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January 6, 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 Applications of Stratos Communications, Inc.**
File No. SES-MFS-20051122-01614 (Call Sign E000180)
File No. SES-MFS-20051122-01615 (Call Sign E010050)
File No. SES-MFS-20051122-01616 (Call Sign E010048)
File No. SES-MFS-20051122-01617 (Call Sign E010049)
File No. SES-MFS-20051122-01618 (Call Sign E010047)

Dear Ms. Dortch:

Mobile Satellites Ventures Subsidiary LLC ("MSV") hereby files this redacted public version of a Petition to Hold in Abeyance the above-referenced applications of Stratos Communications, Inc. ("Stratos") to shift the operations of its currently authorized, earlier-generation L band mobile terminals 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

¹ See Stratos Communications, Inc., Applications for Modification of Title III Blanket License, File Nos. SES-MFS-20051122-01614; SES-MFS-20051122-01615; SES-MFS-20051122-01616; SES-MFS-20051122-01617; SES-MFS-20051122-01618 (November 22, 2005) ("*Stratos Applications*").

² 47 C.F.R. § 0.459(b).

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and MSV.³ When considering other applications to use Inmarsat satellites in the United States, 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 Stratos applications.

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*.

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.

⁴ See *COMSAT Corporation et. al., Memorandum Opinion, Order and Authorization*, 16 FCC Red 21661, ¶¶ 111 (2001) ("*COMSAT Order*") ("The Mexico City Agreement and related coordination documents, such as minutes of coordination meetings, are considered confidential.").

⁵ *Id.*

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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.

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

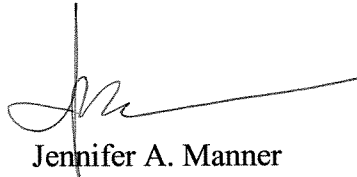
N/A.

Ms. Marlene H. Dortch
January 6, 2006
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Please contact the undersigned with any questions.

Very truly yours,

A handwritten signature in black ink, appearing to be 'JM', with a long horizontal stroke extending to the right. A vertical line is drawn through the signature, likely for scanning purposes.

Jennifer A. Manner

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

In the matter of)
)
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Application for Modification of Blanket) (Call Sign E000180)
License to Operate Inmarsat M-4 Mobile Earth)
Terminals with Inmarsat 4F2 at 52.75°W)
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Stratos Communications, Inc.) File No. SES-MFS-20051122-01615
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Terminals with Inmarsat 4F2 at 52.75°W)
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License to Operate Inmarsat M Mobile Earth)
Terminals with Inmarsat 4F2 at 52.75°W)
)

PETITION TO HOLD IN ABEYANCE

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January 6, 2006

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Summary

The International Bureau should hold in abeyance the applications filed by Stratos to shift the operations of its currently authorized, earlier-generation L band mobile terminals in the United States from a coordinated Inmarsat satellite to an uncoordinated Inmarsat satellite (Inmarsat 4F2). The applications should not be granted unless and until the new Inmarsat satellite has been coordinated.

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 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 Stratos 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 disputed spectrum are blocking MSV's

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operations *today* and grant of the instant application, to the extent it authorizes Inmarsat operations on the disputed 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. 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 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

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indicates, a *post hoc* approach to coordination disserves the public interest and impedes the full and efficient use of L band spectrum. Accordingly, the Stratos applications should be held in abeyance until an L band coordination agreement is concluded.

Lack of international coordination notwithstanding, the Stratos 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.

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PETITION TO HOLD IN ABEYANCE

Mobile Satellite Ventures Subsidiary LLC (“MSV”) hereby files this Petition to Hold in Abeyance the above-referenced applications filed by Stratos Communications, Inc. (“Stratos”) to shift the operations of its currently authorized, earlier-generation L band mobile terminals in the United States from a coordinated Inmarsat satellite to an uncoordinated Inmarsat satellite

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(Inmarsat 4F2).¹ The International Bureau (“Bureau”) should not grant the applications 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 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

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).

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*”).

