

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

In the matter of	)	
	)	
MVS USA, Inc.	)	File No. SES-LFS-20051123-01634
Application for Blanket License to Operate	)	(Call Sign E050348)
Mobile Earth Terminals with Inmarsat 4F2	)	
At 52.75° W	)	

**OPPOSITION OF MVS USA, INC. TO MSV PETITION TO HOLD BGAN  
APPLICATION IN ABEYANCE**

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Pursuant to Section 25.154(c) of the Commission’s Rules, MVS USA, Inc. (“MVS”) hereby opposes Mobile Satellite Ventures Subsidiary LLC’s (“MSV’s”) Petition to Hold in Abeyance or to grant with conditions the above-captioned Broadband Global Area Network (“BGAN”) application of MVS (the “Application”). As the Commission is aware, MSV has raised identical arguments with respect to several other applications to use the new Inmarsat satellite, and those claims have been thoroughly refuted by Inmarsat and the other applicants. Thus, in order to minimize the burden on the Commission, MVS will not respond in detail to MSV, but instead will offer a few observations and also incorporate by reference the previously filed oppositions to MSV.<sup>1</sup> MVS’s ability to respond, however, has been impeded by the fact that significant portions of MSV’s petition were redacted, and MVS reserves the right to supplement its opposition if MSV discloses those portions of its petition to MVS.<sup>2</sup>

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<sup>1</sup> See Telenor Satellite, Inc., Opposition, File No. SES-LFS-20050930-01352 *et al.* (filed Dec. 7, 2005); Inmarsat Ventures Limited, Opposition, File No. SES-LFS-20050930-01352 *et al.* (filed Dec. 7, 2005); Inmarsat Ventures Limited, Opposition, File No. SES-LFS-20051011-01396 *et al.* (filed Dec. 7, 2005); FTMSC US, LLC, Opposition, File No. SES-LFS-20051011-01396 *et al.* (filed Dec. 7, 2005); Stratos Communications, Inc., Opposition, File No. SES-LFS-20050826-01175 *et al.* (filed Nov. 10, 2005); Inmarsat Ventures Limited, Consolidated Opposition of Inmarsat Ventures Limited, File No. SES-MFS-20051122-01614 *et al.* (filed Jan. 19, 2006).

<sup>2</sup> MVS is separately filing a motion to strike those redacted portions of the MSV petition, or in the alternative to disclose that material to MVS pursuant to an appropriate protective order.

## **I. Introduction and Summary**

MVS seeks authority to provide new BGAN services in the United States utilizing mobile earth terminals (“METs”) communicating with Inmarsat’s recently launched fourth generation satellite to be located at 52.75° W.L. (“the Inmarsat 4F2 satellite”). As demonstrated in the application, grant of MVS’s BGAN Application would well serve the public interest because it will allow MVS to provide U.S. customers with access to next-generation mobile satellite services (“MSS”) offering e-mail, LAN, Internet, video conferencing and voice communications at transmission speeds of up to 492 kbps, which is several times faster than current MSS offerings.

MSV, an MSS provider in the United States and surrounding areas, is seeking to impede deployment of the BGAN’s enhanced MSS offering by petitioning against MVS (along with all of the other applicants seeking to provide BGAN services). Such delaying tactics are needlessly slowing the deployment of MSS offerings that could potentially bring crucial life-saving telecommunication services and promote homeland security during future terrorist attacks or natural disasters. As MVS explained in its Application, the introduction of BGAN services will provide a non-terrestrial option that could restore broadband connectivity in the event of a serious disruption. Moreover, the proposed BGAN services will also offer a competitive alternative to traditional wireline and wireless services.

Despite these numerous public interest benefits, MSV is attempting to use MVS’s BGAN Application as leverage to settle a dispute between itself and Inmarsat (as well as the other parties to the five nation L-band coordination framework) with regard to L-band MSS coordination. This dispute, however, is outside of the scope of the instant application, and should be resolved through the previously agreed-upon mechanism for conducting international

coordination established under the Mexico City Memorandum of Understanding (“Mexico City MOU”). The Commission should reject MSV’s attempts to affect that separate multinational process through this U.S. licensing proceeding.

Further, contrary to the claims of MSV, precedent establishes that a new international L-band coordination agreement is not needed before the MVS BGAN Application can be granted. As the operating history in the L-band illustrates, there is no increased risk of harmful interference from the proposed operations, even in the absence of a formal coordination agreement. In fact, the Commission granted two MSV satellite applications within the last year on a non-harmful interference basis, in the absence of a formal coordination agreement.<sup>3</sup> No justification exists to hold MVS’s BGAN Application to a different standard than the one to which MSV has already availed itself.

