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

In the matter of	)	
	)	
Amtech Systems LLC	)	File No. SES-STA-20061221-02206
	)	
Amtech Systems LLC	)	File No. SES-STA-20061221-02207

REPLY TO OPPOSITIONS TO PETITION TO HOLD IN ABEYANCE

Mobile Satellite Ventures Subsidiary LLC ("MSV") hereby files this Reply to the Oppositions of Amtech Systems LLC ("Amtech") and Inmarsat Ventures Limited ("Inmarsat") to MSV's Petition to Hold in Abeyance the above-referenced application.[1] In its application, Amtech seeks to operate mobile earth terminals ("METs") with the uncoordinated Inmarsat 3F4 satellite, which has recently been relocated to 142°W, in the event that MSV's MSAT-2 satellite suffers an outage. On December 22, 2006, MSV filed a Petition to hold the Amtech application in abeyance until after (i) the Bureau requires Amtech to disclose which frequencies it will use on the Inmarsat 3F4 satellite and precludes Amtech from using "loaned" L band frequencies or any other frequencies coordinated for MSV or MSV Canada; (ii) Inmarsat coordinates the operation of the Inmarsat 3F4 satellite at 142°W with MSV and other L band operators to

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[1] *See* Amtech Systems LLC, File No. SES-STA-20061221-02206 et al (December 21, 2006) ("*Amtech Application*"); Amtech Systems LLC, Opposition, File No. SES-STA-20061221-02206 et al (January 3, 2007) ("*Amtech Opposition*"); Inmarsat Ventures Limited, Opposition, File No. SES-STA-20061221-02206 et al (January 5, 2007) ("*Inmarsat Opposition*"). The parties agreed to an extension of the deadline for MSV to file its Reply. *See* Consent Motion for Extension of Time, File No. SES-STA-20061221-02206 et al (January 10, 2007).

MSV welcomes further discussions with Amtech concerning possible ways of testing Inmarsat's ability to provide back-up without causing harmful interference to MSV's operations, but urges the necessity of these discussions concluding with MSV's interference concerns fully resolved before any such testing occurs.

mitigate the significant risk of interference from its uncoordinated operations; and (iii) Amtech seeks a waiver of the Commission's longitudinal station keeping rule.[2]

As an initial matter, MSV takes issue with Amtech's assertion that the goal of MSV's opposition is to gain leverage in a pending dispute with Inmarsat. *Amtech Opposition* at 1. In fact, MSV's objection here is based solely on its desire to protect its customers from harmful interference resulting from Inmarsat's use of "loaned" frequencies and its continued operation of uncoordinated satellites. While MSV believes that its satellites will be capable of reliable service for many years to come, it does not seek to undermine Amtech's efforts to establish a back-up arrangement, provided the arrangement does not result in harmful interference to MSV's other customers. In this case, Amtech is seeking to operate with an uncoordinated Inmarsat satellite, the operation of which presents a significant risk of interference to the MSS operations of MSV and MSV Canada , including safety communications, absent prior coordination (as MSV explained in its Petition and which Inmarsat and Amtech fail to refute in their Oppositions[3]). By failing to coordinate the Inmarsat 3F4 satellite at 142°W with MSV and MSV Canada, it is Inmarsat – not MSV – that is preventing Amtech from establishing its desired back-up arrangement.

Inmarsat claims that "it is difficult to imagine" how MSV could be impacted by Amtech's operations with Inmarsat 3F4 because Amtech will operate with this Inmarsat satellite only in the event of a failure of MSV's MSAT-2 satellite. *Inmarsat Opposition* at 2. In fact,

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[2] *See* Mobile Satellite Ventures Subsidiary LLC, Petition to Hold in Abeyance, File No. SES-STA-20061221-02206 et al (December 22, 2006) ("*MSV Petition*").

[3] *MSV Petition* at 5-6. Although they make bare assertions as to the feasibility of operating on a non-harmful-interference basis, neither Amtech nor Inmarsat offer any evidence to demonstrate how they can operate on a non-harmful interference basis with the Inmarsat 3F4 satellite at 142°W. *See Amtech Opposition* at 3; *Inmarsat Opposition* at 2.

MSV provides service in the United States using the MSAT-2 satellite as well as the MSAT-1 satellite licensed by Industry Canada to MSV Canada, which will continue to operate in the unlikely event that MSAT-2 were to suffer a failure. Moreover, any operations with an uncoordinated Inmarsat satellite would threaten interference to customers of MSV's next-generation satellites, the first of which is expected to be launched in June 2009.