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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.⁵ Inmarsat currently operates a fleet of nine in-orbit second generation (Inmarsat-2) satellites and third generation (Inmarsat-3) satellites.⁶ 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 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.⁷ 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

⁵ 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*”).

⁶ See Comments of Inmarsat Ventures plc, IB Docket No. 01-185 (Oct. 19, 2001), at 3.

⁷ The L band spectrum in North America is also shared with Japan’s MTSAT satellite, but only in and near the Pacific Ocean.

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City Memorandum of Understanding (“*Mexico City MoU*”).⁸ 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.

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Mexico City MoU and the subsequent SSAs have never contemplated the operation of Inmarsat-4 satellites at any orbital locations or the provision of 64 kbps or higher speed services (wideband carriers).

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

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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 (carriers and power levels), satellite antenna beams, and service areas.

⁸ 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*”).

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, 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.”¹⁰

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.

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MSV and MSV Canada notified Inmarsat over 18 months ago that they needed to begin operations on this spectrum, but Inmarsat has refused to return the spectrum.¹¹ MSV and MSV Canada need access to this spectrum to implement their aggressive plans to deploy an interim-generation integrated satellite-terrestrial system. While MSV believes that it has the unequivocal

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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”).

¹⁰ *Inmarsat April 2005 Form F-20* at 10 (“*Inmarsat April 2005 Form F-20*”).

¹¹ 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.

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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.

Stratos Applications. Stratos is a distributor of Inmarsat's services in the United States. In November 2001, the Commission authorized various entities, including Stratos, to provide service in the United States using Inmarsat-3 satellites.¹² 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 applications, Stratos seeks authority to modify its licenses that permit it to operate earlier-generation L band mobile terminals in the United States with Inmarsat-3 satellites to also operate these terminals with an uncoordinated Inmarsat-4 satellite that will be located at 52.75°W (called "Inmarsat 4F2").¹³ Stratos claims that this satellite is a replacement for an Inmarsat-3 satellite located at 54°W. *Stratos Application*, Question 42a – Information for Foreign Satellites at 3 and Attachment A at 1-3. To support this claim, Stratos alleges that the Inmarsat 4F2 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 same frequencies that the Commission in the *COMSAT Order* authorized terminals to use with Inmarsat-3 satellites. *Id.*, Attachment A at 1-2.

¹² See *COMSAT Corporation et. al., Memorandum Opinion, Order and Authorization*, 16 FCC Rcd 21661 (2001) ("*COMSAT Order*").

¹³ See *Stratos Communications, Inc., Application for Modification of Blanket License*, File No. File Nos. SES-MFS-20051122-01614; SES-MFS-20051122-01615; SES-MFS-20051122-01616; SES-MFS-20051122-01617; File No. SES-MFS-20051122-01618 (November 22, 2005) ("*Stratos Application*").

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Stratos 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. *Stratos Application*, Attachment A at 43.

Stratos STA Request. On December 16, 2005, Stratos applied for Special Temporary Authority ("STA") to begin operating the earlier-generation L band mobile terminals at issue here with Inmarsat 4F2 at 52.75°W beginning on January 15, 2006, prior to a Commission decision on the above-referenced applications for permanent authority.¹⁴ Stratos explained that Inmarsat has notified its distributors that it must move an Inmarsat-3 satellite presently providing 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."¹⁵ MSV filed Comments on this request stating that it does not oppose the STA request 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 Stratos, 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

¹⁴ Stratos Communications, Inc., Request for Special Temporary Authority, File No. SES-STA-20051216-01760 et al (December 16, 2005) ("*Stratos STA Request*").

¹⁵ See *Stratos STA Request*, Roe Declaration at ¶ 4.

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unfulfilled coordination obligations, including for its planned operations at 142°W.¹⁶ The Stratos STA Request is pending.

Discussion

I. THE BUREAU SHOULD HOLD THE STRATOS APPLICATIONS 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.¹⁷ 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 Organization ("WTO") Basic Telecommunications Agreement,¹⁸ 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.¹⁹

¹⁶ See MSV, Comments, File No. SES-STA-20051216-01760 et al (December 28, 2005) ("*MSV STA Comments*").

