



Jennifer A. Manner
Vice President,
Regulatory Affairs

PHONE: 703 390-2730
FAX: 703 390-2770
EMAIL: jmanner@msvip.com

PUBLIC COPY – REDACTED

March 24, 2006

Via Hand Delivery

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

**Re: Petition of Mobile Satellites Ventures Subsidiary LLC to Hold in Abeyance
Application of Telenor Satellite, Inc.
File No. SES-LIC-20060130-00175 (Call Sign E060025)**

Dear Ms. Dortch:

Mobile Satellites Ventures Subsidiary LLC (“MSV”) hereby files this public, redacted version of a Petition to Hold in Abeyance the above-referenced application of Telenor Satellite, Inc. (“Telenor”) to shift the operations of certain of its currently authorized earth stations in the United States from a coordinated Inmarsat satellite to an uncoordinated Inmarsat satellite (Inmarsat 4F2).¹ As discussed herein, certain information provided in the attached Petition should be treated as confidential.²

47 C.F.R. § 0.459(b)(1) -- Identification of the specific information for which confidential treatment is sought

MSV requests confidential treatment of information relating to the *Mexico City Memorandum of Understanding* and the on-going international L band frequency coordination process which is confidential to the parties to that coordination, which includes the Commission and MSV.³ When considering other applications to use Inmarsat satellites in the United States,

¹ See Telenor Satellite, Inc., Application, File Nos. SES-LIC-20060130-00175 (Call Sign E060025) (January 30, 2006) (“*Telenor Application*”).

² 47 C.F.R. § 0.459(b).

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.

PUBLIC COPY – REDACTED

the Commission has acknowledged the confidentiality of this information and has afforded it confidential treatment.⁴

47 C.F.R. § 0.459(b)(2) -- Identification of the Commission proceeding in which the information was submitted or a description of the circumstances giving rise to the submission

This information is being filed in MSV's Petition to Hold in Abeyance the above-referenced Telenor application.

47 C.F.R. § 0.459(b)(3) -- Explanation of the degree to which the information is commercial or financial, or contains a trade secret or is privileged

As the Commission has acknowledged, the *Mexico City Memorandum of Understanding* and related coordination documents are confidential.⁵

47 C.F.R. § 0.459(b)(4) -- Explanation of the degree to which the information concerns a service that is subject to competition

The information contained herein concerns the market for wireless services, in which MSV faces competition from other MSS providers as well as from terrestrial wireless operators.

47 C.F.R. § 0.459(b)(5) -- Explanation of how disclosure of the information could result in substantial competitive harm

Disclosure of the information for which confidential treatment is sought would result in violation of the *Mexico City Memorandum of Understanding*.

47 C.F.R. § 0.459(b)(6) -- Identification of any measures taken by the submitting party to prevent unauthorized disclosure

Disclosure to third parties of the information for which confidential treatment is sought has been strictly pursuant to non-disclosure agreements.

⁴ See *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.").

⁵ *Id.*

PUBLIC COPY – REDACTED

- 47 C.F.R. § 0.459(b)(7) -- Identification of whether the information is available to the public and the extent of any previous disclosure of the information to third parties**

The information for which confidential treatment is sought is not publicly available. Disclosure to third parties of the information for which confidential treatment is sought has been strictly pursuant to non-disclosure agreements.

- 47 C.F.R. § 0.459(b)(8) -- Justification of the period during which the submitting party asserts that material should not be available for public disclosure**

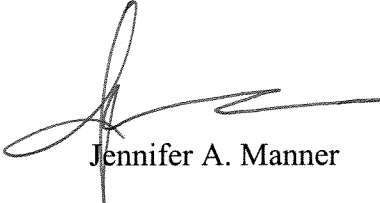
The information for which confidential treatment is sought should remain confidential indefinitely or until the parties to the *Mexico City Memorandum of Understanding* agree that it can be made publicly available.

- 47 C.F.R. § 0.459(b)(9) -- Any other information that the party seeking confidential treatment believes may be useful in assessing whether its request for confidentiality should be granted**

N/A.

Please contact the undersigned with any questions.

Very truly yours,



Jennifer A. Manner

PUBLIC COPY - REDACTED

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

In the matter of)
)
Telenor Satellite, Inc.) File No. SES-LIC-20060130-00175
Application for Blanket License to Operate) (Call Sign E060025)
Inmarsat C Mobile Earth Terminals with)
Inmarsat 4F2 at 52.75°W)

PETITION TO HOLD IN ABEYANCE

Bruce D. Jacobs
David S. Konczal
**PILLSBURY WINTHROP
SHAW PITTMAN LLP**
2300 N Street, NW
Washington, DC 20037-1128
(202) 663-8000

Jennifer A. Manner
Vice President, Regulatory Affairs
**MOBILE SATELLITE VENTURES
SUBSIDIARY LLC**
10802 Parkridge Boulevard
Reston, Virginia 20191
(703) 390-2700

March 24, 2006

PUBLIC COPY - REDACTED

Summary

The International Bureau should hold in abeyance the application filed by Telenor to operate earlier-generation L band mobile terminals in the United States with an uncoordinated Inmarsat satellite (Inmarsat 4F2). While MSV has not objected to temporary use of Inmarsat 4F2 to support earlier-generation Inmarsat services provided certain conditions are imposed, the present application for permanent authority to provide earlier-generation services with Inmarsat 4F2 should not be granted unless and until the new Inmarsat satellite has been coordinated. Inmarsat's attempt to operate its new satellite without first coordinating it threatens the operation of the current MSS systems of MSV and MSV Canada and creates uncertainty for the development of their next-generation systems, which are poised to revolutionize the MSS industry.

In evaluating whether the grant of an earth station application to use a non-U.S. licensed satellite will serve the public interest, *DISCO II* requires the Bureau to assess whether the satellite will cause interference to U.S.-licensed systems and whether there is sufficient spectrum available to permit operation of the foreign-licensed system in the United States. If there is an international coordination agreement in place between the United States and the licensing administration for the foreign satellite, the Commission can generally be assured that permitting the foreign licensed satellite to serve the United States will not raise concerns regarding interference or spectrum availability. But this is not the case in the L band because there is no international coordination agreement pertaining to the operation of Inmarsat 4F2. While the *Mexico City MoU* contemplates the operation of replacement satellites, Inmarsat 4F2 is technically different than Inmarsat-3, which precludes it from being considered a replacement.

In the absence of an international L band coordination agreement covering the Inmarsat 4F2 satellite, there is no basis for the Bureau to conclude that permitting the satellite to serve the

PUBLIC COPY - REDACTED

United States will not raise concerns regarding interference and spectrum availability. There are three kinds of interference presented by Inmarsat's new satellite that neither Inmarsat nor Telenor has addressed.

The first is interference on spectrum that MSV and MSV Canada have coordinated for their own use and loaned temporarily to Inmarsat, and that Inmarsat now refuses to relinquish. Inmarsat's current operations on this loaned-but-recalled spectrum are blocking MSV's operations *today* and grant of the instant application, to the extent it authorizes Inmarsat operations on the loaned-but-recalled spectrum, would do the same.

