

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

In the Matters of)	
)	
SkyWave Mobile Communications, Corp.)	File No. SES-MFS-20051207-01709
Application for Blanket License to)	(Call Sign E030055)
Operate Mobile Earth Terminals with)	
Inmarsat 4F2 at 52.75° W)	
)	
Satamatics, Inc.)	File No. SES-MFS-20051202-01665
Application for Modification of Blanket)	(Call Sign E020074)
License to Operate Mobile Earth Terminals)	
With Inmarsat 4F2 at 52.75° W)	
)	

CONSOLIDATED OPPOSITION TO MOTIONS TO STRIKE

Mobile Satellite Ventures Subsidiary LLC (“MSV”) hereby files this Consolidated Opposition to the Motions to Strike filed by SkyWave Mobile Communications, Corp. (“SkyWave”) on February 2, 2006 (“SkyWave Motion”)¹ and Satamatics Inc. (“Satamatics,” collectively with SkyWave, “Applicants”) on February 9, 2006 (“Satamatics Motion”)² in connection with their above-referenced applications. Applicants seek to strike portions of the Petitions to Hold in Abeyance filed by MSV in connection with each of the above-referenced applications.³ These portions have been kept confidential pursuant to the terms of the *Mexico*

¹ See SkyWave Mobile Communications, Corp., “Motion to Strike the Portions of the MSV Petition,” File No. SES-MFS-20051207-01709 (Call Sign E030055) (filed Feb. 2, 2006) (“*SkyWave Motion*”). The Certificate of Service accompanying the SkyWave Motion erroneously represents that the SkyWave Motion was served upon MSV on January 2, 2006. Since service actually occurred on February 2, 2006, thus MSV’s Opposition is timely filed.

² See Satamatics, Inc., “Motion to Strike the Portions of the MSV Petition,” File No. SES-MFS-20051202-01665 (Call Sign E020074) (filed Feb. 9, 2006) (“*Satamatics Motion*”).

³ See MSV, Petition to Hold in Abeyance SkyWave Application, File No. SES-MFS-20051207-01709 (Call Sign E030055) (filed Jan. 20, 2006); MSV, Petition to Hold in Abeyance Satamatics Application, File No. SES-MFS-20051202-01665 (Call Sign E020074) (filed Jan. 27, 2006)

City Memorandum of Understanding (“*Mexico City MoU*”), an international agreement among the five administrations that license L band operators serving North America.⁴ As discussed herein, the Bureau should deny both the SkyWave Motion and Satamatics Motion because (i) Applicants have no right to access, or block the Commission’s consideration of, these confidential materials; and (ii) Applicants’ interests would not be prejudiced by the Commission’s consideration 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 applications.

Background

MSV Petitions. On January 20, 2006, MSV filed a Petition to Hold in Abeyance the above-referenced application filed by SkyWave, and on January 27, 2006, MSV filed a Petition to Hold in Abeyance the above-referenced application filed by Satamatics. *See MSV Petitions.* In the petitions, 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.⁵ Accordingly, MSV sought confidential treatment of those portions of the petitions

(collectively, “*MSV Petitions*”). Both confidential and public versions of both petitions were filed with the Commission and provided to Inmarsat.

⁴ *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*”).

⁵ *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.”).

(the “Redacted Materials”) addressing the *Mexico City MoU* and related materials. Neither Applicant has ever contacted MSV to request access to the Redacted Materials, although both Applicants note that in the past, MSV has informed other carriers that it is not at liberty to provide such access. *SkyWave Motion* at 2-3; *Satamatics Motion* at 2-3.

SkyWave and Satamatics Motions. On February 2, 2006, SkyWave filed a “Motion to Strike the Portions of the MSV Petition.” See *SkyWave Motion*. On February 9, 2006, Satamatics filed a “Motion to Strike the Portions of the MSV Petition.” See *Satamatics Motion*. In the motions, which are virtually identical, Applicants argue that (i) without access to the Redacted Materials, they cannot fashion an effective response to MSV’s Petition pursuant to procedures specified in the Communications Act (*SkyWave Motion* at 3-4; *Satamatics Motion* at 3-4); (ii) the Administrative Procedures Act (“APA”) guarantees access to the Redacted Materials (*SkyWave Motion* at 4-6; *Satamatics Motion* at 4-6); and (iii) in the absence of such access, the Commission must strike the Redacted Materials from the record (*SkyWave Motion* at 6-8; *Satamatics Motion* at 6-8).