As also demonstrated below and in the previous responses to MSV, MVS’s BGAN Application does not contain any of the other alleged defects or issues claimed by MSV as a basis for delaying or denying grant. MVS thus requests that the Commission summarily deny the MSV petition and promptly grant MVS’s Application to provide BGAN services over the Inmarsat 4F2 satellite.

## **II. Grant of MVS’s BGAN Application Need Not Be Conditioned on L-band Coordination**

MSV’s primary argument is that MVS’s BGAN Application cannot be granted because there is no coordination agreement among the L-band operators covering Inmarsat 4F2 at 52.75°W.L., and that such uncoordinated operations pose a significant risk of harmful

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<sup>3</sup> *In Re Mobile Satellite Ventures Subsidiary LLC, Order and Authorization*, 20 FCC Rcd 9752 (2005)(granting a replacement satellite at 101° W.L.)(“*MSV 101° Order*”); *In Re Mobile Satellite Ventures Subsidiary LLC, Order and Authorization*, 20 FCC Rcd 479 (2005)(granting authority for a new satellite not previously contemplated by the Mexico City MOU at 63.5° W.L.)(“*MSV 63.5° Order*”).

interference.<sup>4</sup> However, the absence of an L-band coordination agreement in no way justifies delay of a grant of the MVS BGAN Application, particularly because MSV's claims of a significant risk of harmful interference are unfounded.

In fact, Commission precedent in this particular band makes clear that the successful negotiation of an international coordination agreement is not a prerequisite to commencing operations when it granted two MSV applications in 2005 to operate new satellites in the L-band despite the fact that no formal coordination agreement is in effect for these MSS operations.<sup>5</sup> In both cases, the Commission acknowledged that no coordination was in place, but simply required MSV to operate on a non-harmful interference basis until such time as it successfully completes coordination.<sup>6</sup>

Moreover, such treatment is also consistent with the prior applications for domestic use of the Inmarsat system in the United States,<sup>7</sup> as well as TMI's request for access to the U.S. market using a Canadian MSS satellite.<sup>8</sup> In both of these cases as well the Commission allowed the competitive entry over the objections of MSV, despite the absence of a formal coordination agreement, and merely conditioned such operations on a non-harmful interference basis until completion of a formal coordination agreement. MVS requests that the Bureau not delay action

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<sup>4</sup> MSV Petition at 7-19.

<sup>5</sup> See *MSV 101° Order*; *MSV 63.5° Order*. The last of the formal annual coordination agreements under the Mexico City framework expired at the end of 1999, and the parties since then have operated pursuant to informal agreements.

<sup>6</sup> See *MSV 101° Order*, 20 FCC Rcd at 9774; *MSV 63.5° Order*, 20 FCC Rcd at 492.

<sup>7</sup> *COMSAT Corporation d/b/a Comsat Mobile Communications, et al.*, 16 FCC Rcd 21661 (2001) (“*COMSAT Order*”).

<sup>8</sup> *SatCom Systems, Inc., et al.*, 14 FCC Rcd 20798 (1999) (“*TMI Market Access Order*”). Although MSV's predecessor – Motient – fought such competitive entry, TMI subsequently joined with Motient and now both satellite systems are operated by MSV.

on MVS's BGAN Application any further and that the Bureau treat MVS similarly to how it has already treated MSV and the other previous L-band MSS entrants.

By its actions, MSV is abusing the Commission's regulatory processes by delaying competition and attempting to impact what is supposed to be a multinational coordination. While we are not privy to any of the details concerning the Mexico City MOU, Inmarsat has indicated that international L-band spectrum disputes are properly resolved under the dispute resolution process established under the Mexico City MOU, and not in Commission licensing proceedings.<sup>9</sup> Even assuming *arguendo* MSV had any legitimate concerns, this is not the proper venue for MSV to raise such a dispute. Moreover, as explained below, MSV has not raised any valid harmful interference issues.

### **III. MVS's BGAN Application Should Not Be Delayed By Non-Existent Interference Concerns**

In reality, MSV's claims of harmful interference are nothing more than speculation and conjecture without any basis in the record.<sup>10</sup> In fact, the strongest evidence of the unlikelihood of any harmful interference is the fact that the parties in this band have been operating on a non-harmful interference basis since the end of 1999, despite the absence of a formal coordination agreement. Because Inmarsat has expressly committed to operating the Inmarsat 4F2 satellite within the same "envelope" as the Inmarsat 3 satellite it has replaced (at least until a new coordination agreement is reached), and based on the last five years of operating history in this band, there is no legitimate concern that grant of MVS's Application will lead to harmful interference.

