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Satellite Division  
International Bureau

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

ORIGINAL

FILED/ACCEPTED

FEB 12 2007

Federal Communications Commission  
Office of the Secretary

In the matter of )  
)  
Horizon Mobile Communications, ) File No. SES-STA-20070112-00112 (Call Sign E070006)  
Inc. )

**REPLY**

Mobile Satellite Ventures Subsidiary LLC (“MSV”) hereby files this Reply to the Oppositions filed by Horizon Mobile Communications, Inc. (“Horizon”) and Inmarsat Ventures Limited (“Inmarsat”) to MSV’s Petition to Deny the above-referenced application of Horizon for Special Temporary Authority (“STA”) to operate 5000 Broadband Global Area Network (“BGAN”) terminals using an Inmarsat satellite, Inmarsat 4F2 at 52.75°W, for which coordination is not complete. The authorization of each additional BGAN terminal negatively impacts the L band coordination process by depriving Inmarsat of any incentive to satisfy its obligation to coordinate its Inmarsat 4F2 satellite. Any alleged public interest benefits resulting from grant of this STA will not outweigh the harm caused to the L band coordination process and the harm that results from permitting satellite operators such as Inmarsat to cause interference to other satellite operators, to bypass the international frequency coordination process, and to undermine the Commission’s application process.

**Background**

On January 18, 2007, MSV filed a Petition to Deny the Horizon STA request, explaining that Horizon had failed to justify its request because (i) the authorization of an excessive number of BGAN terminals disserves the public interest by depriving Inmarsat of any incentive to

coordinate its Inmarsat 4F2 satellite;<sup>1</sup> (ii) any alleged public interest benefits resulting from the authorization of additional BGAN terminals fail to outweigh the harm caused by interference to existing MSV and Inmarsat customers that may result from operation of BGAN terminals prior to a coordination agreement (*MSV Petition* at 1-2); (iii) the only justifications provided for grant of the STA were “marketing considerations,” which the Commission’s rules specifically preclude as grounds for grant of an STA (*id.* at 2); (iv) while Horizon claimed that an STA was justified because its application for permanent authority cannot be granted in time for it to offer service by late February, the statutory thirty-day Public Notice requirement and the Commission’s obligation to determine whether grant of an application will serve the public interest does not create an “extraordinary circumstance” justifying the grant of an STA (*id.* at 3); (v) Horizon failed to demonstrate that the STA is necessary “due to circumstances beyond its control,” as the Commission’s policies require (*id.* at 3-4); (vi) Horizon failed to provide any evidence that the 25,000 currently authorized BGAN terminals are insufficient to meet any alleged demand for the service (*id.* at 4); and (vii) there is no basis for the claim that because the International Bureau (“Bureau”) has already permitted some BGAN terminals to operate in the United States on a temporary basis, it must grant all subsequent STA applications for BGAN terminals (*id.* at 4-5).

To the extent the Bureau grants this application despite the negative impact on the L band coordination process, the likelihood of harmful interference, and the lack of extraordinary circumstances, MSV asked the Bureau to attach certain conditions. *MSV Petition* at 5-10. First, MSV urged the Bureau to apply the same conditions it has imposed on other BGAN STA grants, along with the clarifications previously requested. *Id.* at 5-8. Second, MSV asked the Bureau to

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<sup>1</sup> See Mobile Satellite Ventures Subsidiary LLC, Petition to Deny, File No. SES-STA-20070112-00112 (Call Sign E070006) (January 18, 2007) (“*MSV Petition*”), at 8-9.

establish a firm expiration date for the STA and provide that no extensions or renewals will be granted without Inmarsat having first completed coordination. *Id.* at 8-9. To the extent the Bureau does not adopt this second condition, MSV urged the Bureau to at least (i) require Horizon to disclose the aggregate number of BGAN terminals that are in operation using the Inmarsat 4F2 satellite serving the United States and nearby geographic areas; and (ii) limit the BGAN terminals authorized to those issued to “first responders.” *Id.* at 9-10. Horizon and Inmarsat filed Oppositions to MSV’s Petition.<sup>2</sup>