Discussion

I. APPLICANTS HAVE NO RIGHT TO ACCESS THE REDACTED MATERIALS

Applicants claim that the APA – and more specifically, the procedures specified therein for formal adjudications – entitles them to access the Redacted Materials. *SkyWave Motion* at 3; *Satamatics Motion* at 3. 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.⁶ Tellingly, neither Applicant cites a single case demonstrating that the APA’s

⁶ *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

requirements for formal adjudications do apply; in fact, the cases they do cite reach the opposite conclusion.⁷ Similarly, neither Applicant cites a single case demonstrating that the Commission may not rely on confidential information legitimately withheld from parties to the proceeding. To the contrary, Applicants themselves suggest that a protective agreement – which would necessarily restrict their access to the Redacted Materials while permitting the Commission to consider those materials – would be an appropriate option in the instant proceeding. *SkyWave Motion* at 5 n.13; *Satamatics Motion* at 5 n. 13.

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 –

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”).

⁷ Applicants quote these cases out of context, and with apparent disregard for the actual findings of the Commission. For example, Applicants cite *International Record Carriers* for the proposition that Section 309 proceedings are formal adjudications implicating the formal procedures specified in Section 556 of the APA. In that case, however, the Commission actually concluded that proceedings under Section 222 of the Communications Act are not formal adjudications, after distinguishing *U.S. v. Storer Broadcasting Co.*, 351 U.S. 192 (1956), a case decided under now-obsolete application hearing procedures. 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) (“*International Record Carriers*”). Applicants cite only the language distinguishing *Storer*, but not the language establishing the present inapplicability of Section 556. Cf. *SkyWave Motion* at 4 n.9; *Satamatics Motion* at 4 n.9. Applicants also cite the Commission’s *Cellular Inquiry*, in which the Commission concluded that its “paper hearing” procedures satisfy the requirements of Sections 554 and 556 of the APA. The Applicants, however, fail to mention that the Commission reached this conclusion because nothing in Sections 309(e) or 409 of the Communications Act triggers the need for the formal adjudicatory procedures specified in Section 556 in the first place, since nothing in those sections requires a decision “on the record.” See *Cellular Inquiry* at ¶ 67.

from public inspection.⁸ It follows that confidential materials properly submitted for the record may be considered by the Commission on par with public materials; any contrary rule would be inconsistent with the Commission's obligation to consider all record evidence, and would render FOIA a virtual nullity.⁹ Pursuant to FOIA, the Commission already has afforded confidential status to the *Mexico City MoU* and related documents.¹⁰ 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.¹¹ In this respect, FOIA qualifies any right that the Communications Act may ordinarily give a party to file a responsive pleading.

Applicants ignore the confidential nature of the *Mexico City MoU*, and consequently rely on precedent that is inapplicable to the instant proceeding. Applicants rely principally on the Commission's *CPUC Report and Order* and the D.C. Circuit's decision in *U.S. Lines, Inc. v.*

⁸ See 5 U.S.C. §552; 47 C.F.R. § 0.457. Of course, "generally" information submitted to the Commission does not fall within a FOIA exemption, and as such other parties must "generally" be given access to this information. Notwithstanding, FOIA exempts certain materials from the "general" rule, although this point is overlooked by Applicants. See *Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission*, 13 FCC Rcd 24816, at ¶¶ 33-34 (1998) (finding that applicant's need for confidential treatment may trump petitioners' need to access submitted materials); *Mobile Communications Holdings, Inc. and ICO Global Communications (Holdings) Limited*, 18 FCC Rcd 133, at ¶ 5 (following "general" rule permitting public inspection of submitted materials where no FOIA exemption applied); cf. *SkyWave Motion* at 4 n.11; *Satamatics Motion* at 4 n.11.

