

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

In the Matter of	)	
	)	
Stratos Global Corporation, Transferor	)	WC Docket No. 07-73
	)	
Robert M. Franklin, Transferee	)	FCC File Nos.:
	)	ITC-T/C-20070405-00133
Consolidated Application for Consent to Transfer	)	ITC-T/C-20070405-00135
of Control	)	ITC-T/C-20070405-00136
	)	SES-T/C-20070404-00440 through -00443
	)	0002961737 and
	)	ISP-PDR-20070405-00006

**MEMORANDUM OPINION AND ORDER  
AND DECLARATORY RULING**

**Adopted: December 7, 2007**

**Released: December 7, 2007**

**By the Commission:**

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## I. INTRODUCTION

1. In this Memorandum Opinion and Order and Declaratory Ruling, we consider a series of applications (collectively, “Application”) filed by Stratos Global Corporation (Stratos Global) and Robert M. Franklin (Trustee) for authority to transfer control of the domestic and international section 214 authorizations<sup>1</sup> and Title III licenses<sup>2</sup> held by three subsidiaries of Stratos Global (Stratos Mobile Networks, Inc., Stratos Offshore Services Company, and Stratos Communications Inc.) (collectively, “Stratos Licensees”), from Stratos Global to a trust of which Mr. Franklin is the Trustee.<sup>3</sup> Applicants also filed a petition for a declaratory ruling that the public interest would be served by allowing indirect foreign ownership of the Stratos Licensees in excess of the 25 percent benchmark in section 310(b)(4) of the Communications Act of 1934, as amended (the “Act”).<sup>4</sup> Based on the record established in this proceeding, we find that the grant of the Application and the petition for declaratory ruling will serve the public interest, convenience and necessity, subject to the conditions specified below. We also grant the

<sup>1</sup> Section 214 of the Communications Act of 1934, as amended, 47 U.S.C. § 214 (hereafter cited as the “Act”).

<sup>2</sup> Section 309 of the Act, 47 U.S.C. § 309.

<sup>3</sup> The Application consists of 11 individual applications as follows: three FCC International 214 applications seeking consent to the transfer of Stratos Global’s international section 214 authorizations, ITC-T/C-20070405-00136 (authorizations held by Stratos Communications, Inc.), ITC-T/C-20070405-00133 (authorizations held by Stratos Mobile Networks), and ITC-T/C-20070405-00135 (authorizations held by Stratos Offshore Services Company); four FCC Form 312’s seeking consent to the transfer of Stratos Global’s satellite earth-station, VSAT, and space-station authorizations, SES-T/C-20070404-00440, SES-T/C-20070404-00442, SES-T/C-20070404-00443 (authorizations held by Stratos Offshore Services Company), and SES-T/C-20070404-00441 (authorizations held by Stratos Communications, Inc.); two FCC Domestic 214 applications seeking consent to the transfer of Stratos Global’s domestic section 214 authorizations (for Stratos Communications, Inc. and Stratos Offshore Services Company); one FCC Form 603 seeking consent to the transfer of Stratos Global’s terrestrial radio licenses, File No. 0002961737 (authorizations held by Stratos Offshore Services Company); and one FCC Form 44 seeking consent to the transfer of Stratos Global’s Certification as an Accounting Authority (authorization held by Stratos Mobile Networks, Inc.). The Application was accompanied by a Narrative description of the parties and the transaction (Narrative) and includes a petition for declaratory ruling, ISP-PDR-20070405-00006. Appendix A to this Memorandum Opinion and Order and Declaratory Ruling lists the transfer of control applications, and associated authorizations and licenses, filed in this proceeding.

<sup>4</sup> Section 310(b)(4) of the Act, 47 U.S.C. § 310(b)(4).

Petition to Adopt Conditions to Authorizations and Licenses filed by the United States Department of Justice, the Federal Bureau of Investigation and the United States Department of Homeland Security. We also deny the petitions filed in response to this transfer of control application.

## **II. BACKGROUND**

### **A. The Applicants**

#### **1. The Transferor**

2. Stratos Global, a Canadian corporation, through its subsidiaries the Stratos Licensees, is an independent retail distributor of satellite services for a variety of international satellite systems. The Stratos Licensees are wholly-owned direct subsidiaries of Stratos Holdings, Inc. (Stratos Holdings), a Delaware corporation that is wholly owned by Stratos Wireless, Inc. (Stratos Wireless), a Canadian corporation. Stratos Wireless is, in turn, wholly owned by Stratos Global. The Stratos Licensees provide Mobile Satellite Services (MSS), Fixed Satellite Services (FSS), and terrestrial communications services to users in the United States pursuant to section 214 and Title III of the Act.

#### **2. The Transferee (The Trustee)**

3. Applicants state that they have created a Canadian Trust (Trust) to hold the shares of Stratos Global upon the completion of this transaction. The Trustee is Robert M. Franklin, who is a Canadian citizen. Mr. Franklin is a businessman who has served on a number of corporate boards, including (1) serving as chairman of Glenayre Electronics Limited, a telecommunications hardware and software company, from 1990 to 1993; (2) sitting on the board of Call-Net Enterprises, a Canadian competitive carrier, from 2002 to 2005; and (3) serving as chairman of Placer Dome, Inc., a Canadian mining company, from 2003 to 2006. Mr. Franklin currently serves as a director of Barrick, a gold mining company and several other, non-telecommunications-related companies. The Trust will hold the Stratos Global shares for the benefit of CIP Canada Investments, Inc. (CIP Canada).

#### **3. CIP**

4. Communications Investment Partners Limited (CIP) is a limited partnership organized under the laws of the British Virgin Islands as an investment company with a focus on satellite service providers. The five directors, and sole equity holders, of CIP are three citizens of the Netherlands (Hans Lipman, Eric de Jong and Hans van Morsel), a citizen of France (Eric Le Proux) and one person who is a joint citizen of the United States and Mexico (Victor Horcasitas). Each of the directors holds a 20 percent equity and voting interest in CIP. Applicants report that, collectively, these individuals have extensive experience as directors of, and advisors to, satellite-service companies in the MSS and FSS sectors.

5. CIP has created two wholly-owned subsidiaries to carry out the transaction: CIP UK, a private limited company that was chartered under the laws of England and Wales, and CIP Canada, a corporation chartered under the laws of Canada. Applicants state that CIP Canada is wholly owned by CIP UK, which is, in turn, wholly owned by CIP.

### **B. Inmarsat**

6. Inmarsat plc (Inmarsat) is not a party to the Application. Inmarsat established a subsidiary, Inmarsat Finance III Limited (Inmarsat Finance), a company formed under the laws of England and Wales, as a "special purpose" company to provide debt financing to CIP to fund the acquisition of Stratos Global.<sup>5</sup>

7. Inmarsat was created in 1979 by the INMARSAT Convention as an intergovernmental

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<sup>5</sup> Narrative at 5.

organization (IGO) to develop a global maritime satellite system to meet commercial maritime and safety communications needs of the United States and other countries.<sup>6</sup> Each national government that subscribed to the INMARSAT Convention designated an operating company to become a “Signatory” by signing the INMARSAT Operating Agreement and acquiring an ownership interest in INMARSAT. Signatories, but not INMARSAT, could also operate terrestrial gateways called “Land Earth Stations” (LESs) to interconnect INMARSAT satellite services to the public switched network. Historically, INMARSAT’s role was limited to that of a wholesaler, providing MSS to Signatories who operated LESs and distributed INMARSAT services to end users.

8. The INMARSAT IGO privatized in 1999 by converting to a U.K. private company (Inmarsat), headquartered in London. In 2005, Inmarsat became a public company, listed on the London Stock Exchange. Applicants state that Inmarsat’s shares are widely held and that no shareholder owns 10 percent or more of the company.<sup>7</sup> Applicants further state that, in aggregate, over 85 percent of Inmarsat’s shares are owned by citizens of or entities formed under the laws of countries that are Members of the World Trade Organization (WTO).<sup>8</sup>

9. As part of the Inmarsat privatization, Inmarsat Global LTD (Inmarsat Global), the Inmarsat subsidiary that provides MSS services, is contractually barred from owning or controlling a distributor of Inmarsat services until April 14, 2009.<sup>9</sup> Applicants state that these restrictions, which are contained in Inmarsat Global’s current distribution contracts, expire on that date.<sup>10</sup>

### C. The Transaction

10. The Applicants state that the Transfer of Control Application before us is the “first step of an eventual two-step transaction.”<sup>11</sup> In this first step, Applicants seek Commission consent for a transfer of control of Stratos Global to an irrevocable Canadian trust (Trust). Applicants further state that “in connection with the future dissolution of the Trust, Commission consent will be sought again for control of Stratos [Global] to be acquired, as applicable, by CIP Canada, Inmarsat Finance or a third party.”<sup>12</sup> This Memorandum Opinion and Order and Declaratory Ruling addresses only the first step, the transfer of Stratos Global to the Trust.

11. In the Application now before us, Applicants state that CIP UK, CIP Canada and Stratos

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<sup>6</sup> See *Comsat Corporation d/b/a Comsat Mobile Communications*, Memorandum Opinion, Order and Authorization, FCC 01-272, 16 FCC Rcd 21661, 21669, ¶ 3 (2001).

<sup>7</sup> Narrative at 5. Subsequently, Inmarsat reported that two affiliated private equity funds have acquired, in the aggregate, more than 10% of its shares in public trading on the London Stock Exchange. Letter from Diane Cornell, Vice President, Government Affairs, Inmarsat, to Marlene H. Dortch, Secretary, FCC, dated October 29, 2007 (October 29 Letter). See fn. 276, *infra*.

<sup>8</sup> *Id.* at 5-6.

<sup>9</sup> *Id.* at 6. The language in the distribution contracts that creates the bar reads as follows: “During the Extended Term [*i.e.*, until April 14, 2009], [Inmarsat Global] shall not be entitled to establish any LES [land earth station] or to acquire an existing LES or to become the affiliate (or have any other direct or indirect interest in) an entity that operates an LES, save in the circumstances set out in Clauses 2.9, 2.10, 2.11 and 2.12 below.” Letter from Robert M. Franklin, Trustee, Alfred M. Mamlet (Counsel for Stratos Global), Patricia Paoletta (Counsel for CIP Canada Investments, Inc.), and John P. Janka (Counsel for Inmarsat Finance III Ltd) to Marlene H. Dortch, Secretary, FCC, dated October 3, 2007 (citing Land Earth Station Operating Agreement, Clause 2.8).

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at 10.

<sup>12</sup> *Id.* at 10-11.

Global have entered into a definitive arrangement under which CIP Canada will purchase all the shares of Stratos Global through a Plan of Arrangement under the Canadian Business Corporations Act. Applicants further state that the Plan of Arrangement will require approval by an Ontario court and by 66 2/3 percent of votes cast at a special meeting of the Stratos Global shareholders.<sup>13</sup>

12. On April 2, 2007, CIP Canada and Robert M. Franklin, Trustee, entered into the Trust. Under the terms of the Trust, CIP Canada will acquire the stock of Stratos Global and transfer the stock to the Trust. The Trustee will hold the legal title to and exercise the voting rights with respect to the stock. Applicants state that such ownership will give the Trustee *de jure* and *de facto* control of Stratos Global through his power to elect members of the Board of Directors of Stratos Global. Everyday management of the company will remain with current Stratos Management. The Trust will hold the stock for the benefit of CIP Canada. The Trust prohibits CIP or any of its affiliates or employees from communicating with the Trustee and prohibits the Trustee from communicating with Inmarsat or its affiliates “regarding the management or operation of [Stratos Global].”<sup>14</sup>

13. **The Facilities Agreement.** Inmarsat Finance will provide the funding for CIP Canada’s acquisition of the Stratos Global stock. On June 11, 2007, Inmarsat Finance and CIP UK entered into a “Facilities Agreement” (Loan Facility) with CIP UK as the “Borrower” and CIP Canada as the “Guarantor.”<sup>15</sup> Under the Loan Facility, CIP UK may borrow up to US\$275,000,000 (Facility A)<sup>16</sup> to fund CIP Canada’s acquisition of the stock of Stratos Global.<sup>17</sup> CIP UK may borrow an additional sum of up to US\$151,500,000 (Facility B)<sup>18</sup> for CIP UK to finance CIP Canada’s repurchase of Stratos Global’s existing senior bank debt or to make a tender offer for Stratos Global’s outstanding bonds.<sup>19</sup> Applicants state that they do not anticipate that CIP UK will draw upon Facility B because Stratos Global intends to seek agreement from its current lender to leave the existing debt facility in place upon completion of the transaction and because Stratos Global’s existing bonds currently trade “substantially above the required tender price.”<sup>20</sup>

14. The Loan Facility provides that the loan has a term of ten years from the date that CIP

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<sup>13</sup> *Id.* at 6. On June 12, 2007, Stratos Global announced that shareholders had voted to approve the Plan of Arrangement. [http://www.stratosglobal.com/aboutStratos/page-aboutStratos\\_newsroom\\_newsItem.cfm?newsID=315](http://www.stratosglobal.com/aboutStratos/page-aboutStratos_newsroom_newsItem.cfm?newsID=315)

<sup>14</sup> Trust at 16-17, Section 10 (c). *See also* Section 4 (b) of the Trust (p.6), which obligates the Trustee to require directors that he appoints to promise in writing not to communicate with CIP or Inmarsat regarding Stratos Global, “including the management or operation of [Stratos Global].”

<sup>15</sup> Inmarsat Finance III Limited and CIP UK Holdings Limited, Facilities Agreement (Loan Facility) at 3, dated June 11, 2007.

<sup>16</sup> Loan Facility at 25, Clause 5.3 (a) (i).

<sup>17</sup> *Id.* at 22, Clause 3.1 (a) (i).

<sup>18</sup> *Id.* at 25, Clause 5.3 (a) (ii).

<sup>19</sup> *See* Narrative at 7. *See also* Loan Facility, which states that Facility B proceeds may be used for “repurchase of the Target Notes [defined in Clause 1.1 of the Loan Facility as “the indenture governing the 9 7/8% senior notes of [Stratos Global] due 13 February 2013] by the Guarantor [*i.e.*, CIP Canada] tendered in the mandatory tender offer for such Target Notes.” Loan Facility at 22, Clause 3.1 (b), *See also* Trust, which states that, subsequent to the acquisition and transfer of the Stratos Global stock to the Trust, CIP Canada will “implement a mandatory tender offer for Company’s [*i.e.*, Stratos Global’s] issued and publicly tradable bonds.” Trust at 1, preamble.

<sup>20</sup> Narrative at 7.

UK acquires the stock of Stratos Global.<sup>21</sup> The interest rate for the loan is 5.75 percent through December 31, 2010 and 11.5 percent thereafter.<sup>22</sup> The Loan Facility does not require CIP UK to repay the loan until after the exercise of the Call Option by Inmarsat, at which time the Borrower is required to repay the loan “in equal semi-annual installments up to the Termination Date.”<sup>23</sup> The Loan Facility provides that interest shall be accrued for each “Interest Period,”<sup>24</sup> which it defines as “three months, or any other period agreed between the Borrower and the Lender.”<sup>25</sup> The Loan Facility, however, does not require the Borrower to make interest payments until after the exercise of the call option (on or about April 14, 2009).<sup>26</sup> Prior to that date, the Loan Facility provides that interest is to be “capitalized at the end of each Interest Period and shall be added to the amount of the Facility A loan.”<sup>27</sup> The Loan Facility does require CIP UK to make payments for interest accrued between the exercise of the call option (on or about April 14, 2009) and December 31, 2010, and for interest accrued after January 1, 2011.<sup>28</sup>

15. The Applicants state that the loan is not secured until after April 14, 2009, “when a security package subordinate to the existing Stratos [Global] indebtedness will be put in place.”<sup>29</sup> They note, however, that, in the event of a default, Inmarsat will have the right to require CIP UK to divest its shares in CIP Canada and pay the net proceeds of sale to Inmarsat Finance.<sup>30</sup>

16. **The Call Option Agreement.** CIP and Inmarsat Finance also entered into a Call Option Agreement (Option), under which CIP, in return for \$750,000, granted Inmarsat Finance an option to acquire CIP UK.<sup>31</sup> Inmarsat’s payment of the \$750,000 is contingent upon completion of the acquisition of the stock of Stratos Global.<sup>32</sup> Applicants state that Inmarsat may exercise the option over a seventeen-month period beginning in April 2009 and ending on December 31, 2010.<sup>33</sup> They further state that the

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<sup>21</sup> Loan Facility at 27, Clause 6.1 (a) requires CIP UK to repay the loan until the “Termination Date,” which the Loan Facility defines as “10 years from the date of Completion.” Loan Facility at 18, 1.1. The Loan Facility defines “Completion” as “the completion of the Acquisition in accordance with the Plan of Arrangement.” *Id.* at 7. The Loan Facility defines “Acquisition” as “the Acquisition of the Target Shares and the cancellation and termination of the Target Options in accordance with the Plan of Arrangement.” *Id.* at 3. The Loan Facility defines the “Plan of Arrangement” as “the plan of arrangement in the form of Schedule C to the Arrangement Agreement.” *Id.* at 16. The Loan Facility defines “Arrangement Agreement” as “the arrangement agreement between the Borrower [CIP UK], Guarantor [CIP Canada] and the Target [Stratos Global] dated 19 March 2007, as amended from time to time.”

<sup>22</sup> Loan Facility at 34, Clause 11.1.

<sup>23</sup> *Id.* at 27, Clause 6.1 (a). The referenced “call option” will be discussed in paragraph 16, *infra*.

<sup>24</sup> *Id.* at 34, Clause 11.2 (a).

<sup>25</sup> *Id.* at 35, Clause 12.1 (a).

<sup>26</sup> *Id.* at 34, Clause 11.1.

<sup>27</sup> *Id.* at 34, Clause 11.2 (a).

<sup>28</sup> *Id.* at Clause 11.2 (b).

<sup>29</sup> Narrative at 7.

<sup>30</sup> *Id.*

<sup>31</sup> Communications Investment Partners Limited and Inmarsat Finance III Limited, Call Option Agreement (Option) (dated March 19, 2007).

<sup>32</sup> Option at 4, Clause 2.1.

<sup>33</sup> Narrative at 8. The option provides that Inmarsat Finance may exercise the option on April 14, 2009, Option at 4-5, Clause 3.1.1 or earlier if the contractual provisions barring Inmarsat from owning a distributor of satellite (continued....)

cost for exercising the option will be an additional payment of between \$750,000 and \$1,000,000, “depending upon when the call option is exercised.”<sup>34</sup> Finally, Applicants state that, unless and until Inmarsat exercises the Option and necessary regulatory approvals are obtained, Inmarsat will not have any equity interest in Stratos Global, or control over its management or operation.<sup>35</sup>

17. **Termination of the Trust.** The Trust provides that, subject to necessary regulatory approvals, the Trust will terminate automatically on April 14, 2009, unless the Trustee has not yet been able to transfer the Stratos Global shares (and any bonds that were purchased pursuant to the tender offer) to one of three possible Transferees specified in the Trust.<sup>36</sup> In that event, the Trust provides that the Trust shall be extended until the earliest of three possible outcomes occurs.<sup>37</sup> First, Inmarsat Finance exercises its option to acquire CIP UK, at which time the Trustee will transfer the Stratos Global shares to CIP Canada.<sup>38</sup> Second, if Inmarsat Finance does not exercise the option, CIP Canada elects to acquire the shares.<sup>39</sup> Third, if neither Inmarsat Finance nor CIP Canada elects to acquire the Stratos Global shares, the Trustee arranges for an investment company to sell the shares through an auction and remit the proceeds to CIP Canada.<sup>40</sup>

#### D. Comments on the Transfer of Control Application

18. The Commission placed the Application on Public Notice on May 30, 2007.<sup>41</sup> On June 29, 2007, the Commission received two petitions and a comment opposing a grant of the Application. Iridium Satellite, LLC (Iridium) filed a petition to deny the Application,<sup>42</sup> and VIZADA Services LLC (VIZADA) filed a petition seeking denial of the Application or a hearing to determine disputed facts.<sup>43</sup> Telenor Satellite Services, Inc. (Telenor) filed comments supporting the VIZADA Petition.<sup>44</sup> On the same day, the Federal Bureau of Investigation (FBI), on behalf of itself and the U.S. Department of Homeland Security (DHS), requested the Commission to defer action on the Application until such time as the U.S. Department of Justice (DOJ), FBI and DHS completed their review of any national security,

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services have been “waived, terminated, or otherwise have expired.” Option at 4, Clause 3.1.2 The option provides that the option expires as of 5:00 GMT on the “Final Maturity Date,” Option at Clause 3.3, which the Option defines as December 31, 2010 “or such other date as the parties hereto may agree in writing from time to time.” Option at 2, Clause 1.1.

<sup>34</sup> Narrative at 8.

<sup>35</sup> *Id.*

<sup>36</sup> Trust at 15, Section 9 (a).

<sup>37</sup> *Id.*

<sup>38</sup> *Id.* at 7-8, Section 5 (b).

<sup>39</sup> *Id.*

<sup>40</sup> *Id.* at 8, Section 5 (c).

<sup>41</sup> See *Stratos Global Corp. and Robert M. Franklin, Trustee, Seek FCC Consent to the Indirect Transfer of Control of Stratos Global's Wholly-Owned, FCC-Authorized Subsidiaries from Stratos to an Irrevocable Trust*, Public Notice, WC Docket No. 07-73, 22 FCC Rcd 10005 (rel. May 30, 2007).

<sup>42</sup> Iridium Satellite, LLC, Petition to Deny, filed June 29, 2007 (Iridium Petition).

<sup>43</sup> VIZADA Services LLC, Petition to Deny of VIZADA Services LLC, filed June 29, 2007 (VIZADA Petition).

<sup>44</sup> Telenor Services, Inc., Comments of Telenor Satellite Services, Inc., filed June 29, 2007 (Telenor Comments).

law enforcement or public safety implications of that Application.<sup>45</sup>

19. On July 9, 2007, Stratos Global,<sup>46</sup> CIP Canada,<sup>47</sup> and Inmarsat Finance III<sup>48</sup> filed Oppositions to the petitions to deny. The Commission also received on that date a “Response” from Robert M. Franklin, the Trustee, opposing the Petitions to Deny.<sup>49</sup> On July 31, 2007, Iridium,<sup>50</sup> VIZADA<sup>51</sup> and Telenor<sup>52</sup> filed Replies to the Oppositions.<sup>53</sup>

20. The International Bureau adopted a protective order, dated July 20, 2007, pursuant to which Petitioners would be allowed to review confidential or proprietary information in the Loan Facility and the Call Option.<sup>54</sup> On July 31, pursuant to the protective order, Iridium,<sup>55</sup> VIZADA<sup>56</sup> and Telenor<sup>57</sup>

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<sup>45</sup> Letter from Elaine Lammert, Deputy General Counsel, U.S. Department of Justice, Federal Bureau of Investigation, to Marlene H. Dortch, Secretary, Federal Communications Commission, dated June 29, 2007 (DOJ Petition to Adopt Conditions).

<sup>46</sup> Stratos Global Corporation, Opposition to Petitions to Deny, filed July 9, 2007 (Stratos Global Opposition). The Opposition included five attachments: (1) a document, dated May 4, 2007, and entitled “Arrangement involving Stratos Global Corporation and CIP Canada Investment Inc.” (Proxy Circular); (2) Amendments to the Arrangement Agreement and Loan Commitment Letter; (3) Ontario Superior Court of Justice Order; (4) Stratos Global and Inmarsat plc Letter Agreement; and (5) Stratos CEO Letter to Customers.

<sup>47</sup> CIP Canada Investment Inc., Opposition of CIP to Petitions to Deny, filed July 9, 2007 (CIP Canada Opposition). The Opposition included two attachments filed under a request for confidential treatment: (1) the Loan Facility; and (2) Call Option. CIP Canada also filed redacted versions of the two attachments for the public file. CIP Canada offered to make unredacted versions of the Loan Facility and the Call Option available to Petitioners under an appropriate protective order. CIP Canada Opposition at 2.

<sup>48</sup> Inmarsat Finance III Ltd, Opposition of Inmarsat Finance III Limited, filed July 9, 2007 (Inmarsat Finance Opposition).

<sup>49</sup> Robert M. Franklin, Trustee, Response of Trustee to Petitions to Deny Consolidated Application of Stratos Global and Robert M. Franklin, Transferee, for Consent to Transfer Control of Stratos to and Irrevocable Trust, filed July 9, 2007 (Trustee Response).

<sup>50</sup> Iridium Satellite LLC, Reply of Iridium Satellite LLC to Oppositions to Petitions to Deny, filed July 31, 2007.

<sup>51</sup> VIZADA Satellite Services LLC, Reply of VIZADA Services LLC, filed July 31, 2007.

<sup>52</sup> Telenor Satellite Services, Inc., Reply of Telenor Satellite Services, Inc., filed July 31, 2007 (Telenor Reply).

<sup>53</sup> On July 12, Telenor, individually, and Iridium and VIZADA, jointly filed Requests for Extension of Time to reply to the Oppositions on the grounds that CIP Canada had filed redacted copies of the Inmarsat Loan Facility and the Call Option Agreement, and that it would not be possible to reply to the Oppositions until they had seen the unredacted copies of the Loan Facility and Call Option. Telenor Satellite Services, LLC, Request for Extension of Time, filed July 12, 2007; Iridium Satellite LLC and VIZADA Satellite Services, Inc., Joint request for Extension of Time, filed July 12, 2007. Stratos Global, CIP Canada and Inmarsat Finance filed oppositions to the Telenor and joint Iridium/VIZADA requests on the grounds that Iridium VIZADA and Telenor could base their replies on the redacted documents. Stratos Global Corporation, CIP Canada Investment Inc. and Inmarsat Finance III Limited, Joint Opposition to Requests for Extension of Time, filed July 12, 2007. Subsequently, on the same day, CIP Canada filed unredacted copies of the Loan Facility and Call Option Agreements, under a request for confidential treatment. CIP Canada Investment Inc., Request for Confidential Treatment of Redacted Portions of the Call Option Agreement and Loan Facility Agreement, filed July 9, 2007.

<sup>54</sup> *Stratos Global Corporation and Robert M. Franklin, Trustee, Consolidated Application for Consent to Transfer Control of Stratos Global Corporation’s FCC-Authorized Subsidiaries and Petition for Declaratory Ruling*, WC Docket No. 07-72, Protective Order, DA 07-3344 (rel. July 20, 2007).



filed Replies to the Oppositions containing confidential information. All three Petitioners also filed redacted versions of their Replies for the public record.

21. On July 31, 2007, Iridium filed a confidential request for the Commission to require Applicants to make available, under the protective order, a document referred to in the documents they had previously submitted on a confidential basis. On August 8, 2007, Inmarsat requested the International Bureau to modify its July 20, 2007 protective order to cover the document sought by Iridium. By letter dated August 15, 2007, the International Bureau modified its prior protective order requiring Applicants to make the subject document available to Petitioners.<sup>58</sup>

22. On August 17, 2007, Inmarsat Finance filed, under a request for confidentiality, a copy of a document entitled “Project Sprite—Proposed Acquisition Structure” (“Sprite Document”) that addresses the structure of the transaction.<sup>59</sup> On September 11, 2007, VIZADA, pursuant to the modified protective order, filed supplementary comments on the Sprite Document.<sup>60</sup>

23. On August 30, 2007, DOJ, FBI and DHS filed a joint Petition to Adopt Conditions to Authorizations and Licenses.<sup>61</sup>

24. On August 23, 2007, and September 26, 2007, the Applicants met *ex parte* with Commission staff to supplement the information filed with their Application.<sup>62</sup> On September 18, 2007, Applicants filed answers to questions from Commission staff providing additional information concerning capitalization of the CIP entities.<sup>63</sup> On October 16, 2007, in response to a request by Commission staff, Applicants submitted additional ownership information for Inmarsat.<sup>64</sup> On October 26, 2007, Stratos

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<sup>55</sup> Iridium Satellite LLC, Reply of Iridium Satellite LLC to Oppositions to Petitions to Deny, filed July 31, 2007 (Iridium Reply).

<sup>56</sup> VIZADA Satellite Services LLC, Reply of VIZADA Services LLC, filed July 31, 2007 (VIZADA Reply).

<sup>57</sup> Telenor Satellite Services, Inc., Reply of Telenor Satellite Services, Inc., filed July 31, 2007 (Telenor reply).