The second kind of interference results from the fact that Inmarsat 4F2 is technically different than the Inmarsat-3 satellites, and its technical characteristics are in no way contemplated in the 1999 Spectrum Sharing Arrangement among the L band operators or any other Agreement or Understanding between the United States and Inmarsat's licensing administration, the United Kingdom. Inmarsat 4F2 is more likely both to cause interference to and to suffer interference from other L band systems, even when being operated solely to support earlier-generation Inmarsat services.

The third kind of interference is that threatened by Inmarsat's claim that it is entitled, contrary to its earlier commitments to operate only on spectrum it had coordinated pursuant to the 1999 SSA, to operate wherever it chooses in the L band. Inmarsat has never explained how Inmarsat 4F2 in actual practice could possibly operate on all L band frequencies without resulting in mutual interference among L band operators.

The Commission's most important role is that of spectrum "traffic cop," enforcing reasonable rules of the road, in this case that new satellites must be coordinated before they are permitted to provide United States service. Such enforcement is entirely within its authority

PUBLIC COPY - REDACTED

under the *WTO Basic Telecom Agreement* and *DISCO II* principles, and is consistent with Commission precedent. While in some cases the Bureau is reasonably able to conclude that an applicant will be able to complete coordination before operating or will be able to operate on a non-interference basis until coordination is complete, that is not the case here. Given the evidence of interference that Inmarsat 4F2 will cause even when being used to provide solely earlier-generation services, it is not a solution for the Bureau to grant applications to operate with Inmarsat 4F2 now, hope that a coordination agreement can be reached in the future, and that in the interim there will not be greater interference among L band systems that embroils the Commission and the operators in interference disputes. As the current impasse in the L band indicates, a *post hoc* approach to coordination disserves the public interest and impedes the full and efficient use of L band spectrum. Accordingly, the Telenor application should be held in abeyance until an L band coordination agreement is concluded.

Lack of international coordination notwithstanding, the Telenor application raises additional issues that warrant further scrutiny, including (i) whether Inmarsat 4F2 qualifies as a replacement satellite; and (ii) the failure of Inmarsat 4F2 to comply with the Bureau's interpretation of the Commission's longitudinal station keeping rule.

PUBLIC COPY - REDACTED

Table of Contents

Summary..... i

Table of Contents iv

Background 1

Discussion..... 8

I. The Bureau Should Hold the Telenor Application in Abeyance Until the
Conclusion of an L Band Coordination Agreement 8

II. The Telenor Application Raises Additional Issues That Warrant Further
Scrutiny 20

Conclusion 22

PUBLIC COPY - REDACTED

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

In the matter of)
)
Telenor Satellite, Inc.) File No. SES-LIC-20060130-00175
Application for Blanket License to Operate) (Call Sign E060025)
Inmarsat C Mobile Earth Terminals with)
Inmarsat 4F2 at 52.75°W)

PETITION TO HOLD IN ABEYANCE

Mobile Satellite Ventures Subsidiary LLC (“MSV”) hereby files this Petition to Hold in Abeyance the above-referenced application filed by Telenor Satellite, Inc. (“Telenor”) to operate earlier-generation L band mobile terminals in the United States with an uncoordinated Inmarsat satellite (Inmarsat 4F2).¹ The International Bureau (“Bureau”) should not grant the application unless and until the new Inmarsat satellite has been coordinated.

Background

MSV. MSV is the entity authorized by the Commission in 1989 to construct, launch, and operate a United States Mobile Satellite Service (“MSS”) system in the L band.² MSV’s licensed satellite (AMSC-1 or MSAT-2) was launched in 1995, and MSV began offering service in 1996. MSV is also the successor to TMI Communications and Company, Limited Partnership (“TMI”) with respect to TMI’s provision of L band MSS in the United States. Today, MSV

¹ As one of the L band Mobile Satellite Service (“MSS”) operators in North America which could be subjected to harmful interference from grant of this application, MSV is a “party in interest” with standing to file this Petition. *See* 47 U.S.C. § 309(d)(1). Moreover, MSV has standing as a competitor in the MSS market. *See FCC v. Sanders Brothers Radio Station*, 309 U.S. 475, 477 (1940).

² *Order and Authorization*, 4 FCC Rcd 6041 (1989); *remanded by Aeronautical Radio, Inc. v. FCC*, 928 F.2d 428 (D.C. Cir. 1991); *Final Decision on Remand*, 7 FCC Rcd 266 (1992); *aff’d, Aeronautical Radio, Inc. v. FCC*, 983 F.2d 275 (D.C. Cir. 1993); *see also AMSC Subsidiary Corporation, Memorandum Opinion and Order*, 8 FCC Rcd 4040 (1993).

PUBLIC COPY - REDACTED

offers a full range of land, maritime, and aeronautical satellite services, including voice and data, using both its own U.S.-licensed satellite and the Canadian-licensed L band satellite (MSAT-1) licensed to Mobile Satellite Ventures (Canada) Inc. (“MSV Canada”). In January 2005, the Bureau licensed MSV to launch and operate an L band MSS satellite at 63.5°WL (called “MSV-SA”) to provide MSS in South America.³ In May 2005, the Bureau licensed MSV to launch and operate a replacement L band MSS satellite at 101°WL (called “MSV-1”).⁴

MSV recently announced that it has entered into a contract with Boeing Satellite Systems, Inc. for the construction and delivery of three next generation, transparency class L band satellites to serve the Western Hemisphere.⁵ The satellites will be among the largest and most powerful commercial satellites ever built. Each satellite’s primary antenna will be twice as large as any previous commercial satellite, and the satellites will have significantly more power available over the U.S. compared to any other MSS system providing or seeking to provide service to the United States. The satellites will be used to provide advanced mobile broadband services to devices that are virtually identical to cell phone handsets in terms of aesthetics, cost, and functionality. MSV is ahead of the Commission’s milestone schedule and is planning to launch these satellites beginning in 2009. Among the keys to exploiting this advancement in satellite technology are regulatory certainty, protection from harmful interference, and access to contiguous spectrum blocks. Harmful interference (such as that presented by the operation of

³ See *Mobile Satellite Ventures Subsidiary LLC, Order and Authorization*, DA 05-50 (January 10, 2005) (“*MSV-SA Order*”).

⁴ See *Mobile Satellite Ventures Subsidiary LLC, Order and Authorization*, DA 05-1492 (May 23, 2005) (“*MSV-1 Order*”).

⁵ See MSV Press Release, “Mobile Satellite Ventures Engages Boeing to Develop Next Generation Satellites” (dated January 11, 2006) (available at: http://www.msvlp.com/pr/news_releases_view.cfm?id=80).

PUBLIC COPY - REDACTED

uncoordinated satellites, including Inmarsat 4F2, and Inmarsat's refusal to honor its prior coordination commitments, including the return of the loaned spectrum) and inefficient spectrum assignments (such as that presented by the current assignment of non-contiguous slivers in the L band) will only impede the development of these MSV next generation networks and their benefits for consumers throughout the Western Hemisphere.