¹⁷ 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*").

¹⁸ Fourth Protocol to the GATS (April 30, 1996), 36 I.L.M. 354 (1997) ("WTO Basic Telecommunications Agreement").

¹⁹ 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

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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 parameters. While Stratos 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 replacement satellite under the *Mexico City MoU*.

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(i) it is not replacing another satellite;²⁰ (ii) it will cause greater interference to other L band operators, even when being used exclusively to provide earlier-generation services (*see infra* pages 13-15); 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 15-16). In addition to these and other interference concerns, Stratos states that Inmarsat 4F2 will have inefficient global L band beams,

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*).

²⁰ Stratos has told the Commission that Inmarsat will relocate the Inmarsat-3 satellite that Inmarsat 4F2 is allegedly replacing to 142°W on January 15, 2006. *See Stratos STA Request*.

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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.²² Unlike the Inmarsat 4F2 satellite at issue here, those L band satellites had already been coordinated in the past for narrowband carriers and were in the ITU Master Registry. 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* note 9. 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.

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 technically different than any satellite covered by the previous

²¹ *Stratos Application*, Attachment A at 12-14, 16;
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²² *See COMSAT Order* (authorizing Inmarsat 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).

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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.

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.²³ In those cases, the Bureau 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.”²⁴ As proponents of providing service in the United States with an uncoordinated satellite, the burden falls squarely on Inmarsat and Stratos to demonstrate that Inmarsat can operate its uncoordinated satellite on a non-harmful interference basis pending the conclusion of a coordination agreement. Inmarsat and Stratos have utterly failed to meet this burden.

Interference resulting from Inmarsat’s continued use of spectrum that it agreed to return to MSV and MSV Canada. The first type of interference is presented by Inmarsat’s proposed use

²³ 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 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”).

²⁴ *Loral Orion Services, Inc., Order*, DA 99-2221, 14 FCC Rcd 18878, ¶ 18 (October 18, 1999).

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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. MSV and MSV Canada need access to this 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 expiration of the last SSA at the end of 1999. Thus, the Commission was aware that the SSA had expired. It also was aware that Inmarsat had **REDACTED**

²⁵ 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.²⁶ This

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²⁶ 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. The words "coordinated for" as used in the *COMSAT Order* and similar decisions licensing L

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condition is simple and straightforward, and should not be the subject of 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 the 1999 SSA may have formally expired, it continues to effectively govern the operations of L band MSS providers.²⁷ Inmarsat's decision in 2003 to request an additional loan from MSV and MSV Canada 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."²⁸

Interference resulting from technically different nature of Inmarsat's new satellite relative to the satellites it has coordinated previously. The second type of interference results from the fact that Inmarsat 4F2 is technically 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 operation of Inmarsat-4 regional beams vis-à-vis the MSV

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.

²⁷ See Exhibit A.

²⁸ *Inmarsat April 2005 Form F-20* at 10.

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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.²⁹ Thus, while Inmarsat and Stratos may claim that they can operate earlier-generation services over Inmarsat 4F2 within the “technical envelope” in which they are operated today, this

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Inmarsat has not yet undertaken this required coordination. 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 places 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.

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“technical envelope” simply does not exist because Inmarsat has not diligently coordinated all of its operations in order to establish such an envelope. 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. 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 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.³⁰ If this is the case (which MSV has

³⁰ 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-

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reason to doubt),³¹ 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. Inmarsat has not explained how it will ensure that terminals using frequencies shared with other L band operators will operate only in those geographic areas where co-channel sharing was concluded to be possible in the 1999 SSA. 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 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

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.

³¹ *See* Letter from Jennifer A. Manner, MSV, to Ms. Marlene H. Dortch, FCC, IB Docket No. 01-185 (November 15, 2005).

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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),³² 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.

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 23.* 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.³³ 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

³² *COMSAT Order* ¶ 115(c)-(d).

³³ 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.