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<sup>9</sup> See Consolidated Opposition of Inmarsat Ventures Limited at 7, n.20 (filed Jan. 19, 2006).

<sup>10</sup> *E.g.*, MSV Petition at 14 ("raising the potential for increased interference"; "likely to cause harmful interference"; "could cause harmful interference").

Indeed, technical advances incorporated into the Inmarsat 4F2 satellite, including narrower spot beams with steeper antenna side lobes, when compared to the Inmarsat 3 satellite, will actually reduce the potential for harmful interference to adjacent areas.<sup>11</sup> As Inmarsat indicated in response to MSV's earlier petition against another applicant, any satellite is theoretically capable of interfering operations, "but Inmarsat restrains operations to ensure that *harmful interference does not occur*."<sup>12</sup> This will be particularly true for the BGAN operations on Inmarsat 4F2 because the technical characteristics of the service have been designed to operate with no higher EIRP spectral density than exists on Inmarsat 3.

Moreover, the Commission need not merely extrapolate from the Inmarsat 3 operations. Additional evidence of the lack of harmful interference of the planned BGAN services is provided by the activities of MVS and others pursuant to experimental authority under which BGAN services were emulated using the Inmarsat 3 satellite in order to provide demonstrations to potential customers.<sup>13</sup> MVS is unaware of any interference complaints arising from these activities.<sup>14</sup>

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<sup>11</sup> In addition, the Inmarsat 4F2 satellite will be located at 53° W.L., which is one degree further away from MSV than the Inmarsat 3 satellite it has replaced, thus providing an additional reduction in any potential for harmful interference to MSV. In contrast, the MSV satellites authorized earlier in the year will also have higher power and wider carriers than MSV's existing satellites, with one being authorized in an entirely new orbital location significantly closer to Inmarsat. Nonetheless, MSV's applications for these new satellites were still granted merely conditioned on non-harmful interference operations until coordination can be completed.

<sup>12</sup> See Consolidated Opposition of Inmarsat Ventures Limited (filed Jan. 19, 2006)(emphasis added).

<sup>13</sup> See Call Sign WD2XKU pursuant to file number 0167-EX-PL-2004 (providing experimental authorization on a nationwide basis until May 1, 2006).

<sup>14</sup> To the extent the Commission even has any lingering concerns with the possibility of an un-coordinated L-band, MSV stated in its petition that it believed that coordination could be completed in a "matter of months." MSV Petition at 19. As a result, if the Commission expeditiously grants MVS's application, any such formally un-coordinated operations would occur for a limited, finite period of time, and as discussed above, are unlikely to result in actual, harmful interference. In contrast, delay in grant of the application would certainly result in less competition and delay in innovative services desired by MVS's customers, and possibly even denial of critical services in the event of another natural or man-made disaster.



MVS is also deeply puzzled by MSV's claims that it is harmed by the inability of MSV and MSV Canada to "implement their aggressive plans to deploy an interim-generation integrated satellite terrestrial system" in the spectrum they "loaned to Inmarsat on a temporary basis."<sup>15</sup> Although MVS does not have access to the Mexico City MOU, the Commission's descriptions of that accord make clear that no operator acquires any permanent rights to spectrum:

The 1996 operator-to-operator agreement provided each system with an amount of spectrum based upon its current and projected near-term traffic requirements. *Unlike most international coordinations that create permanent assignments of specific spectrum, the operators' assignments can change from year to year based on their marketplace needs.* Significantly, each of the five operators received less spectrum than it had requested for its system, for its long-term use and, in some cases, less spectrum than it had been authorized to use by its respective administration...*[T]here is no permanent assignment of specific spectrum to any L-band operator. Thus, no operator can assert any claim with respect to a specific piece of spectrum.*<sup>16</sup>

Thus, MSV does not appear to be in any position to "own" or "loan" any of the L-band spectrum.

Moreover, to the extent MSV is claiming a right to additional portions of the L-band beyond its current satellite needs in order to offer ATC services, such a claim is entirely illegitimate. First, the Commission's Rules specify that ATC operations in the L-band are only permitted in bands which have been coordinated,<sup>17</sup> and the last formal coordination agreement under the Mexico City MOU expired at the end of 1999.<sup>18</sup> In addition, the Commission in

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<sup>15</sup> MSV Petition at 11.