Inmarsat. Inmarsat is a provider of MSS in the L band and is licensed by the United Kingdom. Inmarsat was established in 1976 as a legal monopoly owned largely by foreign government post, telephone, and telegraph ("PTT") administrations. From its base as a monopoly, Inmarsat gradually built a fleet of satellites to provide global service, primarily to large, oceangoing vessels. As the first entrant into the MSS market and as a result of its ties to foreign governments, Inmarsat has developed a dominant share of the MSS market.⁶ Inmarsat currently operates a fleet of nine in-orbit second generation (Inmarsat-2) satellites and third generation (Inmarsat-3) satellites.⁷ Inmarsat has also launched two fourth-generation (Inmarsat-4) satellites and is in the process of constructing and launching its third Inmarsat-4 satellite. Inmarsat has not provided the required technical information in the record of this or any other proceeding relating to the Inmarsat 4F2 satellite needed for MSV to determine whether, nor has

⁶ See Inmarsat Finance plc, Form F-4 Registration Statement -- Exchange Offer for 7 5/8% Senior Notes due 2012 (May 25, 2004) ("*Inmarsat May 2004 SEC Form F-4*"), at 2 ("In the maritime sector, we believe we are the leading provider of global mobile satellite services, with 2002 revenues in excess of 30 times those of our nearest competitor."); *id.* ("We believe we are also the market leader in the provision of high-speed data services to the maritime and land sectors, with 2002 data revenues of more than 15 times those of our nearest competitor."); Inmarsat Global Ltd., Form F-20 (April 29, 2005), at 28, 33, 34, and 35 (stating that Inmarsat is the "leading provider" of MSS in the land, maritime, and aeronautical sectors) (available at: <http://www.sec.gov/Archives/edgar/data/1291401/000104746905012474/0001047469-05-012474-index.htm>) ("*Inmarsat April 2005 Form F-20*").

⁷ See Comments of Inmarsat Ventures plc, IB Docket No. 01-185 (Oct. 19, 2001), at 3.

PUBLIC COPY - REDACTED

Inmarsat discussed with other L band operators how, the Inmarsat-4 satellites will avoid causing or suffering interference with respect to other L band satellites.

L band coordination process. Spectrum in the L band in North America is shared primarily among five operators: MSV, MSV Canada, Inmarsat, and Mexican and Russian systems.⁸ The five Administrations that license these systems reached an agreement in 1996 for a framework for future coordination of the L band spectrum in North America, called the Mexico City Memorandum of Understanding (“*Mexico City MoU*”).⁹ Under the *Mexico City MoU*, the L band operators are each assigned certain specific frequencies to use on their specific satellites through multi-party operator agreements, called Spectrum Sharing Arrangements (“SSA”). Under the 1999 SSA, which was based on operation of narrowband carriers only, spectrum is divided among the five L band operators in largely non-contiguous slivers. The *Mexico City MoU* and the subsequent SSAs have never contemplated the operation of satellites such as Inmarsat 4F2 at any orbital locations.

Under the *Mexico City MoU*, the L band operators are required to ensure that spectrum is

REDACTED

⁸ The L band spectrum in North America is also shared with Japan’s MTSAT satellite, but only in and near the Pacific Ocean.

⁹ 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*”).

PUBLIC COPY - REDACTED

REDACTED

Since 1999, all the L band operators, only recently with the exception of Inmarsat, have been operating on a non-interference basis using spectrum assignments listed in the 1999 SSA for specific satellites, orbital locations, earth stations, services (carrier types and emission levels), satellite antenna beams and the associated main beam and sidelobe roll-off, and service areas. At the last L band operators meeting, held in 1999, Inmarsat committed to abide by the terms of the 1999 SSA.¹⁰ **REDACTED**

, as is the statement it made in its April 2005 securities filing that “the amount of spectrum available to each operator is currently frozen at the levels agreed in 1999.”¹¹

Despite these commitments, Inmarsat has continued to use certain L band frequencies that were coordinated for MSV and MSV Canada, temporarily loaned to Inmarsat, and then subsequently recalled.

REDACTED

MSV and MSV Canada notified Inmarsat over two years ago that they needed to begin

¹⁰ **REDACTED**

Indeed, even more recently, the Commission was under the impression that “the parties continue to operate under the 1999 assignments pending further negotiations.” *See Flexibility for Delivery of Communications by MSS Providers, Report and Order*, IB Docket No. 01-185, 18 FCC Rcd 1962, n.144 (February 10, 2003) (“*ATC Order*”).

¹¹ *Inmarsat April 2005 Form F-20* at 10.

PUBLIC COPY - REDACTED

operations on this spectrum, but Inmarsat has refused to return the spectrum.¹² MSV and MSV Canada need access to this spectrum to implement their aggressive plans to begin testing and deploying their interim-generation and next-generation integrated satellite-terrestrial networks. While MSV believes that it has the unequivocal right to use these frequencies, it has refrained from doing so in order to protect Inmarsat's customers, which Inmarsat is cynically using as hostages.

Telenor Application. Telenor is a distributor of Inmarsat's services in the United States. In November 2001, the Commission authorized various entities, including Telenor's predecessor, COMSAT Mobile, to provide service in the United States using Inmarsat-3 satellites.¹³ The Commission granted the applications subject to the condition that operations be on a non-interference basis, using only those frequencies coordinated for Inmarsat-3 satellites under the 1999 SSA. *See COMSAT Order* ¶ 115(c)-(d).

In its above-referenced application, Telenor seeks authority to operate earlier-generation L band mobile terminals in the United States with an uncoordinated Inmarsat-4 satellite that is located at 52.75°W (called "Inmarsat 4F2").¹⁴ Telenor claims that this satellite is a replacement for an Inmarsat-3 satellite located at 54°W. *Telenor Application*, Attachment A at 1. To support this claim, Telenor alleges that the Inmarsat 4F2 satellite will serve the same geographic area as the Inmarsat-3 satellite at 54°W and that the terminals operating with Inmarsat 4F2 will use the

¹² Inmarsat has acknowledged its refusal to return the loaned spectrum in a filing with the U.S. Securities and Exchange Commission ("SEC"). *See Inmarsat April 2005 Form F-20* at 48.

¹³ *See COMSAT Corporation et. al., Memorandum Opinion, Order and Authorization*, 16 FCC Rcd 21661 (2001) ("*COMSAT Order*").

¹⁴ *See Telenor Satellite, Inc., Application*, File No. SES-LIC-20060130-00175 (Call Sign E060025) (January 30, 2006) ("*Telenor Application*").

PUBLIC COPY - REDACTED

same frequencies that the Commission in the *COMSAT Order* authorized terminals to use with Inmarsat-3 satellites. *Id.*, Attachment A at 1-2. Telenor states that Inmarsat 4F2 will operate with $\pm 0.1^\circ$ East-West station-keeping, noting that the Commission's rule requiring Fixed Satellite Service ("FSS") satellites to operate with $\pm 0.05^\circ$ East-West station-keeping does not apply to MSS satellites. *Telenor Application*, Attachment A at 47.