### **Discussion**

In their Oppositions, Inmarsat and Horizon ignore the negative impact on the L band coordination process that results from the authorization of each additional BGAN terminal. *See MSV Petition* at 8. As MSV explained in its Petition, it will take much longer than five years for Inmarsat’s distributors to approach the limit of 30,000 BGAN terminals authorized pursuant to this STA (if granted) and the other outstanding BGAN STAs. *See id.* at 8 and Exhibit C. The authorization of far more BGAN terminals than Inmarsat and its distributors need for the next several years disserves the public interest by depriving Inmarsat of any incentive to satisfy its obligation to coordinate its Inmarsat 4F2 satellite. Thus, even assuming that BGAN service offers higher speed MSS (as Horizon contends), grant of this STA would not outweigh the harm that will result from the negative impact on the L band coordination process. Recognizing this negative impact on the L band coordination process and the potential for interference resulting from operation of the uncoordinated Inmarsat 4F2 satellite, Industry Canada has taken a much more limited approach to the temporary authorization of the BGAN service by permitting the

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<sup>2</sup> *See* Horizon Mobile Communications, Inc., Opposition, File No. SES-STA-20070112-00112 (Call Sign E070006) (January 31, 2007) (“*Horizon Opposition*”); Inmarsat Ventures Ltd., Opposition, File No. SES-STA-20070112-00112 (Call Sign E070006) (January 31, 2007) (“*Inmarsat Opposition*”).

operation of only a very limited number of terminals and for only critical operations.<sup>3</sup> In so restricting BGAN authority, Industry Canada has explained that “Successful completion of this coordination is essential in order to ensure an interference-free environment for the operation of all valuable satellite services.”<sup>4</sup>

The claim by Horizon and Inmarsat that there has been no evidence of harmful interference resulting from BGAN operations is unavailing. *Horizon Opposition* at 3-4; *Inmarsat Opposition* at 3. As MSV explained in its Petition, only roughly 5500 BGAN terminals have been activated *worldwide* in the past year. *See MSV Petition* at 8 and Exhibit C. While MSV is not aware of any publicly available figures on the number of BGAN terminals deployed in the United States (and Inmarsat has failed to provide any such figure in the record of this or any other proceeding), it is safe to assume that only a fraction of the 5500 BGAN terminals activated worldwide today are used in the United States.<sup>5</sup> Thus, despite the claims of Horizon and Inmarsat, the operation of a handful (if any) BGAN terminals to date demonstrates nothing regarding the potential for interference if more and more BGAN terminals are operated in the

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<sup>3</sup> *See, e.g.*, Letter from Chantel Beaumieur, Director, Space and International Regulatory Activities, Industry Canada, to Lieutenant-Colonel J.J. F La Boissonnière, Director Information Management Technologies, Products and Services 5, National Defence Headquarters (September 8, 2006) (authorizing the Canadian National Defence Headquarters to operate two BGAN terminals).

<sup>4</sup> *Id.* at 1 (“Canada’s policy for permitting the use of foreign satellites to serve the Canadian market requires that they be successfully coordinated with other satellites through the international coordination process. Successful completion of this coordination is essential in order to ensure an interference-free environment for the operation of all valuable satellite services. At this time, Inmarsat has not completed this coordination for its Inmarsat 4F2 satellite located at the 52.75°W.L. orbital position. . . . Accordingly, until the coordination status of the Inmarsat satellite has changed, Industry Canada will not authorize Canadian service providers to provide Inmarsat’s BGAN service in Canada.”).

<sup>5</sup> Inmarsat has explained that BGAN terminals are used in 172 countries, with Inmarsat’s Chinese distribution partner accounting for 12% of BGAN sales, mostly to Chinese media, oil, and gas companies. *See Communications Daily* (November 16, 2006), at 12 (quoting Inmarsat’s Chief Operating Officer).

future. Moreover, while Horizon and Inmarsat claim that first responders will benefit from BGAN service (although there is no evidence that first responders are actually using the service),<sup>6</sup> first responders also currently rely on MSV's services and may suffer interference if Inmarsat is permitted to operate additional BGAN terminals prior to a coordination agreement. Indeed, if BGAN terminals have been provided to first responders, it is most likely that the terminals would be used only during an emergency. During these emergencies, interference is likely to those first responders that use MSV's service that are responding to the same emergency. As numerous public safety users have explained in letters to the Commission, grant of STAs for BGAN service comes at the expense of increased interference to the services MSV provides today to substantial numbers of federal, state, and local first responders and relief workers. *See MSV Petition* at 5-6 n.19.