<sup>16</sup> See *COMSAT Order*, 16 FCC Rcd at 21670-71, 21699 (emphasis added). See also *Mobile Satellite Ventures Subsidiary LLC*, Order and Authorization, 19 FCC Rcd 22144, 22146, n.8 (2004); *Flexibility for Delivery of Communications by Mobile Satellite Service Providers in the 2 GHz Band, the L-Band, and the 1.6/2.4 GHz Bands*, Report and Order and Notice of Proposed Rulemaking, 18 FCC Rcd 1962, 1994 n.144 (2003) ("MSS Flex Order"); *Flexibility for Delivery of Communications by Mobile Satellite Service Providers in the 2 GHz Band, the L-band, and the 1.6/2.4 GHz Band*, Notice of Proposed Rulemaking, 16 FCC Rcd 15532, 15539-40 (2001).

<sup>17</sup> See 47 C.F.R. § 25.253(a)(4); see also *Inmarsat Opposition to MSV's ATC License Modification* (filed Jan. 13, 2006).

<sup>18</sup> See *COMSAT Order*, 16 FCC Rcd at 21670-71 ("No operator-to-operator agreement has been in effect since year-end 1999.").

granting ATC authority for the L-band made clear that a service provider could not seek to coordinate spectrum for ATC needs (as opposed to legitimate satellite service needs), based in large parts on MSV's representations that it would not do so:

We believe that our decision to remove domestic barriers to improve the delivery of MSS signals in particular areas in the United States is consistent with our commitments under the Mexico City MoU. Under the MoU, parties agreed to attempt to avoid harmful interference and to use spectrum assignments in the most efficient manner practicable. . . . While we recognize that Inmarsat, which is also a party to the Mexico City MoU, may disagree with our interference and spectrum-efficiency conclusions, we have evaluated its claims, and we have addressed its concerns by placing constraints on MSV's ATC operations designed to overcome the potential for interference that Inmarsat has identified. *Moreover, nothing in this Order is intended to adjust the spectrum assignment to which signatories are entitled under the Mexico City MoU.* The only "purpose" of the Mexico City MoU is to establish a process to develop operating agreements for the operation of geostationary mobile satellite service networks in the L-band in the region around North America. *Because the MoU adjusts the parties' L-band spectrum assignments, based on present and future satellite spectrum usage, we agree with MSV's assertion that parties could not legitimately identify terrestrial ATC usage to justify a larger MSS satellite spectrum assignment.*<sup>567</sup> We therefore conclude that permitting the integration of terrestrial infrastructure into licensed MSS systems remains fully consistent with the terms of the Mexico City MoU, to which the Commission is party.

Fn. 567 See MSV Reply at 17 (*"MSV is committed to continuing to limit its coordination efforts to gaining access to spectrum for its satellite operations."*); see also, e.g., MSV Reply at 15 (*"Authorizing terrestrial operations in the L-band is consistent with the ITU Radio Regulations as well as the Mexico City Memorandum of Understanding (MoU), because such operations will be on [a] non-interference basis to other systems, [and] will not be a factor in L-band coordination negotiations . . ."*); MSV Jan. 10, 2002 Ex Parte Letter at 4 (*"ATC operations will not require MSV to coordinate access to more spectrum"*).<sup>19</sup>

The Commission should not allow MSV to renege on these obligations and commitments as it appears to be trying to do here.

#### **IV. Other Issues Raised by MSV**

MSV raised a few "miscellaneous" arguments in its effort to delay Commission action on MVS's Application, in addition to its request to hold the Application in abeyance pending a

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<sup>19</sup> *MSS Flex Order*, 18 FCC Rcd at 2066-67 (emphasis added, footnotes eliminated).

formal coordination agreement. These claims, too, lack legitimacy, and should be promptly dismissed.

**Replacement Satellite.** Notwithstanding MSV's claims to the contrary, Inmarsat's 4F2 is simply a replacement satellite requesting authorization to provide BGAN services within the same regions of the United States that are currently being served by the Inmarsat 3 satellite. Accordingly, the proposed use of the Inmarsat 4F2 satellite can be considered a replacement satellite. In fact, MSV's argument is hypocritical given that its recent grant of a replacement satellite actually provided authority to offer service to additional territories, but was still treated as a replacement satellite.<sup>20</sup> The discretion to determine a "replacement satellite" is within the Commission's purview and can expand the coverage areas if it so chooses,<sup>21</sup> as it did for MSV. In light of the service territory and orbital location of the Inmarsat 4F2 satellite, there is simply no valid reason not to treat it as a replacement satellite.