Inmarsat also incorrectly claims that the Commission's policies do not require Amtech to precisely specify which L band frequencies it will use on Inmarsat 3F4. *Inmarsat Opposition* at 2. In fact, in order to ensure that harmful interference will not result to MSV and other L band operators, the Commission has limited earth stations operating with Inmarsat satellites to those portions of the L Band "*coordinated for* the Inmarsat satellite system in the most recent annual L-Band operator-to-operator agreement," which refers to the 1999 Spectrum Sharing Arrangement ("SSA").[4] Thus, the Commission has precluded earth stations authorized to use Inmarsat satellites from using those L band frequencies that have not been "coordinated for" Inmarsat in the 1999 SSA, including frequencies that may have been temporarily loaned to Inmarsat on a bilateral basis but subsequently recalled by the lender.[5] While Amtech concedes

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[4] *See Comsat Corporation et al, Memorandum Opinion, Order and Authorization*, 16 FCC Rcd 21661, ¶ 115(c) (2001) ("*COMSAT Order*"). MSV incorporates the following filings by reference, which demonstrate that the Commission has precluded earth stations authorized to use Inmarsat satellites from using any L band frequencies that have not been "coordinated for" Inmarsat in the 1999 SSA. *See* Letter from Jennifer A. Manner, MSV, to Mr. John Giusti and Mr. Julius Knapp, FCC (June 20, 2006); Letter from Jennifer A. Manner, MSV, to Ms. Marlene H. Dortch, FCC, File No. SES-MFS-20051122-01614 (Call Sign E000180) et al (June 20, 2006); Letter from Jennifer A. Manner, MSV, to Mr. John Giusti and Mr. Julius Knapp, FCC (July 18, 2006); Letter from Jennifer A. Manner, MSV, to Ms. Marlene H. Dortch, FCC, File No. SES-MFS-20051122-01614 (Call Sign E000180) et al (July 18, 2006).

[5] The Bureau has defined these frequencies as "loaned" and described them as "those bandwidth segments that were loaned to Inmarsat by MSV and [Mobile Satellite Ventures (Canada) Inc.], either as part of the Revised 1999 Spectrum Sharing Arrangement (October 4, 1999), or later as

that any grant of STA it receives should preclude it from using "loaned" frequencies (*Amtech Opposition* at 2-3), the Commission's policies also require that the Bureau preclude Amtech from using *any* L band frequencies on Inmarsat satellites that have been coordinated for MSV or MSV Canada.

Inmarsat incorporates by reference previous filings it has made regarding the uncoordinated status of the Inmarsat 3F4 satellite. *See Inmarsat Opposition* at 1 n.1. MSV hereby incorporates by reference its response to those filings, which demonstrate that (i) Inmarsat has never reached a coordination agreement with MSV or MSV Canada with respect to the 142°W orbital location; (ii) Inmarsat's licensing Administration (the United Kingdom) has never notified the United States that it deems the Inmarsat 3F4 satellite at 142°W to be coordinated; and (iii) grant of an application to operate in the L band with the Inmarsat 3F4 satellite at 142°W would support Inmarsat's unilateral coordination strategy and would countenance circumvention of the formal ITU coordination process.[6]

Amtech claims that Commission precedent holds that Inmarsat's failure to coordinate the Inmarsat 3F4 satellite at 142°W with MSV, MSV Canada, and other L band operators does not preclude the Bureau from authorizing operation of the satellite using L band frequencies. *Amtech Opposition* at 3. In fact, Commission precedent holds that the Bureau will not license an

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bilateral arrangements between Inmarsat and MSV and Inmarsat and MSV Canada." *See, e.g.*, *Telenor STA Grant*, File No. SES-STA-20060118-00055 et al (January 18, 2006), at ¶ 3.