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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 Stratos applications in abeyance.³⁴ Needless to say, if the Bureau authorizes the use of Inmarsat's new satellite without insisting that 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.³⁵ 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 Stratos to operate the earlier-generation terminals with Inmarsat 4F2. *See MSV STA Comments.*

³⁴ A Bureau decision holding the Stratos applications in abeyance is consistent with its recent decisions authorizing MSV to operate next-generation satellites on a non-interference basis. *See MSV-1 Order; MSV-SA Order.* In MSV's case, the Bureau granted licenses for satellites that are years away from launch, not earth station licenses for imminent operation that are presented by Stratos's applications.

³⁵ 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).

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II. THE STRATOS APPLICATIONS RAISE ADDITIONAL ISSUES THAT WARRANT FURTHER SCRUTINY

The lack of international frequency coordination for Inmarsat 4F2 notwithstanding, the Stratos applications raise additional issues that warrant further scrutiny. First, while Stratos 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 Stratos claims that Inmarsat 4F2 will serve the same geographic area as the Inmarsat-3 satellite at 54°W, neither Stratos nor Inmarsat has provided the coverage area for the Inmarsat-3 satellite in order to make that comparison.³⁶ Moreover, as Stratos's recent STA application reveals, the Inmarsat-3 satellite that Inmarsat 4F2 is allegedly replacing will be moved to another orbital location on January 15, 2006 to provide service in the Pacific Ocean region. *See Stratos 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* page 9), Inmarsat 4F2 cannot be considered a replacement satellite under the *Mexico City MoU*.

³⁶ While Stratos 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 Stratos 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 satellite does not satisfy the Commission's criteria for a replacement satellite because it will have different coverage area than satellite it is replacing).

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Second, while Stratos 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.³⁷ 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.³⁸ 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 MSS satellites.³⁹ 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 Stratos application must be dismissed for failing to seek a waiver of this rule.⁴⁰

³⁷ *Stratos Application*, Attachment A at 43; see 47 C.F.R. § 25.210(j).

³⁸ See *MSV-1 Order* ¶ 21.

³⁹ See MSV, Petition for Clarification and Partial Reconsideration, File Nos. SAT-LOA-19980702-00066 et al (June 22, 2005).

⁴⁰ 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).

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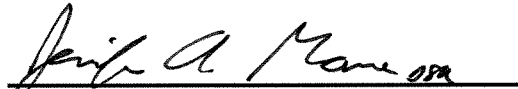
Conclusion

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

Respectfully submitted,



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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)

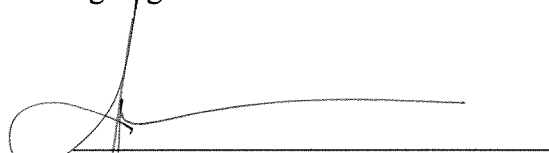
“The current coordination agreement under which Inmarsat and MSV share L-band spectrum was finalized in 1999. Ideally, the L-band MSS operators should renegotiate their coordination agreement every year. Indeed, changes to the existing coordination agreement could help avoid some of the potential interference 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)

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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 applications of Stratos Communications, Inc. ("Stratos") for Title III authorizations to operate earlier-generation terminals in the United States with the Inmarsat 4F2 satellite.
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.



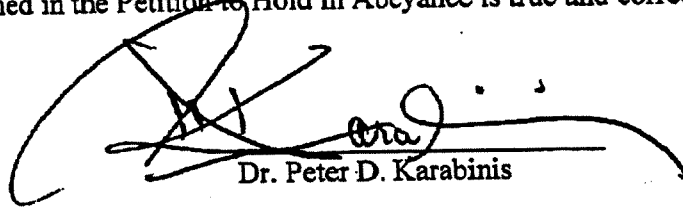
Jennifer A. Manner

Executed on January 6, 2006

Technical Certification

I, Dr. Peter D. Karabinis, Senior Vice President and Chief Technical Officer 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.



Dr. Peter D. Karabinis

Dated: January 6, 2006

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CERTIFICATE OF SERVICE

I, Sylvia A. Davis, a secretary with the law firm of Pillsbury Winthrop Shaw Pittman LLP, hereby certify that on this 6th day of January 2006, served a true copy of the foregoing by first-class United States mail, postage prepaid, upon the following:

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