

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

In the matter of	)	
	)	
Stratos Communications, Inc.	)	File No. SES-MFS-20051122-01614 (Call Sign E000180)
Application for Modification of	)	File No. SES-MFS-20051122-01615 (Call Sign E010050)
Earth Station License to Operate with	)	File No. SES-MFS-20051122-01616 (Call Sign E010048)
Inmarsat 4F2 at 52.75°W	)	File No. SES-MFS-20051122-01617 (Call Sign E010049)
	)	File No. SES-MFS-20051122-01618 (Call Sign E010047)

**OPPOSITION TO MOTION TO STRIKE**

Mobile Satellite Ventures Subsidiary LLC (“MSV”) hereby files this Opposition to the “Motion to Strike the Portions of the MSV Petition Withheld from Stratos” (“Motion”) filed by Stratos Communications, Inc. (“Stratos”) on January 19, 2006 in connection with the above-referenced applications.<sup>1</sup> Stratos seeks to strike portions of MSV’s Petition to Hold in Abeyance,<sup>2</sup> which have been kept confidential pursuant to the terms of the *Mexico City Memorandum of Understanding* (“*Mexico City MoU*”), an international agreement among the five administrations that license L band operators serving North America.<sup>3</sup> As discussed herein, the Bureau should deny the Motion because (i) Stratos has no right to access these confidential materials and (ii) Stratos’s interests would not be prejudiced by the Commission’s consideration

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<sup>1</sup> See Stratos Communications, Inc., “Motion to Strike the Portions of the MSV Petition withheld from Stratos,” File Nos. 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) (filed January 19, 2006) (“*Stratos Motion*”).

<sup>2</sup> See MSV, Petition to Hold in Abeyance Stratos Applications, File Nos. 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) (filed January 6, 2006) (“*MSV Petition*”). Both confidential and public versions of the Petition were filed with the Commission.

<sup>3</sup> 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*”).

of these confidential materials, since Inmarsat Ventures Limited (“Inmarsat”) has access to the materials and is an active participant in the proceeding in support of the Stratos applications.

### **Background**

*MSV Petition.* On January 6, 2006, MSV filed a Petition to Hold in Abeyance the above-referenced applications filed by Stratos to operate terminals with an uncoordinated Inmarsat-4 L band satellite. In the Petition, MSV made reference to the *Mexico City MoU*, a framework agreement executed in 1996 by the five administrations that license L band systems serving North America. Pursuant to procedures established in the *Mexico City MoU*, the five North American L band operators are each assigned certain frequencies to use on their specific satellites. The *Mexico City MoU* provides that the agreement, and certain related materials, are confidential to the parties and operators.<sup>4</sup> Accordingly, MSV sought confidential treatment of those portions of its Petition (the “Redacted Materials”) addressing the *Mexico City MoU* and related materials.

*Stratos Motion.* On November 10, 2005, Stratos filed a “Motion to Strike the Portions of the MSV Petition Withheld from Stratos.” *See Stratos Motion.* Stratos argues that (i) without access to the Redacted Materials, it cannot fashion an effective response to MSV’s Petition (*Stratos Motion* at 3-4); (ii) the Administrative Procedures Act (“APA”) guarantees access to the Redacted Materials (*id.* at 4-5); and (iii) in the absence of such access, the Commission must strike the Redacted Materials from the record (*id.* at 5-8).

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<sup>4</sup> *Mexico City MoU*; see also *COMSAT Corporation et. al., Memorandum Opinion, Order and Authorization*, 16 FCC Rcd 21661, ¶ 111 (2001) (“*COMSAT Order*”) (“The Mexico City Agreement and related coordination documents, such as minutes of coordination meetings, are considered confidential.”).