Telenor STA Request. On January 18, 2006, Telenor applied for Special Temporary Authority ("STA") to operate the earlier-generation L band mobile terminals at issue here with Inmarsat 4F2 at 52.75°W prior to a Commission decision on the above-referenced application for long-term authority.¹⁵ Telenor explained that Inmarsat notified its distributors that it must move an Inmarsat-3 satellite that previously provided service in the United States from 54°W to 142°W to replace an uncoordinated Inmarsat second-generation satellite at 142°W that "is running out of fuel and will be decommissioned shortly."¹⁶ MSV filed Comments stating that it does not oppose the STA request to use Inmarsat 4F2 provided a more detailed justification is provided regarding the need to relocate the Inmarsat-3 satellite at 54°W to 142°W and the Bureau (i) limits authorized operations to frequencies that are not in dispute; (ii) puts Telenor, Inmarsat, and their customers on notice that the STA for use of the Inmarsat 4F2 satellite at 52.75°W is for 60 days and any additional STAs for its use will not be extended beyond June 30, 2006 without Inmarsat having completed coordination of the satellite with the United States; and (iii) makes clear that these actions in no way eliminate Inmarsat's unfulfilled coordination obligations, including for

¹⁵ See Telenor Communications, Inc., Request for Special Temporary Authority, File No. SES-STA-20060119-00064 (Call Sign E000284) (January 19, 2006) ("*Telenor STA Request*").

¹⁶ See *Telenor STA Request*, Norton Declaration at ¶ 2.

PUBLIC COPY - REDACTED

its planned operations at 142°W.¹⁷ On January 18, 2006, the Bureau granted the Telenor STA requests subject to a number of conditions, including the requirements (i) to operate on an unprotected, non-interference basis, and (ii) to demonstrate by February 17, 2006 whether Telenor is using loaned frequencies and, if so, what the impact would be if Inmarsat was required to terminate its use of loaned frequencies.¹⁸ In granting the STA, the Bureau made clear that this grant should not be construed as constituting a finding that Inmarsat can operate Inmarsat 4F2 on a non-interference basis.¹⁹

Discussion

I. THE BUREAU SHOULD HOLD THE TELENOR APPLICATION IN ABEYANCE UNTIL THE CONCLUSION OF AN L BAND COORDINATION AGREEMENT

In *DISCO II*, the Commission established a framework for evaluating whether the grant of an earth station application to use a non-U.S. licensed satellite to provide service in the United States will serve the public interest.²⁰ Among other things, the Commission will assess whether the foreign-licensed satellite will cause interference to U.S.-licensed systems and whether there is sufficient spectrum available to permit the operation of the foreign-licensed system in the United States. *DISCO II* ¶ 150. The Commission found in *DISCO II* that this exercise of spectrum management authority is consistent with the Chairman's Note to the World Trade

¹⁷ See MSV, Comments, File No. SES-STA-20051222-01788 et al (December 28, 2005) (“*MSV STA Comments*”).

¹⁸ See *Telenor STA Grant*, File No. SES-STA-20060119-00064 (Call Sign E000284) (January 19, 2006), at ¶¶ 2, 3.

¹⁹ *Id.* ¶ 5.

²⁰ See *Amendment of the Commission's Regulatory Policies To Allow Non-U.S.-Licensed Space Stations To Provide Domestic and International Satellite Service in the United States, Report and Order*, IB Docket No. 96-111, 12 FCC Rcd 24094 (1997) (“*DISCO II*”).

PUBLIC COPY - REDACTED

Organization (“WTO”) Basic Telecommunications Agreement,²¹ which states that WTO Members may exercise their domestic spectrum and frequency management policies when considering whether to allow foreign-licensed satellites to service the U.S. market.²²

If there is an international coordination agreement in place between the United States and the licensing administration for the foreign satellite, the Commission can generally be assured that permitting the foreign licensed satellite to serve the United States will not raise concerns regarding interference or spectrum availability. This is not the case in the MSS L band because there is no coordination agreement among the L band operators covering Inmarsat 4F2 at 52.75°W or any other orbital location, or covering its technical and operational parameters.²³ While Telenor and Inmarsat claim that Inmarsat 4F2 is a replacement satellite under the Commission’s satellite processing rules, which is doubtful, it certainly does not qualify as a

²¹ Fourth Protocol to the GATS (April 30, 1996), 36 I.L.M. 354 (1997) (“WTO Basic Telecommunications Agreement”).

²² See *Chairman of the World Trade Organization Group on Basic Telecommunications, Chairman's Note, Market Access Limitations on Spectrum Availability*, 36 I.L.M. at 372 (“under the GATS each Member has the right to exercise spectrum/frequency management”); *Space Imaging, LLC, Declaratory Order and Order and Authorization*, DA 05-1940, ¶ 18 (Chief, International Bureau, July 6, 2005) (“In *DISCO II*, the Commission determined that, given the scarcity of orbit and spectrum resources, it would consider spectrum availability as a factor in determining whether to allow a foreign satellite to serve the United States. This is consistent with the Chairman’s Note to the WTO Basic Telecom Agreement, which states that WTO Members may exercise their domestic spectrum/frequency management policies when considering foreign entry. Thus, in *DISCO II*, we stated that when grant of access would create interference with U.S.-licensed systems, we may impose technical constraints on the foreign system’s operations in the United States or, when conditions cannot remedy the interference, deny access.”) (citing *DISCO II*).

²³ In the *Outerlink* proceeding, Inmarsat explained that operation of a satellite or services prior to international coordination is a significant concern: “Inmarsat opposes the grant of Outerlink’s Application, unless and until the Outerlink service is coordinated between Inmarsat and MSV. The problem here is simple. Inmarsat and MSV have not coordinated the provision of Outerlink’s service.” See Letter from John P. Janka, Counsel for Inmarsat, to Mr. Thomas S. Tycz, FCC, File No. SES-LIC-19980415-00436 (April 23, 2002), at 1.

PUBLIC COPY - REDACTED

replacement satellite under the *Mexico City MoU*.

REDACTED

(i) it is not replacing another satellite;²⁴ (ii) it has much larger on-board power and will cause greater aggregate interference to other L band operators, even when being used exclusively to provide earlier-generation services (*see infra* pages 14-16); and (iii) it will require greater protection from other L band operators, even when being used exclusively to provide earlier-generation services (*see infra* pages 16-18). In addition to these and other interference concerns, Telenor states that Inmarsat 4F2 will have inefficient L band global beams,

REDACTED

²⁵ Until coordination is complete, Inmarsat 4F2 is simply a rogue satellite that has no internationally recognized rights.

While the Commission has in the past licensed earth stations to operate with L band satellites on a non-interference basis in the absence of a coordination agreement, the spectrum management issues presented now are fundamentally different.²⁶ With respect to the MSAT-1

²⁴ Telenor has told the Commission that Inmarsat would relocate the Inmarsat-3 satellite that Inmarsat 4F2 is allegedly replacing to 142°W. *See Telenor STA Request*.

²⁵ *Telenor Application*, Attachment A at 12-14, 16;

REDACTED

²⁶ *See COMSAT Order* (authorizing Inmarsat-3 satellites to provide service in the United States on a non-interference basis after concluding that operation pursuant to such a condition was possible); *Applications of SATCOM Systems, Inc., TMI Communications and Company, LP, et al., Order and Authorization*, 14 FCC Rcd 20798 (1999), *aff'd sub nom. AMSC Subsidiary Corp. v. FCC*, 216 F.3d 1154 (D.C. Cir. 2000) (authorizing Canadian-licensed satellite to provide service in the United States on a non-interference basis after concluding that operation pursuant to such a condition was possible).