⁹ In this particular case, the Commission is under further obligation to consider the Redacted Materials by virtue of the *Mexico City MoU*, which creates affirmative legal obligations that cannot be ignored or stricken simply because Applicants may be unaware of the substance of these obligations.

¹⁰ 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).

¹¹ See *Robert J. Butler*; see also *U.S. Dep't of Justice v. Reporters Committee for Freedom of the Press*, 489 U.S. 749 (1989); *North v. Walsh*, 881 F.2d 1088, 1096 (D.C. Cir. 1989).

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.¹² 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.¹³ Critically, however, the data in these cases was not subject to an international agreement requiring that it be kept confidential.

II. APPLICANTS’ INTERESTS ARE NOT BE PREJUDICED BY THE COMMISSION’S CONSIDERATION OF THE REDACTED MATERIALS

Although it is clear that Applicants have no legal right to the Redacted Materials, it is also worth noting that neither Applicant’s interests are prejudiced by the materials remaining undisclosed, since Inmarsat, which MSV has provided with a copy of the non-redacted Petitions, is an active participant in these proceedings.¹⁴ Applicants can safely rely on Inmarsat, the entity that provides the space segment of the service proposed by Applicants, to address the issues presented in the Redacted Materials. Inmarsat has a strong incentive to vigorously prosecute the applications and to respond to MSV’s positions in the Redacted Materials, as Inmarsat would benefit from Applicants’ 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

¹² 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*”).

¹³ *U.S. Lines v. Federal Maritime Commission*, 548 F.2d 519 (D.C. Cir. 1978).

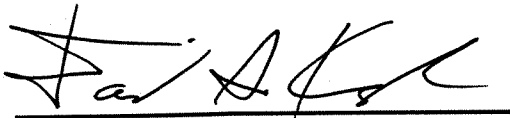
¹⁴ See *Inmarsat Ventures Limited, Response*, File No. SES-MFS-20051123-01634 (January 26, 2006).

circumstances, it is unlikely that Applicants could provide any relevant information with respect to the Redacted Materials that Inmarsat has not already provided.¹⁵

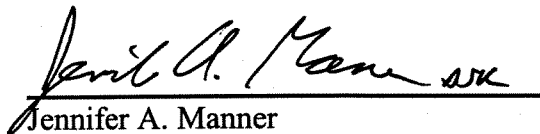
Conclusion

For the foregoing reasons, MSV respectfully requests that the Commission deny the Motions to Strike filed by SkyWave and Satamatics.

Respectfully submitted,



Bruce D. Jacobs
David S. Konczal
Jarrett S. Taubman*
**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

*Admitted in NY. Not admitted in DC. Supervised by members of the DC Bar.

Dated: February 14, 2006

¹⁵ As noted above, the Commission need not afford Applicants access to the Redacted Materials – either to comply with the APA or to protect Applicants’ interests. However, should the Commission determine that it cannot consider the Redacted Materials without disclosing those materials to Applicants, disclosure pursuant to a protective order would be preferable to striking the Redacted Materials from the record.

CERTIFICATE OF SERVICE

I, Sylvia A. Davis, a secretary with the law firm of Pillsbury Winthrop Shaw Pittman LLP, hereby certify that on this 14th day of February, 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

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

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

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

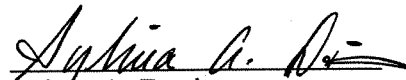
Kathryn Medley*
International Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Alfred M. Mamlet
Steptoe & Johnson LLP
1330 Connecticut Avenue, NW
Washington, DC 20036

Counsel for SkyWave Mobile Communications,
Corp. and Satamatics, Inc.

John P. Janka
Jeffrey A. Marks
Latham & Watkins LLP
555 Eleventh Street, N.W.
Suite 1000
Washington, DC 20004

Diane J. Cornell
Vice President, Government Affairs
Inmarsat, Inc.
1100 Wilson Blvd, Suite 1425
Arlington, VA 2220


Sylvia A. Davis

*Via electronic mail