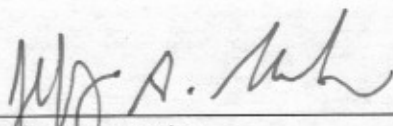
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