PUBLIC COPY - REDACTED

and Inmarsat-3 satellites, they had already been coordinated in the past for narrowband carriers and were in the ITU Master Registry, unlike the Inmarsat 4F2 satellite at issue here. The operators discussed the technical parameters of their respective systems, applied those parameters in extensive calculations of potential interference, and developed an initial sharing plan for interference-free operation by which, even after the annual meetings reached a stalemate, the operators agreed to abide. *See supra* page 5. The Commission and the L band operators could be reasonably assured that the systems would be operated on a non-interference basis, provided the operators adhered to the frequency assignments detailed in the 1999 SSA.²⁷

In this case, however, there is no similar arrangement which defines the frequency assignments for Inmarsat 4F2. Inmarsat is proposing to operate a satellite that is not covered by any coordination agreement, is largely different from a technical perspective from any satellite covered by the previous coordination agreement, has never been analyzed by other L band operators, and (according to Inmarsat) will not accept any limitations on the frequencies it will use for operation.

As the Bureau demonstrated in at least three previous cases, it will not authorize an uncoordinated satellite to provide service if there is evidence that interference will result, regardless of whether the satellite is domestic or foreign-licensed.²⁸ In those cases, the Bureau

²⁷ The Bureau's decisions to license MSV's next-generation satellites is consistent with the previous Commission decisions licensing the MSAT-1 and Inmarsat-3 satellites. *See MSV-1 Order; MSV-SA Order*. In the cases of MSV-1 and MSV-SA, no entity claimed that the satellites would cause interference, thus it was reasonable for the Bureau to conclude that harmful interference would not result. Moreover, the MSV-1 and MSV-SA satellites are years away from launch. Where launch of a satellite is years away, it is reasonable for the Commission to conclude that any interference issues that might arise will be resolved through coordination prior to actual operation.

²⁸ *See* Letter from Thomas S. Tycz, FCC, to Joseph A. Godles, Counsel for PanAmSat, File No. SAT-STA-19980902-00057 (September 15, 1998) (refusing to permit PanAmSat to operate C

PUBLIC COPY - REDACTED

refused to permit the satellites to operate until after a coordination agreement had been reached with affected operators. Indeed, the Bureau has explained that imposing “a requirement that the [uncoordinated] satellite cannot operate at all will ensure that the satellite does not cause harmful interference to other satellites while coordination is being completed.”²⁹ As proponents of providing service in the United States with an uncoordinated satellite, the burden falls squarely on Inmarsat and Telenor to demonstrate that Inmarsat can operate its uncoordinated satellite on a non-harmful interference basis pending the conclusion of a coordination agreement. Inmarsat and Telenor have utterly failed to meet this burden.

Interference resulting from Inmarsat’s continued use of loaned spectrum that it agreed to return to MSV and MSV Canada. The first type of interference is presented by Inmarsat’s proposed use of frequencies on Inmarsat 4F2 that have been coordinated for use by MSV and MSV Canada under the 1999 SSA, then loaned to Inmarsat on a temporary basis, and that Inmarsat now refuses to relinquish or to refrain from using on Inmarsat 4F2.³⁰ MSV and MSV

band payload until after coordinating with affected Administrations) (“*PanAmSat Order*”); *Loral Orion Services, Inc., Order and Authorization*, DA 99-2222, 14 FCC Rcd 17665, ¶ 10 (October 18, 1999) (refusing to permit Loral to provide commercial service because coordination had not yet been completed and harmful interference would occur absent coordination); *BT North America Inc., Order*, DA 00-162, 15 FCC Rcd 15602 (February 1, 2000) (granting earth station applications to operate with foreign-licensed satellite only after foreign-licensed satellite operator reached a coordination agreement with affected U.S.-licensed operator); *see also AfriSpace, Inc., Order and Authorization*, DA 06-4, ¶ 12 (Chief, International Bureau, January 3, 2006) (“[T]he Commission will not authorize new systems that would cause interference to licensed U.S. systems.”); *MSV-SA Order* ¶ 8 (stating that the Commission “will not consider applications for new systems where the new system’s operations would cause interference to licensed systems”).

²⁹ *Loral Orion Services, Inc., Order*, DA 99-2221, 14 FCC Rcd 18878, ¶ 18 (October 18, 1999).

³⁰ The Bureau has recently taken action towards terminating Inmarsat’s illegal use of loaned-but-recalled frequencies. *See, e.g., Telenor STA Grant* ¶ 3. The Bureau has defined “loaned” L band frequencies as “those bandwidth segments that were loaned to Inmarsat by MSV and [Mobile Satellite Ventures (Canada) Inc.], either as part of the Revised 1999 Spectrum Sharing Arrangement (October 4, 1999), or later as bilateral arrangements between Inmarsat and MSV and Inmarsat and MSV Canada.” *See id.*

PUBLIC COPY - REDACTED

Canada need access to this loaned-but-recalled spectrum to implement their aggressive plans to deploy an interim-generation integrated satellite-terrestrial system. Inmarsat's current use of these frequencies prevents MSV and MSV Canada from using those frequencies to test and deploy their new, hybrid systems. This is a real, concrete example of interference that is already occurring today and that Inmarsat proposes to continue on Inmarsat 4F2.

Under the terms of the *COMSAT Order*, earth stations accessing Inmarsat satellites in the United States are permitted to operate only on a non-interference basis *and* only on those frequencies "coordinated for" Inmarsat in the "most recent annual L-Band operator-to-operator agreement," which is a reference to the 1999 SSA. *See COMSAT Order* ¶ 115(c)-(d). The Commission granted these applications in 2001, well after the last SSA had been agreed to in 1999. Thus, the Commission was aware that a new SSA had not been negotiated since 1999. It also was aware that Inmarsat had committed in the last multilateral operators meeting to continue to abide by the terms of the 1999 SSA.³¹ Thus, the Commission precluded earth stations from using portions of the L band that have not been "coordinated for" Inmarsat in the 1999 SSA, including spectrum that may have been temporarily loaned to Inmarsat but subsequently recalled by the lenders.³² This condition is simple and straightforward, and should not be the subject of

³¹ REDACTED

Inmarsat's commitment to operate in accordance with the 1999 SSA was made in October 1999 simultaneous with the impasse in negotiating a new SSA. Until only recently, Inmarsat's actions have demonstrated that it would continue to fulfill its commitment to comply with 1999 SSA. The Commission knew of Inmarsat's outstanding commitment when it permitted Inmarsat to provide service in the United States in 2001.

³² L band frequencies that have been loaned between L band operators have not been "coordinated for" the borrowing operator. In order to have the right to "loan" frequencies, the lending operator must have "coordinated for" the right to use those frequencies in the first place. Thus, the terms of the *COMSAT Order* and similar decisions licensing L band earth stations only give the lending operator, and not the borrowing operator, the right to use loaned frequencies.