**Station-keeping tolerances.** MSV posits the argument that it is not clearly "settled" whether the Commission's Rule requiring FSS satellites to operate within the  $\pm 0.5^\circ$  East-West station keeping rule apply for MSS satellites. That claim, however, is incorrect. The Commission's Rule and a subsequent decision have made it very clear that Section 25.210(j) does not apply to MSS satellites.<sup>22</sup> Even MSV acknowledged that "there is no rule requiring MSS satellites to operate with a  $\pm 0.05^\circ$  East-West station keeping box" in an earlier

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<sup>20</sup> MSV's satellite at 101° W.L. actually increased its geographic area from the satellite it replaced by adding parts of South America to its coverage area, but nevertheless was regarded as a replacement satellite by the Bureau. See *MSV 101° Order*, 20 FCC Rcd at 9752, 9756-57.

<sup>21</sup> *Amendment of the Commission's Space Station Licensing Rules and Policies*, 18 FCC Rcd 10760, 10857-58 (2003)(confirming that the Commission "will consider replacement satellite applications that request greater coverage areas").

<sup>22</sup> The FCC stated that it declined "to adopt changes to Section 25.210(j) to specify a longitudinal tolerance of  $\pm 0.05^\circ$  for all space stations, including MSS and remote sensing space stations." *In the Matter of Mitigation of Orbital Debris*, 19 FCC Rcd 11567, 11586 (2004).

proceeding.<sup>23</sup> Whatever circumstances may have lead to the Commission's denial of the waiver requested by MSV of such an obligation, they are not present here – because undoubtedly there is no requirement to operate MSS satellites within a  $\pm 0.05^\circ$  East-West station keeping box – and thus MVS and Inmarsat need no waiver.

**FBI/DOJ Authorization.** MSV's argument that MVS failed to include in the record evidence of its compliance with the national security review by the Executive Branch also lacks merit. The Commission can readily ignore MSV's attempt to appoint itself a "private attorney general" (or more accurately, a "private director of homeland security") in a desperate attempt to challenge grant of the BGAN applications. The Commission and MSV can rest assured that MVS is taking all necessary steps directly with the FBI and DOJ to ensure that the Executive Branch is fully satisfied that grant of MVS's Application is entirely consistent with national security.<sup>24</sup>

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<sup>23</sup> See Stratos Opposition filed November 10, 2005 at 10, n.23.

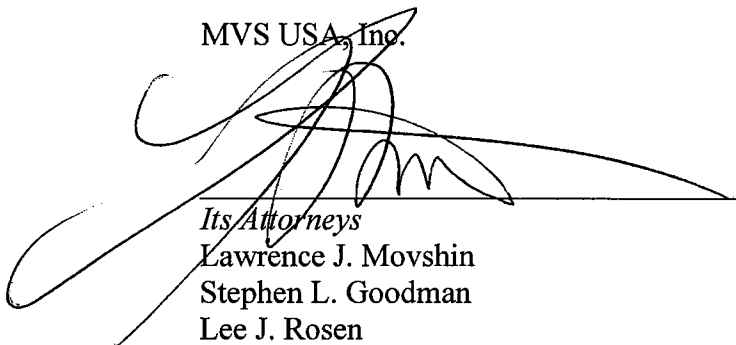
<sup>24</sup> Furthermore, if and when MSS is subject to E911 requirements, MVS will make any necessary modifications to its network to ensure compliance with the Commission's regulations.

**V. CONCLUSION**

For the reasons stated above, MVS respectfully requests that the Bureau expeditiously dismiss or deny the MSV Petition and promptly grant the MVS BGAN Application as set forth therein.

Respectfully Submitted,

MVS USA, Inc.

A large, stylized handwritten signature in black ink, appearing to be 'L. Movshin', is written over a horizontal line. The signature is highly cursive and extends significantly to the left and right of the line.

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January 26, 2006

## CERTIFICATE OF SERVICE

I, LaVon E. Nickens, hereby certify that on this 26<sup>th</sup> day of January, 2006, I caused copies of the foregoing "Opposition of MVS USA, Inc. to MSV Petition To Hold BGAN Application in Abeyance," to be sent via first class U.S. mail, postage pre-paid (unless otherwise noted) to the following:

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