<sup>58</sup> Letter from John Giusti, Deputy Chief, International Bureau, to Diane J. Cornell, Vice President, Government Affairs, Inmarsat, Inc., dated August 15, 2007.

<sup>59</sup> Letter from John P. Janka and Jeffrey Marks, Counsel for Inmarsat Finance III Limited, to Marlene H. Dortch, Secretary, FCC, dated August 17, 2007. (Sprite Document). Inmarsat Finance also submitted a redacted version of the Sprite Document for the public record.

<sup>60</sup> VIZADA Satellite Services LLC, “Comments of VIZADA Services LLC on ‘Project Sprite Proposed Acquisition Structure’ Memorandum,” filed September 11, 2007. VIZADA also filed a redacted version of its supplemental comments for the public record.

<sup>61</sup> U.S. Department of Justice, Federal Bureau of Investigation and Department of Homeland Security, Petition to Adopt Conditions to Authorizations and Licenses, filed August 30, 2007 (DOJ Petition to Adopt Conditions)

<sup>62</sup> See Letters from Patricia Paoletta, Counsel for CIP Canada Investment Inc., Alfred M. Mamlet, Counsel for Stratos Global, and John P. Janka, Counsel for Inmarsat Finance III Limited, to Marlene H. Dortch, Secretary, FCC, dated August 24, 2007 (August 23 *ex parte* Letter) and September 27, 2007 (September 27 *ex parte* Letter).

<sup>63</sup> Letter from Alfred M. Mamlet, Counsel for Stratos Global, to Marlene H. Dortch, Secretary, FCC, dated September 18, 2007 (September 18 Letter).

<sup>64</sup> Letter from John P. Janka and Jeffrey A. Marks, Counsel for Inmarsat Finance III Limited, to Marlene H. Dortch, Secretary, FCC, dated October 16, 2007 (Inmarsat Finance October 16 Letter).

Global<sup>65</sup> and CIP<sup>66</sup> filed additional ownership information. On October 29, 2007, Inmarsat further supplemented its ownership information.<sup>67</sup>

25. Petitioners argue that the Commission should deny the Application because they are concerned that Inmarsat's acquisition of Stratos Global would give Stratos Global, which now distributes the satellite services of many satellite providers, an incentive to discriminate in favor of Inmarsat services.<sup>68</sup> Petitioners also seek denial of the application because they argue that, notwithstanding the provisions of the Trust, Inmarsat Finance will control Stratos Global, thus making Inmarsat plc (the parent of Inmarsat Finance) the "real party in interest" in this proceeding. Because Inmarsat was not included as a party to the Application, Petitioners argue that the transaction constitutes an unauthorized transfer of control under section 310(d) of the Act that requires the Commission to deny the Application.<sup>69</sup> In the event that the Commission does not deny the Application, Petitioners ask that the Commission set the Application for hearing on the control question.<sup>70</sup> Iridium argues that the proposed transfer of Stratos Global to a Trust is novel and unsupported by Commission precedent, which has authorized trusts only in cases of hostile takeover "tender offers," bankruptcy or post-merger divestitures.<sup>71</sup> Additionally, Iridium and VIZADA argue that Inmarsat's proposed acquisition of Stratos Global will raise significant anticompetitive issues.<sup>72</sup>

26. Stratos Global, CIP Canada and Inmarsat Finance all dispute Petitioners' arguments that the transaction documents will allow Inmarsat to control Stratos Global during the Trust period. They argue that the Trust gives *de jure* and *de facto* control of Stratos Global to the Trustee and that its provisions create a "firewall" that will insulate Stratos Global from CIP or Inmarsat.<sup>73</sup> The Applicants further argue that, under the Trust, the Trustee will control Stratos Global by voting the Stratos Global stock and appointing Directors to the Stratos Global Board. Stratos Global and CIP Canada agree with this, arguing that, subject to the Trustee's control, existing Stratos Global management will continue to run the corporation from day to day.<sup>74</sup> The Trustee characterizes Petitioners' arguments as a baseless attack on his qualifications and states that he can and will carry out his duties under the Trust.<sup>75</sup>

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<sup>65</sup> Letter from Alfred M. Mamlet and Marc A. Paul, Counsel for Stratos Global Corporation, to Marlene H. Dortch, Secretary, FCC, dated October 26, 2007 (Stratos Global October 26 Letter). Stratos Global provided principal place of business information for Stratos Global and Stratos Wireless.

<sup>66</sup> Letter from Patricia Paoletta, Counsel for CIP Canada Investment Inc., to Marlene H. Dortch, Secretary, FCC, dated October 26, 2007 (CIP October 26 Letter). CIP provided principal place of business information for CIP, CIP UK and CIP Canada.

<sup>67</sup> Letter from Diane Cornell, Vice President, Government Affairs, Inmarsat, Inc., to Marlene H. Dortch, Secretary, FCC, dated October 29, 2007 (Inmarsat October 29 Letter).

<sup>68</sup> Inmarsat Finance Opposition at 16; Inmarsat Finance Reply at 16; and VIZADA Petition at 26.

<sup>69</sup> VIZADA Petition at 32; Telenor Reply at 13.

<sup>70</sup> VIZADA Petition at 32; Telenor Reply at 13.

<sup>71</sup> Iridium Petition at 6-13.

<sup>72</sup> Iridium Petition at 16; VIZADA Petition at 23-31.

<sup>73</sup> Stratos Global Opposition at 16.

<sup>74</sup> Stratos Global Opposition at 19.; CIP Opposition at 8. *See also* Trustee Response at the fourth unnumbered page.

<sup>75</sup> Trustee Response at fourth and fifth unnumbered pages.

### III. PUBLIC INTEREST ANALYSIS

#### A. Framework of Analysis

27. Pursuant to sections 214(a) and 310(d) of the Act,<sup>76</sup> the Commission must determine whether the proposed transfer of control to the Trust of licenses and authorizations held and controlled by Stratos Global and its subsidiaries will serve the public interest, convenience and necessity.<sup>77</sup> In making this determination, we first assess whether the proposed transaction complies with the specific provisions of the Act, other applicable statutes, and the Commission's rules. If the proposed transaction would not violate a statute or rule, the Commission considers whether it could result in public-interest harms by substantially frustrating or impairing the objective or implementation of the Act or related statutes. The Commission then employs a balancing test, weighing any potential public interest harms against the potential public interest benefits.<sup>78</sup> The applicants bear the burden to prove by a preponderance of the

<sup>76</sup> Sections 214(a) and 310(d) of the Act, 47 U.S.C. §§ 214(a), 310(d).

<sup>77</sup> 47 U.S.C. § 310(d) requires that we consider applications for the transfer of Title III licenses under the same standard as if the proposed transferee were applying for the licenses directly under section 308 of the Act, 47 U.S.C. § 308. See *Applications of Guam Cellular and Paging, Inc. and DoCoMo Guam Holdings, Inc.*, Memorandum Opinion and Order and Declaratory Ruling, WT Docket No. 06-96, FCC 06-167, 21 FCC Rcd 13580, 13588-9, ¶ 13 (rel. Nov. 13, 2006) (“*DoCoMo-Guam Cellular Order*”); *Applications of Midwest Wireless Holdings, L.L.C. and ALLTEL Communications, Inc.*, WT Docket No. 05-339, Memorandum Opinion and Order, FCC 06-146, 21 FCC Rcd 11526, 11535, ¶ 16 (rel. Oct. 2, 2006) (“*ALLTEL-Midwest Wireless Order*”); *SBC Communications, Inc. and AT&T Corp. Applications for Approval of Transfer of Control*, WC Docket No. 05-65, Memorandum Opinion and Order, FCC 05-183, 20 FCC Rcd 18290, 18300, n.60 (2005) (*SBC/AT&T Order*); *Verizon Communications Inc. and MCI, Inc. Applications for Approval of Transfer of Control*, WC Docket No. 05-75, Memorandum Opinion and Order, FCC 05-184, 20 FCC Rcd 18433, 18443, n.59 (2005) (*Verizon/MCI Order*); *Applications of Western Wireless Corporation and Alltel Corporation for Consent to Transfer Control of Licenses and Authorizations*, WT Docket No. 05-50, Memorandum Opinion and Order, FCC 05-138, 20 FCC Rcd 13053, 13062-63, ¶ 17 (2005) (*Alltel/Western Wireless Order*); *Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation*, WT Docket 04-70, Memorandum Opinion and Order, FCC 04-255, 19 FCC Rcd 21522, 21542, ¶ 40 (2004) (*Cingular/AT&T Wireless Order*); *General Motors Corporation and Hughes Electronics Corporation, Transferors, and The News Corporation Limited, Transferee*, MB Docket No. 03-124, Memorandum Opinion and Order, FCC 03-330, 19 FCC Rcd 473, 485, ¶ 18 (2004) (*News Corp./Hughes Order*).

<sup>78</sup> See, e.g., *DoCoMo-Guam Cellular Order*, FCC 06-167, 21 FCC Rcd at 13588, ¶13; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd T 11535, ¶16; *SBC/AT&T Order*, 20 FCC Rcd at 18300, ¶ 16; *Verizon/MCI Order*, 20 FCC Rcd at 18443, ¶ 16; *Applications of Nextel Communications, Inc. and Sprint Corporation for Consent to Transfer Control of Licenses and Authorizations*, WT Docket No. 05-63, Memorandum Opinion and Order, FCC 05-148, 20 FCC Rcd 13967, 13976, ¶ 20 (2005); *Alltel/Western Wireless Order*, 20 FCC Rcd at 13062-63, ¶ 17; *Cingular/AT&T Wireless Order*, 19 FCC Rcd at 21542-43, ¶ 40; *News Corp./Hughes Order*, 19 FCC Rcd at 483, ¶ 15; *Application of GTE Corporation, Transferor, and Bell Atlantic Corporation, Transferee*, CC Docket 98-184, Memorandum Opinion and Order, FCC 00-221, 15 FCC Rcd 14032, 14046, ¶¶ 20, 22 (2002); *Applications of VoiceStream Wireless Corporation and Powertel, Inc., Transferors, and Deutsche Telekom AG, Transferee*, IB Docket No. 00-187, Memorandum Opinion and Order, FCC 01-142, 16 FCC Rcd 9779, 9789, ¶ 17 (2001) (*Deutsche Telekom/VoiceStream Order*); *Applications of Ameritech Corp., Transferor, and SBC Communications Inc., Transferee, for Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Section 214 and 310(d) of the Communications Act and Parts 5, 22, 24, 25, 63, 90, 95 and 101 of the Commission's Rules*, CC Docket No. 98-141, Memorandum Opinion and Order, FCC 99-279, 14 FCC Rcd 14712, 14737-38, ¶ 48 (1999) (*SBC/Ameritech Order*); *Application of WorldCom, Inc. and MCI Communications Corporation for Transfer of Control of MCI Communications Corporation to WorldCom, Inc.*, CC Docket No. 97-211, Memorandum Opinion and Order, FCC 98-225, 13 FCC Rcd 18025, 18031, ¶ 10 (1998) (*WorldCom/MCI Order*); *Applications of NYNEX Corporation, Transferor, and Bell Atlantic Corporation, Transferee, for Consent to Transfer Control of NYNEX Corporation and its Subsidiaries*, Memorandum Opinion and Order, FCC 97-286, 12 FCC Rcd 19985, 19987, ¶ 2 (1997).

evidence that the proposed transaction, on balance, serves the public interest.<sup>79</sup> If we are unable to find that the proposed transaction serves the public interest for any reason, or if the record presents a substantial and material question of fact, we may designate the Transfer of Control Application for hearing.<sup>80</sup>

28. Our public interest evaluation necessarily encompasses the “broad aims of the Communications Act,”<sup>81</sup> which include, among other things, a deeply rooted preference for preserving and enhancing competition in relevant markets, accelerating private-sector deployment of advanced services, ensuring a diversity of license holdings, and generally managing the spectrum in the public interest.<sup>82</sup> Our public interest analysis may also entail assessing whether the proposed transaction will affect the quality of communications services or will result in the provision of new or additional services to consumers.<sup>83</sup> In conducting this analysis, the Commission may consider technological and market changes, and the nature, complexity, and speed of change of, as well as trends within, the

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<sup>79</sup> See, e.g., *DoCoMo-Guam Cellular Order*, 21 FCC Rcd at 13588, ¶13; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11535, ¶16; *SBC/AT&T Order*, 20 FCC Rcd at 18300, ¶ 16; *Verizon/MCI Order*, 20 FCC Rcd at 18443, ¶ 16; *Cingular/AT&T Wireless Order*, 19 FCC Rcd at 21542-44, ¶ 40 (citing, e.g., *News Corp./Hughes Order*, 19 FCC Rcd at 483, ¶ 15; *Applications for Consent to the Transfer of Control of Licenses from Comcast Corporation and AT&T Corp., Transferors, to AT&T Comcast Corporation, Transferee*, MB Docket No. 02-70, Memorandum Opinion and Order, FCC 02-310, 17 FCC Rcd 23246, 23255, ¶ 26 (2002) (*AT&T/Comcast Order*); *Application of EchoStar Communications Corporation (a Nevada Corporation), General Motors Corporation, and Hughes Electronics Corporation (Delaware Corporations) (Transferors) and EchoStar Communications Corporation (a Delaware Corporation) (Transferee)*, CS Docket No. 01-348, Hearing Designation Order, FCC 02-284, 17 FCC Rcd 20559, 20574, ¶ 25 (2002) (*EchoStar/DirecTV Order*)).

<sup>80</sup> We are not required to designate for hearing applications for the transfer or assignment of Title II authorizations when we are unable to find that the public interest would be served by granting the applications. See *ITT World Communications, Inc. v. FCC*, 595 F.2d 897, 901 (2d Cir. 1979). We may, however, do so if we find that a hearing would be in the public interest. However, with respect to the applications to transfer licenses subject to Title III of the Act, if we are unable to find that the proposed transaction serves the public interest, or if the record presents a substantial and material question of fact, section 309(e) of the Act requires that we designate the application for hearing. 47 U.S.C. § 309(e); see *DoCoMo-Guam Cellular Order*, 21 FCC Rcd at 13588, ¶ 13; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11535, ¶ 16; *EchoStar/DirecTV Order*, 17 FCC Rcd at 20574, ¶ 25; *Cingular/AT&T Wireless Order*, 19 FCC Rcd at 21542-44, ¶ 40.

<sup>81</sup> See *DoCoMo-Guam Cellular Order*, 21 FCC at 13591, ¶ 15; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11536, ¶ 18; *SBC/AT&T Order*, 20 FCC Rcd at 18301, ¶ 17; *Verizon/MCI Order*, 20 FCC Rcd at 18443, ¶ 17; *Cingular/AT&T Wireless Order*, 19 FCC Rcd at 21544, ¶ 41 (citing, e.g., *News Corp./Hughes Order*, 19 FCC Rcd at 483-84, ¶ 16; *AT&T/Comcast Order*, 17 FCC Rcd at 23255, ¶ 27; *EchoStar/DirecTV Order*, 17 FCC Rcd at 20575, ¶ 26).

<sup>82</sup> See 47 U.S.C. §§ 157 nt. (incorporating section 706 of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (1996 Act)), 254, 332(c)(7)); 1996 Act, Preamble; *DoCoMo-Guam Cellular Order*, 21 FCC Rcd at 13591, ¶ 18; *SBC/AT&T Order*, 20 FCC Rcd at 18301, ¶ 17; *Verizon/MCI Order*, 20 FCC Rcd at 18443-44, ¶ 17; *Cingular/AT&T Wireless Order*, 19 FCC Rcd at 21544, ¶ 41; see also *WorldCom/MCI Order*, 13 FCC Rcd at 18030-31, ¶ 9; *2000 Biennial Regulatory Review Spectrum Aggregation Limits for Commercial Mobile Radio Services*, Report and Order, FCC 01-328, 16 FCC Rcd 22668, 22696, ¶ 55 (2001) (citing 47 U.S.C. §§ 301, 303, 309(j), 310(d)); cf. 47 U.S.C. §§ 521(4), 532(a)).

<sup>83</sup> See *DoCoMo-Guam Cellular Order*, 21 FCC Rcd at 13591, ¶ 15; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11536, ¶ 18; *SBC/AT&T Order*, 20 FCC Rcd at 18301, ¶ 17; *Verizon/MCI Order*, 20 FCC Rcd at 18443-44, ¶ 17; *Cingular/AT&T Wireless Order*, 19 FCC Rcd at 21544, ¶ 41 (citing, e.g., *AT&T/Comcast Order*, 17 FCC Rcd at 23255, ¶ 27; *WorldCom/MCI Order*, 13 FCC Rcd at 18030-31, ¶ 9).

communications industry.<sup>84</sup>

29. Our analysis starts with an examination of whether the Applicants are qualified to hold and transfer licenses pursuant to sections 214(a) and 310(d) of the Act.<sup>85</sup> Next, we consider the arguments raised by commenters regarding the potential harms and benefits of the proposed transaction, as well as its effects on competition. Next, we consider whether this transaction implicates our international dominant carrier regulation. Then we consider foreign-ownership issues. Finally, we consider issues related to national security, law enforcement, foreign policy, and trade policy.

### **B. Qualifications of the Applicants**

30. As a threshold matter, we must determine whether the Applicants meet the requisite qualifications to hold and transfer licenses under section 310(d) of the Act and the Commission's rules. In general, when evaluating assignments under section 310(d), we do not re-evaluate the qualifications of the transferor.<sup>86</sup> The exception to this rule occurs where issues related to basic qualifications have been designated for hearing by the Commission or have been sufficiently raised in petitions to warrant the designation of a hearing.<sup>87</sup> This is not the case here, so we need not re-evaluate the basic qualifications of Stratos Global or its subsidiaries. Moreover, as we discuss below, we are not persuaded, based on the record in this proceeding, that Inmarsat is the real party in interest in the first step of this two-step transaction.

31. After reviewing Petitioners' arguments, we find that they have failed to demonstrate that either the Trust or the Trustee lacks sufficient financial, legal, technical or other basic qualifications to be a licensee under the Communications Act. Section 310(d) requires us to consider the qualifications of the proposed transferee as if the transferee were applying for the license directly under section 308 of the Act.<sup>88</sup> In the first step of the transaction, which is the only step before us, the transferee will be the Trust and, more specifically, the Trustee, Robert M. Franklin. The Commission has previously held that the

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<sup>84</sup> See *DoCoMo-Guam Cellular Order*, 21 FCC Rcd at 13591, ¶ 15; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11536, ¶ 18; *SBC/AT&T Order*, 20 FCC Rcd at 18301-02, ¶ 17; *Verizon/MCI Order*, 20 FCC Rcd at 18444, ¶ 17; *Cingular/AT&T Wireless Order*, 19 FCC Rcd at 21544, ¶ 41.

<sup>85</sup> 47 U.S.C. §§ 214(a), 310(d).

<sup>86</sup> See *DoCoMo-Guam Cellular Order*, 21 FCC Rcd at 13590, ¶ 14; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11536, ¶ 17; *Sprint Nextel-Nextel Partners Order*, 21 FCC Rcd at 7362, ¶ 10; *SBC-AT&T Order*, 20 FCC Rcd at 18379, ¶ 171; *Verizon-MCI Order*, 20 FCC Rcd at 18526, ¶ 183; *Sprint-Nextel Order*, 20 FCC Rcd at 13979, ¶ 24; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13063-4, ¶ 18; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21546, ¶ 44; *Deutsche Telekom/VoiceStream Order*, 16 FCC Rcd at 9790, ¶ 19.

<sup>87</sup> See *DoCoMo-Guam Cellular Order*, 21 FCC Rcd 13590, ¶ 14; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11536-7, ¶ 17; *Sprint Nextel-Nextel Partners Order*, 21 FCC Rcd at 7362, ¶ 10; *SBC-ATT Order*, 20 FCC Rcd at 18379, ¶ 171; *Verizon-MCI Order*, 20 FCC Rcd at 18526, ¶ 183; *Sprint-Nextel Order*, 20 FCC Rcd at 13979, ¶ 24; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13063-4, ¶ 18; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21546, ¶ 44; *Deutsche Telekom/VoiceStream Order*, 16 FCC Rcd at 9790, ¶ 19.

<sup>88</sup> Section 308 requires that applicants for Commission licenses set forth such facts as the Commission may require as to citizenship, character, and financial, technical, and other qualifications. 47 U.S.C. § 308. See also *DoCoMo-Guam Cellular Order*, 21 FCC Rcd at 13590, ¶ 14; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11536-7, ¶ 17; *Sprint Nextel-Nextel Partners Order*, 21 FCC Rcd at 7362, ¶ 10; *SBC-ATT Order*, 20 FCC Rcd at 18379, ¶ 171; *Verizon-MCI Order*, 20 FCC Rcd at 18526, ¶ 183; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13063-4, ¶ 18; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21546, ¶ 44.

requirement for the Commission to review a transferee's qualifications applies to trustees as well.<sup>89</sup> We find, below, that a trust is a valid mechanism to hold the Stratos Global stock. We also conclude, based on the evidence in the record, that the Trust and Robert M. Franklin as Trustee of the Trust possess the basic qualifications to be the transferee of Stratos Global and the licenses and authorizations held by the Stratos Licensees. We find that Robert M. Franklin's business experience, including experience specifically related to telecommunications, qualifies him to be a licensee under Section 308.<sup>90</sup> Iridium has not adequately explained why the information provided by Applicants is "deficient" for us to determine the Trustee's qualification under Section 308 to be a transferee of Commission authorizations.<sup>91</sup> We therefore conclude that Iridium has failed to raise any question as to the Trustee's qualifications to implement his duties under the Trust.

### C. Real Party In Interest

32. Upon review, we reject Petitioners' arguments that we should deny the Application because the Applicants have failed to identify Inmarsat as the "real party in interest" in the transaction.<sup>92</sup> The argument is most clearly stated in VIZADA's Petition to Deny, where VIZADA argues that the Loan Facility, Call Option and other documents in this transaction "demonstrate that Inmarsat will control Stratos through a web of entanglements with the company and CIP that make it the only party with power over the Stratos finances and an economic interest in the company's success."<sup>93</sup> VIZADA also argues that these documents virtually guarantee Inmarsat's ultimate *de jure* ownership of Stratos Global. As such, VIZADA argues that Inmarsat should be listed as the transferee on the Application.<sup>94</sup> In addition, Iridium argues that the transfer of Stratos Global to the Trust will create a "loophole" to the Commission's review of transfers of control that is contrary to the public interest.<sup>95</sup> More specifically, Iridium argues that allowing Inmarsat to transfer Stratos Global to the Trust is equivalent to transferring it to Inmarsat, since Inmarsat will thereby take on the entire economic risk of Stratos Global, thus making the future transfer a foregone conclusion. Iridium believes that this would set a precedent that future applicants could exploit.<sup>96</sup> Because Applicants did not list Inmarsat as the transferee under the Application, VIZADA and Telenor contend that the Commission should deny the Application or, alternatively, set it for hearing to resolve disputed issues of fact.<sup>97</sup>

33. The "real party in interest" issue arises under Section 310(d) of the Act, which requires that "[n]o . . . station license, or any rights thereunder, shall be transferred, assigned or disposed of in any manner, voluntarily or involuntarily, directly or indirectly, . . . to any person except upon application to

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<sup>89</sup> *Tender Offer Policy Statement*, 59 Rad. Reg. 2d at 1562-3, ¶ 35, n.124; *QVC Network, Inc.*, Memorandum Opinion and Order, 8 FCC Rcd 8485, 8486, ¶ 4 (1993); *CNCA Acquisition Corp.*, Memorandum Opinion and Order, 3 FCC Rcd 6088, 6094, ¶ 40 (1988); *Macfadden Acquisition Corp.*, 104 F.C.C. 2d 545, 565-6, ¶¶ 36-40 (1986).

<sup>90</sup> See Narrative at 4; Appendix B, Curriculum Vitae of Robert M. Franklin, Trustee.

<sup>91</sup> Iridium argued that the material submitted, including the Trustee's Curriculum Vitae, lacks meaningful detail and, thus, is deficient under the Communications Act and the *Tender Offer Policy Statement* for such a determination. Iridium Petition at 10-11.

<sup>92</sup> VIZADA Petition at 3-23; Iridium Reply at 5-7; Telenor Reply at 3-9.

<sup>93</sup> VIZADA Petition at 3.

<sup>94</sup> *Id.*

<sup>95</sup> Iridium Petition at 17.

<sup>96</sup> *Id.*

<sup>97</sup> VIZADA Petition at 3-23; Telenor Reply at 3-13.

the Commission . . . .”<sup>98</sup> The term “real party in interest” refers to a third party who is not listed as an applicant in a transfer of control application but “has an ownership interest or will be in a position to actually or potentially control the operation of the [radio] station.”<sup>99</sup> In a case where there is such an unidentified real party in interest, there is an unauthorized transfer of control, because the third party obtained the interest without having first received authorization from the Commission. Thus, in order to make their case that Inmarsat is the real party in interest in this step of the transaction (the transfer of control of Stratos Global to the Trust), Petitioners must show that Inmarsat has acquired an ownership in, or will be in a position to control, Stratos Global without having obtained prior Commission approval. After reviewing the arguments of the Petitioners, we are not persuaded that Petitioners have made the requisite showing.

34. At the outset, we note that the Application states that 100 percent of the stock of Stratos Global will be transferred to the Trust and that the Trustee will have *de jure* and *de facto* control over Stratos Global.<sup>100</sup> Because Inmarsat Finance will not own any of the stock of Stratos Global during the term of the Trust, it is clear that Inmarsat will not have any formal ownership interest in Stratos Global during that period. We must now consider whether Inmarsat will be in a position to actually or potentially control the operation of Stratos Global.<sup>101</sup> After reviewing the arguments of VIZADA and Telenor, we conclude that they have not shown that Inmarsat will be able to control Stratos Global during the term of the Trust.

35. The Commission has taken an expansive view of what constitutes “control,” stating that the term, as used in section 310, “embrace[s] every form of control, actual or legal, direct or indirect, negative or affirmative.”<sup>102</sup> The Commission has stated that “a realistic definition of the word ‘control’ includes any act which vests in a new entity or individual the right to determine the manner or means of operating the licensee and determining the policy that the licensee will pursue.”<sup>103</sup> The Commission has also stated that “legal,” *i.e.*, *de jure*, control is “typically determined by whether a shareholder owns more than 50 percent of the voting shares of a corporation.”<sup>104</sup> Again, because 100 percent of the stock of Stratos Global will be held by the Trust, we conclude that this first step in the transaction will not give Inmarsat legal or *de jure* control of Stratos Global.

36. We are also unpersuaded that the transaction will give Inmarsat *de facto* control over Stratos Global during the Trust period. The Commission has said that “in our examination into the matter of control of a corporate licensee we do not confine ourselves to a narrow, legalistic approach but rather

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<sup>98</sup> 47 U.S.C. § 310(d).

<sup>99</sup> See, e.g., *Astroline Communications v. FCC*, 857 F.2d 1556, 1564 (1988) (citing *KOWL, Inc.*, 49 F.C.C. 2d 962 (Rev. Bd, 1974)). See also *Creek County Broadcasting Company*, Memorandum Opinion and Order, 31 F.C.C. 2d 462 (1971); *Sumiton Broadcasting Co., Inc.*, 15 F.C.C. 2d 400, 405 (1968).

<sup>100</sup> The Application states that “[t]he Trust will hold title to and exercise all voting rights in the Stratos Global stock.” Narrative at 6. See also *Stratos Global Opposition* at 4-5.

<sup>101</sup> See *Astroline Communications Company*, 857 F.2d at 1564 (“The Commission’s real party-in-interest inquiry typically focuses on whether a third person ‘has an ownership interest, or will be in a position to actually or potentially control the operation of the station.’” (citing *KOWL, Inc.*, 61 Rad. Reg. at 134)).

<sup>102</sup> *Albert J. Feyl*, Memorandum Opinion and Order, 15 F.C.C. 823, 825, ¶ 5 (1951), quoting *Rochester Telephone Corp. v. U.S.*, 23 F.Supp. 634 (1938), *aff’d* 307 U.S. 125 (1939).

<sup>103</sup> *WHDH, Inc.*, 17 F.C.C. 2d 856, 863 (1969).