PUBLIC COPY - REDACTED

any reasonable dispute. Tellingly, neither Inmarsat nor the earth station licensees permitted to access Inmarsat satellites have ever sought reconsideration or clarification of this unambiguous condition. Moreover, the Commission has repeatedly confirmed that although a new SSA had not been negotiated since 1999, it continues to effectively govern the operations of L band MSS providers.³³

REDACTED

is also consistent with such a condition, as is its statement in its April 2005 securities filing that “the amount of spectrum available to each operator is currently frozen at the levels agreed in 1999.”³⁴

Interference resulting from technically different nature of Inmarsat’s new satellite relative to the satellites it has coordinated previously under the Mexico City MoU. The second type of interference results from the fact that, from a technical perspective, Inmarsat 4F2 is largely different than the Inmarsat-3 satellites, and is more likely both to cause interference to and to suffer interference from other L band systems, even when being operated exclusively to support earlier-generation Inmarsat services. The Inmarsat 4F2 satellite uses nineteen regional beams to support earlier-generation Inmarsat services, compared to the six (or less) larger regional beams used by Inmarsat-3 satellites, resulting in a three-fold increase in the number of regional beams. This requires new mutually-agreed calculations of interference levels, assessment of the acceptability of interference levels by each operator, and careful development of a new and substantially different co-channel reuse spectrum sharing matrix to govern the

The words “coordinated for” as used in the *COMSAT Order* and similar decisions licensing L band earth stations recognize the superior right the lending operator has to loaned frequencies and that the lending operator may exercise its right to use the loaned frequencies at some point in the future.

³³ See Exhibit A.

³⁴ *Inmarsat April 2005 Form F-20* at 10.

PUBLIC COPY - REDACTED

operation of Inmarsat-4 regional beams vis-à-vis the MSV and MSV Canada systems. This multilateral engineering process is required to ensure that multiple-entry co-channel interference between Inmarsat-4 and the current systems of MSV and MSV Canada is accurately quantified and consistent with the performance requirements of each system. The spectrum reuse matrix adopted in the 1999 SSA among the North American L band MSS operators does not account for this increase in the number of regional beams or the change in the spot beam size and specific geographic coverage. These changes relative to the coordinated parameters, in conjunction with a significantly larger aggregate EIRP (“AEIRP”) of Inmarsat 4F2 relative to Inmarsat-3, could cause harmful intersystem interference if the required engineering is not conducted and subscribed to multilaterally by the three operators through a formal and binding coordination agreement. Moreover, the wideband carriers Inmarsat operates today on its Inmarsat-3 satellites, including those used to provide its High Speed Data (“HSD”) service, have never been coordinated and have resulted in interference to other L band operators.³⁵ Thus, while Inmarsat

35

REDACTED

Inmarsat has not yet undertaken this required coordination. As the proponent of providing HSD services, the onus has been on Inmarsat to initiate this coordination, **REDACTED** and as required by ITU Radio Regulations. Not surprisingly, MSV has suffered non-co-channel interference from Inmarsat’s uncoordinated HSD transmissions due to Inmarsat’s failure to provide sufficient guard bands with respect to MSV transmissions. In coordination of these MSS wideband carriers, the challenge is to suitably limit this interference risk while minimizing the size and number of guard bands in order to achieve the highest possible spectrum utilization efficiency. Moreover, the necessary guard bands must be equitably accommodated within the operators’ frequency assignments. Establishment of the appropriate risk-efficiency balances and equitable placements of guard bands are not matters that should be decided unilaterally by Inmarsat.

Operation of wideband carriers on current-generation satellites is not the only example of operations Inmarsat has failed to coordinate despite its obligation to do so. According to its securities filings, Inmarsat also currently operates Inmarsat-2 satellites at 98°W and 142°W, and

PUBLIC COPY - REDACTED

has claimed that earlier-generation services can be provided over Inmarsat 4F2 within the “technical envelope” in which they are operated today, this “technical envelope” simply does not exist because Inmarsat has not diligently coordinated all of its operations in order to establish such an envelope.³⁶ The fact is that the key technical parameters of Inmarsat 4F2 used to support earlier-generation services, such as its proposed use of loaned frequencies, increased number of regional beams, higher AEIRP, and wideband carriers, have not been previously coordinated, thus making operation of Inmarsat 4F2 on a non-interference basis relative to other L band systems unlikely.³⁷ Absent prior coordination, it is unclear how Inmarsat intends to provide these services while avoiding interference to other L band operators.

The potential for interference is not limited to that caused to other L band systems because Inmarsat itself may suffer greater interference upon operation of its new satellite to support existing services. The antenna gain of Inmarsat 4F2 when providing earlier-generation services is 5 dB higher than that of the Inmarsat-3 satellite, resulting in the increased susceptibility of Inmarsat 4F2 relative to Inmarsat-3 satellites to uplink co-channel interference from operation of current-generation terminals operating on the MSV and MSV Canada systems. With respect to adjacent-band interference, Inmarsat has claimed in another proceeding that the

plans to relocate an Inmarsat-3 satellite to 142°W, none of which have been coordinated with other North American L band operators. *Inmarsat April 2005 Form F-20* at 39.

³⁶ While Inmarsat has claimed that the “technical envelope” under which it will operate was established in a 1992 bilateral agreement between the U.S. and the United Kingdom, this is merely a sharing matrix based on the I-3 satellite beam configuration which does not address key technical parameters of L band operations on the Inmarsat 4F2 satellite. See Consolidated Response of Inmarsat Ventures Limited, File No. SES-STA-20051216-01756 et al (January 6, 2005) (“*Inmarsat Response*”), at 6.

³⁷ In recently granting STAs to provide earlier-generation services with the Inmarsat 4F2 satellite, the Bureau acknowledged some of these concerns by restricting Inmarsat from increasing the aggregate uplink and downlink EIRP densities relative to those same services provided over the Inmarsat 3F4 satellite. *Telenor STA Grant* ¶ 1.

PUBLIC COPY - REDACTED

Inmarsat 4F2 satellite has not been designed to accommodate the level of adjacent band interference that can exist from operation of current L band systems based on the system parameters contemplated when Inmarsat-3 was coordinated.³⁸ If this is the case (which MSV has reason to doubt),³⁹ then Inmarsat 4F2 is more susceptible to adjacent band interference than the Inmarsat-3 satellites. Moreover, while the technical parameters permitting co-channel sharing between Inmarsat and other North American L band operators are specified in the reuse matrix accompanying the 1999 SSA, the three-fold increase in regional beams used on the Inmarsat 4F2 satellite to support earlier-generation services and the major differences in associated beam-coverage areas render this reuse matrix inapplicable to the Inmarsat-4 satellites. This interference problem would exist even if the Inmarsat-4F2 satellite were proposed to be positioned at the same 54.00°W orbital location of the Inmarsat-3 satellite, rather than 52.75°W. Thus, even when Inmarsat 4F2 is being used exclusively to provide earlier-generation services, there is no guarantee that Inmarsat will be able to operate on an unprotected, non-interference basis. Thus, if the Bureau permits Inmarsat 4F2 to operate in the United States to provide earlier-generation services prior to the conclusion of a coordination agreement, operation on an

³⁸ At the time the last L band coordination agreement was reached, Inmarsat was well aware of the potential for the U.S. and Canadian-licensed L-band satellites to support more than 1,000 METs transmitting simultaneously, allowing for voice activation. Given the 16 dBW maximum EIRP of these METs, there can be more than 46 dBW aggregate EIRP ($16 + 10 \cdot \log(1000)$) launched toward space from current L-band METs alone. See MSV, Opposition to Inmarsat Ventures Ltd. Petition for Partial Reconsideration and Clarification, IB Docket No. 01-185 (August 4, 2005), at 9-10 and Technical Appendix. In the ATC proceeding, however, Inmarsat has claimed that Inmarsat 4F2 has been designed to accommodate only 37 dBW from “MSV-related” sources of interference. See Inmarsat Ventures Ltd, Petition for Partial Reconsideration and Clarification, IB Docket No. 01-185 (May 13, 2005) (“*Inmarsat Petition*”), at 9.