There is no basis for the claim that, because the Bureau has already permitted some BGAN terminals to operate in the United States on a temporary basis, it must grant all subsequent STA applications for BGAN terminals. *Horizon Opposition* at 5. An applicant for an STA must base its request on its own showing of "extraordinary circumstances" and public interest benefits justifying the grant. *See* 47 U.S.C. § 309(f); 47 C.F.R. § 25.120(b)(1). Horizon has failed to make this showing. *See MSV Petition* at 2-4. This is especially the case because the authorization of each additional BGAN terminal increases the potential for interference to MSV and other L band operators and negatively impacts the L band coordination process by depriving Inmarsat of any incentive to satisfy its obligation to coordinate its Inmarsat 4F2 satellite. While

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<sup>6</sup> Horizon and Inmarsat make unsupported claims regarding how BGAN service could be potentially useful for first responders. *Horizon Opposition* at 2-3; *Inmarsat Opposition* at 3. Horizon and Inmarsat, however, offer no evidence that first responders are actually using BGAN terminals in the United States today. If unsupported claims regarding *theoretical* users are sufficient to support grant of an STA, then there is no limit to what will justify grant of an STA in the future.

Horizon and Inmarsat make various claims regarding the purported benefits of the BGAN service, neither even attempts to explain why the 25,000 BGAN terminals authorized to date are insufficient to meet this alleged demand. *Horizon Opposition* at 2-3; *Inmarsat Opposition* at 2-4. Indeed, given Inmarsat's recent disclosure of the sluggish demand for the BGAN service, neither Inmarsat nor Horizon would be able to provide such an explanation. *See MSV Petition* at 8 and Exhibit C.

Horizon and Inmarsat claim that grant of an STA is warranted because Horizon's underlying application for permanent authority to operate BGAN terminals is unlikely to be granted within sixty days after filing. *Horizon Opposition* at 4; *Inmarsat Opposition* at 1-2. Any delay, however, is a circumstance of Inmarsat's own making.<sup>7</sup> Inmarsat is an experienced operator of satellites throughout the world. Inmarsat knows well its obligation to coordinate its new satellite and services with other L band operators. But, despite having many years to do so, Inmarsat has failed to coordinate the Inmarsat 4F2 satellite and the BGAN service with the North American L band operators. Only Inmarsat – and neither the Commission nor MSV -- is to blame for Inmarsat's failure to coordinate its new satellite and services.

Inmarsat and Horizon also disingenuously assert that the Bureau has held that an STA is justified any time an application for regular authority has been pending for longer than sixty days. *Horizon Opposition* at 4; *Inmarsat Opposition* at 1-2. In fact, the sixty-day time frame they cite refers only to "routinely grantable earth station" applications.<sup>8</sup> The pending BGAN applications are far from "routine," given the harmful interference and international coordination

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<sup>7</sup> The Bureau has specifically stated that an applicant must demonstrate that an STA is necessary "due to circumstances beyond its control." *See Public Notice*, DA 87-1311 (September 25, 1987).

<sup>8</sup> *See Amendment of Part 25 of the Commission's Rules, First Report and Order*, 6 FCC Rcd 2806, ¶ 27 (May 21, 1991); *Public Notice*, DA 87-1311 (September 25, 1987).

issues raised. Moreover, the pending BGAN applications are the first applications to seek access to the foreign-licensed Inmarsat 4F2 satellite in the United States. As such, these applications are more than routine “earth station” applications because they present the Bureau with its first opportunity to consider the technical and policy issues presented by the operation of Inmarsat’s new foreign-licensed satellite in the United States. As such, these applications are more akin to *satellite* applications than earth station applications.<sup>9</sup> Accordingly, the Commission’s policies regarding processing of routine earth station applications do not apply to the applications pending to operate with Inmarsat 4F2.

Horizon and Inmarsat fail to refute MSV’s request that the Bureau apply the same conditions it imposed on other BGAN STA grants, along with the clarifications requested by MSV, to the extent the Horizon STA request is granted. *MSV Petition* at 5-8. While Inmarsat claims without any elaboration that MSV’s proposed clarifications are “not warranted,”<sup>10</sup> the fact is that these conditions are essential to help mitigate the harmful interference to MSV’s customers from uncoordinated BGAN operations in the United States.<sup>11</sup> Moreover, given the

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<sup>9</sup> See *Amendment of the Commission’s Regulatory Policies To Allow Non-U.S.-Licensed Space Stations To Provide Domestic and International Satellite Service in the United States, Report and Order*, IB Docket No. 96-111, 12 FCC Rcd 24094 (1997) (“*DISCO II*”), at ¶¶ 189-190.

<sup>10</sup> See *Inmarsat Opposition* at 3.