<sup>104</sup> *Fox Television Stations, Inc.*, Memorandum Opinion and Order, FCC 95-188, 10 FCC Rcd 8452, 8513, ¶ 151 (1995) (*Fox I*) (citing *Metromedia, Inc.*, Memorandum Opinion and Order, 98 F.C.C. 2d 300, 306 (1984)).

look beyond stock ownership, in some cases, to determine where actual working [*i.e.*, *de facto*] control resides.”<sup>105</sup> *De facto* control therefore refers to an ability to control an entity that arises from circumstances other than stock ownership. The *de facto* control issue “transcends formulas, for it involves an issue of fact which must be resolved by the special circumstances presented,” and must be determined on a case-by-case basis.<sup>106</sup> The Commission has stated that, in analyzing *de facto* control in a particular case, it will consider the representations of the applicant, its actual conduct, and relevant corporate governance and contractual provisions.<sup>107</sup> To show that Inmarsat has *de facto* control over Stratos Global, Petitioners must show that the circumstances of this transaction demonstrate that Inmarsat has actual control of that company, even though it will own none of the company’s stock. As we describe more fully below, we believe that Petitioners have not demonstrated that Inmarsat has such actual control of Stratos Global.

37. In *Intermountain Microwave*, the Commission set out six factors it would use to determine whether a third party has *de facto* control over a common carrier licensee.<sup>108</sup> These factors are: (1) does the licensee have unfettered use of all the facilities and equipment? (2) who controls daily operations? (3) who determines and carries out the policy decisions, including preparing and filing applications with the Commission? (4) who is in charge of employment, supervision, and dismissal of personnel? (5) who is in charge of the payment of financing obligations, including expenses arising out of operations and (6) who receives monies and profits derived from the operation of the facilities? Applying these factors to the Application before us, we believe that they indicate that the Trust and the Trustee will have *de facto* as well as *de jure* control of Stratos Global during the Trust period. We note that the Trust and the Trustee meet all six factors of the *Intermountain Microwave* test. Under the terms of the transaction documents, it is the management of Stratos Global, operating under the oversight of the Board of Directors and the Trustee, that will have the use of the Stratos Licensees’ facilities, control daily operations, adopt and carry out policy decisions, decide personnel issues, pay financial obligations, and receive monies from the operation of the company. We also note that neither CIP nor Inmarsat have the ability to order or change decisions of Stratos Global management. Accordingly, we conclude that, under the *Intermountain Microwave* factors, Inmarsat Finance will not have the ability to control Stratos Global during the Trust period.

### 1. Permissibility of the Trust Mechanism

38. From the foregoing, it is clear that our analysis depends upon the validity and adequacy of the Trust in this proceeding to insulate Stratos Global and the Trustee from CIP and Inmarsat. We note that Petitioners have made two challenges to the Trust. First, Iridium argues that the use of the trust mechanism is not consistent with Commission precedent. Second, VIZADA argues that the Trust is not adequate to insulate Stratos Global from CIP and Inmarsat. After reviewing the Trust Agreement and the arguments of the Petitioners and the Applicants, we conclude that the Trust here is both valid and adequate.

39. After reviewing Iridium’s arguments, we find that the Applicants’ proposal to place the stock of Stratos Global into the Trust until 2009 is neither novel nor unsupported by Commission precedent. We do not agree with Iridium’s argument that the Commission has limited the use of trusts

<sup>105</sup> *Albert J. Feyl*, 15 F.C.C. at 826, ¶ 6.

<sup>106</sup> *Fox I*, 10 FCC Rcd at 8514, ¶ 154.

<sup>107</sup> See, e.g., *News International plc*, Memorandum Opinion and Order, 97 F.C.C. 2d 349, 356, ¶ 17 (1984); *Baker Creek Communications, L.P.*, Memorandum Opinion and Order, 13 FCC Rcd 18709, 18713-714, ¶ 7 (PSPWD/WTB 1998).

<sup>108</sup> *Intermountain Microwave*, Public Notice, 12 F.C.C. 2d 559 (1963).



solely to applications involving a hostile takeover, bankruptcy, or post-merger divestiture.<sup>109</sup> Rather, we agree with Stratos Global and Inmarsat Finance that the Commission allows parties to use any form of business organization, including a trust, that best suits their business needs.<sup>110</sup> For example, the Commission's *Attribution Policy Statement* recognizes that applicants establish trusts for a variety of purposes, including "personal and economic reasons unrelated to any Commission rule" and states that "[s]uch trusts should be facilitated to the extent possible."<sup>111</sup> The *Attribution Policy Statement* recognizes that applicants create trusts to effect compliance with Commission rules, for example, to hold broadcast licenses that would violate the Commission's media ownership rules if held outright.<sup>112</sup> The Commission also noted that applicants often use trusts to execute multi-phase transactions.<sup>113</sup> In *Twentieth Holdings*, the Commission stated that a voting trust, "like any other legal entity, may hold broadcast licenses."<sup>114</sup> In the wireless context, the Commission has granted applications for licenses to offer cellular telephone services to a company controlled by a trust.<sup>115</sup> We thus conclude that it is settled law that a trust can hold a broadcast or common carrier radio license. We continue to believe that a properly drawn trust can provide needed insulation of valuable or problematic investments and that the Commission should allow parties to use trusts for valid private reasons, so long as those trusts are not publicly detrimental. For this reason, we conclude that it is permissible under the Communications Act for Applicants to use a trust to hold the stock of Stratos Global.

40. We also disagree with Iridium's assertion that Commission precedent permits only "temporary" trusts of very short duration<sup>116</sup> or that the roughly two-year period for the "permanent" Trust

<sup>109</sup> Iridium Petition at 7.

<sup>110</sup> Stratos Global Opposition at 7, Inmarsat Finance Opposition at 7 (both citing *Twentieth Holdings Corp.*, Decision, FCC 89-129, 4 FCC Rcd 4052, ¶ 5 (1989)). Additionally, Stratos Global cites *Clifford Stanton Heinz Trust*, 11 FCC Rcd 5354, ¶¶ 6-10, 26 (1996); *KEOT, Inc.*, DA 01-0103, ¶ 15 (rel. Jan. 17, 2001); *LEO One USA Corp.*, Order and Authorization, DA 98-238, 13 FCC Rcd 2801, 2808-9, ¶¶ 15-7 (1998); *Lester T. Pritchard*, Certified Letter, FCC 91-131, 6 FCC Rcd 2210, 2210-21 (1991). See also *Corporate Ownership Reporting and Disclosure by Broadcast Licensees; Amendment of Sections 73.35, 73.240 and 73.636 of the Commission's Rules Relating to Multiple Ownership Standard, FM, and Television Broadcast Stations; Amendment of Section 73.35, 73.240, 73.636 and 76.501 of the Commission Rules relating to Multiple Ownership of AM, FM, and Television Stations and CATV Systems; Reexamination of the Commission's Rules and Policies Regarding the Attribution of Ownership Interests in Broadcast, Cable Television, Newspaper Entities*, Report and Order, Docket No. 20521FCC 84-115, 97 F.C.C. 2d 997, 1023, ¶ 53 (1984) (*Attribution Policy Statement*), in which the Commission said that [i]n many cases, trusts are established for personal and economic reasons unrelated to any Commission rule . . . and should be facilitated to the extent possible." Stratos Global also notes that many Commission rules recognize that a trust may hold Commission licenses. Stratos Global Opposition at 7 (citing 47 C.F.R. §§ 1.2105(a)(ii)(A) (competitive bidding rules); 22.99 (experimental license); 25.103 (satellite communications); 90.7 (private land mobile radio service)).

<sup>111</sup> *Attribution Policy Statement*, 97 F.C.C. 2d at 1023, ¶ 53.

<sup>112</sup> *Id.*

<sup>113</sup> *Id.*

<sup>114</sup> *Twentieth Holdings*, 4 FCC Rcd at 4052, ¶ 4. In that case Twentieth Holdings put one of its television station licensees into a trust to avoid a violation of the Commission's media cross ownership rules. *Id.* at ¶ 4.

<sup>115</sup> *Clifford Stanton Heinz Trust*, 11 FCC Rcd at 5355-56, ¶¶ 6-10.

<sup>116</sup> Iridium Petition at 6-13 (citing *Tender Offer Policy*, 59 *Rad. Reg. 2d* at 1557-62, ¶¶ 27-33). Iridium states that the Commission clarified that the procedures apply only to (1) hostile takeovers by tender offer, which require prompt action, and (2) friendly tender offers where "a competing offer already exists, so that the second offeror must be promptly empowered to present its offer to the shareholders." Iridium Petition at 7 (citing *Rogers* (continued....))

in this transaction violates any Commission precedent.<sup>117</sup> We agree, rather, with Applicants that the Commission has approved trusts with longer terms.<sup>118</sup> In the cases of tender offers, divestitures and bankruptcies discussed by Iridium, the nature of the transactions generally dictates trust terms of short duration. In a tender offer, the purpose of a trust is to allow the parties to transfer a licensee without the need for a long-form Commission review so that shareholders can exercise a time-limited offer to purchase their shares. In the case of divestiture trusts, it is desirable for a Commission licensee expeditiously to divest ownership interests that the Commission has found to have negative competitive implications or otherwise adversely to impact the public interest. For that reason, it is not surprising that the trusts the Commission was considering in those contexts generally provided for short terms. We note, however, that even in the context of divestitures, the Commission has approved trusts with longer terms. For example, in *AT&T/Comcast*, the Commission approved a divestiture trust that would last for at least five years.<sup>119</sup> That case involved the merger of AT&T Corp. (AT&T) and Comcast Corporation (Comcast) who were, respectively, the largest and third largest U.S. cable television companies.<sup>120</sup> The trust was created to allow the merged company to dispose of AT&T's prior 27.64 percent interest in Time Warner Entertainment. L.P. (TWE), who was the second largest U.S. cable operator. In approving the trust, the Commission imposed the same basic requirements for a valid trust that it had enumerated in the *Tender Offers Policy Statement*,<sup>121</sup> except that it allowed AT&T greater than usual influence over the trust assets, because it found that the divestiture of TWE would be unusually complex.<sup>122</sup> To ensure that AT&T did not abuse this greater freedom, the Commission imposed safeguards on it.<sup>123</sup> The Commission found that the combination of the trust and the safeguards adequately insulated AT&T from the operation of TWE until AT&T could effectuate a divestiture.<sup>124</sup> The Commission noted that the five-year term of the *AT&T/Comcast* trust was longer than usual for divestiture trusts, but stated that such a term was not unprecedented.<sup>125</sup> The Commission found that, under the circumstances of the case before it, the

(Continued from previous page)

*Communications Inc., for Consent to Interim Transfer of Control of Maclean Hunter Ltd.*, Memorandum Opinion and Order, 9 FCC Rcd 7350, 7356, ¶ 14 (Cable Services Bureau, 1994) (*Rogers Communications*), which, in turn, cites *Voting Trustees for JB Acquisition Corp; Application for Consent to Interim Transfer of Control of John Blair and Company*, Memorandum Opinion and Order, 60 Rad. Reg. 2d 1095, ¶ 3 (1986) (*John Blair Company*)). Iridium further asserts that the Commission has allowed a trust in the case of a friendly tender offer only in order to keep the trustee neutral where there is a competing offer (citing *Applications of Viacom Inc. for Commission Consent to Interim Transfer of Control of Paramount Communications, Inc.*, Memorandum Opinion and Order, 8 FCC Rcd 8439 (1993)). Iridium further asserts that the Commission has made clear that voting trusts are not normally necessary in the case of a friendly tender offer (citing *Rogers Communications, supra.*, 9 FCC Rcd at 7355-6, ¶ 13, which, in turn, cited *John Blair Company*, 60 Rad. Reg. 2d at 1095, ¶ 3).

<sup>117</sup> See ¶ 43, *supra*.

<sup>118</sup> Stratos Global Opposition at 7, Inmarsat Finance Opposition at 9.

<sup>119</sup> *Applications for Consent to the Transfer of Control from Comcast Corporation and AT&T Corp., Transferors, to AT&T Comcast Corporation, Transferee*, Memorandum Opinion and Order, MB Docket No. 02-70, FCC 02-310, 17 FCC Rcd 23246, 23273, ¶ 72 (2002) (*AT&T/Comcast*).

<sup>120</sup> *Id.* at 23248-9.

<sup>121</sup> See ¶ 45, *infra*.

<sup>122</sup> 17 FCC Rcd at 23276-8, ¶¶ 80-83.

<sup>123</sup> *Id.* at 23270-1, ¶¶ 68-9.

<sup>124</sup> *Id.* at 23277-8, ¶ 81.

<sup>125</sup> *Id.* at 23276, ¶ 80 (citing *Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from Tele-Communications, Inc., Transferor to AT&T Corp., Transferee*, CS Docket No. 98-178, FCC 99-24, 14 FCC Rcd 3160, 3207-13, ¶¶ 97-112 (1999)).

proposed five-year term was reasonable.<sup>126</sup>

41. In other contexts, the Commission has approved trusts with terms even longer than five years. For example, in *Lockheed Martin/Warburg*,<sup>127</sup> and *Twentieth Holdings*,<sup>128</sup> the Commission approved trusts with indefinite terms. In *Lockheed Martin/Warburg*, the issue was the transfer of control of a subsidiary of Lockheed Martin Corporation (Lockheed Martin) that acted as the North American Numbering Plan Administrator to NeuStar, Inc. (NeuStar). To ensure that NeuStar, an affiliate of Warburg, Pincus & Co. (Warburg), a provider of telecommunications, maintained the neutrality required of an NANP administrator, the parties created a trust with an indefinite term to prevent Warburg from influencing NeuStar.<sup>129</sup> Similarly, in *Twentieth Holdings*, the Commission approved the indefinite transfer of a television station license to a trust to avoid violation of the Commission's media ownership rules. Indeed, even the Commission's *Attribution Policy Statement* recognizes that "a trust may be used to indefinitely avoid divestiture of a valuable investment."<sup>130</sup> In the matter before us, we are not concerned with a tender offer, divestiture, or bankruptcy and conclude that the reasons in those types of cases for trusts of shorter duration do not apply to the Trust before us. We are concerned here with the transfer of stock to a trust for the private business reasons of the Applicants. The roughly two-year term proposed by the Applicants here is not indefinite, and is significantly shorter than the five-year term in *AT&T/Comcast*. As a result, we conclude that the term for the Trust in this transaction is consistent with Commission precedent.

42. We recognize that the Commission has been concerned with the potential for abuse of trusts.<sup>131</sup> The Commission indeed expressed that concern in the *Attribution Policy Statement* itself.<sup>132</sup> The Commission, however, stated that, notwithstanding such potential, it recognizes "the effective insulation that [trusts] can provide" and stated that it will "continue to accept trusts as legitimate insulation devices, judging their acceptability for our purposes on a case-by-case basis."<sup>133</sup> In the first step of the transaction, Applicants have stated that the purpose of the Trust is not related to any Commission rule, but to insure compliance with the restrictions in the Inmarsat Global distribution contracts.<sup>134</sup> We express no opinion as to whether the Trust will keep Inmarsat in compliance with those contracts. We conclude, however, that Petitioners have not shown any reason why authorizing Applicants to use the Trust for their private business needs would vitiate a finding that the transfer of control of Stratos Global will serve the public interest.

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<sup>126</sup> *Id.* at 21277-8, ¶ 81.

<sup>127</sup> *Request of Lockheed Martin Corp. and Warburg, Pincus & Co. for review of the Lockheed Martin Communications Industry Services Business*, Order, CC Dkt. No. 92-237, 14 FCC Rcd 19792 (1999) (*Lockheed Martin/Warburg*). Similarly, in *Twentieth Holdings*, the Commission held that the trust in that case, "if properly insulated, could continue indefinitely."

<sup>128</sup> *Twentieth Holdings*, 4 FCC Rcd at 4054, ¶ 16.

<sup>129</sup> *Lockheed Martin/Warburg*, 14 FCC Rcd at 19800-03, ¶¶ 9-14.

<sup>130</sup> *Id.*

<sup>131</sup> *Id.* at 13 (citing *Jacor Communications, Inc.*, Memorandum Opinion and Order, 14 FCC Rcd 6867, 6895-6, ¶ 35 (Mass Media Bur., 1999), which cites *Attribution Policy Statement*, 97 F.C.C. 2d at 1023-4).

<sup>132</sup> *Attribution Policy Statement*, 97 F.C.C. 2d at 1023-4, ¶ 54 (citing n.50). "The Commission has recognized the effective insulation such arrangements can provide, while maintaining a concern about their potential abuse, depending on the particular provisions of each trust."

<sup>133</sup> *Id.* at 1024, ¶ 54.

<sup>134</sup> Narrative at 2. See also *Inmarsat Finance Opposition* at 7-8.

43. Moreover, we find speculative Iridium's argument that allowing the Trust to hold Stratos Global for up to two years will harm the public interest.<sup>135</sup> Iridium argues that, because the Trustee will necessarily have to act in a conservative manner and is unable to communicate with CIP or Inmarsat, it may not be able to adjust its business plan to accommodate changes in the satellite market, thereby causing Stratos Global to miss or delay important business opportunities. Because Iridium depends on Stratos Global, Iridium believes such a result could potentially harm Iridium's competitive position and, thereby, harm the public interest.<sup>136</sup> We see no reason to assume that Stratos Global could not respond to changes in the satellite industry. We note that the current Stratos Global management will remain in place during the Trust and will have an incentive to keep the company competitive.<sup>137</sup> If, however, Iridium finds that Stratos Global will not meet its future needs, we note that Applicants have asserted that there are other distributors of satellite services that Iridium could use.<sup>138</sup> Iridium has not shown that it would be difficult for it to switch providers in such an event. For this reason, we cannot conclude that allowing the Trust to hold Stratos Global for two years is likely to harm the public interest.

44. Finally, we are not persuaded by Iridium's argument that allowing the Trust to hold the subject licenses and authorizations will allow Inmarsat to escape Commission scrutiny. Iridium argues that the Trust in this proceeding will allow Inmarsat to acquire Stratos Global without an opportunity for Commission review.<sup>139</sup> As noted above, the Commission will have an opportunity in the second step of this transaction to review the transfer of the licenses from the Trust to Inmarsat Finance, to CIP or to a third party. In that review, the Commission will examine the facts then before it and determine whether the transfer of control will serve the public interest. For this reason, we do not agree with Iridium's argument that allowing the use of a Trust in this proceeding will create a "loophole" in our transfer of control review process.<sup>140</sup> For the above reasons, we conclude that the transfer of the Stratos licenses to the Trust in the first step of this transaction is permissible under the Communications Act.

## 2. Adequacy of the Trust in This Proceeding

45. After reviewing the arguments of VIZADA, we find that the Trust in this proceeding will, if properly administered by the Trustee, adequately insulate Stratos Global from CIP and Inmarsat Finance. In the *Tender Offers Policy Statement*, the Commission noted that, because authorizing the use of a trust would allow an offeror to purchase enough stock to convey *de jure* or *de facto* control of a licensee, section 310(d) requires that we impose sufficient controls to prevent the offeror from exercising control before the Commission can approve the transfer of control.<sup>141</sup> The Commission stated that such controls would include restrictions on the offeror directly and provisions to ensure the strict separation between the trustee and the offeror.<sup>142</sup> The Commission also included a list of the provisions that it had

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<sup>135</sup> Iridium Reply at 15-16.

<sup>136</sup> Iridium Petition at 15-16.

<sup>137</sup> Stratos Global Opposition at 26.

<sup>138</sup> Inmarsat Finance Opposition at 19-20.

<sup>139</sup> Iridium Petition at 17.

<sup>140</sup> *Id.*

<sup>141</sup> *Tender Offers and Proxy Contests*, Policy Statement, 59 Rad. Reg. 2d 1536, 1578, ¶ 60 (P & F) (1986). (*Tender Offers Policy Statement*).

<sup>142</sup> *Id.* The Commission said that, under its *Tender Offers Policy*, direct restraints would be necessary to ensure that the offeror "will be strictly prohibited from either becoming involved in, or seeking to influence directly or indirectly, the operation or management of the licensee."

developed in its *Attribution Policy Statement* that it deemed necessary for a valid trust.<sup>143</sup> Those standards include a requirement (1) that the trust be irrevocable;<sup>144</sup> (2) that the trustee be “an independent person with no familial or business relationship with the beneficiary or the grantor;”<sup>145</sup> (3) that the trustee impose the same insulation criteria to any corporate director the trustee may appoint;<sup>146</sup> (4) that the trust forbid “communications with the trustee regarding the management and operation of the [company to be acquired];”<sup>147</sup> (5) that a trust may permit written communications from the trustee to the offeror;<sup>148</sup> and (6) that all permissible communications with the trustee be in writing.<sup>149</sup>

46. The Application states that “[t]he Trust Agreement [in this transaction] was developed, consistent with Commission policy [*i.e.*, the *Tender Offers Policy Statement*], to ensure that the Trustee will have *de jure* and *de facto* control of Stratos [Global].”<sup>150</sup> Applicants note that the Trust in this transaction contains all of the elements specified in the *Tender Offers Policy Statement*.<sup>151</sup> After reviewing the Trust Agreement in this transaction, we agree that it does contain all of the elements the Commission has required to ensure the independence of the Trustee from CIP and Inmarsat Global. The Trust Agreement provides that the Trust is irrevocable,<sup>152</sup> that the Trustee must have no familial or business connection with CIP or Inmarsat Finance,<sup>153</sup> that the Trustee impose that requirement on any directors he appoints,<sup>154</sup> that the Trust forbid communications from CIP and Inmarsat Finance to the Trustee,<sup>155</sup> that the Trustee may communicate in writing to the beneficiary,<sup>156</sup> and that all permissible communications must be in writing.<sup>157</sup> We note further that the Trust contains an additional guarantee of Trustee independence by providing that the Trustee can only be removed for criminal misconduct,

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<sup>143</sup> *Tender Offers Policy Statement*, 59 Rad. Reg. 2d at 1579, ¶ 63 (citing *Attribution Policy Statement*, 97 F.C.C. 2d at 1024).

<sup>144</sup> *Tender Offers Policy Statement*, 59 Rad. Reg. 2d at 1563, ¶ 35, n.123.

<sup>145</sup> *Tender Offers Policy Statement*, 59 Rad. Reg. 2d at 1579, ¶ 63 (citing *Attribution Policy Statement*, 97 F.C.C. 2d at 1024, ¶ 56).

<sup>146</sup> *Tender Offers Policy Statement*, 59 Rad. Reg. 2d at 1579, ¶ 63 (citing *One Two Corporation and Eugene McCarthy*, F.C.C. 85-375, 58 Rad. Reg. 2d 924 (1985) (*McCarthy*), where the Commission had imposed the requirement).

<sup>147</sup> *Tender Offers Policy Statement*, 59 Rad. Reg. 2d at 1579, ¶ 63 (citing *Attribution Rulemaking*, 97 F.C.C. 2d at 1024, at ¶ 56).

<sup>148</sup> *Id.*, the Commission noted that, in *McCarthy*, it had permitted written communications from the trustee regarding the management and operation of the company, because the mere receipt of such reports would not give the offeror the means to influence corporate management. *McCarthy*, 58 Rad. Reg. 2d at 935, ¶ 42.

<sup>149</sup> *Tender Offers Policy Statement*, 59 Rad. Reg. 2d at 1580-81, ¶ 65.

<sup>150</sup> Narrative at 6 (citing the *Tender Offers Policy Statement*, 59 Rad. Reg. 2d 1536, 1579-81, ¶¶ 62-65 (1986)).

<sup>151</sup> Narrative at 6-7.

<sup>152</sup> Trust Agreement at 3, Section 1.

<sup>153</sup> *Id.* at 14, Section 7.j.

<sup>154</sup> *Id.* at 6, Section 4.a.ii.

<sup>155</sup> *Id.* at Section 4.b and pp. 16-17, Section 10.c.

<sup>156</sup> *Id.* at 16, Sections 10.a and b.

<sup>157</sup> *Id.* at 17, Section 10.d.

malffeasance or upon a finding by an appropriate court that the Trustee is incompetent.<sup>158</sup>

47. The only way in which the Trust in this transaction departs from the criteria listed in the *Tender Offer Policy Statement* is that, while generally forbidding communications between Stratos Global and Inmarsat Finance, it does provide that “any officer [of Stratos Global] who is also a director may communicate with Inmarsat and its officers, employees and Affiliates regarding commercial matters in the ordinary course of business between [Stratos Global] and Inmarsat and their respective Affiliates.”<sup>159</sup> Applicants argue that the provision refers only to Mr. Jim Parm, the CEO of Stratos Global, who is the only employee of the company who is also a Director.<sup>160</sup> Applicants state that the provision is intended only to preserve the routine communications between Stratos Global that are necessary to permit Stratos Global to deliver Inmarsat satellite services to end users; the provision does not authorize Inmarsat to discuss management and operation of Stratos Global. VIZADA argues that this provision could undermine the insulation value of the Trust because “[n]owhere do the Applicants suggest that the ‘ordinary course of business’ would not include communications with their lender—Inmarsat Finance—about every aspect of the Stratos business, because, after all, how the business is doing impacts the loan facility.”<sup>161</sup> VIZADA also argues that “Applicants [do not] contend that Inmarsat and Stratos management would be hampered in any way under the trust Agreement from communicating on distribution deals.”<sup>162</sup>

48. We note that Stratos Global has been distributing the satellite services of Inmarsat for many years and that Stratos Global and Inmarsat have worked together to ensure that Stratos Global could successfully deliver Inmarsat services to end users. We agree, therefore, that the provision in the Trust allowing limited communications between the CEO of Stratos and Inmarsat related to the exchange of technical information is reasonable, and do not find that it violates the Commission’s requirements for valid trusts. On the other hand, while we do not agree that the Trust provision is intended to permit unrestricted communications, we agree with VIZADA that it is necessary to ensure that there is no abuse of this provision. Accordingly, we remind Inmarsat, CIP and Stratos Global that they have an obligation to adhere strictly to the limited purposes for which communication is permitted under the Trust. We shall, therefore, condition our consent to the transfer of control of Stratos Global to the Trust upon compliance with the prohibition on communications by any employee or officer of Stratos Global and Inmarsat or CIP relating to the management and operation of Stratos Global. We note that, in a letter to the Commission staff, the Applicants elaborated upon what they deem to be permissible communications “in the ordinary course of business.” They state that those communications relate to network operations (technical coordination of the space and terrestrial segments), sales and marketing (joint marketing of services), finance (billing, accounting and financial reporting), legal (negotiating and implementing contracts governing the two companies’ relationships), and regulatory (cooperative efforts to obtain licensing for services in the United States and other countries).<sup>163</sup> We also shall incorporate into this Order that list of permissible communications.<sup>164</sup> We shall require Inmarsat and Stratos Global to keep

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<sup>158</sup> *Id.* at 13, Section 7.h.

<sup>159</sup> Trust at 6, Section 4(b).

<sup>160</sup> September 18 Letter at third unnumbered page.

<sup>161</sup> VIZADA Petition at 13.

<sup>162</sup> *Id.*

<sup>163</sup> September 18 Letter at third and fourth unnumbered pages. Inmarsat Finance further states that it discusses “most of these same issues” with its other major suppliers. *Id.*

<sup>164</sup> The discussion of “communications in the ordinary course” is set out in Appendix C.

records of their communications and, upon a reasonable request, to make them available to the Commission. Accordingly, and subject to the condition discussed in this paragraph, we conclude that the Trust in this transaction is valid and that, if properly carried out by the Trustee, should ensure that Inmarsat cannot control the operation of Stratos Global during the pendency of the Trust.

49. In conclusion, we find that the Trust Agreement in this proceeding contains all the provisions that the Commission has required for valid trusts. Of course, we realize that the written provisions of the Trust are not sufficient in themselves to ensure that the Trust will effectively insulate Stratos Global from CIP and Inmarsat Finance during the trust period. As the Commission has noted, the trust must be properly administered by the trustee to ensure separation of the trustee and the creator of the trust. Above, we rejected arguments that the Applicants have not provided sufficient detail to establish the qualifications of the Trustee to administer the Trust.<sup>165</sup> We note that the Trustee, Mr. Franklin, dismissed the allegation that CIP Canada or Inmarsat Finance would influence his administration of the Trust as “an unsupported assumption that I will not fulfill my contractual obligations.”<sup>166</sup> Mr. Franklin has stated that he is “clearly obligated to operate [the Trust] independently of CIP Canada and Inmarsat, and [that] they are clearly obligated to refrain from any interference in the management of Stratos [Global] during the trust period.”<sup>167</sup> Mr. Franklin also states that he has “an interest in maintaining my successful reputation and the necessary managerial experience to comply with my contractual obligations . . . .”<sup>168</sup> Petitioners have provided no evidence that Mr. Franklin will not administer the Trust independently of CIP Canada and Inmarsat. As a result, in view of the Trustee’s pledge, we will not, as petitioners would have us do, assume that the Trustee will not fulfill his obligations. On the basis of the record before us, we find that the Trust in this transaction is designed to provide sufficient insulation and that it will be administered so as to ensure that Inmarsat will not have *de facto* control over Stratos Global during the Trust period.

