

LATHAM & WATKINS LLP

June 21, 2006

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

Re: **Thrane & Thrane Airtime, Ltd.**
File No. SES-STA-20060522-00857 (Call Sign E060179)

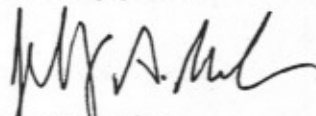
Dear Ms. Dortch:

MSV attached to its Petition to Deny in this proceeding an *ex parte* presentation submitted in other proceedings requesting that the Commission substantially modify the conditions in previously granted special temporary authority ("STA") to provide Broadband Global Area Network (BGAN) service. MSV asks that the Commission take that request into account in granting Thrane & Thrane Airtime, Ltd.'s STA.¹

On June 19, 2006, Inmarsat and the BGAN STA grantees submitted a Joint Opposition to MSV's request for clarification in those other proceedings. Inmarsat respectfully requests that the Commission accept the Joint Opposition (attached), which responds to MSV's specific proposals, into the record of this proceeding.

Please contact the undersigned if you have any questions regarding the attached.

Sincerely yours,



John P. Janka
Jeffrey A. Marks

Enclosure

¹ MSV has since converted the *ex parte* presentation to a Petition for Clarification. MSV Petition for Clarification, File Nos. SES-STA-20060310-00419 *et al.* (filed June 12, 2006), attaching *ex parte* Letter from Jennifer Manner, Mobile Satellite Ventures LP, to Marlene H. Dortch, FCC (originally filed May 26, 2006).

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

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Before the
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In the matter of)
)
Stratos Communications, Inc.) File No. SES-STA-20060310-00419 (Call Sign E050249)
)
Telenor Satellite, Inc.) File No. SES-STA-20060313-00430 (Call Sign E050276)
)
FTMSC US, LLC) File No. SES-STA-20060314-00438 (Call Sign E050284)
)
BT Americas Inc.) File No. SES-STA-20060315-00445 (Call Sign E060076)
)
MVS USA, Inc.) File No. SES-STA-20060316-00454 (Call Sign E050348)

JOINT OPPOSITION TO PETITION FOR CLARIFICATION

Telenor Satellite, Inc., FTMSC US, LLC, BT Americas Inc., MVS USA, Inc. and Stratos Communications, Inc. (collectively, the "Licensees"), together with Inmarsat Ventures Limited ("Inmarsat"), oppose the petition of Mobile Satellite Ventures LP ("MSV")¹ to "clarify" conditions applicable to the existing grants of special temporary authority ("STA") to provide Broadband Global Area Network (BGAN) service over the Inmarsat-4 spacecraft ("I-4").

Contrary to its label, MSV's petition goes beyond a request for mere "clarification" and actually seeks to add entirely new conditions to the STAs. In any event, there is no basis for granting MSV's request. By all accounts, each Licensee has complied with the conditions of its STA during the approximately one month since BGAN STA issued. Indeed, the Licensees have every incentive to comply with the STA conditions in order to maintain their BGAN authorizations, and Inmarsat has every incentive to ensure that the Licensees have the

¹ MSV Petition for Clarification, File Nos. SES-STA-20060310-00419 (filed June 12, 2006), attaching *ex parte* Letter from Jennifer Manner, Mobile Satellite Ventures LP, to Marlene H. Dortch, FCC (originally filed May 26, 2006).

wherewithal to comply. MSV has provided no evidence that the Licensees have not complied, and MSV has not demonstrated that the current conditions are inadequate to constrain the potential for interference. In short, MSV's request is the proverbial solution in search of a problem, and there is no reason to modify the STA conditions.

The following are more specific responses to each of MSV's comments on the STA conditions.

