

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

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Applications of Inmarsat Hawaii Inc. to Modify Licenses for	)	.
E080059, Paumalu, Hawaii; and	)	IBFS File No. SES-MOD-20081224-01717
KA25, Paumalu, Hawaii	)	IBFS File No. SES-MOD-20081224-01718

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**PETITION FOR CLARIFICATION OR RECONSIDERATION**

Pursuant to Section 1.106 of the Commission’s rules,<sup>1</sup> Inmarsat Hawaii Inc. (“Inmarsat”) requests that the Bureau clarify or reconsider certain conditions imposed in connection with the Bureau’s grant of the above-referenced modification applications on July 14, 2009 (the “Applications”).<sup>2</sup>

**I. BACKGROUND**

In the Applications, Inmarsat requested waiver of Section 25.202(g) of the Commission’s rules to enable the use of its Paumalu earth stations to perform telemetry, tracking and command (“TTAC”) functions in the 3945-3955 MHz and 6338-6342 MHz bands with the Inmarsat 4F1 and Inmarsat 4F3 spacecraft, which are not at the edge of Inmarsat’s feeder link bands. Inmarsat observed that the requested waivers would be consistent with Commission precedent finding a waiver of Section 25.202(g) appropriate where spacecraft are in orbit, the

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<sup>1</sup> 47 C.F.R. § 1.106.

<sup>2</sup> The Applications were placed on public notice on July 15, 2009.

proposed operations are or can be coordinated, and the spacecraft cannot be modified to operate on different TTAC frequencies.<sup>3</sup>

On July 14, 2009, the Bureau granted the Applications and the requested waivers. In doing so, the Bureau specifically recognized that: (i) the Inmarsat 4F1 and 4F3 spacecraft have been coordinated with adjacent operators to provide TTAC as proposed; (ii) altering current coordination agreements for these and adjacent locations would be unduly disruptive of ongoing operations; and (iii) the Inmarsat 4F1 and 4F3 spacecraft have been placed into operation and the TTAC frequencies upon which they rely cannot be altered.<sup>4</sup> However, the Bureau also imposed the following conditions on its waiver of Section 25.202(g) (collectively, the “TTAC Conditions”):<sup>5</sup>

(a) Inmarsat must coordinate its operations with space stations operating within 6 degrees of the Inmarsat 4F1 and 4F3 space stations [(the “Coordination Condition”)].

(b) Notwithstanding the International Coordination Status, Inmarsats operations must be on non-interference basis, i.e., Inmarsat may not cause harmful interference to, or claim protection from, any authorized space stations operating in the conventional C-band frequencies, and shall cease operations immediately upon notification of such interference [(the “Non-Interference Condition”)].

(c) In the event Inmarsat is notified of interference, it may request special temporary authority to operate TT&C under an alternate plan.

(d) Within 90 days of the grant of this authorization, Inmarsat must file with the Commission a comprehensive plan detailing how it will protect other authorized operators using the C-band frequencies. This plan should specify Inmarsats power

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<sup>3</sup> *In the Matter of the Applications of INTELSAT LLC (For Authority to Operate, and to Further Construct, Launch, and Operate C-band and Ku-band Satellites that Form a Global Communications System in Geostationary Orbit)*, Memorandum Opinion and Order and Authorization, 15 FCC Rcd 15460, at ¶¶ 97-100 (2000).

<sup>4</sup> See Condition 336 of the Application grants.

<sup>5</sup> See Conditions 337 and 341 of the Application grants. These conditions are imposed on “Intelsat’s waiver of 25.202(g).” Inmarsat requests that the Bureau correct these conditions to refer to *Inmarsat*.

levels, and include a list of all parties with which Inmarsat has coordination agreements.

(e) Inmarsat must accommodate future space station and earth station networks that are compliant with Section 25.202(g).

(f) The uplink antenna sizes for this earth station must be no less than [16 or 19] meters.

## **II. MODIFICATION OR CLARIFICATION OF THE TTAC CONDITIONS IS WARRANTED**

In granting the requested waivers, the Bureau adopted the Coordination Condition, requiring Inmarsat to coordinate its use of TTAC frequencies in the “conventional” part of the C band with adjacent satellite operators. The apparent purpose of this requirement is to ensure that Inmarsat’s operations do not cause harmful interference to either existing or new operations. Inmarsat has no objection to this condition in principle. However, because coordination is a two-way street, such that Inmarsat cannot unilaterally ensure the successful completion of coordination negotiations, the condition should be modified to require only that Inmarsat *seek* coordination in good faith.

The Bureau also adopted the Non-Interference Condition, which provides that Inmarsat’s operations must be on a “non-interference basis,” regardless of “International Coordination Status.” This condition appears to require Inmarsat to operate on a non-interference basis regardless of any coordination agreement it may have reached with adjacent operators. As such, this condition is problematic for several reasons.

As an initial matter, the Non-Interference Condition is inconsistent with the Bureau’s factual findings in the Application grants, and its adoption of the Coordination Condition. As discussed above, the Coordination Condition recognizes the benefits of international coordination, and *requires* Inmarsat to engage in such coordination, implicitly acknowledging that coordination is effective in controlling the threat of harmful interference.