### 3. Other Arguments

50. Notwithstanding the existence of the Trust, Petitioners argue that Inmarsat will control Stratos Global. VIZADA argues that “the many contractual ties binding Inmarsat with CIP, Stratos and the Trust” will give Inmarsat Finance *de facto* control over Stratos Global.<sup>169</sup> VIZADA argues that the Loan Facility and the Call Option collectively put the economic risk of Stratos Global on Inmarsat and, thereby, undermine the purported insulation value of the Trust.<sup>170</sup> As a result, Petitioners argue that neither the Stratos Global management nor the Trustee can do anything other than maintain the *status quo* and do Inmarsat’s bidding. We are not persuaded by these arguments.

51. **The Loan Facility.** We are not persuaded that the Loan Facility will undermine the insulation value of the Trust. VIZADA argues that the Inmarsat Finance loan provides 100 percent of the capital CIP and its subsidiary, CIP Canada, will need to acquire the stock of Stratos Global as well as the money for all of their expenses.<sup>171</sup> For this reason, VIZADA argues that the capital contribution of CIP appears to be so limited that it is not clear that the Trustee would have the incentive to run Stratos Global

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<sup>165</sup> See ¶ 31, *supra*.

<sup>166</sup> Trustee Response at the fifth unnumbered page.

<sup>167</sup> *Id.* at third unnumbered page.

<sup>168</sup> *Id.* at the fifth unnumbered page.

<sup>169</sup> VIZADA Petition at 23.

<sup>170</sup> *Id.* at 12.

<sup>171</sup> VIZADA Petition at 9-16.

for the benefit of CIP.<sup>172</sup> VIZADA also argues that the terms of the loan are below market and suggest that they are designed to force CIP to sell Stratos Global to Inmarsat after the trust terminates.<sup>173</sup> Similarly, VIZADA argues that Inmarsat is subsidizing its loan to CIP. Finally, VIZADA argues that Loan Facility undermines the Trust because it “probably” gives Inmarsat, as creditor, the ability to review Stratos Global’s financial records and communicate with Stratos Global management.<sup>174</sup> From all these aspects of the Loan Facility, VIZADA argues that the loan will put all the financial risk of Stratos Global on Inmarsat,<sup>175</sup> render CIP irrelevant,<sup>176</sup> undermine the purported insulating effects of the Trust and, thus, give Inmarsat *de facto* control of Stratos Global.<sup>177</sup>

52. After reviewing VIZADA’s arguments, we do not believe that it has shown that the Loan Facility will give Inmarsat Finance *de facto* control of Stratos Global during the Trust period. At the outset, we note that all of VIZADA’s arguments about the Loan Facility address the relationship under that document between Inmarsat Finance and CIP. Thus, for example, VIZADA correctly notes that the Inmarsat loan will provide essentially all of the CIP entities’ the capital for the transaction. Applicants have admitted as much.<sup>178</sup> VIZADA may also be correct about the favorable terms, including the

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<sup>172</sup> VIZADA Petition at 16-17. Indeed, VIZADA argues that that the Narrative suggests that the principals’ equity stake in CIP will be limited to a small capital contribution and the \$750,000 from Inmarsat for the option. VIZADA Petition at 17.

<sup>173</sup> *Id.* at 9-10. VIZADA divides the Inmarsat Finance loan into two phases. VIZADA characterizes the phase one loan terms (prior to April 14, 2009) (which it asserts feature a “below-prime” 5.75% interest rate, capitalization of the interest, and lack of security for the loan) as a “sweetheart deal” that is below market and not “arm’s length.” VIZADA asserts that “[i]t is inconceivable that a *bona fide* arms-length lender would extend a loan to CIP under [those] terms.” *Id.* at 10. VIZADA describes the phase two loan terms (after April 14, 2009) (which it asserts feature an “above-market” 11.5% rate, requirement to make interest payments and introduction of a “unspecified” security package) as “onerous” and designed to make Inmarsat’s acquisition of Stratos Global inevitable.

<sup>174</sup> VIZADA Petition at 10. In its Reply, which was based on its review of the unredacted version of the Loan Facility, VIZADA argues that such review confirmed its hunch that Inmarsat will be able to receive financial information about Stratos Global’s performance. VIZADA Reply at 8.

<sup>175</sup> VIZADA Petition at 16. VIZADA argues that Loan Facility gives Inmarsat the dominant financial stake in the transaction and that the Commission looks at a putative controlling party’s financial stake to determine if it is the unauthorized real party in interest. *Id.* (citing *Trinity Broadcasting of Florida, Inc.*, 14 FCC Rcd 13570, 13583, ¶¶ 29-30). VIZADA also argues that the Commission has recognized that significant contributors of debt can have influence over a Commission licensee so as to require approval of their participation (citing *Review of the Commission’s Regulations Governing Attribution of Broadcast and Cable/MDS Interests*, Report and Order, 14 FCC Rcd 12559, 12580, ¶ 39 (1999), *reconsid. grtd in part and denied in part*, Memorandum Opinion and Order, 16 FCC Rcd 1097 (2001)).

<sup>176</sup> VIZADA Petition at 15. VIZADA asserts that the only logical conclusion one can draw from the transaction is that “CIP and the Trust will have no material interest in the operations of Stratos independent of Inmarsat.” *Id.* at 15.

<sup>177</sup> VIZADA Petition at 12.

<sup>178</sup> In response to a question from Commission staff, Applicants stated that, after exercise of Facility A under the Loan Facility, the anticipated total capitalization of CIP would be approximately US\$50,000; that the anticipated total capitalization of CIP UK would be approximately £1,000 (US\$2,000); that the anticipated total capitalization of CIP Canada would be approximately US\$275 million; and that the “net debt capitalization of the CIP Group (CIP, CIP UK and CIP Canada), on a pro-forma consolidated basis, is expected to be approximately US\$275 million with equity capitalization of approximately US\$50,000.” September 18 Letter at the second unnumbered page. By subsequent letter, Applicants clarified that the \$275 million loan was intended to cover the approximately \$260 million payment CIP Canada must make to the Stratos Global shareholders for their stock and to provide up to \$15 (continued....)



possibility that Inmarsat will be subsidizing CIP's borrowing and other aspects of the loan. Even if we were to accept all of VIZADA's arguments as true, however, they would demonstrate at most that Inmarsat will have control of CIP and its affiliates. Stratos Global is not a party to the Loan Facility and that document does not create any relationship between Stratos Global and CIP, let alone between Stratos Global and Inmarsat Finance. VIZADA's arguments, even if true, do not show that the Loan Facility gives Inmarsat *de facto* control of Stratos Global. As we discussed above, the Trust will insulate Stratos Global from CIP and its affiliates. Therefore, we agree with Inmarsat Finance's argument that "[i]t is axiomatic that if CIP Canada cannot influence or control the Trust, then *no entity*, including Inmarsat Finance, can control or influence the Trust by virtue of any relationship it may have with CIP."<sup>179</sup>

53. **The Call Option.** For the same reason, we are not persuaded by VIZADA's argument that the Call Option suggests that Inmarsat Finance has *de facto* control of Stratos Global because neither CIP nor the Trust will have a material interest in the operation of Stratos Global. VIZADA argues that the \$750,000 that Inmarsat paid for the option and the additional payment of \$750,000 to \$1,000,000 (depending on when Inmarsat exercises the option), will allow Inmarsat to acquire Stratos Global for a "marginal" cash outlay of approximately 0.7 percent of the fair market value of the stock.<sup>180</sup> VIZADA argues that a fixed-price option denies the optioning party "any chance to share in the upside gain" and deprives it of any incentive to compete aggressively or to take other potentially beneficial business risks.<sup>181</sup> VIZADA argues that the Commission disapproves of fixed-price options in the broadcast context, and that this disapproval is evidenced by the Mass Media Bureau's 1995 interim policy that it will not approve options held by programmers of broadcast stations if the option "involve[s] upfront payments of all, or substantially all, of the stations value."<sup>182</sup> VIZADA argues that the Call Option is a "fixed-price option" of the type that the Commission has expressed concern about, on the grounds that such options do not give the party granting the option the fair market value at the time the option is exercised. VIZADA notes that Inmarsat Finance will have, in effect, paid upfront over 99.6 percent of the value of the Stratos Global stock via its financing of CIP, with an "inconsequential" payment at the back-end.<sup>183</sup> Thus, VIZADA argues that there is "no reason for management or the Trustee to do anything more than maintain the *status quo* and do Inmarsat's bidding."<sup>184</sup>

54. After reviewing VIZADA's arguments, we find that it has not shown that the Call Option will give Inmarsat Finance *de facto* control of Stratos Global or that it is the real party in interest in this transaction. As with the case of VIZADA's arguments about the Loan Facility, its arguments about the Call Option are addressed to the wrong entity. It was CIP, not Stratos Global, that negotiated the terms of the Call Option with Inmarsat Finance. Were we to accept its arguments on this point as true, they would suggest only that Inmarsat Finance will control CIP, not Stratos Global. As a result, we fail to see why CIP's fixed-price option to Inmarsat removes the Trustee's incentive to operate Stratos Global

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million of "headroom" to cover CIP Canada's "transaction costs." Letter from John P. Janka, Counsel for Inmarsat Finance, to Marlene H. Dortch, Secretary, FCC, dated October 29, 2007 at first unnumbered page.

<sup>179</sup> Inmarsat Finance Opposition at 9.

<sup>180</sup> VIZADA Petition at 14-15. VIZADA calculates this percentage by dividing Inmarsat's \$1.75 million cost for the option by the \$250 million the Narrative cites as the current market value of the Stratos Global stock. See Narrative at 7.

<sup>181</sup> VIZADA Petition at 15.

<sup>182</sup> *Id.* (citing Public Notice, "Processing of Applications Proposing Local Marketing Agreements," Rep. No. 54161, 1995 LEXIS 3593 (MMB rel. June 1, 1995)).

<sup>183</sup> VIZADA Petition at 15.

<sup>184</sup> VIZADA Petition at 15-16.

competitively.<sup>185</sup> The terms of the Call Option do not affect the Trustee or the management of Stratos Global and should have no impact on their incentives to operate Stratos Global competitively. Most importantly, the terms of the Call Option do not give CIP any power to control Stratos Global and, as in the case of the Loan Facility, do not give Inmarsat Finance power to control Stratos Global by virtue of its relationship to CIP.

55. Having determined that neither VIZADA's arguments about the Loan Facility nor its arguments about the Call Option would show that they separately give Inmarsat *de facto* control of Stratos Global, we also reject VIZADA's argument that they collectively would do so. As stated above, neither argument addresses the relationship of Inmarsat to Stratos Global and, as a result, we conclude that VIZADA has not shown anything about the Loan Facility or the Call Option that would undermine our conclusions above that the trust will prevent Inmarsat Finance, or its parent, Inmarsat, from exercising *de facto* control of Stratos Global.

56. We are also not persuaded by VIZADA's argument that, because the Trustee and the management of Stratos Global will be aware that Inmarsat will acquire the stock of Stratos Global in 2009, they will ignore their responsibility to the company and will "do Inmarsat's bidding."<sup>186</sup> We recognize that the loan in this transaction will give Inmarsat an economic interest in Stratos Global and that all parties to the proceeding are aware of it. We address the competitive effects of such knowledge in Section III.D, below. It is not certain, however, that Inmarsat will in fact exercise its option to acquire Stratos Global in 2009. As a result, because the Stratos Global stock could ultimately go to a purchaser other than Inmarsat, Stratos Global management cannot be certain during the Trust period that favoring Inmarsat would benefit them individually in the long run. Further, because the Trust forbids Inmarsat to communicate with the Trustee or the Stratos Global management about the operation of Stratos Global, it is not clear how the Trustee or company management would know what Inmarsat would want them to do in a particular situation. Unless we were to assume, as we do not, that management or the Trustee will violate their obligations under the Trust, the more likely event is that management will generally try to manage Stratos Global in a way that keeps it competitive and increases its value.

57. Having said that, however, we cannot ignore the possibility that awareness of Inmarsat's interest would influence the Trustee or management in their operation of Stratos Global. As the Commission noted in the *New International* case, however, "influence and control are not the same thing."<sup>187</sup> The Commission went on to elaborate that to establish control "[t]he influence must be to the degree that the minority shareholder is able to 'determine' the licensee's policies and operation, or 'dominate' corporate affairs."<sup>188</sup> As a result, to show that awareness of Inmarsat's possible future ownership of Stratos Global would give it *de facto* control, Petitioners must show that such influence is so strong that it would cause the Trustee or Stratos Global to violate their fiduciary obligations and to allow Inmarsat to dictate company policy or to dominate Stratos Global's daily operations. We do not think that Petitioners have demonstrated such strong influence. Given that the Trust forbids Inmarsat or CIP to discuss corporate policy or operations with the Trustee or the Stratos Global management, we do not

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<sup>185</sup> VIZADA's argument about the potential deleterious effects of a fixed-price option concerns the incentive of the company granting the option, in this transaction CIP, to operate competitively. Here, however, CIP is the beneficiary of the Trust and will not operate Stratos Global. The Trustee, who will operate Stratos Global, is neither a party to, nor affected by, the Option. As a result, the Option would not be likely to affect on the Trustee's operation of Stratos Global.

<sup>186</sup> VIZADA Petition at 15-16.

<sup>187</sup> *News International, plc*, Memorandum Opinion and Order, FCC 84-79, 97 F.C.C. 2d 349, 355-56, ¶ 16 (1984).

<sup>188</sup> *Id.*

think that such an overwhelming influence is likely to occur.

58. For all the foregoing reasons, we conclude that the Trust in this proceeding is adequate to insulate Stratos Global from CIP and Inmarsat Finance and that Inmarsat is not the real party in interest in this Application. We also conclude that Petitioners have not demonstrated that either the trustee or the Stratos Global management is unwilling or incapable of administering the Trust effectively. As a result, we conclude that allowing the Trust to hold the Stratos Global stock for two years will not harm the public interest.

#### **D. Effect on Competition**

##### **1. Analytical Framework**

59. We next consider the potential public interest harms, including potential harms to competition, arising from this transfer of control. Consistent with Commission precedent, in addition to considering whether the transfer of control will reduce existing competition, we also must focus on its likely effect on future competition.<sup>189</sup> Below, we discuss the potential competitive effects of the transaction in the mobile satellite, fixed satellite and domestic terrestrial communications markets.

##### **2. Analysis of Competitive Effects**

60. In analyzing the competitive effects of the first step of the transaction, we evaluate the effect of the transfer of the Stratos Global stock to the Trust. We shall also consider the competitive effects on the incentives of Stratos Global and Inmarsat for the duration of the Trust, in the event that upon future dissolution of that Trust, control of Stratos Global passes to Inmarsat Finance, and ultimately to Inmarsat. As we stated earlier, although we find that the first step of this transaction would not shift control of Stratos Global to Inmarsat, we recognize that the existence of the Trust may alter the economic incentives between Stratos Global and Inmarsat. As we noted above, we recognize that the Trustee is aware of the transitional role of the Trust and that Inmarsat is funding the acquisition of Stratos Global by CIP.<sup>190</sup> We further recognize that the Trustee is aware that, in 2009, Inmarsat may exercise its option to acquire and vertically integrate Stratos Global. Although we find that the Trust will prevent Inmarsat from exercising *de facto* control of Stratos Global for the length of the Trust Agreement, we will consider the possibility that his awareness of Inmarsat's role could influence the behavior of the Trustee or Stratos Global management, at least at the margin, in ways that are favorable to, or supportive of, the economic interests of Inmarsat during the limited duration of the trust. Only within the context of these possibly changed economic incentives are the complaints of anticompetitive effects of the instant transaction potentially relevant.<sup>191</sup>

61. Petitioners allege that Stratos Global, in distributing the satellite services of various satellite operators, will "favor" the services provided by Inmarsat. Iridium alleges that this would work to the economic detriment of satellite operators that have no planned vertical integration with Stratos Global.<sup>192</sup> We note, again, that the Trust Agreement prevents Inmarsat from exercising control over Stratos Global. Even if we accept Iridium's allegations as true, however, we fail to see how this will

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<sup>189</sup> See *DoCoMo-Guam Cellular Order*, 21 FCC Rcd at 13591, ¶ 16; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11538, ¶ 19; *SBC-ATT Order*, 20 FCC Rcd at 18302, ¶ 18; *Verizon-MCI Order*, 20 FCC Rcd at 18444, ¶ 18; *Sprint-Nextel Order*, 20 FCC Rcd at 13978, ¶ 22; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13065, ¶ 20; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21545, ¶ 44; *Verizon/MCI Merger Order*, 20 FCC Rcd at 18444-45, ¶ 18; *SBC/AT&T Merger Order*, 20 FCC Rcd at 18302, ¶ 18.

<sup>190</sup> See ¶ 56, *supra*.

<sup>191</sup> VIZADA Petition at 26-29; Iridium Petition at 16-17.

<sup>192</sup> Iridium Petition at 16.

reduce competition. Because Stratos Global is not the only distributor of satellite services, other mobile satellite operators will still have a choice of other distributors should Stratos Global choose to favor Inmarsat.

62. On the other hand, VIZADA alleges that Inmarsat will “favor” Stratos Global over other distributors of mobile satellite services by giving Stratos Global access to satellite capacity, network capabilities or service enhancements on more favorable terms than are available to other Inmarsat service distributors.<sup>193</sup> We disagree, and find that the transfer of Stratos Global stock to the Trust will not result in discriminatory treatment of Stratos Global over other Inmarsat service providers. First, the current distribution agreement includes anti-discrimination provisions that would constrain Inmarsat’s ability to favor Stratos Global.<sup>194</sup> Furthermore, we view such alleged harms from the point of view of possible effects on industry competition and consumer welfare and *not* simply the possible effects on individual *competitors*. If Inmarsat ultimately exercises the Call Option and acquires Stratos Global, the vertical integration of Stratos Global with Inmarsat would alter the current wholesale business model, whereby Inmarsat depends on entities, such as Stratos Global, to offer its retail satellite services to end-users. In that case, Inmarsat would be able to offer both wholesale and retail satellite services to its customers, and realize the recognized economic efficiencies that vertical integration can offer.<sup>195</sup> Such a change in business model and business organization is not intrinsically anticompetitive; in fact, it can be viewed as a response to, or consequence of, increasing competition in the markets for various satellite services, including mobile satellite services. Such a change in business organization could improve coordination between the deployment and assignment of satellite capacity and the sales and marketing of retail satellite services.

63. We therefore find that the transfer of Stratos Global stock to the Trust does not create incentives for anticompetitive behavior. Given the availability of alternative mobile satellite capacity, Inmarsat is not a monopolist in the supply of mobile satellite capacity for international mobile satellite services. Similarly, Stratos Global is not a monopolist in the supply of international retail satellite services.<sup>196</sup> Competitors to Inmarsat in the supply of international mobile satellite capacity, such as Iridium, can choose alternative firms for the retail distribution of their mobile satellite services should Stratos systematically attempt to steer retail customers away from Iridium, for example, and toward comparable services offered by Stratos’ potential future affiliate, Inmarsat. In the alternative, competitors

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<sup>193</sup> VIZADA Petition at 26.

<sup>194</sup> Inmarsat Finance Opposition at 12 (noting that Inmarsat’s current distribution relationships with VIZADA and Telenor are governed by contracts that provide most-favored-nations protections against discrimination); *see also* VIZADA Petition at 26 (noting that “[t]he anti-discrimination protections in the current distribution agreement may constrain Inmarsat’s ability to act” on the incentives to discriminate between now and the expiration of the Trust Agreement).

<sup>195</sup> In general, efficient vertical integration tends to lower various transaction costs relative to reliance on arms-length market contracting to acquire certain inputs of production, such as the retail distribution services provided by Stratos Global as an independent distributor of satellite services. For a discussion of the potential economic efficiencies of vertical integration viewed from a transaction cost perspective, see Oliver E. Williamson, *The Economic Institutions of Capitalism* (New York: The Free Press, 1985), Chapter 4. A more general textbook discussion of the economics of vertical integration is provided by Dennis W. Carlton and Jeffrey M. Perloff, *Modern Industrial Organization*, 2d ed. (New York: Harper Collins, 1994), Chapter 13.

<sup>196</sup> We note that Stratos Global competes with VIZADA and Telenor and other distributors of satellite services. In fact, Iridium itself distributes Iridium services to the U.S. government, and Iridium faces no contractual restraint against distributing directly to its customers. *See* Stratos Global Opposition at 27. In addition, we note that Iridium does not contend that existing or new competitors could not distribute Iridium services in the event that Stratos Global were to market Iridium less aggressively. *Id.*

to Inmarsat may also choose to forward-integrate into the retail distribution of mobile satellite services, like Inmarsat, if it is profitable to do so for the supplier of mobile satellite capacity. Given the differentiated nature of mobile satellite services in terms of coverage, service attributes, availability, and pricing, it will be unprofitable for Stratos Global as a retail distributor to attempt systematically to steer all customers toward a service provided by Inmarsat unless an Inmarsat service best meets end-user requirements. That is, Stratos Global will lose customers to competing retail distributors over the longer term if it does not closely match the appropriate vendor of mobile satellite services to the customer's mobile communications requirements. As a result, Stratos Global lacks the market power and, hence, the incentive to discriminate anticompetitively against the competitors of Inmarsat in the retail distribution of mobile satellite services. For the same reason, in the event that Inmarsat were to decide to acquire Stratos Global, it would also be unprofitable over the longer term for a vertically integrated Inmarsat and Stratos to engage in such conduct.

64. In view of our findings above that Inmarsat's role in this transaction will not give it *de jure* or *de facto* control of Stratos Global, and given the current structure of the international mobile satellite industry and the availability of alternative vendors for both mobile satellite space segment and the retail distribution of mobile satellite services, we find that the instant transaction will not augment the market power of either Stratos Global or Inmarsat. Hence, possible behavioral incentives resulting from this transaction and described above will not induce anticompetitive effects disadvantaging either the end-user customers of Stratos Global or the competitors of Inmarsat that presently rely upon Stratos Global for the retail distribution of mobile satellite services.<sup>197</sup>

#### **E. Potential Public Interest Benefits**

65. The Commission applies a "sliding scale approach" to evaluating public interest benefit claims. Under this sliding scale approach, where potential harms appear "both substantial and likely, the Applicants' demonstration of claimed benefits also must reveal a higher degree of magnitude and likelihood than we would otherwise demand."<sup>198</sup> On the other hand, where potential harms appear to be less likely or less substantial, as in this case, we will accept a lesser showing to approve the transaction.<sup>199</sup> As the Commission has found before, because we do not find substantial public interest harms, we find the benefits that are likely to result from the transfer of control are sufficient for us to find that the transaction will serve the public interest.<sup>200</sup>

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<sup>197</sup> This conclusion is consistent with the Commission's previous finding "that markets for commercial communications satellite services are subject to effective competition and that customers realize significant net benefits in terms of service choice, innovation, and improvements in service quality." *Annual Report and Analysis of Competitive Market Conditions with Respect to Domestic and International Satellite Communications Services*, IB Docket No. 06-67, Order, FCC 07-34, 22 FCC Rcd 5954 (2007).

<sup>198</sup> *EchoStar/DirecTV Order*, 17 FCC Rcd at 20631, ¶ 192 (quoting *SBC/Ameritech Order*, 14 FCC Rcd at 14825, ¶ 256); cf. *DOJ/FTC Guidelines* § 4 ("The greater the potential adverse competitive effect of a merger . . . the greater must be cognizable efficiencies in order for the Agency to conclude that the merger will not have an anticompetitive effect in the relevant market. When the potential adverse competitive effect of a merger is likely to be particularly large, extraordinarily great cognizable efficiencies would be necessary to prevent the merger from being anticompetitive.").

<sup>199</sup> *Verizon/MCI Order*, 20 FCC Rcd at 18531, ¶ 196; *SBC/AT&T Order*, 20 FCC Rcd at 18385, ¶ 185.

<sup>200</sup> *Application of PacifiCorp Holdings, Inc. and Century Telephone Enterprises, Inc. for Consent to Transfer Control of Pacific Telecom, Inc., a Subsidiary of PacifiCorp Holdings, Inc.*, Report No. LB-97-49, Memorandum Opinion and Order, 13 FCC Rcd 8891, 8893-84, ¶ 3 (Wireless Telecom. Bur. 1997) (finding that the public interest standard was met even though the Applicants had not established the existence of substantial pro-competitive efficiency benefits to consumers).

66. We disagree with Iridium's assertion that the transaction will harm the public interest because the Trustee's obligation to conserve corporate assets will hamper Stratos Global's ability to compete effectively in the fast-changing satellite market.<sup>201</sup> According to the Applicants, little will change as a result of the transfer from Stratos Global to the Trust.<sup>202</sup> Stratos Global management, subject to the Trustee's oversight, will continue to execute the company's current business strategy and the transaction will be largely transparent to Stratos Global's customers, and the rates, terms and conditions of Stratos Global services will be unaffected by the transaction.<sup>203</sup>

67. We note that Trust Agreement insulates the Trustee from control by either CIP Canada or Inmarsat and requires the Trustee to operate in Stratos Global's interest.<sup>204</sup> Furthermore, as we stated earlier, we do not expect the transfer of Stratos Global to the Trust to have any negative effect on competition in the market for satellite services.<sup>205</sup>

68. Moreover, we reject Iridium's argument that approving the transfer of Stratos Global to the Trust will undermine the Commission's review process by allowing an applicant to put an asset in trust and avoid rigorous scrutiny.<sup>206</sup> As we have noted before, our review of the transfer of Stratos Global to the Trust (and, if necessary, the subsequent, separate review of the transfer of control from the Trust to Inmarsat or another party) is consistent with the Commission's licensing policy.<sup>207</sup>

69. We find, however, that the acquisition of Stratos Global by the Trust is likely to give rise to some public interest benefits. Although it is difficult to quantify precisely the magnitude of these benefits, we, therefore, reject Iridium's claim that there are no public interest benefits from the transaction.<sup>208</sup> Under the terms of the Trust Agreement, current management will have full latitude to operate Stratos Global in the best interests of the company, subject to the exercise of the Trustee's voting rights. Stratos Global will also continue to have the chance to expand its business to the benefit of existing and future customers. Further, the transaction provides Stratos Global's public shareholders an opportunity to sell their shares quickly and at a fair price.<sup>209</sup> Indeed, Applicants note that the Stratos Global Board of Directors unanimously approved the proposed transaction, concluding that it would benefit Stratos Global's shareholders and customers.<sup>210</sup>

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<sup>201</sup> Iridium Petition at 15.

<sup>202</sup> Stratos Global Opposition at 24-5.

<sup>203</sup> Narrative at 12.

<sup>204</sup> Iridium Petition at 15-6.

<sup>205</sup> See Section III.D., *supra*.

<sup>206</sup> Iridium Petition at 17.

<sup>207</sup> See ¶ 44, *supra*.

<sup>208</sup> Iridium Petition at 11.

<sup>209</sup> Narrative at 11 (citing *Rill*, 1985 LEXIS at \*15-\*16, ¶ 13). We reject Iridium's argument that such a sale is not a benefit because Applicants have not shown that the Stratos Global shareholders would have trouble finding other buyers for their stock.

<sup>210</sup> *Id.* Subsequently, Applicants informed the Commission that shareholders had approved the transaction. Stratos Global Opposition at 6. See also [http://www.stratosglobal.com/aboutStratos/page-aboutStratos\\_newsroom\\_newsItem.cfm?newsID=315](http://www.stratosglobal.com/aboutStratos/page-aboutStratos_newsroom_newsItem.cfm?newsID=315) The Commission has held that other "going private" transactions in the satellite industry yield similar public interest benefits. See, e.g., *Motient Corporation & SkyTerra Comm'ns*, 21 FCC Rcd 10198 (2006); *Hughes Network Systems*, 20 FCC Rcd 8080 (2005); *News Corp. Ltd.*, 19 FCC (continued....)