Condition 1. Condition 1 states that "[n]either the aggregate uplink EIRP densities in the direction of any other L-Band satellite serving the United States, nor the downlink EIRP densities at any geographical point within the United States, shall be increased, above the levels previously authorized in connection with operations using the Inmarsat 3F4 satellite, as a result of the operations authorized by this STA." MSV first requests that the Commission clarify that Condition 1 places an "aggregate" EIRP on the downlink as well as the uplink. As an initial matter, it is doubtful whether an aggregate downlink EIRP limit is even necessary, given that Inmarsat's illuminating a given geographic area with more than one co-frequency carrier would cause self-interference. But that issue is academic because Inmarsat and the Licensees already treat Condition 1 as limiting "aggregate" downlink EIRP from I-4 at any geographic point within the United States. Thus, MSV's requested "clarification" would neither enhance the meaning of Condition 1 nor have any practical impact on the operations of Inmarsat or the Licensees.

Second, MSV requests that the Commission extend the application of Condition 1 beyond the I-4 satellite that is the subject of the STAs, and cover all other Inmarsat spacecraft "visible over North America," regardless whether those spacecraft are authorized to serve the United States. Specifically, MSV seeks to constrain the operations of Inmarsat spacecraft that

are located over Australia and Africa, among other locations. There is no valid basis for MSV's request. The STA covers only BGAN service, and only I-4. Indeed, I-4 is the only Inmarsat spacecraft with U.S. coverage that is capable of providing BGAN service.

Moreover, Inmarsat and the Licensees have confirmed in the context of these BGAN STAs and the underlying BGAN applications that, until a new coordination agreement with MSV is reached, Inmarsat will operate within the technical envelope that Inmarsat has previously coordinated with MSV. MSV cites no precedent in support of imposing these types of "fleet-wide" limits on satellites that are not even the subject of these STAs. The Commission imposed no such fleet-wide limit on MSV, when the Commission licensed MSV's two, uncoordinated, next-generation spacecraft.² The Commission authorized new services on those spacecraft without reference to the technical parameters under which MSV operates today, subject only to the requirement that service be provided on a non-interference basis, and in the complete absence of any indication that MSV actually could do so. MSV was allowed to provide new services, using new, high-powered, broadband carriers, and a new satellite located almost 40 degrees closer to Inmarsat, but had no spectrum coordinated to serve the primary service area of one of these two spacecraft (South America).³ Yet the Commission did not impose on MSV any of the conditions that MSV proposes here. There simply is no basis for the type of policy change MSV urges, and no basis for treating Inmarsat differently than MSV.

Conditions 2 and 5. Conditions 2 and 5 provide that operations pursuant to STA shall be on an "unprotected basis" and that any action taken or expense incurred pursuant to the STA are at the Licensees' "own risk." MSV seeks to extend this condition to Inmarsat. However, there is no reason to think the Licensees are not able to comply with Conditions 2 and

² See *MSV Sub. LLC*, 20 FCC Rcd 9752 (2005); *MSV Sub. LLC*, 20 FCC Rcd 479 (2005).

³ MSV recently surrendered its authorization for the spacecraft slated to serve South America.

5, and MSV has not shown that these conditions are inadequate. Moreover, Inmarsat already has ample incentive to ensure that the Licensees have the ability to comply with all STA conditions, and thereby maintain their authority to provide BGAN. Extending Conditions 2 and 5, as MSV proposes, thus is both unnecessary and unwarranted.

Condition 3. Condition 3 to the STAs excludes the use of certain disputed L-Band spectrum segments for the provision of BGAN services. MSV requests that the Commission also require that the Licensees obtain and submit a certification from Inmarsat that Inmarsat will not assign these disputed frequencies to “earth stations covered by the STA.” There is no need for consuming Commission resources with this additional “paperwork” requirement. The Licensees are complying with this condition, and MSV does not claim otherwise. And, as noted above, Inmarsat has every incentive to ensure that the Licensees comply with this condition in order to maintain their authorizations. In any event, as a federal court of appeals recognized in an analogous context, Commission enforcement powers are adequate to protect against MSV’s speculation about future non-compliance,⁴ making the proposed certification requirement superfluous.

