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555 Eleventh Street, N.W., Suite 1000
Washington, D.C. 20004-1304
Tel: (202) 637-2200 Fax: (202) 637-2201
www.lw.com

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Via Hand Delivery

February 14, 2006

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

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Federal Communications Commission
Office of Secretary

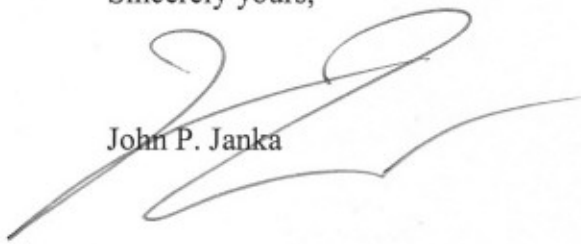
Re: Notice of Ex Parte Presentation
Proceedings Listed on Attached Page

Dear Ms. Dortch:

On Monday, February 13, 2006, Diane J. Cornell, Inmarsat's Vice President of Government Affairs, Justin Lilly, consultant to Inmarsat, and I, met with Sam Feder, General Counsel of the Commission, and the following members of the Office of General Counsel: Matthew Berry, Joel Kaufman, and Daniel Harrold. The enclosed presentation formed the basis for the conversation.

Sincerely yours,

John P. Janka



cc: Sam Feder
Matthew Berry
Joel Kaufman
Daniel Harrold

Attachment and Enclosure

No. of Copies rec'd 041
List A B C D E

Applicant	File Nos.
Stratos	SES-MFS-20051122-01614 SES-STA-20051216-01760 SES-MFS-20051122-01615 SES-STA-20051216-01761 SES-MFS-20051122-01616 SES-STA-20051216-01762 SES-MFS-20051122-01617 SES-STA-20051216-01763 SES-MFS-20051122-01618 SES-STA-20051216-01764 SES-LFS-20050826-01175 SES-AMD-20050922-01313 ITC-214-20050826-00351
Telenor	SES-MFS-20051123-01626 SES-STA-20051216-01756 SES-MFS-20051123-01627 SES-STA-20051216-01757 SES-MFS-20051123-01629 SES-STA-20051216-01758 SES-MFS-20051123-01630 SES-STA-20051216-01759 SES-MFS-20060118-00050 SES-STA-20060118-00055 SES-MFS-20060118-00051 SES-STA-20060118-00056 SES-MFS-20060118-00052 SES-STA-20060118-00057 SES-MFS-20060118-00053 SES-STA-20060118-00058 SES-LFS-20050930-01352 SES-AMD-20051111-01564 ITC-214-20051005-00395
Satamatics	SES-MFS-20051202-01665 SES-STA-20051223-01790
Skywave	SES-MFS-20051207-01709 SES-STA-20051222-01788
FTMC	SES-LFS-20051011-01396 SES-AMD-20051118-01602 ITC-214-20051012-0406
MVS	SES-LFS-20051123-01634



Authorizing Services Over Inmarsat-4

Presentation to the Office of General Counsel

February 13, 2006

Overview

- Inmarsat has been providing MSS to the United States for years using a number of different L-Band spacecraft
- Inmarsat distributors have asked for FCC authority to continue existing services, and to deploy new services, using the I-4 replacement spacecraft launched in November 2005
- MSV asks the FCC to delay authorizing use of I-4 until a global rechannelization of L-Band spectrum occurs to support MSV's future hybrid ATC/MSS network
- A long line of cases supports authorizing I-4 *now*, and addressing MSV's spectrum issues under the overarching international L-Band framework that the United States led the way in establishing in 1996

Existing Framework for Using the L-Band

- Inmarsat and MSV established a technical framework in 1992 to ensure non-interfering operations between their MSS networks
 - This technical (coordination) framework still applies
 - The I-4 spacecraft operates within this framework *today*
- The 1996 Mexico City MOU set up a *supplemental* process to facilitate the use of the L-Band over North America
 - The MOU was signed by five Administrations, including the FCC
 - The MOU does not assign specific band segments to individual nations or systems (*i.e.*, no L-Band operator “owns” any specific spectrum block)
 - The MOU provides for five different MSS operators to periodically meet and resegment L-Band usage among themselves for defined time periods

Existing Framework for Using the L-Band

- Under the MOU process, L-Band operators are to mutually agree
 - on spectrum assignments *for defined periods*
 - in negotiated operating agreements of *limited duration (i.e., one year term)*
- Interference considerations require that spectrum assignments over North America also take into account how the L-Band is used over Europe, Africa and Asia
 - separate annual operator meetings (similar to the Mexico City MOU process) periodically assign spectrum to different operators around the world

Existing Framework for Using the L-Band

- The last operating agreement under the MOU *terminated December 31, 1999* because there was not unanimous consent to extend it
 - “[I]t was AMSC [MSV] that vetoed the proposed extension of the [1999] operating agreement . . . believing it was better strategically to force the issue of how to deal with the spectrum shortage.” Brief for FCC, *AMSC v. FCC*, 216 F.3d 1154 (D.C. Cir. 2000) (Case No. 99-1513, filed Mar. 31, 2000)
- Inmarsat and the U.K. repeatedly have urged the reinitiation of multilateral negotiations under the MOU

Existing Framework for Using the L-Band

- In the absence of an operating agreement under the MOU
 - No MSS system has any permanent or exclusive L-Band spectrum assignment
 - “Unlike most international coordinations that create permanent assignments of specific spectrum, [L-Band] operators’ assignments can change from year to year based on their marketplace needs.” *MSV 101^o W.L. Order*, DA 05-1492, ¶ 34 (2005)
 - There is no spectrum to “own,” “loan,” or “recall”
 - “[T]here is no permanent assignment of specific spectrum to any L-band operator. Thus, no operator can assert any claim with respect to a specific piece of spectrum.” *Comsat*, 16 FCC Rcd. 21661, 21699 (2001)
 - ITU Radio Regulations and the FCC require systems to operate on a non-harmful interference basis