## F. Section 310 Foreign Ownership Review

70. Applicants request a declaratory ruling under section 310(b)(4) of the Act that the public interest would be served by permitting the Stratos Licensees to be controlled by a Canadian trust, with a Canadian trustee, with up to and including 100 percent of the beneficial interest in the Trust held directly or indirectly by non-U.S. persons and entities.<sup>211</sup> Applicants state that the direct and indirect beneficiaries of the Trust will be CIP Canada, CIP UK, CIP and the five CIP principals.<sup>212</sup>

71. The Stratos Licensees hold common carrier earth station and terrestrial wireless licenses.<sup>213</sup> We therefore examine the foreign ownership interests that will be held indirectly in the Stratos Licensees through their controlling U.S. parent company, Stratos Holdings, pursuant to our public interest analysis under section 310(b)(4) of the Act and the Commission's foreign ownership policies established in the *Foreign Participation Order*.<sup>214</sup> As part of that analysis, we consider below any national security, law enforcement, foreign policy, or trade policy concerns raised by the foreign investment.<sup>215</sup> Relying on Commission precedent, we find that the proposed transfer of control does not raise any issues under sections 310(a) or 310(b)(1)-(3) of the Act.<sup>216</sup> Our analysis focuses on issues raised

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Rcd 15424 (2004); *New Skies Satellites*, 19 FCC Rcd 21232 (2004); *Intelsat, Ltd. & Zeus Holdings*, 19 FCC Rcd 24820 (2004).

<sup>211</sup> Application, Appendix E (Section 310(b)(4) Showing) at 3. The Commission has previously granted the Stratos Licensees a declaratory ruling that permits their indirect foreign ownership under section 310(b)(4), subject to specific limitations and conditions. See *International Authorizations Granted*, Public Notice, DA 01-2552, 16 FCC Rcd 19381, 19382 (IB 2001) (granting ISP-PDR-20010830-00038). We find that the foreign ownership interests that would be held indirectly in the Stratos Licensees upon consummation of the proposed transaction would exceed the parameters of their existing ruling. As a result, the Stratos Licensees require prior approval under section 310(b)(4) for the new foreign equity and voting interests that would be held directly and indirectly in their U.S. parent, Stratos Holdings.

<sup>212</sup> Application, Appendix E at 3.

<sup>213</sup> Appendix A to this Memorandum Opinion and Order and Declaratory Ruling lists the transfer of control applications, and associated authorizations and licenses, filed in this proceeding.

<sup>214</sup> 47 U.S.C. § 310(b)(4); *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, Report and Order and Order on Reconsideration, IB Docket No. 97-142, 12 FCC Rcd 23891 (1997) (*Foreign Participation Order*). We note that section 310(b)(4) governs only common carrier, broadcast, and aeronautical en route or fixed radio licenses. Therefore, we do not consider specifically in our discussion here the proposed transfer of the private radio licenses held by the Stratos Licensees. Our findings with respect to competitive effects, see *supra* ¶¶ 60-64, our section 310(b)(4) public interest determination for the common carrier licenses, see *infra* ¶¶ 91-102, and Executive Branch resolution of any national security, law enforcement and public safety concerns, see *infra* ¶¶ 110-111, collectively suffice to resolve any public interest implications related to foreign ownership, outside our review under section 310(b)(4), to the extent there are any, for the private radio licenses.

<sup>215</sup> The Commission considers national security, law enforcement, foreign policy and trade policy concerns when analyzing foreign investment pursuant to sections 310(b)(4) and 310(d). *Foreign Participation Order*, 12 FCC Rcd at 23918-21, ¶¶ 59-66. See also *infra* Section III.J. (National Security, Law Enforcement and Public Safety Concerns).

<sup>216</sup> Section 310(a) prohibits any radio license from being "granted to or held by" a foreign government or its representative. See 47 U.S.C. § 310(a). In this matter, no foreign government or its representative will hold any of the radio licenses at issue. Section 310(b)(1)-(2) of the Act prohibit common carrier, broadcast, aeronautical fixed or aeronautical en route radio licenses from being "granted to or held by" aliens or their representatives, or foreign corporations. See 47 U.S.C. § 310(b)(1)-(2). We find that no alien, representative of an alien or foreign corporation will hold any of the radio licenses at issue in this matter. Accordingly, we find that the proposed transaction is not inconsistent with the foreign ownership provisions of sections 310(a) or 310(b)(1)-(2) of the Act. See *Deutsche* (continued....)

under section 310(b)(4). Based on the record before us, we conclude, subject to certain conditions specified below, that it would not serve the public interest to deny consent to the transfer of control because the proposed acquisition by the Trustee of the Stratos Global stock would create indirect foreign equity and voting interests in the Stratos Licensees.

### 1. Legal Standard for Indirect Foreign Ownership of Radio Licensees

72. Section 310(b)(4) of the Act establishes a 25 percent benchmark for investment by foreign individuals, corporations, and governments in entities that control U.S. common carrier radio licensees. This section also grants the Commission discretion to allow higher levels of foreign ownership if it determines that such ownership is not inconsistent with the public interest.<sup>217</sup>

73. The calculation of foreign ownership interests under section 310(b)(4) is a two-pronged analysis in which the Commission examines separately the equity interests and the voting interests in the licensee's direct or indirect parent.<sup>218</sup> The Commission calculates the equity interest of each foreign investor in the parent and then aggregates these interests to determine whether the sum of the foreign equity interests exceeds the statutory benchmark. Similarly, the Commission calculates the voting interest of each foreign investor in the parent and aggregates these voting interests.<sup>219</sup> The presence of aggregated alien equity or voting interests in a common carrier licensee's parent in excess of 25 percent triggers the applicability of section 310(b)(4)'s statutory benchmark.<sup>220</sup> Once the benchmark is triggered, section 310(b) (4) directs the Commission to determine whether the "public interest will be served by the refusal or revocation of such license."

74. In the *Foreign Participation Order*, the Commission concluded that the public interest would be served by permitting greater investment by individuals or entities from World Trade Organization ("WTO") Member countries in U.S. common carrier and aeronautical fixed and en route radio licensees.<sup>221</sup> Therefore, with respect to indirect foreign investment from WTO Members, the Commission replaced its "effective competitive opportunities," or "ECO," test with a rebuttable presumption that such investment generally raises no competitive concerns.<sup>222</sup> In evaluating an applicant's request for approval of foreign ownership interests under section 310(b) (4), the Commission uses a "principal place of business" test to determine the nationality or "home market" of foreign

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*Telekom/Voice Stream Order*, 16 FCC Rcd at 9804-09, ¶¶ 38-48. Additionally, because the foreign investment in the Stratos Licensees will be held through a controlling U.S. parent (Stratos Holdings, a Delaware corporation), the proposed transaction does not trigger section 310(b)(3) of the Act, which places a 20% limit on alien, foreign corporate or foreign government ownership of entities that themselves hold common carrier, broadcast, aeronautical fixed or aeronautical en route Title III licenses. Compare 47 U.S.C. § 310(b)(3) with 47 U.S.C. § 310(b)(4). See *Request for Declaratory Ruling Concerning the Citizenship Requirements of Section 310(b)(3) and (4) of the Communications Act of 1934, as amended*, Declaratory Ruling, 103 F.C.C. 2d 511, 520-22, ¶¶ 16-20 (1985) (*Wilner & Scheiner I*), reconsidered in part, 1 FCC Rcd 12 (1986).

<sup>217</sup> 47 U.S.C. § 310(b)(4).

<sup>218</sup> See *BBC License Subsidiary L.P.*, Memorandum Opinion and Order, 10 FCC Rcd 10968, 10973 ¶ 22 (1995) ("*BBC License Subsidiary*").

<sup>219</sup> See *id.* at 10972, 10973-74, ¶¶ 20, 22-25.

<sup>220</sup> See *id.* at 10973-74, ¶ 25.

<sup>221</sup> *Foreign Participation Order*, 12 FCC Rcd at 23896, 23913, 23940, ¶¶ 9, 50, 111-112.

<sup>222</sup> *Id.*



investors.<sup>223</sup>

75. In light of Commission policies adopted in the *Foreign Participation Order*, we begin our evaluation of the indirect foreign ownership of the Stratos Licensees under section 310(b)(4) by calculating the foreign equity and voting interests that will be held in their U.S. parent, Stratos Holdings, upon consummation of the proposed transaction. We then determine whether these foreign interests properly are ascribed to individuals or entities that are citizens of, or have their principal places of business in, WTO Member countries. The Commission stated, in the *Foreign Participation Order*, that it will deny an application if it finds that more than 25 percent of the ownership of an entity that controls a common carrier radio licensee is attributable to parties whose principal place(s) of business are in non-WTO Member countries that do not offer effective competitive opportunities to U.S. investors in the particular service sector in which the applicant seeks to compete in the U.S. market, unless other public interest considerations outweigh that finding.<sup>224</sup>

76. In calculating attributable alien equity interests in a parent company, the Commission uses a multiplier to dilute the percentage of each investor's equity interest in the parent company when those interests are held through intervening companies. The multiplier is applied to each link in the vertical ownership chain, regardless of whether any particular link in the chain represents a controlling interest in the company positioned in the next lower tier.<sup>225</sup> By contrast, in calculating alien voting interests in a parent company, the multiplier is not applied to any link in the vertical ownership chain that constitutes a controlling interest in the company positioned in the next lower tier.<sup>226</sup> When evaluating foreign voting interests in the U.S. parent company of a common carrier licensee, it is possible that multiple investors will be treated as holding the same voting interest in a U.S. parent company where the investment is held through multiple intervening holding companies. Our purpose in identifying the citizenship of the specific individuals or entities that hold these interests is not to increase the aggregate level of foreign investment, but rather to determine whether any particular interest that a foreign investor proposes to acquire raises potential risks to competition or other public interest concerns, such as national security or law enforcement concerns.<sup>227</sup>

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<sup>223</sup> To determine a foreign entity's home market for purposes of the public interest determination under section 310(b)(4), the Commission will identify and balance the following factors: (1) the country of a foreign entity's incorporation, organization or charter, (2) the nationality of all investment principals, officers, and directors, (3) the country in which the world headquarters is located, (4) the country in which the majority of the tangible property, including production, transmission, billing, information, and control facilities, is located, and (5) the country from which the foreign entity derives the greatest sales and revenues from its operations. *Foreign Participation Order*, 12 FCC Rcd at 23941, ¶ 116 (citing *Market Entry and Regulation of Foreign-Affiliated Entities*, Report and Order, 11 FCC Rcd 3873, 3951, ¶ 207 (1995) (*Foreign Carrier Entry Order*)). For examples of cases applying the five-factor "principal place of business" test, see *Lockheed Martin Global Telecommunications, Comsat Corporation, and Comsat General Corporation, Assignor, and Telenor Satellite Mobile Services, Inc., and Telenor Satellite, Inc., Assignee, Applications for Assignment of Section 214 Authorizations, Private Land Mobile Radio Licenses, Experimental Licenses, and Earth Station Licenses and Petition for Declaratory Ruling Pursuant to Section 310(b)(4) of the Communications Act*, Order and Authorization, 16 FCC Rcd 22897 (2001), *erratum*, 17 FCC Rcd 2147 (Int'l Bur. 2002), *recon. denied*, 17 FCC Rcd 14030 (2002) (*Telenor Order*); *Space Station System Licensee, Inc., Assignor, and Iridium Constellation LLC, Assignee, et al.*, Memorandum Opinion, Order and Authorization, 17 FCC Rcd 2271 (Int'l Bur. 2002).

<sup>224</sup> See *Foreign Participation Order*, 12 FCC Rcd at 23946, ¶ 131.

<sup>225</sup> See *BBC License Subsidiary*, 10 FCC Rcd at 10973-74, ¶¶ 24-25.

<sup>226</sup> See *id.* at 10973, ¶ 23; see also *Wilner & Scheiner I*, 103 FCC 2d at 522, ¶ 19.

<sup>227</sup> See *Foreign Participation Order*, 12 FCC Rcd at 23940-41, ¶¶ 111-15.

## 2. Characterization of the Inmarsat Loan Facility as Debt or Equity

77. As we indicated above, section 310(b)(4) of the Act requires us to examine the foreign ownership of Stratos Holdings, the U.S. parent of the Stratos Licensees, upon consummation of the proposed transaction. In calculating foreign equity and voting interests under section 310(b) of the Act, the Commission considers not only the individual shareholdings of a corporate parent, but also the many alternative means by which equity or voting interests are held in noncorporate business entities,<sup>228</sup> including the beneficiaries of irrevocable trusts.<sup>229</sup> Thus, it is clear, and Applicants do not dispute, that section 310(b)(4) applies to CIP Canada as the beneficiary of the Trust in this transaction, as well as to CIP Canada's direct and indirect 100 percent parent companies, CIP UK and CIP.<sup>230</sup> We also find on the record before us that Inmarsat's loan facility is more properly classified as a capital contribution to CIP Canada than debt for purposes of our section 310(b)(4) foreign ownership analysis. As a result, we find that the loan facility is equivalent to a 100 percent indirect beneficial ownership interest in the Trust by Inmarsat Finance. We set forth our findings on the debt/equity issue below and, in Section III.F.3 below, we examine the foreign equity and voting interests that will be held indirectly in the Stratos Licensees upon consummation of the proposed transaction.

78. VIZADA argues that under longstanding policies in the broadcast context, the Commission should find that Inmarsat's loan or Call Option—either standing alone and certainly the two together—would give Inmarsat influence over CIP equivalent to an outright equity interest, thereby conferring *de facto* control over the Commission licensee.<sup>231</sup> With respect to the Call Option, we do not think that it constitutes an equity interest for purposes of section 310(b)(4), because it is a future interest. The Commission has long held that future interests such as warrants, options and convertible debt do not constitute capital stock until exercised or converted and, thus, are not relevant to the foreign ownership analysis. This is because we concluded above that the Trust insulates Stratos Global from Inmarsat.

79. We turn then to VIZADA's argument about the Inmarsat loan. We concluded above that the terms of the Loan Facility do not give Inmarsat ownership of Stratos Global stock or the ability to control it. We agree with VIZADA, however, that the Inmarsat loan will represent a sizeable portion of the capital of CIP Canada and, perhaps, of the other CIP entities as well. The Applicants have said that the loan will represent virtually all of the capitalization of CIP Canada. While the Commission has generally held that debt interests are generally irrelevant to its foreign-ownership analysis, it has recognized that some debt interests may be classified as equity contributions rather than *bona fide* debt.

80. The Commission has stated that it will not rely on the labels that parties put on arrangements but will look to “the totality of circumstances, the economic reality and substance of the transaction” to determine the proper categorization of a particular loan.<sup>232</sup> In *Fox II*, the Commission applied a series of five factors that Congress specified in the context of federal tax law to distinguish debt

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<sup>228</sup> See, e.g., *Kansas City Broadcasting Co.*, 5 Rad. Reg. 1057 (1952) (members of a church); *Chicagoland TV Co.*, 4 Rad. Reg. 2d 747,752 (1965) (union members).

<sup>229</sup> *PrimeMedia Broadcasting, Inc.*, 3 FCC Rcd 4293, 4295, ¶¶ 8-11 (1988).

<sup>230</sup> See Application, Appendix E at 1. The Commission has previously recognized that the scope of section 310(b) applies equally to all business forms and that an overly restrictive administrative interpretation of the scope of the statute could provide the vehicle for the complete circumvention of the alien ownership restrictions. See *Wilner & Scheiner I*, 103 FCC 2d at 514-15, ¶ 7 (citing *Attribution Policy Statement*, 97 FCC 2d at 1009, ¶ 22 (1984) and *Kansas City Broadcasting Co.*, 5 Rad. Reg. at 1094).

<sup>231</sup> VIZADA Petition at 17.

<sup>232</sup> See, e.g., *Fox Television Stations, Inc.*, Second Memorandum and Order, FCC 95-313, 11 FCC Rcd 5714, 5720, ¶ 16 (1995) (*Fox II*).

from capital contributions.<sup>233</sup> (1) whether there is a written, unconditional promise to repay the money on demand and to pay a fixed rate of interest; (2) whether there is subordination to or preference over any indebtedness of the company; (3) the company's debt/equity ratio; (4) whether the alleged debt is convertible to stock; and (5) the relationship between holdings of stock in the corporation and holdings of the interest in question.<sup>234</sup> While the Commission stated that it did not deem the factors "controlling," it did find them to be "helpful comparisons" as a guide for its evaluation of a particular transaction.<sup>235</sup> Similarly, the Commission has not required all five factors to be present in making its determination.<sup>236</sup> The five factors would be a useful guide to determine the character of the loan in this transaction. Applying those principles to the Inmarsat Finance Loan Facility, we conclude that, for purposes of section 310 (b)(4), we should treat it as equivalent to a capital contribution and not as a *bona fide* debt.

81. **Written promise to pay and a fixed interest rate.** The Inmarsat Finance Loan Facility contains a written promise for the borrower to repay the loan and bears a fixed rate of interest of 5.75 percent until April 14, 2009, and a fixed rate of 11.50 percent thereafter. This suggests that the loan should be characterized as a *bona fide* debt. There are, however, a number of additional factors that make such a conclusion less certain. First, if Inmarsat Finance exercises the Call Option in 2009, CIP could avoid any actual payment of interest. The Loan Facility provides that, prior to the option exercise date, interest accrues and is "payable" every three months, but states that interest should be capitalized and added to the principal. It is only after the exercise date that CIP UK would be required to begin to pay interest, and assuming that the option is exercised by Inmarsat the interest and principal would be canceled. Second, the Call Option provides that, for a payment of \$750,000 to \$1,000,000, depending upon when it exercises the option, Inmarsat will acquire all of CIP, presumably including CIP UK's indebtedness to Inmarsat Finance, without requiring CIP to pay any principal or interest. We conclude that the provisions of the Loan Facility can be read as evidencing an intent for Inmarsat to recover its loan through a transfer of stock rather than money. As a result, the loan terms suggest that the Inmarsat Finance loan should be characterized as an equity contribution, rather than *bona fide* debt.

82. **Subordination of the CIP loan.** The Loan Facility provides that the loan to CIP UK is unsecured until April 14, 2009, and that it is subordinate to other Stratos Global indebtedness.<sup>237</sup> In *Next Wave*, the Commission concluded that, because the convertible promissory notes in that case were subordinated to most of the corporation's other debt suggested that the loan should be characterized as an equity contribution. The loan in this transaction does not involve convertible promissory notes but the Loan Facility does provide that the loan is unsecured (until the option exercise date) and subordinated to Stratos Global's existing debt, and exercise of the option would result in Inmarsat's obtaining the stock of Stratos Global and the assumption of CIP's indebtedness. We view this as effectively the same result as if Inmarsat had held convertible promissory notes. As a result, repayment of the loan is effectively made with stock. This also suggests that the Loan Facility should be characterized as an equity contribution.

83. **CIP's debt/equity ratio.** In their September 18 letter, Applicants state that CIP UK's anticipated debt/ratio after exercising Facility A of the Loan Facility, and assuming no external debt,

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<sup>233</sup> *Id.*

<sup>234</sup> 26 U.S.C. § 385(b) (Supp. 1995). The Commission in *Fox II* also noted that courts have articulated similar tests involving as many as 16 factors, 11 FCC Rcd at 5720 (citing *Roth Steel Tube Co. v. Commissioner*, 800 F. 2d 625 (6<sup>th</sup> Cir. 1986), *cert. denied* 381 U.S. 1014 (1987); *Fin Hay Realty Co. v. United States*, 398 F. 2d 694, 696 (3d cir. 1968)).

<sup>235</sup> *Fox II* 11 FCC Rcd at 5720, ¶ 16.

<sup>236</sup> *Next Wave*, 12 FCC Rcd at 2049, ¶ 43.

<sup>237</sup> Narrative at 7.

would be “approximately 137,000 to 1.”<sup>238</sup> This suggests that CIP will be extremely thinly capitalized. In *NextWave*, the Commission stated that the debt/equity ratio indicating a thin capitalization would make it unlikely, in the face of a business loss, that the company could repay the debt interests in question.<sup>239</sup> The Commission noted that in *Fox II* it had found that a debt/equity ratio of 1400:1 rendered the debt interests there not *bona fide* debt.<sup>240</sup> The Commission also found that NextWave’s debt/equity ratio of 14:1 indicated that it was thinly capitalized and rendered the debt instruments in that case not *bona fide* debt.<sup>241</sup> In this matter, we note that CIP UK’s debt/equity ratio is substantially greater than those considered in *Fox II* and *NextWave* and suggests that a business loss would make it virtually certain that CIP UK would be unable to repay the Inmarsat Finance loan. We also note that the Inmarsat Finance loan exhibits an additional factor the Commission found relevant in *NextWave*—namely that the risk a thinly capitalized debtor will be unable to repay the debt interest is increased when the debt in question is subordinate to a company’s other debt.<sup>242</sup> The fact that the Inmarsat Finance loan in this transaction is subordinate to Stratos Global’s existing debt reinforces our conclusion about CIP UK’s likely inability to repay the loan and, again, suggests that the Inmarsat loan is not a *bona fide* debt.

84. **Convertibility of the Inmarsat Finance loan to stock.** In *NextWave*, the Commission considered “convertible promissory notes” that could be converted to stock.<sup>243</sup> The Commission noted that, ordinarily, it would not consider future interests such as the convertible promissory notes relevant to its section 310 (b) foreign-ownership analysis until converted, but that it would consider such notes to determine whether they represent *bona fide* debt.<sup>244</sup> In this transaction, there are no traditional convertible debt interests such as the convertible promissory notes in *NextWave*. The Inmarsat Finance loan is not by its terms “convertible” to stock. We note, however, that this transaction also includes the Call Option that allows Inmarsat Finance to acquire the Stratos Global stock without an additional payment (other than the payment for the option and the relatively nominal payment for its exercise). The Commission has generally held that convertible debt instruments are not relevant to its foreign ownership determinations until converted, but, in *NextWave*, considered the convertible instruments there for the purpose of determining whether the ability to repay the debt with stock affected the status of the obligation as *bona fide* debt.<sup>245</sup> The Commission there concluded that the convertibility to stock evidenced an intent for the debt to be repaid with stock and that the debt instruments should, therefore, be characterized as an equity contribution, rather than *bona fide* debt.<sup>246</sup> In this matter, we concluded above that the Loan Facility, coupled with the Call Option, also evidences that the noteholder, Inmarsat Finance, expects CIP to repay the loan with the Stratos Global stock rather than cash. We, thus, further conclude that the two documents together have the same effect as if the Inmarsat Finance loan were a traditional convertible

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<sup>238</sup> September 18 Letter at the third unnumbered page. Applicants also state that, because CIP and CIP Canada have little or no external debt, the debt/equity ratio for each would be “less than 1 to 1” and that the ratio for the CIP Group (on a pro forma consolidated basis) would be 5000 to 1.

<sup>239</sup> *NextWave*, 12 FCC Rcd at 2055, ¶ 54.

<sup>240</sup> *Id.*

<sup>241</sup> *Id.* at ¶ 55.

<sup>242</sup> *Id.* at ¶ 54.

<sup>243</sup> *Id.* at 2052, ¶¶ 48-9.

<sup>244</sup> *Id.* at 2056, ¶ 56.

<sup>245</sup> *Id.* at 2057, ¶ 56.

<sup>246</sup> *Id.* at ¶ 57.

debt instrument.<sup>247</sup> For this reason, we conclude that this equivalency suggests that we should characterize the Inmarsat Finance loan as an equity contribution rather than *bona fide* debt.

85. **Relationship of Loan Facility to Stratos Global stock.** In *NextWave*, the Commission looked to see whether the benefits normally reflected in corporate ownership are derived through the debt obligations of the company.<sup>248</sup> The Commission noted that, in *Fox II*, it had found that the fact that the minority shareholder in that case was entitled to the profits of the company and, upon liquidation, its assets indicated that the loan was a capital contribution and not a *bona fide* debt.<sup>249</sup> In the present matter, neither Inmarsat nor CIP is entitled to the profits of Stratos Global during the Trust period, but under the Call Option Inmarsat is entitled to acquire the stock of Stratos Global after the Trust terminates. In analyzing Inmarsat Finance's rights are those of a shareholder or a creditor, we apply the six-factor test the Commission enunciated in *NextWave*: (1) whether the Inmarsat Finance's loan is made in proportion to its stock ownership; (2) whether expectation of repayment depends solely on the success of CIP's business; (3) whether the loan proceeds are to be used to purchase capital assets rather than to meet CIP's daily operating expenses; (4) whether the Inmarsat Finance loan, rather than its ownership interests in CIP, reflects rights to profit distributions or liquidation preferences; (5) whether Inmarsat participates in the management of CIP; and (6) whether an outside commercial lender would have provided CIP for the same principal amount under the same terms and conditions as those in the Loan Facility.<sup>250</sup>

86. Several of these factors are related to convertible debt instruments such as the "convertible promissory notes" at issue in *NextWave* and may not apply in the same way that they did in that case. However, the Inmarsat Finance loan does implicate factors 3 and 6. The proceeds of the loan are designed to allow CIP Canada to purchase the stock of Stratos Global, as well as to cover CIP Canada's expenses in acquiring the stock and carrying out other functions under the Loan Facility and the Trust (such as providing funds to cover potential issues by Stratos Global of additional securities) (factor 3). We also think it is unlikely that an arm's length lender would lend CIP the full amount committed by the Loan Facility (*i.e.*, an amount to cover the entire capitalization of CIP and its operating expenses) or that it would do so without a security interest (factor 6).

87. The Inmarsat loan may implicate several of the other factors as well. With respect to factor 4, Inmarsat does not have any rights under the Loan Facility to the profits of CIP, but CIP does have the right to receive any dividends declared by Stratos Global, offset by amounts it is obligated to pay the Trustee. With respect to factor 2, we note that Inmarsat Finance's expectation of repayment does indirectly depend on the success of CIP's business. During the Trust period (until April 14, 2009), CIP has no function other than to hold the beneficial interest in the Stratos Global stock, to pay the Trustee and, if it wishes, to purchase any new issue of Stratos Global securities.<sup>251</sup> Because the Loan Facility calls for the interest during that period to be capitalized, CIP is not required to make any payment of

<sup>247</sup> *Id.* at 2056, ¶ 56.

<sup>248</sup> *Id.* at 2057-8, ¶ 59.

<sup>249</sup> *Id.* at 2057-8, ¶ 59.

<sup>250</sup> *Id.*

<sup>251</sup> The Trust requires CIP Canada to transfer legal title to the shares it acquires from shareholders to the Trust. Trust at 3, Section 2.a. The Trust also requires the Trustee to issue Trust Certificates to CIP Canada representing its beneficial interest in the stock. *Id.* at 2.b. The Trust provides that CIP Canada can, if it wants, purchase any new securities the Company may issue during the Trust period. *Id.* at 9, Section 6.b. The Trust requires CIP Canada to pay the Trustee his monthly salary. *Id.* at 10, Section 7.b. The Trust also provides that the Trustee can declare a dividend payable to CIP and net out of such dividends amounts sufficient to cover his salary and to maintain the "Expenses Account." *Id.* at 14, Section 8.a.

either principal or interest to Inmarsat Finance. As a result, Inmarsat Finance has no expectation of repayment during that period. Similarly, during the Trust period, as CIP doesn't have any business, the possibility that CIP's business might "fail" is remote. After the exercise date of the Option, the Loan Facility provides that CIP should begin to make cash payments of both principal and interest. However, as noted, the Loan Facility also provides that CIP can, in effect, pay off the principal and interest by transferring the Stratos Global stock, without any out-of-pocket payment. This suggests that the loan should be characterized as an equity contribution and not as *bona fide* debt.

88. On the other hand, Inmarsat Finance does not hold any stock in CIP. Thus, it does not make the loan in proportion to its stock ownership, so factor 1 of the six factors does not appear to apply to the Loan Facility. Similarly, Inmarsat Finance does not have a right under the Loan Facility to participate in the management of CIP, so we cannot conclude that factor 5 would apply to the Loan Facility. On balance, it is not clear whether the factor relating to the relationship of the debt to stock would apply to the Inmarsat Finance loan.