Condition 4. Condition 4 requires that “adequate guard bands shall be provided” in the provision of BGAN service. MSV requests that the Commission specify that an adequate guard band is “at least 50 kHz between the band edges of the carriers used by the BGAN service provider and the band edges of MSV’s coordinated frequencies,” but MSV admits, in the same breath, that 50 kHz might not really be the appropriate value, and that value might need to be changed in the future. As an initial matter, it makes little sense to adopt a specific guard band requirement given MSV’s uncertainty. More fundamentally, MSV fails to show that the current

⁴ *AMSC v. FCC*, 216 F.3d 1154, 1159 (D.C. Cir. 2000) (citing 47 U.S.C. § 312).

condition is inadequate. MSV has not demonstrated that there have been any interference problems from BGAN service, which now has been provided to the United States for over a month. Nor has MSV demonstrated that 50 kHz would be the appropriate size for a guard band. Moreover, all indications are that Condition 4, as written, provides ample protection to MSV, and that the Licensees are complying with this condition. And, practically speaking, Inmarsat historically has worked cooperatively with MSV to routinely and promptly resolve operational issues in other contexts, consistent with Commission rules and policies.⁵ MSV provides no reason to think that will not continue to be the case.

As a final matter, there is no valid basis to shift the entire operational burden of coordination to Inmarsat by requiring only Inmarsat to use guard bands, as MSV advocates. To the contrary, Commission precedent recognizes that coordination is a “two-way street,” and that each party is obligated to bear some of the associated burdens, and not simply raise barriers to the provision of new services.⁶

Conditions 6, 7, and 10. Conditions 6, 7 and 10 recognize that the Commission is expressly not making a determination whether BGAN can be provided on a non-interference basis, and that STA grant is without prejudice to (i) any future Commission determination that operations are consistent with operation on a non-interference basis, and (ii) Commission consideration of the Licensees’ underlying BGAN applications. MSV has no issue with the terms of these three conditions. Rather, MSV asks that the Commission require that Inmarsat “conclude coordination of [I-4] with respect to the current and planned operations of MSV and MSV Canada before [the FCC] can make a definitive determination that operation of [I-4] will

⁵ See, e.g., 47 C.F.R. § 25.274 (setting forth the procedures to be followed to resolve interference concerns).

⁶ See, e.g., *AMSC Sub. Corp.*, 8 FCC Rcd 4040, 4043 ¶ 17 (1993) (“*AMSC Order*”).

not result in unacceptable interference and before it can grant the pending applications for permanent authority.”

First and foremost, such a condition is inappropriate because I-4 is now operating within the technical envelope that has long been coordinated with MSV. Moreover, imposing such a condition would be fundamentally unfair, as it would provide MSV with sole control over whether “full” BGAN authority ever issues, and the record is clear that MSV has refused to coordinate further with Inmarsat unless and until other business issues between the companies are resolved. Fortunately, longstanding Commission precedent prevents such competitive abuses, providing that completion of coordination is not a condition precedent to (or a *quid pro quo* for) issuance of an authorization to provide MSS in the United States.⁷ Finally, for the reasons discussed above in the context of Condition 1, imposing such a condition would be inconsistent with the way the Commission treated MSV last year, when it fully licensed the operation of MSV’s two, uncoordinated, next-generation spacecraft, without any requirement that MSV effectuate coordination prior to launching or commencing new services.

If the Commission takes any action in response to MSV’s request, it should be to require MSV to participate in the Mexico City MOU coordination process, demonstrate MSV’s need for L-Band spectrum to provide MSS (based on current spectrum usage and short-term projections of future need), and thereby fulfill its obligations under Commission policy.⁸

⁷ *Establishment of Policies and Service Rules for MSS in the 2 GHz Band*, 15 FCC Rcd 16127, 16192 ¶ 148-49 (2000); *SatCom Systems, Inc.*, 14 FCC Rcd 20798, 20813 ¶ 30 (1999) (“*TMP*”); *Amendment of the Commission’s Rules to Establish Rules and Policies Pertaining to MSS in the 1610-1626.5/2483.5-2500 MHz Frequency Bands*, 9 FCC Rcd 5936, 6018 ¶ 211 (1994); *AMSC Order*, 8 FCC Rcd at 4043 ¶ 17.