## Discussion

### I. STRATOS HAS NO RIGHT TO ACCESS THE REDACTED MATERIALS

Stratos claims that the APA – and more specifically, the procedures specified therein for formal adjudications – entitles it to access the Redacted Materials. *Stratos Motion* at 4-5. In fact, however, the Commission’s licensing proceedings are not formal adjudications under the APA and, as such, are not subject to these procedural requirements.<sup>5</sup> While Stratos claims that the Commission’s licensing proceedings are in fact formal adjudications under the APA, Stratos cites only cases in which the Commission has reached the opposite result.<sup>6</sup> Stratos implicitly concedes as much by suggesting that a protective agreement – which would necessarily restrict Stratos’s access to the Redacted Materials – would be an appropriate option in the instant proceeding. *Stratos Motion* at 5-6.

Moreover, the Freedom of Information Act (“FOIA”) affirmatively grants the Commission the right to withhold certain materials – including materials that address sensitive matters of foreign relations, administration bargaining positions, and international coordination –

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<sup>5</sup> *An Inquiry Into the Use of the Bands 825-845 MHz and 870-890 MHz for Cellular Communications Systems; and Amendment of Parts 2 and 22 of the Commission's Rules Relative to Cellular Communications Systems*, 86 FCC 2d 469, at ¶ 67 (1981) (“*Cellular Inquiry*”); see also, e.g., *AT&T Corp.* 16 FCC Rcd 13636, at ¶ 61 (2001) (finding that the “fact that Congress did not in Section 214 require an oral hearing . . . is evidence that Congress was leaving it to the discretion of the Commission to decide what procedure to use”); *Long Island Lighting Company*, 14 FCC Rcd 16521, at ¶ 15 (1999) (finding that “Applicants’ reliance on the APA in this instance is misplaced [as] Section 556 by its own terms is applicable only in proceedings which require resolution by a hearing on the record.”).

<sup>6</sup> See *International Record Carriers’ Scope of Operations in the Continental United States Including Possible Revisions to the Formula Prescribed Pursuant to Section 222 of the Communications Act*, 61 FCC.2d 183, at ¶ 5 (1976) (concluding that proceedings under Section 222 of the Communications Act are not formal adjudications, and distinguishing *U.S. v. Storer Broadcasting Co.*, 351 U.S. 192 (1956), decided under now-obsolete application hearing procedures); *Cellular Inquiry* at ¶ 67 (adopting “paper hearing” procedures, rather than formal adjudicatory procedures, as nothing in Sections 309(e) or 409 of the Communications Act requires a decision by the Commission “on the record”). Stratos quotes both cases out of context and without regard for the actual findings of the Commission.

from public inspection.<sup>7</sup> Pursuant to FOIA, the Commission already has afforded confidential status to the *Mexico City MoU* and related documents.<sup>8</sup> Further, under FOIA, the Commission may restrict access to confidential documents even if those documents would assist a party in prosecuting its interests before the Commission; the applicability of the FOIA exemptions is not dependent on the particular circumstances of a FOIA requester or its litigation or other needs.<sup>9</sup>

Stratos ignores the confidential nature of the *Mexico City MoU*, and consequently relies on precedent that is inapplicable to the instant proceeding. Stratos relies principally on the Commission's *CPUC Report and Order* and the D.C. Circuit's decision in *U.S. Lines, Inc. v. Federal Maritime Commission*. In the *CPUC Report and Order*, the Commission refused to consider the results of a study which relied on data which had not been provided to other parties to the proceeding, even though the submitting party had the legal authority to do so.<sup>10</sup> In *U.S. Lines*, the D.C. Circuit rejected a Federal Maritime Decision which relied upon certain "reliable data reposing in the files of the Commission" that had not been placed in the record.<sup>11</sup> Critically, however, the data in these cases was not subject to an international agreement requiring that it be kept confidential.

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<sup>7</sup> See 5 U.S.C. §552; 47 C.F.R. § 0.45.

<sup>8</sup> See *COMSAT Order*, 16 FCC Rcd 21661, at ¶ 111 (2001) ("The Mexico City Agreement and related coordination documents, such as minutes of coordination meetings, are considered confidential."); see also *Robert J. Butler*, 6 FCC Rcd 5414, at ¶ 17 (1991).