89. As we noted in ¶ 80, above, however, we need not find that every factor applies to determine that a loan should be characterized as an equity contribution. The Commission noted in *Next Wave*, rather, that the determination of the proper characterization of an investment as debt or equity does not depend on counting the factors but evaluating them.<sup>252</sup> Indeed, the Commission in *Fox II* suggested that one of the factors, the debt/equity ratio, might be sufficient alone to characterize a debt as equity.<sup>253</sup> In *Fox II*, the debt/equity ratio was 1400:1. In *Next Wave*, where the Commission also found the company to be thinly capitalized, the debt/equity ratio was 14:1. In this transaction, the debt/equity ratio is approximately 137,000:1. Based on *Fox II*, we might conclude that such a debt/equity ratio would be sufficient in itself to conclude that the Inmarsat Finance loan should be characterized as an equity contribution. However, as we indicated above we there are a number of other factors which would lead us to the same conclusion. Therefore, we believe we have ample basis under the five-factor test to characterize the Inmarsat Finance loan, for purposes of our section 310(b)(4) foreign ownership analysis, as an equity contribution rather than *bona fide* debt. As a result, we shall examine the foreign ownership of Inmarsat, the parent of Inmarsat Finance.

90. We emphasize that our determination to recharacterize the Inmarsat Finance loan as an equity contribution is strictly for purposes of our foreign-ownership inquiry under section 310(b)(4). It does not imply a finding that we should treat the loan as an equity contribution to Stratos Global for purposes of section 310(d); nor is it inconsistent with our conclusion, above, that Inmarsat would not have *de facto* control over Stratos Global.

### 3. Attribution of Foreign Ownership Interests

91. As explained in Section II.C above, under the terms of the transaction before us, CIP Canada will acquire the stock of Stratos Global, the ultimate parent company of the Stratos Licensees. Stratos Global will continue to wholly own the Stratos Licensees through Stratos Global's direct and indirect wholly-owned subsidiaries, Stratos Wireless and Stratos Holdings, respectively. Stratos Global and Stratos Wireless are both organized under the laws of Canada, while Stratos Holdings is organized in the United States. CIP Canada will transfer the stock of Stratos Global to a Canadian-organized Trust, of which Mr. Robert M. Franklin will serve as Trustee. Mr. Franklin, a Canadian citizen, will exercise the legal title to, and voting rights of, the Stratos Global stock. The Trust will hold the stock of Stratos Global for the benefit of CIP Canada. CIP Canada is organized as a Canadian corporation and is wholly

<sup>252</sup> *NextWave*, 12 FCC Rcd at 2049, ¶ 43 (citing *Bauer v. Commissioner*, 748 F.2d 1365 (9th Cir. 1985)).

<sup>253</sup> *Fox II*, 11 FCC Rcd at 5721, ¶ 17. "[We are aware of no case in which a court found *bona fide* debt despite a debt/equity ratio that approached the one at issue in this case [*i.e.*, *Fox II*, where the debt/equity ratio was 21:1]."

owned by CIP UK, which is organized under the laws of England and Wales. CIP UK is, in turn, wholly owned by CIP, a limited partnership organized under the laws of the British Virgin Islands. The equity and voting interests of CIP are divided among five individuals, with each partner holding 20 percent of CIP's equity and voting interests. Four of CIP's partners are foreign citizens. One partner holds dual U.S.-Mexican citizenship.

92. Based on the information and representations submitted by the Applicants, and consistent with the foreign ownership case precedent discussed in Section III.F.1. above, we examine below the foreign equity and voting interests that will be held, directly or indirectly, in Stratos Holdings, the U.S. parent company of the Stratos Licensees. First, we calculate that, upon closing of the proposed transaction, Stratos Wireless and its 100 percent parent company, Stratos Global, will continue to hold, directly and indirectly, 100 percent of the equity and voting interests in Stratos Holdings. Based on the information in the record, we find that Stratos Wireless and Stratos Global have their principal places of business in the United States or Canada, a WTO Member country.<sup>254</sup>

93. We next look at the indirect foreign equity interests that will be held in Stratos Holdings by the CIP entities. We attribute to each of CIP Canada, the direct beneficiary of the Trust, and to its direct and indirect parent companies, CIP UK and CIP, a 100 percent indirect equity interest in Stratos Holdings. We also attribute a 20 percent indirect equity interest in Stratos Holdings to each of CIP's five partners.

94. We find that CIP Canada, CIP UK and CIP principally conduct business in WTO Member countries, including the British Virgin Islands, the United Kingdom, Canada, and/or the United States.<sup>255</sup> CIP Canada is a holding company organized and headquartered in Canada.<sup>256</sup> CIP Canada currently has no tangible property or direct sales or revenues.<sup>257</sup> CIP Canada's direct parent company, CIP UK, is a holding company organized and headquartered in the United Kingdom.<sup>258</sup> Like CIP Canada, CIP UK currently has no tangible property or direct sales or revenues.<sup>259</sup> Its direct parent company, CIP,

<sup>254</sup> See Stratos Global October 26 Letter. All of Stratos Wireless's officers and directors are U.S. or Canadian citizens; it is headquartered in Canada, where the majority of its tangible property is located; and it derives the greatest sales and revenues from its operations in Canada. All of Stratos Global's officers and the majority of its directors are U.S. or Canadian citizens; it is a holding company headquartered in the United States with the majority of its tangible property located in the United States and Canada; the country with the greatest revenues from the operations of its subsidiaries is the United States. *Id.* at 2-3.

<sup>255</sup> The United States Trade Representative maintains a list of WTO Members on its web-site at [http://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/org6\\_e.htm](http://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm). Because the British Virgin Islands is an overseas territory of the United Kingdom, the Commission treats it as a WTO Member for purposes of the public interest analysis under section 310(b)(4) of the Act. See *Global Crossing, Ltd. (Debtor-in-Possession), Transferor, and GC Acquisition Limited, Transferee*, IB Docket No. 02-286, DA 03-3121, Order and Authorization, 18 FCC Rcd 20301, 20322, ¶ 25 n.99 (IB/WTB/WCB 2003) (citing *Cable & Wireless USA, Inc., Application for Authority to Operate as a Facilities-Based Carrier in Accordance with the Provisions of Section 63.18(e)(4) of the Rules Between the United States and Bermuda*, Order, Authorization and Certificate, DA 00-311, 15 FCC Rcd 3050, 3052, ¶ 7 (IB 2000) (relying on an opinion provided by the U.S. Department of State that the 1994 Marrakesh Agreement Establishing the World Trade Organization applies to all British territories)).

<sup>256</sup> See CIP October 26 Letter. See also Narrative at 4-5.

<sup>257</sup> CIP October 26 Letter.

<sup>258</sup> *Id.* See also Narrative at 4.

<sup>259</sup> CIP October 26 Letter.

is organized and headquartered in the British Virgin Islands.<sup>260</sup> CIP is an investment company whose major contemplated investment is Stratos Global,<sup>261</sup> which we find has its principal place of business in the United States or Canada.<sup>262</sup> CIP currently has no tangible property or direct sales or revenues. It is owned and controlled in equal (20 percent) shares by its five partners.<sup>263</sup> Three CIP partners are citizens and residents of the Netherlands; two CIP partners are citizens and residents of France; and one CIP partner has dual U.S.-Mexican citizenship and resides primarily in Spain. The Netherlands, France, Mexico and Spain are all WTO Member countries. Based on the totality of the circumstances presented in this case, we find that the newly created CIP entities are fairly treated as having their principal places of business in the British Virgin Islands, the United Kingdom, Canada, and/or the United States.<sup>264</sup> We also find that the five investment principals of CIP are citizens of the United States and other WTO Member countries.

95. We analyze next the indirect foreign equity interests that will be held in Stratos Holdings by and through Inmarsat Finance. As discussed in Section III.F.2. above, we consider Inmarsat Finance, in effect, to hold indirectly a 100 percent beneficial ownership interest in the Trust for purposes of our foreign ownership analysis. As a result, we attribute to Inmarsat Finance and to its direct parent, Inmarsat, a 100 percent indirect equity interest in Stratos Holdings. We find, based on the information in the record, that Inmarsat Finance and Inmarsat each has its principal place of business in the United Kingdom, a WTO Member country.<sup>265</sup>

96. We also find, based on information Inmarsat Finance has submitted for the record, that citizens of, or entities that principally conduct business in, WTO Member countries hold at least 75 percent of the equity and voting interests in Inmarsat.<sup>266</sup> In the ordinary course of business, Inmarsat periodically has JPMorganCazenove Limited (Cazenove) survey Inmarsat shareholders that own 100,000 or more shares.<sup>267</sup> Cazenove investigates shareholdings in Inmarsat to identify, where possible, the

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<sup>260</sup> *Id.* See also Narrative at 4.

<sup>261</sup> CIP October 26 Letter.

<sup>262</sup> See *supra* ¶ 92.

<sup>263</sup> *Id.*

<sup>264</sup> See *supra* ¶ 94, n.255. See also *Foreign Carrier Entry Order*, 11 FCC Rcd at 3951-2, ¶ 207 (“If all five of [the] factors indicate that the same country should be considered to be the entity’s home market, it will be presumed to be so, subject only to rebuttal on clear and convincing evidence to the contrary. If these five factors yield inconsistent results, however, we will balance them, as well as any other information that is particularly relevant to the case, to determine the appropriate home market under the totality of the circumstances.”).

<sup>265</sup> See Inmarsat Finance October 16 Letter at 6; Narrative at 5-6. See also *supra* Section II.B.

<sup>266</sup> As discussed in Section III.F.1 above, the Commission stated, in the *Foreign Participation Order*, that it will deny an application if it finds that more than 25% of the ownership of an entity that controls a common carrier radio licensee is attributable to parties whose principal place(s) of business are in non-WTO Member countries that do not offer effective competitive opportunities to U.S. investors in the particular service sector in which the applicant seeks to compete in the U.S. market, unless other public interest considerations outweigh that finding. See *supra* ¶ 75.

<sup>267</sup> See Inmarsat Finance October 16 Letter at 2. Shareholdings of 100,000 or less each represent only approximately 0.02% of the issued and outstanding shares of Inmarsat, which it considers de minimis for its review purposes. Cazenove also does not analyze holdings of private individuals. Certain members of Inmarsat’s senior management, however, own in the aggregate approximately 1.48% of Inmarsat shares and are citizens of the United States and other WTO Member countries. See *id.* at 2. We include these “known” shareholdings in our foreign ownership analysis. See *infra* ¶ 97.



underlying beneficial ownership of Inmarsat shares.<sup>268</sup> Inmarsat Finance states that, “[i]n accordance with the UK Companies Act (which governs Inmarsat plc), this investigation typically involves writing to the named shareholder requesting that they provide the relevant information relating to the underlying ownership.”<sup>269</sup> Cazenove also takes steps to determine the country of “domicile” for Inmarsat’s shareholders and any third parties that manage those shareholdings.<sup>270</sup> According to Inmarsat Finance, in determining the “domicile” of an entity, Cazenove “conducts research to look beyond the street address associated with the shares. Among other things, Cazenove looks to available information such as: investment purpose, country of organization, location of headquarters, and country from which the funds being managed were contributed.”<sup>271</sup> We find that the information Inmarsat has relied on to establish a “domicile” for the beneficial owners of its shares provides a reasonable basis for identifying a principal place of business for these shareholders for purposes of our section 310(b)(4) analysis in this case.

97. Cazenove most recently conducted a survey of Inmarsat shareholders in September 2007. Based on the results of this survey, Inmarsat Finance has categorized and calculated its equity ownership as follows:<sup>272</sup>

Certain members of Inmarsat senior management (U. S. or other WTO Member countries)	1.48%
U.S. Banks, Insurance Companies, Pension Plans, Foundations/Endowments <sup>273</sup>	0.24%

<sup>268</sup> See Inmarsat Finance October 16 Letter at 2. According to Inmarsat Finance, in many instances, Inmarsat shares are managed by a different entity than the beneficial owners, with the investment manager typically exercising the voting power. Certain managers hold the voting power represented by the shares of multiple beneficial owners. Inmarsat Finance explains that, in certain cases in which the beneficial owner is known, either it is not certain whether that beneficial owner relies on a manager, or Inmarsat does not have complete information about the manager. In the aggregate, those circumstances exist for approximately 2% of Inmarsat shares. We need not, in any event, analyze in detail the level of foreign voting interests in Inmarsat in the context of the transaction before us. We conclude, in Section III.C. above, that the Trustee in this transaction, who will exercise legal title to 100% of Stratos Global’s stock, will also exercise all voting rights in the stock and have *de jure* and *de facto* control of Stratos Global. We also conclude, in Section III.F.2. above, that Inmarsat will hold, in effect, a 100% indirect equity interest in the Stratos Licensees for purposes of our foreign ownership analysis. Accordingly, consistent with our foreign ownership case precedent discussed in Section III.F.1. above, we calculate only the level of foreign equity interests in Inmarsat and not the level of foreign voting interests.

<sup>269</sup> *Id.*

<sup>270</sup> As explained in footnote 266, above, we are concerned in the circumstances of this transaction with the foreign equity interests in Inmarsat, not with the level of foreign voting interests.

<sup>271</sup> Inmarsat Finance Letter at 2.

<sup>272</sup> All percentages listed are approximate. See Inmarsat Finance October 16 Letter at 2.

<sup>273</sup> This category also includes holdings by analogous entities such as custodians, charities, and “market makers.” All of these investing entities are U.S.-organized and –controlled, and have their “domicile” or “principal place of business” in the United States. See Inmarsat Finance October 16 Letter at 2-4. As explained in paragraph 96, we find that the information Inmarsat has relied on to establish a “domicile” for the beneficial owners of its shares provides a reasonable basis for identifying a principal places of business for purposes of our section 310(b)(4) analysis in this case.

Foreign Banks Insurance Companies, Pension Plans, Foundation/Endowments (WTO) <sup>274</sup>	29.0%
U.S. Private Equity Funds and Management Investment Cos. (including mutual funds, closed end funds, hedge funds and unit trusts) <sup>275</sup>	4.0%
Foreign Private Equity Funds and Management Investment Cos. (including mutual funds, closed end funds, hedge funds and unit trusts) (WTO) <sup>276</sup>	47.0%
Other U.S. investors not covered above	0.00%
Other foreign investors not covered above <sup>277</sup>	7.00% (including 1% non-WTO)
<b>TOTAL</b>	<b>88.72%</b>

98. Thus, Inmarsat has accounted for approximately 89 percent of its equity and voting interests. Approximately 1.00 percent (1.32 percent) is identified as non-WTO investment.<sup>278</sup> We find the information submitted by Inmarsat sufficient to conclude that at least 75 percent of Inmarsat's equity and voting interests are held by individuals that are citizens of, or entities that have their principal places of business in, the United States or other WTO Member countries.

<sup>274</sup> This category also includes holdings by analogous entities such as custodians, charities, and "market makers." All of these investing entities are foreign-organized or –controlled, and have their "domicile" or "principal place of business" in a WTO Member country. See Inmarsat Finance October 16 Letter at 3-4. As explained in ¶ 96, we find that the information Inmarsat has relied on to establish a "domicile" for the beneficial owners of its shares provides a reasonable basis for identifying a principal place of business for purposes of our section 310(b)(4) analysis in this case.

<sup>275</sup> All entities in this category are organized in the United States, and have their "domicile" or "principal place of business" in the United States. *Id.* at 4.

<sup>276</sup> All investing entities in this category are organized in a foreign country or are domiciled in a foreign country. All of these countries are Members of the WTO. *Id.* at 4-5.

<sup>277</sup> All entities in this category are organized in a foreign country or are domiciled in a foreign country. Of the approximately 7.00% equity interests held in Inmarsat by these "other" foreign investors, the following is the aggregate percentage of equity and voting interests attributable to non-WTO investment: one Liberian investor (0.14%), one Libyan Arab Mamahiriya investor (0.03%), and one Russian Federation investor (1.15%). These are legacy shareholders that have not traded any of their original shareholdings in Inmarsat to date. See *id.* at 6.

<sup>278</sup> In late October, 2007, Inmarsat was notified that Harbinger Capital Partners Master Fund I, Ltd. and Harbinger Capital Partners Special Situations Fund, L.P. had acquired, in the aggregate, over 10% of Inmarsat shares in recent trading on the London Stock Exchange. See Inmarsat October 29 Letter. We find on the basis of publicly available information that each of the Harbinger funds principally conducts business in WTO Member countries. See File No. ISP-PDR-20070314-00004, Letter from Tom W. Davidson, Counsel for SkyTerra Communications, Inc. and Bruce Jacobs, Counsel for Mobile Satellite Ventures Subsidiary LLC, to Marlene H. Dortch, Secretary, FCC, dated October 5, 2007 at 1-4 and Attachment 1. This document may be viewed on the FCC web-site through the International Bureau Filing System (IBFS) by searching for ISP-PDR-20070314-00004 and accessing the "Attachment Menu" from the Document Viewing Area.

99. As a final matter, we examine the indirect foreign voting interests that will be held in Stratos Holdings upon consummation of the Transaction. As noted above, Mr. Robert M. Franklin, a citizen of Canada, will exercise legal title to 100 percent of Stratos Global's stock as Trustee of the Canadian-organized Trust. Under the terms of the Trust, which we conclude is permissible and valid under existing Commission precedent,<sup>279</sup> Mr. Franklin will exercise all voting rights in Stratos Global's stock and have *de jure* and *de facto* control of Stratos Global. We therefore find that Mr. Franklin will hold indirectly 100 percent of the voting interests in Stratos Holdings and that his interest is properly ascribed to Canada, a WTO Member country.<sup>280</sup>

100. In summary, consistent with our foreign ownership case precedent, we calculate that the following foreign-organized entities will hold, directly or indirectly, 100 percent of the equitable ownership interests in Stratos Holdings upon consummation of the proposed transaction: Stratos Wireless, Stratos Global, CIP Canada, CIP UK, CIP, Inmarsat Finance and its parent Inmarsat. We also find that four of CIP's five partners are foreign citizens and that each will hold a 20 percent indirect equity interest in Stratos Holdings. We find that Mr. Franklin, the Canadian Trustee, will hold indirectly 100 percent of the voting interests in Stratos Holdings. We find that all of these individuals and entities are citizens of, or have their principal places of business in, a WTO Member country. Accordingly, we find that the Stratos Licensees are entitled to a rebuttable presumption that the indirect foreign ownership resulting from the transaction will not pose a risk to competition in the U.S. market. We find no evidence in the record that rebuts this presumption and, as we find above, we find no basis to conclude that the proposed transaction will harm competition. We also determine in Section III.J. below that the 2001 Executive Branch Agreement and the 2007 Amendment 1 to that Agreement address any national security, law enforcement, or public safety concerns.<sup>281</sup>

#### 4. Declaratory Ruling

101. Accordingly, this declaratory ruling permits the indirect foreign ownership of the Stratos Licensees by Stratos Wireless and Stratos Global (individually, up to and including 100 percent of the equity and voting interests); CIP Canada, CIP UK and CIP (individually, up to and including 100 percent of the equity interests); the four named CIP partners that are citizens of the Netherlands and France (individually, up to and including 20 percent of the equity interests); Inmarsat Finance and Inmarsat (individually, up to and including 100 percent of the equity interests); Inmarsat's shareholders (collectively, up to and including 100 percent of the equity interests); and the Canadian Trust and its Trustee, Mr. Robert M. Franklin (individually, up to and including 100 percent of the voting interests). The Stratos Licensees may accept up to and including an additional, aggregate 25 percent indirect foreign equity interests from the named CIP partners and other foreign investors, including any new CIP partners, without seeking prior Commission approval under section 310(b)(4) subject to the following conditions. First, the Stratos Licensees shall obtain prior Commission approval before their indirect equity interests from non-WTO Member countries exceeds 25 percent. Second, the Stratos Licensees shall obtain prior approval before any foreign individual or entity, with the exception of those named above, acquires an indirect equity interest in excess of 25 percent. Third, neither the Stratos Licensees nor the Trustee shall rely on this ruling for purposes of seeking Commission consent to transfer control of the Stratos Licensees to Inmarsat in the second step of the transaction as contemplated by the parties.

102. In the event Inmarsat exercises the call option to acquire the stock of CIP UK, Inmarsat will be required to file with the Commission applications for consent to acquire control of the Stratos

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<sup>279</sup> See *supra* Section III.C.

<sup>280</sup> See Narrative at 4. See also *supra* Section II.B.

<sup>281</sup> See *infra* Section III.J.

Licensees, including a petition for declaratory ruling to permit their indirect foreign ownership by Inmarsat and its shareholders under section 310(b)(4) of the Act. We emphasize that, as Commission licensees, the Stratos Licensees have an affirmative duty to continue to monitor their foreign equity and voting interests – including their foreign equity interests through Inmarsat – and to calculate these interests consistent with the attribution principles enunciated by the Commission.<sup>282</sup>

### G. International Dominant Carrier Regulation

103. Applicants state that the Stratos Licensees, which are authorized to provide U.S.-international telecommunications services, will remain affiliated with five foreign carriers after the proposed transaction: (1) Stratos Wireless, a Canada-based provider of mobile satellite services; (2) Stratos Global, Ltd., a Great Britain-based provider of mobile satellite services and very small aperture terminal (VSAT) services in Great Britain; (3) Stratos Aeronautical Limited, as Great Britain-based provider of mobile satellite services; (4) Xantic B.V. (Xantic), based in the Netherlands and authorized to provide mobile satellite services and fixed satellite services in the Netherlands, Australia and Brazil; and (5) Plenexis Holding GmbH (Plenexis), based in Germany and authorized to provide VSAT services in Germany, Hungary, Russia, Sweden, Turkey and the United Kingdom.<sup>283</sup> Applicants state that the proposed transaction will not result in the Stratos Licensees acquiring any additional foreign carrier affiliations.<sup>284</sup>

104. According to the Application, the Stratos Licensees are authorized to provide service between the United States and foreign countries in which their foreign carrier-affiliates are authorized to provide telecommunications services. Applicants note that all of these countries are Members of the WTO and assert that none of the Stratos Licensees' affiliates has a 50 percent or greater share of the markets for international transport or local access in any country in which they operate.<sup>285</sup>

105. Applicants assert that, notwithstanding the above affiliations, the Stratos Licensees qualify for a presumption of non-dominance under section 63.10(a)(3) because all of the foreign carrier affiliates lack a 50 percent share of the local access and international transport markets in the relevant geographic markets.<sup>286</sup>

106. We have concluded that we should continue to classify the Stratos Licensees — Stratos Communications, Stratos Mobile and Stratos Offshore — as non-dominant for regulatory purposes under section 63.10 of the rules. From the record before us, we find that the transaction will create no new foreign carrier affiliations and that none of the foreign carriers with which the Stratos Licensees will remain affiliated has a 50 percent or greater share of the international transport or local access markets in the countries in which they operate.

### H. Pending and Future Applications of Stratos Global

107. The Application notes that Stratos Global has a number applications pending before the Commission, some of which may be granted while the Application is being considered. Applicants ask, therefore, that a grant of this Application include authority to transfer control of authorizations issued to, and filings made by Stratos Global or its subsidiaries subsequent to the filing of the Application but prior

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<sup>282</sup> See *Verizon Communications, Inc., Transferor, and America Movil S.A. de C.V., Transferee*, WT Docket No. 06-113, Memorandum Opinion and Order and Declaratory Ruling, 22 FCC Red 6195, 6225, ¶ 68 (2007).

<sup>283</sup> International 214 Transfer Applications, ITC-T/C-20070405-00133, -00135 and -00136, Attachment 1 at 2.

<sup>284</sup> *Id.* at 2.

<sup>285</sup> *Id.* at 2-3.

<sup>286</sup> 47 C.F.R. § 63.10(a)(3) (2006).

to consummation of the proposed transaction (the “Interim Period”). We find that grant of the Applicants’ request is consistent with Commission precedent.<sup>287</sup> Accordingly, our grant of this Application shall include authority to transfer control of (1) any license or authorization issued to Stratos Global or its subsidiaries during the Interim Period; (2) construction permits held by such companies that mature into licenses after closing; and (3) applications filed by such companies after the date of this Application and that are pending at the time of the consummation of the proposed transaction.<sup>288</sup> Pursuant to Section 1.65 of the rules, Applicants should amend any current pending applications, as well as applications that were acted on between the filing date of this Application and the consummation date, to reflect the transaction as approved by this Order and Declaratory Ruling.<sup>289</sup>

#### **I. Transfer of Accounting Authority Certification**

108. Along with the Transfer of Control Application, Stratos Mobile Networks, Inc. filed a Form 44 Application for Certification as an Accounting Authority under section 3.51 of the Commission’s rules.<sup>290</sup> Section 3.51 requires that, “[w]hen an accounting authority is transferred, merged or sold, the new entity must apply for certification in its own right . . . .”<sup>291</sup> In its Form 44, Stratos Mobile notes that it is currently certified as an Accounting Authority<sup>292</sup> and states that “[b]y this application, Stratos Mobile does not seek to assign or otherwise encumber its Accounting Authority, but rather it simply seeks to update the ownership and control information for its Accounting Authority.”<sup>293</sup> Stratos Mobile further states that the reason for the filing is that “Stratos Mobile’s ultimate parent corporation, Stratos Global Corporation, is ‘going private’ and its shares will be placed into an irrevocable trust” and that this change “will have no impact on the day-to-day Accounting Authority functions . . . .”<sup>294</sup> Finally, Stratos Mobile states that “it will not be ceasing its operations as an Accounting Authority as a result of the transaction and it hereby continues to accept and process all accounts . . . currently being administered under AAIC Code US09.”<sup>295</sup>

109. None of the commenters addressed the transfer of Stratos Mobile’s existing Accounting Authority and we see no evidence that a grant of the requested transfer would harm the public interest. Stratos Mobile included in its Form 44 filing financial information that shows that it will continue to have the legal and financial qualifications to serve as an Accounting Authority. We therefore grant the request to update Stratos Mobile’s ownership and control information.

#### **J. National Security, Law Enforcement and Public Safety Concerns**

110. When analyzing a transfer of control or assignment application in which foreign

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<sup>287</sup> See *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11572, ¶ 133; *General Motors Corporation and Hughes Electronics Corporation, Transferors, and The News Corporation Limited, Transferee*, 19 FCC Rcd 6309, 6311-12, ¶ 6 (IB/WTB/OET 2004).

<sup>288</sup> See Narrative at 16.

<sup>289</sup> 47 C.F.R. § 1.65 (2006).

<sup>290</sup> 47 C.F.R. § 3.51 (2006).

<sup>291</sup> *Id.*, at § 3.51(a).

<sup>292</sup> Stratos Mobile holds Accounting Authority Identification Code (AAIC) US09.

<sup>293</sup> Stratos Mobile Networks, Inc., Application for Certification as an Accounting Authority (Form 44), Attachment A, at 1. (filed April 5, 2007).