[6] *See* Mobile Satellite Ventures Subsidiary, Reply, File Nos. SES-MFS-20060725-01253, SES-AMD-20060804-01310 (October 3, 2006) (MSV's Reply to Inmarsat's Opposition to MSV's Petition to Hold in Abeyance an application filed by Telenor Satellite Inc. to communicate with Inmarsat 3F4).

uncoordinated satellite if there is evidence that harmful interference will result.[7] Such is the case with the Inmarsat 3F4 satellite at 142°W, which presents a significant risk of interference to the MSS operations of MSV and MSV Canada. *MSV Petition* at 5-6.[8]

Amtech contends that it was not required to seek a waiver regarding the proposed ±0.1° East-West station-keeping tolerance of the Inmarsat 3F4 satellite because there is not a

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[7] *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); *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."); *Mobile Satellite Ventures Subsidiary LLC, Order and Authorization*, DA 05-50 (January 10, 2005), at ¶ 8 (stating that the Commission "will not consider applications for new systems where the new system's operations would cause interference to licensed systems").

[8] The *SatCom Systems* case Amtech cites presents far different facts than those presented here. *See Amtech Opposition* at 3 (citing *SatCom Systems, Inc.*, 14 FCC Rcd 20798 (1999)). In that case, it was reasonable for the Commission to conclude that operation on a non-harmful interference basis was possible because the satellites at issue had been coordinated, the operators had committed to using specific frequencies, and the terms of the earth station licenses limited the operators to those frequencies. By contrast, in this case, Inmarsat is proposing to operate a satellite (i) at an orbital location that is not covered by any coordination agreement; (ii) with technical parameters that are different than those of the satellite previously operating at the proposed orbital location; and (iii) that has never been analyzed by MSV and MSV Canada at the orbital location requested. Thus, the proposed operation of the Inmarsat 3F4 satellite at 142°W presents a far different question than that presented in the *SatCom Systems* case.

The *2 GHz MSS Report and Order* Amtech cites simply affirms the unremarkable proposition that the Commission does not always require international coordination as a prerequisite to authorization of new satellites and services. This only applies, however, when there is a reasonable basis for the Commission to conclude that harmful interference will not occur in the absence of international coordination. *Amtech Opposition* at 3 n.6 (citing *The Establishment of Policies and Service Rules for the Mobile Satellite Service in the 2GHz Band, Report and Order*, 15 FCC Rcd 16127 (2000)). Given the unrebutted evidence that operation with the uncoordinated Inmarsat 3F4 satellite will cause harmful interference, the Commission cannot make such a conclusion here. *See MSV Petition* at 5-6.

Commission rule requiring MSS satellites to comply with ±0.05° East-West station-keeping tolerance. *Amtech Opposition* at 3. In fact, in authorizing MSV to launch and operate a next-generation MSS satellite, the Bureau held that MSV was required to satisfy the standard for a waiver in seeking authority to operate its MSS satellite with ±0.1° East-West station keeping.[9] MSV has sought reconsideration of this decision, asking the Bureau to clarify that the rule requiring satellites to operate with ±0.05° East-West station keeping does not apply to MSS satellites.[10] MSV's concern here is only that the Bureau apply the Commission's rules consistently. Thus, to the extent the Bureau authorizes the Inmarsat 3F4 satellite for service in the United States with ±0.1° East-West station keeping without requiring Amtech to demonstrate "good cause" for a waiver, the Bureau must afford similar treatment to other MSS satellites proposing to serve the U.S. market, such as MSV's satellite.[11] Conversely, if the Bureau on reconsideration of the *MSV-1 Order* upholds its decision that MSS satellites are subject to the rule mandating ±0.05° East-West station keeping, the Amtech application must be dismissed for failing to demonstrate "good cause" for a waiver.[12]

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[9] *See MSV-1, Order*, DA 05-1492 (May 23, 2005), at ¶ 21.

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

[11] *See* Melody Music, Inc. v. FCC , 345 F.2d 730, 732 (D.C. Cir. 1965).

[12] *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). While Amtech states in its Opposition that it requests a waiver, it offers no reasons demonstrating "good cause" for the waiver. *Amtech Opposition* at 3; *see* 47 C.F.R. § 1.3.

Conclusion

Based on the foregoing, the Bureau should hold the Amtech application in abeyance.

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Technical Certification

I, Richard O. Evans, Senior Engineer 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 Reply. I am familiar with the Commission's rules, and the information contained in the Reply is true and correct to the best of my knowledge and belief.

Richard O. Evans

Richard O. Evans

Dated: February 1, 2007

CERTIFICATE OF SERVICE

I, Sylvia A. Davis, a secretary with the law firm of Pillsbury Winthrop Shaw Pittman LLP, hereby certify that on this 1st day of February 2007, I served a true copy of the foregoing by first-class United States mail, postage prepaid, upon the following:

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