<sup>11</sup> In its *Opposition*, Inmarsat incorporates by reference its pleadings from previous proceedings. See *Inmarsat Opposition* at 4 n.6. MSV hereby incorporates by reference the following pleadings MSV has filed in those previous proceedings. See *Mobile Satellite Ventures Subsidiary LLC, Petition for Clarification*, File No. SES-STA-20060310-00419 et al (June 12, 2006); *Mobile Satellite Ventures Subsidiary LLC, Reply*, File No. SES-STA-20060310-00419 et al (June 29, 2006); *Letter from Jennifer A. Manner, Mobile Satellite Ventures Subsidiary LLC, to Ms. Marlene H. Dortch, FCC*, File No. SES-LFS-20050826-01175 et al (November 22, 2006); *Letter from Jennifer A. Manner, Mobile Satellite Ventures Subsidiary LLC, to Ms. Marlene H. Dortch, FCC*, File No. SES-LFS-20050826-01175 et al (December 18, 2006); *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.*

excessive number of BGAN terminals that the Bureau has authorized for use in the United States pursuant to STA, MSV's request that the Bureau establish a firm expiration date for the BGAN STAs will provide Inmarsat with the needed incentive to satisfy its obligation to coordinate its uncoordinated Inmarsat 4F2 satellite with the North American L band operators. *MSV Petition* at 8-9.

Horizon objects to MSV's request that the Bureau take certain actions to the extent it grants the Horizon STA request without establishing a firm expiration date. *MSV Petition* at 9-10. While Horizon objects to disclosing the aggregate number of BGAN terminals that are in operation using the Inmarsat 4F2 satellite on the grounds that it does not have this information, Horizon can easily obtain this information from Inmarsat. The Bureau adopted a similar condition in granting STAs to offer earlier-generation services with Inmarsat 4F2 when it conditioned each grant on the Inmarsat distributor's submission of a report regarding loaned frequencies, which could only be obtained from Inmarsat.<sup>12</sup> An aggregate figure on the number of BGAN terminals that are in operation using the Inmarsat 4F2 satellite serving the United States and nearby geographic areas would be useful to enable L band operators to assess the potential aggregate interference to their operations.<sup>13</sup> Moreover, since disclosure of only an aggregate number of terminals is required to assess potential interference, there is no need for Horizon or any other Inmarsat distributor to provide the number of terminals it has sold individually.

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Manner, MSV, to Ms. Marlene H. Dortch, FCC, File No. SES-MFS-20051122-01614 (Call Sign E000180) et al (July 18, 2006).

<sup>12</sup> See, e.g., *Telenor STA Grant*, File No. SES-STA-20060118-00055 et al (January 18, 2006), at Condition No. 3.

<sup>13</sup> The nearby geographic areas include areas where BGAN terminals use the same Inmarsat 4F2 beams that serve the United States.

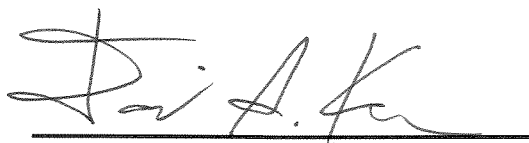


To the extent the Bureau grants the Horizon STA without establishing a firm expiration date, MSV also urged the Bureau to limit the terminals authorized under this STA to those terminals that are issued to “first responders,” defined as a unit of the Federal Government or any entity that would qualify to hold a license under Section 90.523 of the Commission’s rules, which includes State and local government entities as well as certain nongovernmental organizations that provide services to protect the safety of life, health, or property. *MSV Petition* at 9-10. While Horizon objects on the grounds that such a condition would subject it to different treatment than the other BGAN STA holders, MSV has urged and continues to urge the Bureau to apply such a condition to all of the BGAN STAs.<sup>14</sup>

### Conclusion

For the foregoing reasons, the Bureau should deny Horizon’s STA application.

Respectfully submitted,



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<sup>14</sup> See Letter from Jennifer A. Manner, Mobile Satellite Ventures Subsidiary LLC, to Ms. Marlene H. Dortch, FCC, File No. SES-LFS-20050826-01175 et al (November 22, 2006); Letter from Jennifer A. Manner, Mobile Satellite Ventures Subsidiary LLC, to Ms. Marlene H. Dortch, FCC, File No. SES-LFS-20050826-01175 et al (December 18, 2006).

**CERTIFICATE OF SERVICE**

I, Julia Colish, a secretary with the law firm of Pillsbury Winthrop Shaw Pittman LLP, hereby certify that on this 12<sup>th</sup> 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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