<sup>294</sup> *Id.*

<sup>295</sup> *Id.* at 3.

investment is involved, we also consider any national security, law enforcement, foreign policy, or trade policy concerns raised by the Executive Branch.<sup>296</sup> The Amendment of the 2001 Executive Branch Agreement between DOJ, FBI, DHS and the Applicants addresses Executive Branch national security, law enforcement and public safety concerns about the transfer of control of Stratos Global to the Trust.<sup>297</sup>

111. The DOJ Petition to Adopt Conditions to Authorizations and Licenses notes that the Commission has already considered and granted an earlier Petition to Adopt Conditions with respect to Stratos Global, filed on August 9, 2001, by DOJ and FBI, which sought to condition authorizations and licenses of Stratos Global upon compliance with an agreement Stratos Global had entered into with DOJ, FBI and DHS to address those agencies' national security, law enforcement and public safety concerns (2001 Agreement).<sup>298</sup> After discussions with the Applicants, DOJ, FBI and DHS state that they have obtained agreement from Applicants to an amendment (Amendment 1) of the 2001 Agreement that specifies new parties, including but not limited to DHS, and specifies new commitments, including among other things, a commitment by the Transferee not to interfere with or impede Stratos Global's continued adherence to the 2001 Agreement and the updated implementation plan.<sup>299</sup> DOJ, FBI and DHS state that the commitments in the 2001 Agreement, coupled with the additional commitments in the 2007 Amendment 1, will continue to help ensure that the Agencies and other entities with responsibility for enforcing the law, protecting the national security and preserving public safety can proceed appropriately to satisfy those responsibilities.<sup>300</sup> The Agencies, therefore, have asked the Commission to condition the grant of authority to transfer control of Stratos Global upon the Applicants' continued compliance with the 2001 Agreement and the 2007 Amendment 1.<sup>301</sup>

#### IV. CONCLUSION

112. Upon review of the Transfer of Control Application and the record in this proceeding, we conclude that approval of this transaction, subject to the conditions set forth herein, is in the public interest. We find that the Application correctly identified all the parties and relevant entities to this transaction. We find no record evidence that Inmarsat will be able to control Stratos Global during the pendency of the Trust and conclude that Inmarsat is not the real party in interest in this transaction. As a result, we conclude that the proposed transaction will not create an unlawful transfer of control of Stratos Global to Inmarsat without prior authorization from the Commission under sections 214(a) or 310(d) of the Act. We find further that the Applicants' proposal to transfer the stock of Stratos Global to a Canadian trust is permissible under Commission precedent and that the Trust proposed in this Transaction, if properly administered by the Trustee, will provide sufficient insulation of Stratos Global from Inmarsat and CIP to prevent Inmarsat from exercising *de facto* control over Stratos Global during the pendency of the Trust. The proposed Trustee has stated his intention to administer the Trust so as to keep Stratos Global independent of Inmarsat, and we find no record evidence to suggest that the Trustee will not fulfill his pledge. Based upon the foregoing findings and our analysis under section 310(b)(4) of the Act, we also conclude that it would not serve the public interest to prohibit the indirect foreign

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<sup>296</sup> *Foreign Participation Order*, 12 FCC Rcd at 23918, ¶ 58; *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*, IB Docket No. 96-111, FCC 97-399, 12 FCC Rcd 24094, 24170, ¶ 178 (1997).

<sup>297</sup> DOJ Petition to Adopt Conditions at 2.

<sup>298</sup> *Comsat Corporation d/b/a Comsat Mobile Communications*, 16 FCC Rcd 21661, 21714, ¶ 122.

<sup>299</sup> DOJ Petition to Adopt Conditions at 2.

<sup>300</sup> *Id.*

<sup>301</sup> *Id.* at 2-3.

ownership of the Stratos Licensees, subject to Applicants' compliance with their commitments to DOJ, FBI and DHS set forth in Appendix C.<sup>302</sup> This grant is also conditioned on Applicants' compliance with the Trust provisions forbidding communications from Inmarsat or the CIP entities to the Trustee during the Trust relating to the operations of Stratos Global and its U.S. licensed subsidiaries, except those communications necessary to permit the offering of Inmarsat services to end users of the types specified in Appendix C.

## V. ORDERING CLAUSES

113. Accordingly, having reviewed the Transfer of Control Application, the petitions, and the record in this matter, IT IS ORDERED that, pursuant to sections 4(i) and (j), 214, 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), (j), 214, 309, 310(d), the Transfer of Control Application for consent to transfer control of the licenses and authorizations from Stratos Global Corporation to Robert M. Franklin, is GRANTED, to the extent specified and as conditioned in this Memorandum Opinion and Order and Declaratory Ruling.

114. IT IS FURTHER ORDERED, pursuant to sections 4(i) and (j), and 310(b) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), (j), 310(b), that the Petition for Declaratory Ruling requested by Stratos Global Corporation and Robert M. Franklin is GRANTED to the extent set forth herein.

115. IT IS FURTHER ORDERED that, pursuant to sections 4(i) and (j), 214, 309, and 310(b) and (d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 214, 309, 310(b), 310(d), the Petition to Adopt Conditions to Authorizations and Licenses filed by the U.S. Department of Justice, including the Federal Bureau of Investigation, on behalf of itself and the U.S. Department of Homeland Security on August 30, 2007, IS GRANTED. Grant of the Transfer of Control Application and the declaratory ruling IS CONDITIONED UPON compliance with the commitments set forth in the Executive Branch Agreement and the Amendment to that Agreement, attached to this Memorandum Opinion and Order and Declaratory Ruling as Appendix B.

116. IT IS FURTHER ORDERED that this authorization and any licenses related thereto are subject to compliance with the provisions of the Amendment of the 2001 Agreement, which is intended to enhance the protection of U.S. national security, law enforcement, and public safety. Nothing in this Agreement is intended to limit any obligation imposed by Federal law or regulation.

117. IT IS FURTHER ORDERED that the ownership and control information associated with the Accounting Authority certification of Stratos Mobile Networks, Inc., is updated to reflect the grant of the Transfer of Control Application and the consequent transfer of Stratos Mobile Networks, Inc., to the Trust.

118. IT IS FURTHER ORDERED that the above grant shall include authority for the Trustee to acquire control of (1) any license or authorization issued to Stratos Global or its subsidiaries during the Commission's consideration of the Transfer of Control Application or the period required for consummation of the transaction following approval and issuance of this Order; (2) construction permits held by such companies that mature into licenses after closing; and (3) applications filed by such companies after the date of the Transfer of Control Application and that are pending at the time of consummation of the proposed transfer of control.

119. IT IS FURTHER ORDERED that the above grant IS CONDITIONED UPON Applicants' compliance with the Trust provisions forbidding communications from Inmarsat or the CIP entities to the Trustee during the Trust relating to the operations of Stratos Global and its U.S. licensed

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<sup>302</sup> See *supra* ¶¶ 111-12.

subsidiaries, except those communications necessary to permit the offering of Inmarsat services to end users of the types specified in Appendix C

120. IT IS FURTHER ORDERED that, pursuant to sections 4(i) and (j), 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), (j), 309, 310(d), the Petitions to Deny filed by Iridium Satellite, LLC and VIZADA SERVICES LLC ARE DENIED for the reasons stated herein.

121. IT IS FURTHER ORDERED that this Memorandum Opinion and Order and Declaratory Ruling SHALL BE EFFECTIVE upon release. Petitions for reconsideration under section 1.106 of the Commission's rules, 47 C.F.R. § 1.106, may be filed within thirty days of the date of public notice of this order.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary



## APPENDIX A

## Authorizations and Licenses Included in the Transfer of Control Application

## I. INTERNATIONAL AUTHORIZATIONS

## A. International Facilities–Based and Resale Services:

<u>File Number:</u>	<u>Authorization Holder:</u>	<u>Authorization Number:</u>
<b>International Facilities-Based and Resale Services:</b>		
ITC-T/C-20070405-00136	Stratos Communications, Inc.	ITC-214-19980828-00591 ITC-214-19980326-00205 ITC-214-19980121-00028 ITC-214-20010220-00657 ITC-MOD-20040624-00241

## B. Mobile Network Services:

<u>File Number:</u>	<u>Authorization Holder:</u>	<u>Authorization Number:</u>
ITC-T/C-20070405-00133	Stratos Mobile Networks, Inc.	ITC-214-19981214-00859 ITC-214-19970924-00580 ITC-214-19970804-00455 ITC-214-19970627-00356 ITC-214-19961003-00481 ITC-214-19980130-00053 ITC-214-19910301-00010* (Formerly ITC-90-088) ITC-214-19901030-00011* (Formerly ITC-91-012) ITC-214-19910615-00009* (Formerly ITC-91-157) ITC-214-19911206-00008* (Formerly ITC-92-058) ITC-214-19911206-00007* (Formerly ITC-92-059) ITC-214-19921026-00124* (Formerly ITC-93-013) ITC-214-19921026-00123* (Formerly ITC-93-014) ITC-214-19910201-00255*

(Formerly ITC-93-141)  
 ITC-214-19931001-00254\*  
 (Formerly ITC-93-142)  
 ITC-214-19930511-00253\*  
 (Formerly ITC-93-188)  
 ITC-214-19950526-00034\*  
 (Formerly ITC-95-359)  
 ITC-214-19951001-00033\*  
 (Formerly ITC-95-565)  
 ITC-214-19951001-00032\*  
 (Formerly ITC-95-569)  
 ITC-214-19960101-00012\*  
 (Formerly ITC-96-041)

\* The above File Numbers for the section 214 authorizations marked with an \* are new numbers assigned under the IBFS system. The former number for each such authorization is shown below the new number.

### C. Offshore Services:

<u>File Number:</u>	<u>Authorization Holder:</u>	<u>Authorization Number:</u>
ITC-T/C-20070405-00135	Stratos Offshore Services Company	ITC-214-19991220-00815
		ITC-214-19980914-006

## II. DOMESTIC AUTHORIZATION

<u>Docket Numbers:</u>	<u>Authorization Holder:</u>
WC Docket No. 07-73	Stratos Communications, Inc.
WC Docket No. 07-74	Stratos Offshore Services Company

## III. SECTION 310(D) APPLICATIONS

### A. PART 25-SATELLITE EARTH STATION, VSAT, AND SPACE STATION LICENSES:

<u>File Number:</u>	<u>Licensee:</u>	<u>Call Sign(s):</u>
SES-T/C-20070404-00440	Stratos Offshore Services Company	E950151 E010263
SES-T/C-20070404-00441	Stratos Communications, Inc.	E010050 E010049 E010048 E010047

		E000180
SES-T/C-20070404-00442	Stratos Offshore Services Company	E950150 E950149 E960147 E950136 E950135
SES-T/C-20070404-00443	Stratos Offshore Services Company	E980235

**B. Parts 2, 27, 90 and 101-Wireless Licenses:**

<b><u>File Number:</u></b>	<b><u>Licensee:</u></b>	<b><u>Lead Call Sign:</u></b>
0002961737 <sup>1</sup>	Stratos Offshore Services Company	WPNA687

**IV. APPLICATION FOR ASSIGNMENT OF ACCOUNTING AUTHORITY STATUS:**

<b><u>Form Number:</u></b>	<b><u>Holder:</u></b>	<b><u>AAIC Number:</u></b>
FCC 44	Stratos Mobile Networks, Inc.	US09

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<sup>1</sup> By amendment filed April 27, 2007, Applicants amended this application to add 31 additional call signs for microwave licenses to be transferred to the Trust. These 31 licenses were included in an assignment of licenses from Chevron USA Inc., Sola Communications, L.L.C., and Devon Energy Corporation (the Chevron Assignment) to Stratos Offshore, to which the Commission consented on March 3, 2007. Applicants state that they filed the pending Transfer of Control application on April 5, 2007, after the Commission's consent to the assignment but before the transaction could be consummated. As a result, Applicants note that they could not include the 31 licenses in the Application. Now that the Chevron Assignment transaction has been completed, the Applicants have added the additional call signs.

**APPENDIX B**

**Agreement between Applicants and Executive Branch Agencies**

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
 Washington, D.C. 20554

In the Matter of	)	WC Docket No. 07-73
	)	DA 07-2257
Stratos Global Corporation, Transferor	)	File Nos.
	)	ITC-T/C-20070405-00133
Robert M. Franklin, Transferee	)	ITC-T/C-20070405-00135
	)	ITC-T/C-20070405-00136
Transfer of Control of	)	SES-T/C-20070404-00440
Stratos Global Corporation's	)	through -00443
FCC-Authorized Subsidiaries	)	0002961737 and
	)	ISP-PDR-20070405-0006
	)	)
	)	)

**PETITION TO ADOPT CONDITIONS TO  
 AUTHORIZATIONS AND LICENSES**

The Department of Justice ("DOJ"), including the Federal Bureau of Investigation ("FBI"), and Department of Homeland Security ("DHS"), (collectively, the "Agencies"), submit this Petition to Adopt Conditions to Authorizations and Licenses ("Petition"), pursuant to Section 1.41 of the Federal Communications Commission ("FCC" or "Commission") rules.<sup>1</sup> Through this Petition, the Agencies advise the Commission that they have no objection to the Commission approving the transfers sought in the above-referenced proceeding, provided that the Commission conditions its approval on the agreement of Stratos Global Corporation and other Stratos entities (collectively "Stratos"), Robert M. Franklin, and CIP Canada Investment, Inc., to abide by the commitments and undertakings set forth in the Amendment No. 1 ("Amendment") to the August 7, 2001 Agreement between Stratos and the Department of Justice and FBI ("August 2001 Agreement"), both of which are attached hereto.

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<sup>1</sup> 47 C.F.R. § 1.41.

In the above-captioned proceedings, the applicants have petitioned the Commission, among other things, for consent to transfer control of authorizations under Section 214 of the Communications Act of 1934, as amended, currently held by Stratos Global Corporation and its subsidiaries, to Robert M. Franklin, trustee.

The Commission has long recognized that law enforcement, national security and public safety concerns are part of its public interest analysis, and has accorded deference to the views of other U.S. government agencies with expertise in those areas. *See In the Matter of Comsat Corporation d/b/a Comsat Mobile Communications, etc.*, 16 FCC Rcd. 21,661, 21707 ¶ 94 (2001). In regard to Stratos, the Commission has already considered and granted an earlier “Petition to Adopt Conditions” filed on August 9, 2001 by the Department of Justice and FBI, seeking to condition the authorizations and licenses granted to Stratos in that proceeding upon compliance with the August 2001 Agreement. *See id.* at 21714 ¶ 122. The Amendment reaffirms the August 2001 Agreement, specifies new parties including but not limited to DHS, and specifies new commitments, including among other things, a commitment by the transferee not to interfere with or impede Stratos’ continued adherence to the August 2001 Agreement and the updated implementation plan.

After discussions with representatives of the applicants in connection with the transfer request, the Agencies have concluded that the additional commitments set forth in the Amendment will continue to help ensure that the Agencies and other entities with responsibility for enforcing the law, protecting the national security, and preserving public safety can proceed appropriately to satisfy those responsibilities. Accordingly, the Agencies advise the Commission that they have no objection on those grounds to the Commission granting the above-referenced requests for transfer of control provided that the Commission conditions its consent on

compliance by Stratos with the commitments set forth in the Amendment.

The Agencies are authorized to state that the Applicants do not object to the grant of this Petition to Adopt Conditions.

Respectfully submitted,

\_\_\_\_\_  
/s/  
Sigal P. Mandelker  
Deputy Assistant Attorney General  
Criminal Division  
United States Department of Justice  
950 Pennsylvania Avenue, N.W.  
Washington, DC 20530  
(202) 305-8319

\_\_\_\_\_  
/s/  
Stewart A. Baker  
Assistant Secretary for Policy  
U.S. Department of Homeland Security  
3801 Nebraska Avenue, N.W.  
Washington, DC 20528

\_\_\_\_\_  
/s/  
Elaine N. Lammert  
Deputy General Counsel  
Federal Bureau of Investigation  
923 Pennsylvania Avenue, N.W.  
Washington, DC 20532  
(202) 324-1530

August 30, 2007



**Amendment No. 1**

THIS AMENDMENT NO. 1 (hereinafter "Amendment") to the Agreement dated August 7, 2001 ("Agreement"), by and between Stratos Communications, Inc. (previously MarineSat Communications Network, Inc.), and Stratos Mobile Networks (USA) LLC (collectively, "Stratos Parties") and the Department of Justice ("DOJ") and the Federal Bureau of Investigation ("FBI") (collectively with the Stratos Parties, "the 2001 Signatories"), a copy of which is attached as Exhibit A, is hereby agreed by and between the 2001 Signatories, Robert M. Franklin ("Trustee"), CIP Canada Investment Inc. ("CIP Canada"), Stratos Mobile Networks, Inc. and the Department of Homeland Security ("DHS") (collectively "the 2007 Signatories"). This Amendment is effective as of the date of the last signature hereto ("Effective Date").

WHEREAS the 2001 Signatories desire to enter into this Amendment to add parties to the Agreement, to add commitments by the Trustee and CIP Canada in connection with a proposed transaction to be effective if such transaction is consummated, and to clarify the obligations of all signatories under the Agreement, as of the Effective Date;

WHEREAS CIP UK Holdings Limited ("CIP UK"), its subsidiary CIP Canada, and Stratos Global Corporation ("Stratos Global") have entered into a Plan of Arrangement effective March 19, 2007, which provides that upon receipt of regulatory approvals including by the FCC, all of the issued and outstanding shares of Stratos Global will be transferred to a Canadian trust created by CIP Canada;

WHEREAS CIP Canada and the Trustee have entered into a Trust Agreement effective April 2, 2007, which provides for an irrevocable trust ("Trust") giving the Trustee legal title to the Stratos Global shares, until either the dissolution of the Trust, or the removal of the Trustee and replacement by a successor at the election of CIP Canada following (i) a finding by an independent party that the Trustee has engaged in malfeasance, criminal conduct, or wanton or willful neglect, or (ii) a judgment of incompetence by a court of competent jurisdiction, either of which would require regulatory approval;

WHEREAS the Trust Agreement also provides that the Trustee has a fiduciary duty to manage the Stratos Global shares for the benefit of CIP Canada, that the Trustee does not have authority to sell, transfer, assign, or otherwise dispose of the Stratos Global shares during the trust period, that CIP Canada will have no legal control over, or operational responsibility for, Stratos Global prior to the dissolution of the Trust, and whereas the Stratos Global Board of Directors and Stratos management retain operational responsibility for Stratos Global notwithstanding the Trust Agreement and the Plan of Arrangement; and

WHEREAS, the Trust Agreement provides that, subject to receipt of regulatory approval, the Trust will dissolve on or before April 14, 2009 and the Trustee will transfer legal title to the Stratos shares to CIP Canada, or to a third party in the event Inmarsat Finance does not exercise its call option to acquire CIP UK.

NOW, THEREFORE, in consideration of the promises, terms and conditions of this

Amendment, and for other consideration, receipt of which is hereby acknowledged, the 2007 Signatories hereby agree as follows:

SECTION 1. This Amendment is entered into pursuant to Section 7.7 of the Agreement.

SECTION 2. The Agreement shall be amended as of the Effective Date such that Stratos Mobile Networks, Inc. is hereby added as a signatory and party to the Agreement with all of the full rights, benefits and obligations of the Stratos Parties.

SECTION 3. The Agreement shall be amended as of the Effective Date such that DHS is hereby added as a signatory and party to the Agreement with all the rights, benefits and obligations of DOJ and FBI.

SECTION 4. During the period between the Effective Date and either the dissolution of the Trust or the resignation or removal of Trustee, Trustee undertakes the obligation not to interfere with or impede the ability of the Stratos Parties or Stratos Mobile Networks, Inc. to discharge their obligations under the Agreement.

SECTION 5. During the period between the Effective Date and the purchase of the issued and outstanding shares of Stratos Global by a third party, pursuant to regulatory approval, CIP Canada undertakes the obligation not to interfere with or impede the ability of the Stratos Parties or Stratos Mobile Networks, Inc. to discharge their obligations under the Agreement.

SECTION 6. The Agreement shall be amended as of the Effective Date, to modify Section 7.12 by adding the following addresses:

Department of Homeland Security  
Assistant Secretary for Policy  
Email: [ip-fcc@dhs.gov](mailto:ip-fcc@dhs.gov)

Robert M. Franklin, Trustee  
34 Plymbridge Crescent  
Willowdale, Ontario  
M2P 1P5 Canada

CIP Canada Investment Inc.  
Suite 600, 570 Queen Street  
Fredericton, New Brunswick  
E3B 6Z6 Canada

with copies to:

James D. Scarlett  
Torys LLP

Suite 3000  
79 Wellington Street West  
Box 270, TD Centre  
Toronto, Ontario  
M5K 1N2 Canada  
*Counsel for Robert M. Franklin, Trustee*

Patricia J. Paoletta  
Harris, Wiltshire & Grannis LLP  
1200 18th Street, N.W., Suite 1200  
Washington, D.C. 20036-2516  
*Counsel for CIP Canada Investment Inc.*

and

Laura Fraedrich  
Kirkland & Ellis LLP  
655 15th Street, N.W.  
Washington, D.C. 20005-5793  
*Counsel for CIP Canada Investment Inc.*

In addition, the following address is hereby substituted for the Stratos Mobile Networks (USA) LLC address in Section 7.12:

Stratos Communications, Inc.  
Stratos Mobile Networks (USA), LLC  
Stratos Mobile Networks, Inc.  
6901 Rockledge Drive, Suite 900  
Bethesda, MD 20817

SECTION 7. Except as provided in this Amendment, all terms of the Agreement remain in full force and effect. This Amendment may be signed in any number of counterparts, each of which shall constitute an original and all of which shall constitute one and the same agreement.

SECTION 8. The Stratos Parties, Stratos Mobile Networks, Inc., DOJ, FBI, and DHS further agree pursuant to Section 1.2 and 7.7 of the Agreement to an Amended Implementation Plan dated \_\_\_\_\_, 2007, a copy of which is attached hereto as Exhibit B. For clarification, the Amended Implementation Plan is confidential and will not be attached to any public filing of this Amendment.

*[Remainder of this Page Intentionally Left Blank; Signature Pages follow]*

This Amendment is Executed on behalf of the 2007 Signatories:

**Department of Justice**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Sigal Mandelker  
Deputy Assistant Attorney General  
Criminal Division

**Department of Homeland Security**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Stewart A. Baker  
Assistant Secretary for Policy


**Federal Bureau of Investigation**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Elaine N. Lammert  
Deputy General Counsel

**Stratos Communications, Inc.  
Stratos Mobile Networks (USA) LLC  
Stratos Mobile Networks, Inc.**

Date: \_\_\_\_\_

By:   
James J. Parin  
Chief Executive Officer

**Robert M. Franklin, Trustee**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Robert M. Franklin  
Trustee

**CIP Canada Investment Inc.**


Date: \_\_\_\_\_

By: \_\_\_\_\_  
Johannes Jacobus (Hans) Lipman  
Chairman and Director

This Amendment is Executed on behalf of the 2007 Signatories:

**Department of Justice**

Date: 8/8/2007

By:   
Sigal Mandelker  
Deputy Assistant Attorney General  
Criminal Division


**Department of Homeland Security**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Stewart A. Baker  
Assistant Secretary for Policy


**Federal Bureau of Investigation**

Date: 8/14/2007

By:   
Elaine N. Lammert  
Deputy General Counsel

**Stratos Communications, Inc.  
Stratos Mobile Networks (USA) LLC  
Stratos Mobile Networks, Inc.**

Date: \_\_\_\_\_

By:   
James J. Bern  
Chief Executive Officer

**Robert M. Franklin, Trustee**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Robert M. Franklin  
Trustee

This Amendment is Executed on behalf of the 2007 Signatories:


**Department of Justice**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Sigal Mandelker  
Deputy Assistant Attorney General  
Criminal Division

**Department of Homeland Security**

Date: 10 Aug 07

By:   
Stewart A. Baker  
Assistant Secretary for Policy

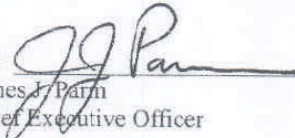
**Federal Bureau of Investigation**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Elaine N. Lammert  
Deputy General Counsel

**Stratos Communications, Inc.  
Stratos Mobile Networks (USA) LLC  
Stratos Mobile Networks, Inc.**

Date: \_\_\_\_\_

By:   
James J. Parrin  
Chief Executive Officer

**Robert M. Franklin, Trustee**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Robert M. Franklin  
Trustee

This Amendment is Executed on behalf of the 2007 Signatories:

**Department of Justice**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Sigal Mandelker  
Deputy Assistant Attorney General  
Criminal Division

**Department of Homeland Security**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Stewart A. Baker  
Assistant Secretary for Policy

**Federal Bureau of Investigation**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Elaine N. Lammert  
Deputy General Counsel

**Stratos Communications, Inc.  
Stratos Mobile Networks, Inc.**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
James J. Parm  
Chief Executive Officer

**Robert M. Franklin, Trustee**

Date: July 18, 2007

By:   
Robert M. Franklin  
Trustee



Date: 23/7/2007

CIP Canada Investment Inc.

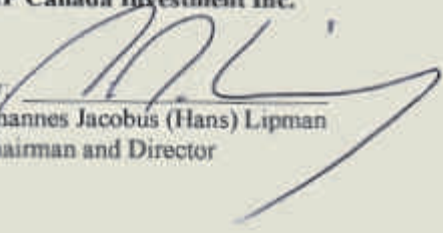
By:   
Johannes Jacobus (Hans) Lipman  
Chairman and Director

Exhibit A

Agreement dated August 7, 2001

This Agreement is made this 7<sup>th</sup> day of August, 2001 by and between: MarineSat Communications Network, Inc. and Stratos Mobile Networks (USA) LLC (collectively, "Stratos"), and the U.S. Department of Justice ("DOJ") and the Federal Bureau of Investigation ("FBI") (collectively with all other parties hereto, "the Parties"). This Agreement is effective as of the date of last signature affixed hereto.

#### RECITALS

WHEREAS, the U.S. telecommunications system is essential to the U.S. economy and to U.S. national security, law enforcement, and public safety;

WHEREAS, the U.S. government considers it critical to maintain the viability, integrity and security of the U.S. telecommunications system (*see, e.g.*, Presidential Decision Directive 63 on Critical Infrastructure Protection);

WHEREAS, the U.S. government considers it critical to ensure the confidentiality of its lawfully authorized surveillance and related activities, and to ensure the confidentiality of Classified, Controlled Unclassified, and Sensitive Information;

WHEREAS, Stratos currently provides service to Inmarsat mobile earth terminals ("METs") outside of the United States, and has filed with the Federal Communications Commission ("FCC") license applications under Sections 214 and 310(b) of the Communications Act of 1934, as amended, to provide service to METs inside the United States (*see Application Pursuant to Section 214 for Authority to Provide Domestic Land Mobile Services Using the Inmarsat Ltd. Satellite System*, File No. SES-MS-20010220-00349, *Applications for Blanket Licenses to Operate Mobile Earth Terminals with Non-U.S. Licensed Satellites*, File Nos. SES-LIC-20010221-00360; SES-LIC-20010221-00361; SES-LIC-20010221-00362; SES-LIC-20010221-00363, *Application for Section 214 Authority to Provide Inmarsat M4 Services*, File No. SES-MS-20000426-00861, and *Application for Blanket Authority to Operate Mobile Earth Terminals*, File No. SES-LIC-20000426-00630);

WHEREAS, MarineSat Communications Network, Inc. d/b/a Stratos Communications is 100 percent owned by Stratos Holdings, Inc., a Delaware holding corporation, which is in turn 100 percent owned by Stratos Global Corp., which has its principal place of business in Toronto, Ontario, Canada and is 65 percent indirectly owned by Aliant, Inc., a Canadian holding company with its principal place of business in Saint John, New Brunswick, Canada;

WHEREAS, Stratos Mobile Networks (USA) LLC is a Delaware-registered limited liability corporation 91 percent owned by TII Aeronautical Corp. ("TIIA") and 9 percent owned by IDB Mobile Communications, Inc., which is in turn 100 percent owned by TIIA. TIIA is 100 percent owned by Stratos Wireless, Inc., which has its principal place of business in Saint John's, Newfoundland, Canada and is in turn 100 percent owned by Stratos Global Corp., which has its principal place of business in Toronto, Ontario, Canada;

WHEREAS, Stratos has met with the FBI and DOJ to discuss the proposed services and the government's responsibilities concerning national security, law enforcement and public safety. In these meetings, Stratos advised: (a) that some of the Domestic Communications Infrastructure Stratos would employ (e.g., satellite gateway earth stations) to route Domestic Communications are located outside the United States; (b) that the Domestic Communications Infrastructure that is located outside the United States is located for *bona fide* commercial reasons; (c) that Stratos plans to route all Domestic Communications through a Point of Presence physically located in the United States, from which the government can conduct Electronic Surveillance pursuant to U.S. Lawful Process; and (d) that Stratos' Domestic Communications Infrastructure within the United States currently consists of the Nortel MMCS switch (and related trunking equipment) located in the Stratos facility at 5 Teleport Drive, Staten Island, New York, which is also Stratos' current Point of Presence within the United States;

NOW THEREFORE, the Parties are entering into this Agreement to address national security, law enforcement, and public safety concerns.

