

ORIGINAL

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

FILED/ACCEPTED

SEP 13 2007

Federal Communications Commission
Office of the Secretary

In the Matter of)
)
iPass, Inc.) SES-STA-20070716-00944 (Call Sign E070144)

REPLY

Mobile Satellite Ventures Subsidiary LLC (“MSV”) hereby files this Reply to the Oppositions filed by iPass, Inc. (“iPass”) and Inmarsat Ventures Limited (“Inmarsat”) to MSV’s Petition to Deny (“MSV Petition”) the above-referenced application of iPass for Special Temporary Authority (“STA”) to operate 4,000 Broadband Global Area Network (“BGAN”) terminals using an Inmarsat satellite, Inmarsat 4F2 at 52.75°W, for which coordination is not complete. As MSV demonstrated in its Petition, the International Bureau (“Bureau”) should deny the STA application because operation of the proposed BGAN terminals will result in harmful interference to MSV’s customers, including critical public safety users, and because iPass has provided no “extraordinary circumstances” justifying grant of the STA application. Nothing in the Oppositions rebuts these conclusions.

Discussion

Despite MSV’s explanation that the operation of BGAN terminals will result in harmful interference,¹ iPass and Inmarsat claim that the STA application should be granted because there has been no documented evidence of harmful interference from current BGAN operations. *See* iPass Opposition at 2; Inmarsat Opposition at 3. However, this claim is unavailing. As MSV has

¹ As explained in the Petition, harmful interference will result from from (i) the use of Inmarsat 4F2 to operate on the loaned frequencies Inmarsat has refused to return; (ii) the technically different parameters of Inmarsat’s new satellite and services relative to the satellites and services it has coordinated previously, such as the use of wideband carriers, higher aggregate EIRP, and increase in number of co-channel reuse beams; and (iii) Inmarsat’s claim that it is entitled to operate on each and every frequency in the L band. MSV Petition at 2.

explained, it is likely that only a very small portion of the total number of authorized BGAN terminals are currently in operation in the United States.² The assumption that these few terminals may not currently be causing interference to MSV's operations does not undermine MSV's argument that harmful interference will occur if an increasing number of terminals are operated in the future. Indeed, as MSV noted in its Petition, the much more limited approach adopted by Industry Canada authorizing temporary use of BGAN service by permitting the operation of only a very limited number of terminals and only for critical communication needs validates MSV's conclusions.³ In restricting BGAN authority, Industry Canada has explained that "[s]uccessful completion of ... coordination is essential in order to ensure an interference-free environment for the operation of all valuable satellite services."⁴ The Bureau should reach the same conclusion here.

iPass and Inmarsat have also failed to make the requisite showing that "extraordinary circumstances" and public interest benefits justify grant of the STA. *See* MSV Petition at 3 (citing 47 C.F.R. § 25.120(b)(1)). iPass and Inmarsat assert that grant of an STA is somehow warranted because iPass's underlying application for permanent authority to operate BGAN terminals is unlikely to be granted within sixty days after filing. iPass Opposition at 5; Inmarsat

² As demonstrated in MSV's Petition, only roughly 11,782 BGAN terminals have been activated *worldwide* in the past year and it is safe to assume that only a fraction of the BGAN terminals activated worldwide today are used in the United States. *See* MSV Petition at 3-4. In addition, Inmarsat has previously 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).

³ *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 Defense Headquarters (September 8, 2006) (authorizing the Canadian National Defense Headquarters to operate two BGAN terminals).

⁴ *Id.* at 1.

Opposition at 1-2. Any delay, however, is a circumstance of Inmarsat's own failure to coordinate its new satellite and services with the North American L band operators.⁵

iPass and Inmarsat also disingenuously allege 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. iPass Opposition at 5-7; Inmarsat Opposition at 1-2. In fact, the sixty-day time frame they cite refers only to "routinely grantable earth station" applications.⁶ The pending BGAN applications are far from "routine," given the harmful interference and international coordination issues raised. Moreover, the pending BGAN applications are among the first 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. In reality, these applications are more akin to *satellite* applications than earth station applications.⁷ Accordingly, the Commission's policies regarding processing of routine earth station applications do not apply to the applications pending to operate with Inmarsat 4F2.

iPass and Inmarsat fail to adequately refute MSV's request that the Bureau apply the same conditions it imposed on other BGAN STA grants,⁸ along with the clarifications requested

⁵ 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).

⁶ 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).

⁷ 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) ("IP"), at ¶¶ 189-190.

⁸ See, e.g., *Stratos Communications, Inc., Request for Special Temporary Authority*, File No. SES-STA-20060310-00419 (filed March 10, 2006; granted with conditions on May 12, 2006).

by MSV,⁹ to the extent the iPass STA request is granted. MSV Petition at 1, 4-5. While Inmarsat claims without any elaboration that MSV's proposed conditions are "baseless,"¹⁰ 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, as the Bureau has recognized.¹¹

iPass also objects to limiting the terminals authorized under this STA to those terminals that are issued to "first responders" on the grounds that such a condition would subject it to different treatment than the other BGAN STA holders. *See* iPass Opposition at 3. MSV submits that the Bureau should apply such a condition equally to all of the BGAN STAs because the only plausible "extraordinary circumstance" that could justify a grant of such STAs is the claim that BGAN terminals would be used to support first responders during an emergency.¹²

⁹ *See* Letter from Ms. Jennifer A. Manner, MSV, to Ms. Marlene H. Dortch, FCC, File No. SES-STA-20060310-00419 *et al.* (May 26, 2006) (attached as Exhibit A to MSV Petition).

¹⁰ *See* Inmarsat Opposition at 3.

¹¹ *See supra* note 8. 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. Manner, MSV, to Ms. Marlene H. Dortch, FCC, File No. SES-MFS-20051122-01614 (Call Sign E000180) *et al.* (July 18, 2006).

¹² *See, e.g.*, MSV Comments, File No. SES-STA-20070619-00833 (Call Sign E050284) (July 6, 2007) *et al.*; MSV, Supplement to Petitions to Hold in Abeyance or to Grant with Conditions, File No. SES-LFS-20050930-01352 (Call Sign E050276) *et al.* (June 18, 2007).

Finally, while iPass and Inmarsat claim that first responders will benefit from BGAN service, there is no evidence that first responders are actually using the service.¹³ In contrast, as MSV has shown through numerous letters submitted to the Commission by public safety users, 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.¹⁴

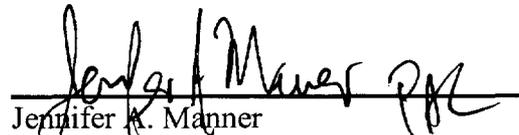
Conclusion

For the foregoing reasons and those provided in MSV's Petition, the Bureau should deny iPass's STA application.

Respectfully submitted,



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¹³ iPass Opposition at 2-3; Inmarsat Opposition at 2. iPass and Inmarsat 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.

¹⁴ See MSV Petition to Deny, File No. SES-STA-20070112-00112 (Call Sign E070006) (January 18, 2007), at 5-6 n.19.

CERTIFICATE OF SERVICE

I, Sylvia Davis, a secretary with the law firm of Pillsbury Winthrop Shaw Pittman LLP, hereby certify that on this September 13, 2007, served a true copy of the foregoing by first-class United States mail, postage prepaid, upon the following:

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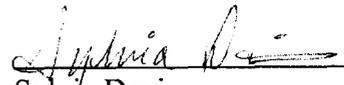
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