Existing Framework for Using the L-Band

- In the absence of an operating agreement under the MOU
 - Inmarsat has committed in FCC licensing proceedings to operate I-4 on a non-harmful interference basis by
 - abiding by the 1992 technical operating envelope
 - serving the United States using the same L-Band frequencies it successfully has been using for years
 - Inmarsat's commitment ensures that its continued uses of the L-Band do not impermissibly "overlap" with MSV's existing uses and thereby cause harmful interference

Longstanding FCC Precedent Supports Licensing I-4 Services Today

- L-Band spectrum assignments are to be
 - renegotiated and substantiated annually under the MOU, based on each operator's actual use and short term need
 - "Spectrum allocations will be reviewed annually on the basis of actual usage and short-term projections of future need." FCC Public Notice, Rep. No. IN 96-16 (rel. June 25, 1996)
 - resolved in the MOU forum, not in United States market access proceedings
 - "[S]pectrum limitation concerns are best addressed in the L-band coordination process." *Comsat*, 16 FCC Rcd. 21661, 21699 (2001)

Longstanding FCC Precedent Supports Licensing I-4 Services Today

- L-Band operators are not legally constrained to spectrum assignments from an expired operating agreement
 - MSV Canada was licensed this way in 1999, giving rise to MSV's appeal:
 - "[MSV] claims, however, that when there is no coordination agreement in effect [other operators] are free to operate on any frequency. . . including the frequencies that had previously been coordinated for [MSV]. The Commission responds that even then the likelihood of interference is not increased . . . because [the] licenses are expressly conditioned upon their operating on a 'non-interference basis.'" *AMSC v. FCC*, 216 F.3d 1154, 1159 (D.C. Cir. 2000)
 - Service over the Inmarsat system was authorized this way in 2001:
 - "[W]e cannot state that Inmarsat will be operating on frequencies coordinated for it and that there will be no chance of interference. The absence of [an operating] agreement, however, is not a sufficient basis upon which to deny the pending applications." *Comsat*, 16 FCC Rcd. 21661, 21698 (2001)
 - MSV's two next-generation spacecraft were licensed this way in 2005:
 - See *MSV 101^o W.L. Order*, DA 05-1492, ¶¶56, 59 (2005) (authorizing MSV operations at 1525-1544 MHz, 1545-1559 MHz, 1626.5-1645.5 MHz, and 1646.5-1660.5 MHz); *MSV 63.5^o W.L. Order*, DA 05-50, ¶¶ 37, 39 (2005) (same)

Longstanding FCC Precedent Supports Licensing I-4 Services Today

- Without specific spectrum assignments, operations are licensed *across the L-Band*, subject to a “non-harmful interference” condition
 - “[I]n the absence of a continuing annual operator-to-operator coordination agreement, [MSV’s] operation in the 1525-1559 and 1626.5-1660.5 MHz band will be on a *non-harmful interference* basis.” *MSV*, 17 FCC Rcd. 12894, 12897 (2002) (emphasis added)
 - “MSV’s operation in the L-band will be on a *non-harmful interference basis . . .*” *MSV 63.5° W.L. Order*, DA 05-50, ¶ 39 (2005) (emphasis added)
 - “[I]n the absence of a coordination agreement with other lawfully authorized L-band operators, MSV’s operations . . . will be on a *non-harmful interference basis*.” *MSV 101° W.L. Order*, DA 05-1492, ¶ 59 (2005) (emphasis added)

Longstanding FCC Precedent Supports Licensing I-4 Services Today

- L-Band operators are not required to relinquish spectrum as a *quid pro quo* for United States market access or licensing
 - “We find that such a *quid pro quo* would be inconsistent with U.S. market access commitments in the WTO Agreement.” *Satcom Systems*, 14 FCC Rcd. 20798, 20813 (1999)

Longstanding FCC Precedent Supports Licensing I-4 Services Today

- *DISCO II* and its progeny, as well as FCC licensing precedent, mandate that Inmarsat be treated consistently with MSV and MSV Canada
 - Twice in 2005, the FCC licensed new MSV L-Band spacecraft that
 - are technically very different from MSV's in-orbit spacecraft
 - new coverage areas, higher-powered, more and smaller spot beams, wideband carriers, physically closer to Inmarsat
 - have yet to be coordinated
 - are not covered by the 1999 operating agreement or the MOU
 - MSV's new L-Band operations are
 - authorized across the entire L-Band
 - simply subject to non-harmful interference conditions

Longstanding FCC Precedent Supports Licensing I-4 Services Today

- MSV Canada (TMI) has been allowed to continue and expand its business in the absence of an L-Band operating agreement
 - “[I]n the absence of an annual operator-to-operator agreement, [the FCC will] not require operators to discontinue services . . . and [will] continue to permit TMI to operate and acquire customers” *Comsat*, 16 FCC Rcd. 21661, 21699 (2001) (*citing Satcom Systems*, 14 FCC Rcd. 20798, 20814 (1999))
- Access to Inmarsat’s new I-4 satellite must be treated the same way as MSV and MSV Canada, consistent with FCC precedent and WTO obligations

Conclusion

- Inmarsat fully supports the reinitiation of L-Band negotiations under the MOU
- In the meantime, all pending applications to provide I-4 services should be granted promptly
 - subject only to the obligation to operate in the L-Band on a non-harmful interference basis
- Authorizing I-4 now is fully consistent with
 - longstanding L-Band precedent
 - how MSV was licensed twice last year and how MSV Canada is authorized to continue to operate