³⁹ See Letter from Jennifer A. Manner, MSV, to Ms. Marlene H. Dortch, FCC, IB Docket No. 01-185 (November 15, 2005).

PUBLIC COPY - REDACTED

unprotected, non-interference basis may not be possible without substantial Commission oversight and enforcement.

Interference resulting from Inmarsat's proposal to operate throughout the entire MSS L band. The third potential for interference results from Inmarsat's claim that it is entitled to operate on each and every frequency in the L band despite (i) its earlier commitments to operate only on spectrum it had coordinated pursuant to the 1999 SSA; (ii) the existing interference in the band; (iii) the new technical characteristics of the proposed satellite; and (iv) the contention among the operators regarding their need for additional spectrum. Inmarsat provides no explanation as to how L band operators in actual practice could possibly operate on all L band frequencies and not cause mutual interference. Even assuming that the Commission did authorize Inmarsat-3 to operate on every L band frequency (which is not the case),⁴⁰ this would no longer be sound spectrum management policy in the case of Inmarsat 4F2, which is technically different than Inmarsat-3 and is more likely to cause interference to, and to receive interference from, other L band operators.

MSV and MSV Canada have recently notified Inmarsat that they have suffered a significant increase in their return link noise floor at the edge of certain of their coordinated band segments apparently caused by Inmarsat's placement of its own carriers too close to the band edge. Given these recent examples of Inmarsat's efforts to encroach upon frequencies coordinated for other operators, as well as its continued claim to be entitled to use loaned spectrum, its ongoing use of satellites and services that have not been coordinated, and its plan to use the new satellites not to replace the older satellites but to supplement them, it would be

⁴⁰ COMSAT Order ¶ 115(c)-(d).

PUBLIC COPY - REDACTED

unreasonable to expect that Inmarsat can and will operate its new satellite in a manner that does not lead to harmful interference in the absence of a coordination agreement.

Given the interference concerns presented by Inmarsat 4F2, requiring Inmarsat to coordinate prior to operation is both good spectrum management policy and consistent with precedent. *See supra note 28.* The technical issues presented by the proposed operation of Inmarsat-4 satellites can be resolved only through *a priori* frequency coordination among the L band operators and their licensing administrations, which has not yet occurred. Given the likelihood of operations of Inmarsat 4F2 to cause harmful interference to other L band operators and Inmarsat's refusal to abide by previous coordination agreements by returning loaned spectrum, it is not a solution for the Bureau to grant applications to operate with Inmarsat 4F2 now and hope that a coordination agreement can be reached in the future. As the current impasse in the L band indicates, a *post hoc* approach to coordination disserves the public interest and impedes the full and efficient use of spectrum.⁴¹ If the Bureau were to permit Inmarsat 4F2 to provide service in the United States prior to a coordination agreement, the ability of L band operators to provide vital satellite services, including to the public safety community, will be threatened. L band operators will soon find themselves embroiled in interference disputes before the Commission, unable to take full advantage of this prime spectrum resource and depriving consumers of the benefits of innovative services that MSV will provide in the near future.

Accordingly, unless and until L band coordination discussions are finalized and a coordination agreement is reached, the Bureau should hold the Telenor application in abeyance. Needless to say, if the Bureau authorizes the use of Inmarsat's new satellite without insisting that

⁴¹ As it has done numerous times in the past, MSV invites Inmarsat to participate in discussions to make the most efficient use of the L band spectrum.

PUBLIC COPY - REDACTED

it first complete coordination, there are no reasonable prospects that such coordination will ever be successfully completed. The Commission's goals of increasing efficient use of spectrum and promoting broadband services, particularly in rural areas and for the public safety community, will be thwarted.⁴² Having said that, however, it is also reasonable to expect that if the parties commit to a good faith effort to complete a comprehensive regional coordination agreement, MSV's view is that it can be completed in a matter of a few months, well prior to the June 30, 2006 deadline MSV has proposed for the expiration of any STA granted to Telenor to operate the earlier-generation terminals with Inmarsat 4F2. *See MSV STA Comments.*

II. THE TELENOR APPLICATION RAISES ADDITIONAL ISSUES THAT WARRANT FURTHER SCRUTINY

The lack of international frequency coordination for Inmarsat 4F2 notwithstanding, the Telenor application raises additional issues that warrant further scrutiny. First, while Telenor claims that Inmarsat 4F2 is a replacement for the Inmarsat-3 satellite at 54°W, there is insufficient evidence in the record to support this claim. While Telenor claims that Inmarsat 4F2 will serve the same geographic area as the Inmarsat-3 satellite at 54°W, neither Telenor nor Inmarsat has provided the coverage area for the Inmarsat-3 satellite in order to make that

⁴² The Commission has identified the promotion of "efficient and effective" use of spectrum as one of its strategic objectives. *See FCC, Strategic Plan: 2006-2011* (September 30, 2005). The Commission has also recognized that assignment of contiguous frequency blocks will increase spectrum efficiency and redound to the benefit of the American public. *See generally Improving Public Safety Communications in the 800 MHz Band, Report and Order*, 19 FCC Rcd 14969 (August 6, 2004); *Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, including Third Generation Wireless Systems, Third Report and Order, Third Notice of Proposed Rule Making, and Second Memorandum Opinion and Order*, 18 FCC Rcd 2223, ¶ 68 (2003).

PUBLIC COPY - REDACTED

comparison.⁴³ Moreover, as Telenor's recent STA applications reveal, the Inmarsat-3 satellite that Inmarsat 4F2 is allegedly replacing will be moved to another orbital location to provide service in the Pacific Ocean region. *See Telenor STA Request*. To the extent the Bureau finds that Inmarsat 4F2 is a replacement satellite under the Commission's rules despite these discrepancies, the Bureau should make clear that this decision does not mean that the Commission as the representative of the United States in international frequency coordination negotiations considers Inmarsat 4F2 to be a replacement satellite under the *Mexico City MoU*. As discussed above (*see supra* pages 10), Inmarsat 4F2 cannot be considered a replacement satellite under the *Mexico City MoU*.

Second, while Telenor is correct when it states that the Commission rule requiring FSS satellites to operate with $\pm 0.05^\circ$ East-West station keeping does not apply to MSS satellites, it is incorrect when it implies that this is settled law.⁴⁴ In acting on MSV's application to operate an MSS satellite with $\pm 0.1^\circ$ East-West station keeping, the Bureau held that MSV was required to justify a waiver of the rule requiring FSS satellites to operate with $\pm 0.05^\circ$ East-West station keeping.⁴⁵ MSV has sought reconsideration of this decision, asking the Bureau to clarify that the rule requiring FSS satellites to operate with $\pm 0.05^\circ$ East-West station-keeping does not apply to

⁴³ While Telenor states that Inmarsat 4F2 will "serve the same geographic regions" as the Inmarsat-3 satellite at 54°W , this leaves unanswered whether Inmarsat 4F2 will cover geographic regions beyond those covered by the Inmarsat-3 satellite at 54°W , which would disqualify Inmarsat 4F2 from being a replacement satellite. *See Telenor Application*, Attachment A at 1; 47 C.F.R. § 25.165(e) ("A replacement satellite is one that is . . . [a]uthorized to be operated at the same orbit location, in the same frequency bands, and with the same coverage area as one of the licensee's existing satellites."); *AfriSpace, Inc., Order and Authorization*, DA 06-4, ¶ 5 (Chief, International Bureau, January 3, 2006) (explaining that the satellite does not satisfy the Commission's criteria for a replacement satellite because it will have a different coverage area than satellite it is replacing).