<sup>9</sup> See *Robert J. Butler*; see also *Reporters Committee for Freedom of the Press v. Department of Justice*, 109 S. Ct. 1468, 1480 (1989); *North v. Walsh*, 881 F.2d 1088, 1096 (D.C. Cir. 1989).

<sup>10</sup> See *Petition of the State of California and the Public Utilities Commission of the State of California to Retain Regulatory Authority over Intrastate Cellular Service Rates*, 10 FCC Rcd 7486 (1995) ("*CPUC Report and Order*").

<sup>11</sup> *U.S. Lines v. Federal Maritime Commission*, 548 F.2d 519 (D.C. Cir. 1978).

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

Although it is clear that Stratos has no legal right to the Redacted Materials, it is also worth noting that Stratos's interests are not prejudiced by the materials remaining undisclosed, since Inmarsat, which MSV has provided with a copy of the non-redacted Petition, is an active participant in this proceeding.<sup>12</sup> Stratos can safely rely on Inmarsat, the entity that provides the space segment of the service proposed by Stratos, to address the issues presented in the Redacted Materials.<sup>13</sup> Inmarsat has a strong incentive to vigorously prosecute Stratos's application and to respond to MSV's positions in the Redacted Materials, as Inmarsat would benefit from Stratos's provision of service in the U.S., and the Redacted Materials pertain entirely to Inmarsat's failure to abide by its obligations under the *Mexico City MoU*. Under these circumstances, it is unlikely that Stratos could provide any relevant information with respect to the Redacted Materials that Inmarsat has not already provided.<sup>14</sup>

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<sup>12</sup> See Inmarsat Ventures Limited, Response, File Nos. SES-LFS-20050826-01175, SES-AMD-20050922-01313, ITC-214-20050826-00351 (November 10, 2005).

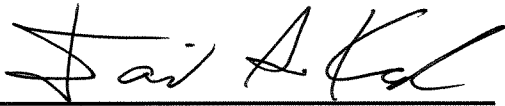
<sup>13</sup> Stratos attempts to forestall this obvious alternative to striking the Redacted Materials from the record by citing the Commission's determination that it normally will not recognize "third-party standing." *Stratos Motion* at 6-7, n.17. The Commission's "third-party standing" precedent, however, addresses only whether a party may claim standing based on the interests of another party. This precedent does not restrict a party from prosecuting the interests of another party if standing is not in issue, particularly where the interests of the two parties coincide. Thus, Stratos's attempts to draw parallels between the Commission's "third-party standing" precedent and the instant proceeding are misguided.

<sup>14</sup> As noted above, the Commission need not afford Stratos access to the Redacted Materials – either to comply with the APA or to protect Stratos's interests. However, should the Commission determine that it cannot consider the Redacted Materials without disclosing those materials to Stratos, disclosure pursuant to a protective order would be preferable to striking the Redacted Materials from the record.

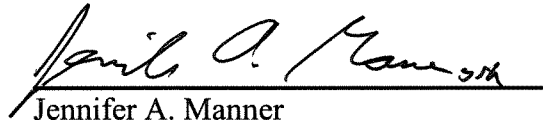
**Conclusion**

For the foregoing reasons, MSV respectfully requests that the Commission deny the Stratos "Motion to Strike Portions of the MSV Petition."

Respectfully submitted,



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Dated: January 31, 2006

## CERTIFICATE OF SERVICE

I, Sylvia A. Davis, a secretary with the law firm of Pillsbury Winthrop Shaw Pittman LLP, hereby certify that on this 31st day of January, 2006, I served a true copy of the foregoing by first-class United States mail, postage prepaid, upon the following:

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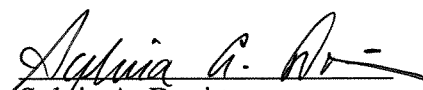
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