⁸ *See TMI*, 14 FCC Rcd at 20813 ¶ 30; *FCC Hails Historic Agreement on International Satellite Coordination*, Rep. No. IN 96-16 (rel. Jun. 25, 1996) (“Spectrum allocations to individual operators will be reviewed annually on the basis of actual usage and short-term projections of future need.”).

* * * * *

For the foregoing reasons, there is no need to "clarify" or add further conditions to the STAs, as MSV requests.

Respectfully submitted,

/s/
Linda J. Cicco
BT AMERICAS INC.
11440 Commerce Park Drive
Reston, VA 20191
703-755-6733

/s/
Alfred M. Mamlet
Marc A. Paul
Brendan Kasper
STEPTOE & JOHNSON LLP
1330 Connecticut Avenue, NW
Washington, D.C. 20036
(202) 429-3000
Counsel to Stratos Communications, Inc.

/s/
Keith H. Fagan
Senior Counsel
TELENOR SATELLITE, INC.
1101 Wootton Parkway
10th Floor
Rockville, MD 20852
(301) 838-7860

/s/
Lawrence J. Movshin
Stephen L. Goodman
Lee J. Rosen
WILKINSON BARKER KNAUER, LLP
2300 N Street, N.W., Suite 700
Washington, D.C. 20037
(202) 783-4141
Counsel to MVS USA, Inc.

/s/
William K. Coulter
DLA PIPER RUDNICK GRAY CARY LLP
1200 19th Street, N.W.
Washington, DC 20036
(202) 861-3943
Counsel to FTMSC US, LLC

/s/
Diane J. Cornell
Vice President, Government Affairs
INMARSAT, INC.
1100 Wilson Blvd, Suite 1425
Arlington, VA 22209
(703) 647 4767

June 19, 2006

CERTIFICATE OF SERVICE

I, Jeffrey A. Marks, hereby certify that on this 19th day of June, 2006, I caused to be served a true copy of the foregoing "Joint Response to Petition for Clarification," by first class mail, postage pre-paid (or as otherwise indicated) upon the following:

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

JoAnn Ekblad*
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

Fern Jarmulnek*
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

John Martin*
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

Richard Engelman*
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

Andrea Kelly*
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

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

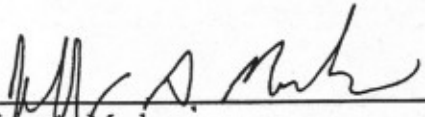
Roderick Porter*
International Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Bruce D. Jacobs
David S. Konczal
Pillsbury Winthrop Shaw Pittman LLP
2300 N Street, N.W.
Washington, DC 20037-1128

**Via Electronic Mail*

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

Jennifer A. Manner
Vice President, Regulatory Affairs
Mobile Satellite Ventures Subsidiary LLC
1002 Park Ridge Boulevard
Reston, Virginia 20191



Jeffrey A. Marks

CERTIFICATE OF SERVICE

I, Jeffrey A. Marks, hereby certify that on this 21st day of June, 2006, I caused to be served a true copy of the foregoing by first class mail, postage pre-paid (or as otherwise indicated) upon the following:

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

JoAnn Ekblad*
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

Fern Jarmulnek*
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

John Martin*
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

Richard Engelman*
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

Andrea Kelly*
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

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

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

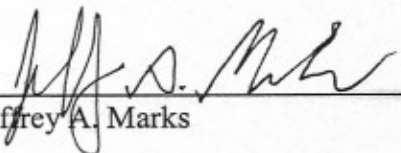
Bruce D. Jacobs
David S. Konczal
Pillsbury Winthrop Shaw Pittman LLP
2300 N Street, N.W.
Washington, DC 20037-1128

Eric Fishman
Holland & Knight LLP
2099 Pennsylvania Avenue, NW
Washington, DC 20006

**Via Electronic Mail*

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

Jennifer A. Manner
Vice President, Regulatory Affairs
Mobile Satellite Ventures Subsidiary LLC
1002 Park Ridge Boulevard
Reston, Virginia 20191



Jeffrey A. Marks