Indeed, the very purpose of coordination agreements is to establish mutually acceptable levels of interference between two or more systems. Moreover, the *sine qua non* of any effective coordination agreement is the ability to enforce that agreement. Yet, the Non-Interference Condition appears to allow parties to coordination agreements with Inmarsat to seek to use Commission processes to avoid their contractual commitments. If that were to occur, it would render compliance with the Coordination Condition a meaningless exercise. Such an abrogation of current coordination agreements would be “unduly disruptive of ongoing operations,” as noted by the Bureau in granting the Applications, and as such should be avoided.

Moreover, the Non-Interference Condition is inconsistent with Commission policy and precedent.<sup>6</sup> The full Commission has found that waiver of Section 25.202(g) is appropriate where spacecraft already are operational and cannot be modified to use alternate TTAC frequencies, and has rejected calls to nullify existing coordination agreements or require operations on a secondary basis as conditions of such waiver. As the Commission has acknowledged, “once a coordination agreement has been reached, operations of both networks are in harmony with each other,” such that there is no “justification for revisiting these coordination agreements” by denying a request for waiver of Section 25.202(g) or requiring operations to be on a non-interference basis.<sup>7</sup> The full Commission also has embraced coordination as a key mechanism for ensuring that parties operate without causing harmful

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<sup>6</sup> See 47 C.F.R. § 0.261(b).

<sup>7</sup> *INTELSAT LLC* at ¶¶ 21, 98. Notably, the INTELSAT POR spacecraft, which benefits from the waiver granted in *INTELSAT LLC*, is one of the licensed points of communication of KA25. This fact underscores the problematic nature of the Non-Interference Condition as written, which could be read to support differential treatment of two similarly-situated spacecraft designated as points of communication on the same earth station license.

interference into each other – even to the point of affording coordination agreements primacy over otherwise relevant Commission rules.<sup>8</sup> This logic applies with equal force here.

For these reasons, Inmarsat requests that the Bureau revise the TTAC Conditions by restating them as follows:<sup>9</sup>

(a) Inmarsat must **seek to coordinate in good faith** its operations with space stations operating within 6 degrees of the Inmarsat 4F1 and 4F3 space stations.

(b) **In the absence of a coordination agreement**, ~~Notwithstanding the International Coordination Status~~, Inmarsat's **TTAC** operations must be on non-interference basis, i.e., Inmarsat may not cause harmful interference to, or claim protection from, any authorized space stations operating in the conventional C-band frequencies, and shall cease operations immediately upon notification of such interference.

(c) In the event Inmarsat is notified of interference, it may request special temporary authority to operate TT&C under an alternate plan.

(d) Within 90 days of the grant of this authorization, Inmarsat must file with the Commission a comprehensive plan detailing how it will protect other authorized operators using the C-band frequencies. This plan should specify Inmarsat's power levels, and include a list of all parties with which Inmarsat has coordination agreements.

~~(e) Inmarsat must accommodate future space station and earth station networks that are compliant with Section 25.202(g).~~<sup>10</sup>

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<sup>8</sup> See, e.g., *Procedures to Govern the Use of Satellite Earth Stations on Board Vessels in the 5925-6425 MHz/3700-4200 MHz Bands and 14.0-14.5 GHz/11.7-12.2 GHz Bands*, Order on Reconsideration, FCC 09-63, at ¶¶ 11-12 (Jul. 30, 2009) (allowing operations at higher off-axis power-density levels than those permitted by the Commission's rules upon showing that such operations are permitted by an effective coordination agreement).

<sup>9</sup> Inmarsat also requests that the Bureau clarify Condition 2610 of the authorization for KA25, which provides that “[n]o harmful interference shall be caused by the operation of this station to other lawfully operated radio stations and operation of this station must be terminated immediately upon notification of harmful interference.” This condition was adopted in response to a modification application in which then-licensee Intelsat sought to add certain carriers to the KA25 license permitting LEOP and other operations. See IBFS File No. SES-MOD-20030513-00642. The condition apparently was intended to apply only to certain carriers, and not to the license as a whole, although this is unclear on the face of the license. Inmarsat requests that the Bureau clarify the scope of this condition.

(e) The uplink antenna sizes for this earth station must be no less than [16 or 19] meters.

Inmarsat requests that the Bureau clarify or revise the TTAC Conditions as specified above.

Such clarifications would serve the public interest, convenience and necessity by facilitating Inmarsat's operations in the United States and providing Inmarsat with the certainty necessary to maximize its service to the public.

In addition, the Bureau should adopt the following condition to the Application grants:

**No operations to which a party to a coordination agreement has consented shall be deemed to result in "harmful interference" with respect to that party.**

Adopting such a condition will clarify further the rights and responsibilities of Inmarsat and the parties with which it coordinates operations vis-à-vis the "non-interference" conditions in these authorizations.

Respectfully submitted,

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August 14, 2009

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<sup>10</sup> This condition appears unnecessary insofar as: (i) Inmarsat is already required to coordinate with – and thus “accommodate” – future operators; and (ii) any uncoordinated operations would be on a non-harmful interference basis, which necessarily would “accommodate” future licensed operations.