⁴⁴ *Telenor Application*, Attachment A at 47; *see* 47 C.F.R. § 25.210(j).

⁴⁵ *See MSV-1 Order* ¶ 21.

PUBLIC COPY - REDACTED

MSS satellites.⁴⁶ This proceeding is pending. To the extent the Bureau authorizes Inmarsat 4F2 for service in the United States with $\pm 0.1^\circ$ East-West station keeping without seeking a waiver, the Bureau must afford similar treatment to other MSS satellites proposing to serve the U.S. market, such as MSV-1. Conversely, if the Bureau on reconsideration of the *MSV-1 Order* upholds its decision that MSS satellites are required to comply with $\pm 0.05^\circ$ East-West station-keeping, the Telenor application must be dismissed for failing to seek a waiver of this rule.⁴⁷

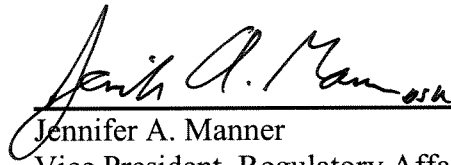
Conclusion

Based on the foregoing, the Commission should hold in abeyance the Telenor application until the conclusion of an L band coordination agreement.

Respectfully submitted,



Bruce D. Jacobs
David S. Konczal
**PILLSBURY WINTHROP
SHAW PITTMAN LLP**
2300 N Street, NW
Washington, DC 20037-1128
(202) 663-8000



Jennifer A. Manner
Vice President, Regulatory Affairs
**MOBILE SATELLITE VENTURES
SUBSIDIARY LLC**
10802 Parkridge Boulevard
Reston, Virginia 20191
(703) 390-2700

Dated: March 24, 2006

⁴⁶ See MSV, Petition for Clarification and Partial Reconsideration, File Nos. SAT-LOA-19980702-00066 et al (June 22, 2005).

⁴⁷ See Letter from Thomas S. Tycz, FCC, to John K. Hane, Pegasus Development Corporation, DA 03-3665 (November 19, 2003) (dismissing application for failing to seek waiver of Commission's East-West station-keeping rule).

PUBLIC COPY - REDACTED

Exhibit A

Commission Statements Acknowledging that L Band Operators Are Limited to Frequencies Coordinated For Their Systems in the 1999 SSA

- *Flexibility for Delivery of Communications by MSS Providers, Report and Order*, IB Docket No. 01-185, 18 FCC Rcd 1962 (February 10, 2003) (“*ATC Order*”).

“The parties to the MoU last revised spectrum assignments in 1999 and, pending further negotiations, continue to operate under those assignments today.” (¶ 92)

“Although annual meetings were to have taken place under the terms of the Mexico City MoU, these meetings have not occurred since the parties last agreed to a complex spectrum-sharing arrangement in London in 1999; therefore, the parties continue to operate under the 1999 assignments pending further negotiations.” (n. 144)

- *Mobile Satellite Ventures Subsidiary LLC, Order and Authorization*, DA 04-3553 (Int’l Bur. 2004):

“The parties to the MOU last revised the spectrum assignments in 1999 and, pending further negotiations, continue to operate with those assignments today.” (n.8)

- *Flexibility for Delivery of Communications by MSS Providers, Memorandum Opinion and Order and Second Order and ATC Reconsideration Order*, IB Docket Nos. 01-185, FCC 05-30 (February 25, 2005) (“*ATC Reconsideration Order*”):

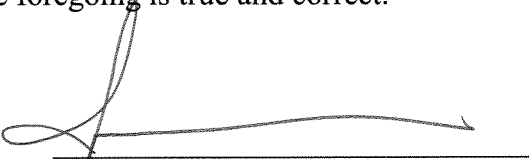
“These negotiations have not occurred since 1999, and the 1999 coordination agreement remains in effect.” (¶ 38)

“The current coordination agreement under which Inmarsat and MSV share L-band spectrum was finalized in 1999. Ideally, the L-band MSS operators should renegotiate their coordination agreement every year. Indeed, changes to the existing coordination agreement could help avoid some of the potential interference issues that could arise from deployment of MSS/ATC. At the same time, however, we acknowledge that it could take a great deal of time and effort to conduct further coordination negotiations. For this reason, *in the case of any L-band frequency that is currently the subject of a coordination agreement and is shared between an MSS operator and an MSS/ATC operator*, we will permit an MSS/ATC to cause a small increase in interference to another MSS operator’s system above the coordinated interference level when the coordinated interference level is already greater than 6% $\Delta T/T$. This measure accounts for the reality that MSS is currently operating in the L-band, and that it may be necessary and appropriate to allow a slightly higher level of interference than currently coordinated levels allow in order to permit ATC to begin operations. When L-band MSS operators enter into a new coordination agreement, this additional interference allowance will no longer apply, and MSS/ATC operators will be required to operate its ATC within the limits coordinated by the parties.” (¶ 44) (emphasis added)

Declaration of Jennifer A. Manner

1. I am the Vice President, Regulatory Affairs of Mobile Satellite Ventures Subsidiary LLC.
2. I have read the foregoing Petition to Hold in Abeyance the application of Telenor Satellite, Inc. ("Telenor").
3. I have personal knowledge of the facts stated in the Petition to Hold in Abeyance. The facts set forth in the Petition, other than those of which official notice may be taken, are true and correct to the best of my knowledge, information, and belief.

I declare under penalty of perjury that the foregoing is true and correct.




Jennifer A. Manner

Executed on March 24, 2006

Technical Certification

I, Richard O. Evans, Senior Engineer of Mobile Satellite Ventures Subsidiary LLC, certify under penalty of perjury that:

I am the technically qualified person with overall responsibility for the technical information contained in this Petition to Hold in Abeyance. I am familiar with the Commission's rules, and the information contained in the Petition to Hold in Abeyance is true and correct to the best of my knowledge and belief.


Richard O. Evans

Dated: March 24, 2006

PUBLIC COPY - REDACTED

CERTIFICATE OF SERVICE

I, Sylvia A. Davis, a secretary with the law firm of Pillsbury Winthrop Shaw Pittman LLP, hereby certify that on this 24th day of March 2006, I served a true copy of the foregoing by first-class United States mail, postage prepaid, upon the following:

Roderick Porter*
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

Richard Engelman*
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

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

Cassandra Thomas*
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

Fern Jarmulnek*
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


Andrea Kelly*
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

Howard Griboff*
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

Keith H. Fagan
Telenor Satellite, Inc.
1101 Wootton Parkway
10th Floor
Rockville, MD 20852


Sylvia A. Davis

*By electronic mail