#### ARTICLE I: INFORMATION STORAGE AND ACCESS

- 1.1 Point of Presence: Pursuant to the Stratos Implementation Plan, Domestic Communications shall be routed through a Point of Presence, which is a network switch under the control of Stratos and is physically located in the United States, from which Electronic Surveillance can be conducted pursuant to Lawful U.S. Process. Stratos will provide technical or other assistance to facilitate such Electronic Surveillance.
- 1.2 Stratos Implementation Plan: Certain of the rights and obligations of the Parties are set forth in further detail in an Implementation Plan dated August 7, 2001, which is consistent with this Agreement. Stratos shall comply with the Implementation Plan, which may be amended from time to time pursuant to Section 7.7.
- 1.3 CPNI: Stratos shall comply with all applicable FCC rules and regulations governing access to and storage of Customer Proprietary Network Information ("CPNI"), as defined in 47 U.S.C. § 222(f)(1).
- 1.4 Compliance with Lawful U.S. Process: Stratos shall take all practicable steps to configure its Domestic Communications Infrastructure such that Stratos is capable of complying, and Stratos employees in the United States will have unconstrained authority to comply, in an effective, efficient, and unimpeded fashion, with Lawful U.S. Process, the orders of the President in the exercise of his/her authority under § 706 of the Communications Act of 1934, as amended (47 U.S.C. § 606), and under § 302(e) of the Aviation Act of 1958 (49 U.S.C. § 40107(b)) and Executive Order 11161 (as amended by Executive Order 11382), and National Security and Emergency Preparedness rules, regulations and orders issued pursuant to the Communications Act of 1934, as amended (47 U.S.C. § 151 *et seq.*).

- 1.5 Information Storage and Access: Stratos shall make available in the United States:
- (i) stored Domestic Communications, if such communications are stored by or on behalf of Stratos for any reason;
  - (ii) any Wire Communications or Electronic Communications (including any other type of wire, voice or electronic communication not covered by the definitions of Wire Communication or Electronic Communication) received by, intended to be received by, or stored in the account of a Stratos U.S.-Licensed MET, or routed to Stratos' Point of Presence in the United States and stored by or on behalf of Stratos for any reason;
  - (iii) Transactional Data and Call Associated Data relating to Domestic Communications, if such information is stored by or on behalf of Stratos for any reason (although all Parties recognize that Stratos currently does not store such information except as part of billing records);
  - (iv) billing records relating to Stratos customers or subscribers for its U.S. Licensed METs, Stratos customers and subscribers domiciled in the United States, or Stratos customers and subscribers who hold themselves out as being domiciled in the United States, as well as billing records related to any call routed through Stratos' Point of Presence in the United States, if such information is stored by or on behalf of Stratos for any reason, for so long as such records are kept pursuant to applicable U.S. law or this Agreement; and
  - (v) Subscriber Information concerning Stratos customers or subscribers for its U.S.-Licensed METs, Stratos customers or subscribers domiciled in the United States, or Stratos customers or subscribers who hold themselves out as being domiciled in the United States, as well as Subscriber Information related to any call routed through Stratos' Point of Presence in the United States, if such information is stored by or on behalf of Stratos for any reason.
- 1.6 Storage Pursuant to 18 U.S.C. § 2703(f): Upon a request made pursuant to 18 U.S.C. § 2703(f) by a governmental entity within the United States to preserve any of the information enumerated in Section 1.5, Stratos shall store such preserved records or other evidence in the United States.
- 1.7 Mandatory Destruction: Stratos shall take all practicable steps to store the data and communications described in Section 1.5 in a manner not subject to mandatory destruction under any foreign laws, if such data and communications are stored by or on behalf of Stratos for any reason. Except for strictly *bona fide* commercial reasons, such data and communications shall be stored in the United States.
- 1.8 Billing Records: Stratos shall store for at least eighteen (18) months all billing records maintained for a U.S.-Licensed MET.

- 1.9 Communications of a U.S.-Licensed MET: No communications of a U.S.-Licensed MET shall be routed outside the United States except for strictly *bona fide* commercial reasons.
- 1.10 Communications of a Non-U.S.-Licensed MET: Electronic Surveillance pursuant to Lawful U.S. Process of a Non-U.S.-Licensed MET shall be conducted pursuant to the Stratos Implementation Plan.
- 1.11 Domestic Communications Infrastructure: Except for strictly *bona fide* commercial reasons, Domestic Communications Infrastructure shall be located in the United States and shall be directed, controlled, supervised and managed by Stratos.
- 1.12 Compliance with U.S. Law: Nothing in this Agreement shall excuse Stratos from any obligation it may have to comply with U.S. legal requirements for the retention, preservation, or production of such information or data. Similarly, in any action to enforce Lawful U.S. Process, Stratos has not waived any legal right it might have to resist such process.

#### ARTICLE II: NON-OBJECTION BY DOJ AND FBI TO GRANT OF LICENSES TO STRATOS

- 2.1 Non-Objection to Current Application: Upon the execution of this Agreement by all the Parties, the FBI and DOJ shall promptly notify the FCC that, provided the FCC adopts a condition substantially the same as set forth in Exhibit A attached hereto, the FBI and DOJ have no objection to the FCC's grant or approval of Stratos' applications (*Application Pursuant to Section 214 for Authority to Provide Domestic Land Mobile Services Using the Inmarsat Ltd. Satellite System*, File No. SES-MS-20010220-00349, *Applications for Blanket Licenses to Operate Mobile Earth Terminals with Non-U.S. Licensed Satellites*, File Nos. SES-LIC-20010221-00360; SES-LIC-20010221-00361; SES-LIC-20010221-00362; SES-LIC-20010221-00363, *Application for Section 214 Authority to Provide Inmarsat M4 Services*, File No. SES-MS-20000426-00861, *Application for Blanket Authority to Operate Mobile Earth Terminals*, File No. SES-LIC-20000426-00630, and *Application Pursuant to Section 214 for Authority to Provide Domestic Aeronautical Mobile Satellite Services via the Inmarsat System*, File No. ITC-214-19981214-00859).
- 2.2 Non-Objection to Future Applications: The FBI and DOJ agree not to object, formally or informally, to the grant of any other FCC application of Stratos for a license under Titles II and III of the Communications Act of 1934, as amended, to provide service to and operate METs in the United States for communications via the Inmarsat Space Segment, provided that such application makes clear that the terms and conditions of this Agreement and the Implementation Plan shall apply to any license issued pursuant to that application. Nothing in this Agreement shall preclude the DOJ or the FBI from opposing,

formally or informally, a FCC application by Stratos to transfer its license(s) to a third party.

#### ARTICLE III: SECURITY OFFICE

- 3.1 Location of Security Office: Stratos shall maintain within the United States a security office. Stratos shall within the security office:
- (i) take appropriate measures to prevent unauthorized access to data or facilities that might contain Classified Information or Sensitive Information;
  - (ii) assign U.S. citizens, who meet high standards of trustworthiness for maintaining the confidentiality of Sensitive Information, to positions that handle or that regularly deal with information identifiable to such person as Sensitive Information;
  - (iii) upon request from the DOJ or FBI, provide the name, social security number, and date of birth of each person who regularly handles or deals with Sensitive Information;
  - (iv) require that personnel handling Classified Information shall have been granted appropriate security clearances;
  - (v) provide that the points of contact described in Section 3.6 shall have sufficient authority over any of Stratos' employees who may handle Classified Information or Sensitive Information to maintain the confidentiality and security of such information in accordance with applicable U.S. legal authority and the terms of this Agreement; and
  - (vi) maintain appropriately secure facilities (e.g., offices) for the handling and storage of any Classified Information and Sensitive Information.
- 3.2 Measures to Prevent Improper Use or Access: Stratos shall take reasonable measures to prevent the use of or access to Stratos' equipment or facilities to conduct Electronic Surveillance in violation of any U.S. federal, state, or local law or the terms of this Agreement. These measures shall take the form of technical, organizational, personnel-related policies and written procedures, necessary implementation plans, and physical security measures.
- 3.3 Access by Foreign Government Authorities: Stratos shall not provide access to Domestic Communications, Call Associated Data, Transactional Data, or Subscriber Information stored in the United States to any person, if the purpose of such access is to respond to the legal process or the request of or on behalf of a foreign government, identified representative, or a component or subdivision thereof, without the express written consent of the DOJ or the authorization of a court of competent jurisdiction in the United

States. Any requests or submission of legal process described in this Section shall be reported to the DOJ as soon as possible and in no event later than five (5) business days after such request or legal process is received by Stratos, unless the disclosure of the request or legal process would be in violation of an order of a court of competent jurisdiction within the United States. Stratos shall take reasonable measures to ensure that it will learn of all such requests or submission of legal process described in this Section.

- 3.4 Disclosure to Foreign Government Authorities: Stratos shall not, directly or indirectly, disclose or permit disclosure of, or provide access to:
- (i) Classified or Sensitive Information, or
  - (ii) Subscriber Information, Transactional Data, Call Associated Data, or a copy of any Wire Communication or Electronic Communication intercepted or acquired pursuant to Lawful U.S. Process

to any foreign government or a component or subdivision thereof without satisfying all applicable U.S. federal, state and local legal requirements pertinent thereto, and obtaining the express written consent of the DOJ or the authorization of a court of competent jurisdiction in the United States. Stratos shall notify the DOJ of any requests or any legal process submitted to Stratos by a foreign government or a component or subdivision thereof for communications, data or information identified in this paragraph. Stratos shall provide such notice to the DOJ as soon as possible and in no event later than five (5) business days after such request or legal process is received by Stratos, unless the disclosure of the request or legal process would be in violation of an order of a court of competent jurisdiction within the United States. Stratos shall take reasonable measures to ensure that it will learn of all such requests or submission of legal process described in this Section.

- 3.5 Notification of Access or Disclosure Requests: Stratos shall notify DOJ in writing of legal process or requests by foreign non-governmental entities for access to or disclosure of Domestic Communications unless the disclosure of the legal process or requests would be in violation of an order of a court of competent jurisdiction within the United States. Stratos shall provide such notice to the DOJ no later than ninety (90) days after such request or legal process is received by Stratos, unless the disclosure of the request or legal process would be in violation of an order of a court of competent jurisdiction within the United States.

- 3.6 Points of Contact: Within sixty (60) days after execution of this Agreement by all parties, Stratos shall designate points of contact within the United States with the authority and responsibility for accepting and overseeing compliance with Lawful U.S. Process. The points of contact will be available 24 hours per day, 7 days per week and shall be responsible for accepting service and maintaining the security of Classified Information and any Lawful U.S. Process for Electronic Surveillance in accordance with the requirements of U.S. law. Stratos will immediately notify in writing the DOJ and the



FBI of such designation, and thereafter shall promptly notify the FBI and DOJ of any change in that designation. The points of contact shall be resident U.S. citizens who are eligible for appropriate U.S. security clearances. If necessary to receive or handle Sensitive or Classified Information, Stratos shall cooperate with any request by a government entity within the United States that a background check and/or security clearance process be completed for a designated point of contact.

- 3.7 Security of Lawful Process: Stratos shall protect the confidentiality and security of all Lawful U.S. Process served upon it and the confidentiality and security of Classified Information and Sensitive Information in accordance with U.S. federal and state law or regulations.
- 3.8 Notice of Obligations: Stratos shall instruct appropriate officials, employees, contractors and agents as to their obligations under this Agreement and issue periodic reminders to them of such obligations.
- 3.9 Access to Classified or Sensitive Information: Nothing contained in this Agreement shall limit or affect the authority of a U.S. government agency to deny, limit or revoke Stratos' access to Classified and Sensitive Information under that agency's jurisdiction.
- 3.10 Reporting of Incidents: Stratos shall take practicable steps to ensure that, if any Stratos official, employee, contractor or agent acquires any information that reasonably indicates: (i) a breach of this Agreement; (ii) Electronic Surveillance conducted in violation of U.S. federal, state or local law or regulation; (iii) access to or disclosure of CPNI or Subscriber Information in violation of U.S. federal, state or local law or regulation (except for violations of FCC regulations relating to improper use of CPNI); or (iv) improper access to or disclosure of Classified Information or Sensitive Information, then Stratos shall notify the FBI and DOJ. This report shall be made promptly and in any event no later than ten (10) calendar days after Stratos acquires such information. Stratos shall lawfully cooperate in investigating the matters described in this Section. Stratos need not report information where disclosure of such information would be in violation of an order of a court of competent jurisdiction within the United States. This Section is effective thirty (30) calendar days after execution of this Agreement by all Parties.
- 3.11 Notice of Decision to Store Information Outside the United States: Stratos shall provide to the FBI and DOJ thirty (30) calendar days advance notice if Stratos (or any entity with which Stratos has contracted or made other arrangements for data or communications processing or storage) plans to store outside of the United States Domestic Communications, Transactional Data, Call Associated Data, or Subscriber Information that was previously stored within the United States. Such notice shall, at a minimum, (a) include a description of the type of information to be stored outside the United States, (b) identify the custodian of the information if other than Stratos, (c) identify the location where the information is to be stored, and (d) identify the factors considered in deciding to store the information outside of the United States (see Section 1.7). This section is effective thirty (30) calendar days after execution of this Agreement by all Parties.

- 3.12 Joint Ventures: Stratos may enter into joint ventures under which the joint venture or entity may provide Domestic Communications. To the extent Stratos does not have *de facto* or *de jure* control over such joint venture or entity, Stratos shall in good faith endeavor to have such entity comply with this Agreement as if it were a subsidiary of Stratos and shall consult with the FBI or the DOJ about the activities of such entity. This Section is effective upon execution of this Agreement by all the Parties. Nothing in this Section relieves, nor shall it be construed to relieve, Stratos of its obligations under Sections 1.5 and 1.7.
- 3.13 Outsourcing Third Parties: If Stratos outsources functions covered by this Agreement to a third party, Stratos shall take reasonable steps to ensure that those third parties comply with the applicable terms of this Agreement.
- 3.14 Access to Information: In response to reasonable requests made by the FBI or the DOJ, Stratos shall provide access to information concerning technical, physical, management, or other security measures and other reasonably available information needed by the DOJ or the FBI to assess compliance with the terms of this Agreement.
- 3.15 Visits and Inspections: Upon reasonable notice and during reasonable hours, the FBI and the DOJ may visit and inspect any part of Stratos' Domestic Communications Infrastructure and security office for the purpose of verifying compliance with the terms of this Agreement. Stratos may have appropriate Stratos employees accompany U.S. government representatives throughout any such inspection.
- 3.16 Access to Personnel: Upon reasonable notice from the FBI or the DOJ, Stratos will make available for interview officers or employees of Stratos, and will seek to require contractors to make available appropriate personnel located in the United States who are in a position to provide information to verify compliance with this Agreement.
- 3.17 Annual Report: On or before the last day of January of each year, a designated senior corporate officer of Stratos shall submit to the FBI and the DOJ a report assessing Stratos' compliance with the terms of this Agreement for the preceding calendar year. The report shall include:
- (i) a copy of the policies and procedures adopted to comply with this Agreement;
  - (ii) a summary of the changes, if any, to the policies and procedures, and the reasons for those changes;
  - (iii) a summary of any known acts of noncompliance with the terms of this Agreement, whether inadvertent or intentional, with a discussion of what steps have been or will be taken to prevent such acts from occurring in the future; and
  - (iv) identification of any other issues that, to Stratos' knowledge, will or reasonably could affect the effectiveness of or compliance with this Agreement.

## ARTICLE IV: DEFINITIONS

As used in this Agreement:

- 4.1 "Call Associated Data" means any information possessed by Stratos relating to a Domestic Communication or relating to the sender or recipient of that Domestic Communication and may include without limitation subscriber identification, called party number, calling party number, start time, end time, call duration, feature invocation and deactivation, feature interaction, registration information, user location, diverted to number, conference party numbers, dual tone multifrequency (dialed digit extraction), inband and outofband signaling, and party add, drop, and hold.
- 4.2 "Classified Information" means any information that has been determined pursuant to Executive Order 12958, or any predecessor or successor Executive Order, or the Atomic Energy Act of 1954, or any statute that succeeds or amends the Atomic Energy Act, to require protection against unauthorized disclosure.
- 4.3 "De facto" and "de jure" control have the meaning provided in 47 C.F.R. § 1.2110.
- 4.4 "Domestic Communications" means (i) Wire Communications or Electronic Communications (whether stored or not) between a U.S.-Licensed MET and another U.S. location, and (ii) the U.S. portion of a Wire Communication or Electronic Communication (whether stored or not) that originates from or terminates to a U.S.-Licensed MET.
- 4.5 "Domestic Communications Infrastructure" means the facilities and equipment of Stratos used to provide, process, direct, control, supervise or manage Domestic Communications. Domestic Communications Infrastructure may be located, for *bona fide* commercial reasons, outside the United States.
- 4.6 "Electronic Communication" has the meaning given it in 18 U.S.C. § 2510(12).
- 4.7 "Electronic Surveillance" means (i) the interception of wire, oral, or electronic communications as defined in 18 U.S.C. §§ 2510(1), (2), (4) and (12), respectively, and electronic surveillance as defined in 50 U.S.C. § 1801(f); (ii) access to stored wire or electronic communications, as referred to in 18 U.S.C. § 2701 *et seq.*; (iii) acquisition of dialing or signaling information through pen register or trap and trace devices or other devices or features capable of acquiring such information pursuant to law as defined in 18 U.S.C. § 3121 *et seq.* and 50 U.S.C. § 1841 *et seq.*; (iv) acquisition of location-related information concerning a telecommunications service subscriber; (v) preservation of any of the above information pursuant to 18 U.S.C. § 2703(f); and (vi) including access to, or acquisition or interpretation of, communications or information as described in (i) through (v) above and comparable State laws.
- 4.8 "Foreign" where used in this Agreement, whether capitalized or lower case, means non-U.S.

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- 4.9 “Intercept” or “Intercepted” has the meaning defined in 18 U.S.C. § 2510(4).
- 4.10 “Lawful U.S. Process” means lawful requests by U.S. federal, state or local law enforcement agencies or U.S. intelligence agencies, certifications, and court orders regarding Electronic Surveillance and the acquisition of Subscriber Information.
- 4.11 “Non-U.S.-Licensed MET” means an Inmarsat MET that is not covered by a Stratos license or authorization to provide service to METs inside the United States.
- 4.12 “Parties” has the meaning given it in the Preamble.
- 4.13 “Pro forma assignments” or “pro forma transfers of control” are transfers or assignments that do not “involve a substantial change in ownership or control” of the licenses as provided in 47 U.S.C. § 309(c)(2)(B).
- 4.14 “Sensitive Information” means unclassified information regarding (i) the persons or facilities that are the subjects of Lawful U.S. Process, (ii) the identity of the government agency or agencies serving such Lawful U.S. Process, (iii) the location or identity of the line, circuit, transmission path, or other facilities or equipment used to conduct Electronic Surveillance, (iv) the means of carrying out Electronic Surveillance, (v) the type(s) of service, telephone number(s), records, communications, or facilities subjected to Lawful U.S. Process, and (vi) other unclassified information designated in writing by an authorized official of a federal, state or local law enforcement agency or a U.S. intelligence agency as “Sensitive Information.”
- 4.15 “Subscriber Information” means information of the type referred to and accessible subject to procedures specified in 18 U.S.C. § 2703(c) or (d) or 18 U.S.C. § 2709. Such information shall also be considered Subscriber Information when it is sought pursuant to the provisions of other Lawful U.S. Process.
- 4.16 “Transactional Data” means:
- a) any “call identifying information,” as defined in 47 U.S.C. § 1001(2), possessed by Stratos, including without limitation the telephone number or similar identifying designator associated with a Domestic Communication;
  - b) Internet address or similar identifying designator associated with a Domestic Communication;
  - c) the time, date, size and duration of a Domestic Communication;
  - d) any information possessed by Stratos relating specifically to the identity and physical address of a Stratos U.S. subscriber, user, or account payer.

- e) to the extent associated with such a U.S. subscriber, user or account payer, any information possessed by Stratos relating to telephone numbers, Internet addresses, or similar identifying designators; the physical location of equipment if known and if different from the location information provided under (f) below; types of service; length of service; fees; and usage, including billing records; and
- f) to the extent permitted by U.S. laws, any information possessed by Stratos indicating as closely as possible the physical location to or from which a Domestic Communication is transmitted.
- 4.17 "United States" or "U.S." means the United States of America including all of its States, districts, territories, possessions, commonwealths, and the territorial and special maritime jurisdiction of the United States.
- 4.18 "U.S.-Licensed MET" means a MET covered by Stratos' *Applications for Blanket Licenses to Operate Mobile Earth Terminals with Non-U.S. Licensed Satellites*, File Nos. SES-LIC-20010221-00360; SES-LIC-20010221-00361; SES-LIC-20010221-00362; SES-LIC-20010221-00363, *Application for Blanket Authority to Operate Mobile Earth Terminals*, File No. SES-LIC-20000426-00630, or by any future Stratos Title III license granted to provide service to METs inside the United States.
- 4.19 "Wire Communication" has the meaning given it in 18 U.S.C. § 2510(1).
- 4.20 Other Definitional Provisions: Other capitalized terms used in this Agreement and not defined in this Article IV shall have the meanings assigned them elsewhere in this Agreement. The definitions in this Agreement are applicable to the singular as well as the plural forms of such terms and to the masculine as well as the feminine and neuter genders of such term. Whenever the words "include," "includes," or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation."

#### ARTICLE V: FREEDOM OF INFORMATION ACT

- 5.1 Protection from Disclosure: The DOJ and FBI shall take all reasonable measures to protect from public disclosure all information submitted by Stratos to the DOJ or FBI in connection with this Agreement and clearly marked with the legend "Confidential" or similar designation. Such markings shall signify that it is Stratos' position that the information so marked constitutes "trade secrets" and/or "commercial or financial information obtained from a person and privileged or confidential," or otherwise warrants protection within the meaning of 5 U.S.C. § 552(b)(4). If a request is made under 5 U.S.C. § 552(a)(3) for information so marked, and disclosure of any information (including disclosure in redacted form) is contemplated, the DOJ or FBI, as appropriate, shall notify Stratos of the intended disclosure as provided by Executive Order 12600, 52 Fed. Reg. 23781 (June 25, 1987). If Stratos objects to the intended disclosure and its

objections are not sustained, the DOJ or FBI, as appropriate, shall notify Stratos of its intention to release (as provided by Section 5 of Executive Order 12600) not later than five (5) business days prior to disclosure of the challenged information.

- 5.2 Use of Information for U.S. Government Purposes: Nothing in this Agreement shall prevent the DOJ or the FBI from lawfully disseminating information as appropriate to seek enforcement of this Agreement, provided that the DOJ and FBI take all reasonable measures to protect from public disclosure the information marked as described in Section 5.1.

#### ARTICLE VI: DISPUTES

- 6.1 Informal Resolution: The Parties shall use their best efforts to resolve any disagreements that may arise under this Agreement. Disagreements shall be addressed, in the first instance, at the staff level by the Parties' designated representatives. Any disagreement that has not been resolved at that level shall be submitted promptly to higher authorized officials, unless the DOJ or the FBI believe that important national interests can be protected, or Stratos believes that paramount commercial interests can be resolved, only by resorting to the measures set forth in Section 6.2 below. If, after meeting with higher authorized officials, either party determines that further negotiations would be fruitless, then either party may resort to the remedies set forth in Section 6.2 below. If resolution of a disagreement requires access to Classified Information, the Parties shall designate a person possessing the appropriate security clearances.
- 6.2 Enforcement of Agreement: Subject to Section 6.1 of this Agreement, if any Party believes that any other Party has breached or is about to breach this Agreement, that Party may bring an action against the other Party for appropriate judicial relief. Nothing in this Agreement shall limit or affect the right of a U.S. Government agency to:
- (i) seek revocation by the FCC of any license, permit, or other authorization granted or given by the FCC to Stratos, or seek any other action by the FCC regarding Stratos; or
  - (ii) seek civil sanctions for any violation by Stratos of any U.S. law or regulation or term of this Agreement; or
  - (iii) pursue criminal sanctions against Stratos, or any director, officer, employee, representative, or agent of Stratos, or against any other person or entity, for violations of the criminal laws of the United States.
- 6.3 Forum Selection: It is agreed by and between the Parties that a civil action for judicial relief with respect to any dispute or matter whatsoever arising under, in connection with, or incident to, this Agreement shall be brought, if at all, in the United States District Court for the District of Columbia.

- 6.4 Irreparable Injury: Stratos agrees that the United States would suffer irreparable injury if for any reason Stratos failed to perform any of its significant obligations under this Agreement, and that monetary relief would not be an adequate remedy. Accordingly, Stratos agrees that, in seeking to enforce this Agreement against Stratos, the FBI and DOJ shall be entitled, in addition to any other remedy available at law or equity, to specific performance and injunctive or other equitable relief.

#### ARTICLE VII: OTHER

- 7.1 Right to Make and Perform Agreement: The Parties represent that, to the best of their knowledge, they have and shall continue to have throughout the term of this Agreement the full right to enter into this Agreement and perform their obligations hereunder and that this Agreement is a legal, valid and binding obligation enforceable in accordance with its terms.
- 7.2 Waiver: The availability of any civil remedy under this Agreement shall not prejudice the exercise of any other civil remedy under this Agreement or under any provision of law, nor shall any action taken by a Party in the exercise of any remedy be considered a waiver by that Party of any other rights or remedies. The failure of any Party to insist on strict performance of any of the provisions of this Agreement, or to exercise any right they grant, shall not be construed as a relinquishment or future waiver, rather, the provision or right shall continue in full force. No waiver by any Party of any provision or right shall be valid unless it is in writing and signed by the Party.
- 7.3 Headings: The article and section headings and numbering in this Agreement are inserted for convenience only and shall not affect the meaning or interpretation of this Agreement.
- 7.4 Other Laws: Nothing in this Agreement is intended to limit or constitute a waiver of (i) any obligation imposed by any U.S. laws on the Parties or by U.S. state or local laws on Stratos, (ii) any enforcement authority available under any U.S. or state laws, (iii) the sovereign immunity of the United States, or (iv) any authority over Stratos' activities or facilities located outside the United States that the U.S. Government may possess. Nothing in this Agreement is intended to, or is to be interpreted to, require the Parties to violate any applicable U.S. law.
- 7.5 Statutory References: All references in this Agreement to statutory provisions shall include any future amendments to such statutory provisions.
- 7.6 Non-Parties: Nothing in this Agreement is intended to confer or does confer any rights or obligations on any Person other than the Parties and any other U.S. Governmental Authorities entitled to effect Electronic Surveillance pursuant to Lawful U.S. Process.

- 7.7 Modification: This Agreement and the Implementation Plan may only be modified by written agreement signed by all of the Parties. The DOJ and FBI agree to consider in good faith possible modifications to this Agreement if Stratos believes that the obligations imposed on it under this Agreement are substantially more restrictive than those imposed on other U.S. and foreign licensed service providers in like circumstances in order to protect U.S. national security, law enforcement, and public safety concerns. Any substantial modification to this Agreement shall be reported to the FCC within thirty (30) days after approval in writing by the Parties.
- 7.8 Partial Invalidity: If any portion of this Agreement is declared invalid by a U.S. court of competent jurisdiction, this Agreement shall be construed as if such portion had never existed, unless such construction would constitute a substantial deviation from the Parties' intent as reflected in this Agreement.
- 7.9 Good Faith Negotiations: The DOJ and the FBI agree to negotiate in good faith and promptly with respect to any request by Stratos for relief from application of specific provisions of this Agreement to future Stratos activities or services if those provisions become unduly burdensome to Stratos or adversely affect Stratos' competitive position. If the DOJ or the FBI find that the terms of this Agreement are inadequate to address national security concerns presented by an acquisition by Stratos in the United States after the date that all the Parties have executed this Agreement, Stratos shall negotiate in good faith to modify this Agreement to address those concerns.
- 7.10 Successors and Assigns: This Agreement shall inure to the benefit of, and shall be binding upon, the Parties and their respective successors and assigns.
- 7.11 Control of Stratos: If Stratos makes any filing with the FCC or any other governmental agency relating to the *de jure* or *de facto* control of Stratos, except for filing with the FCC for assignments or transfers of control to any U.S. subsidiary of Stratos that are *pro forma*, Stratos shall promptly provide to the FBI and DOJ written notice and copies of such filing.
- 7.12 Notices: All written communications or other written notices relating to this Agreement, such as a proposed modification, shall be deemed given: (i) when delivered personally; (ii) if by facsimile, upon transmission with confirmation of receipt by the receiving Party's facsimile terminal; (iii) if sent by documented overnight courier service, on the date delivered; or (iv) if sent by mail, five (5) business days after being mailed by registered or certified U.S. mail, postage prepaid, addressed to the Parties' designated representatives at the addresses shown below, or to such other representatives at such other addresses as the Parties may designate in accordance with this Section:

Department of Justice  
Assistant Attorney General  
Criminal Division  
950 Pennsylvania Ave., N.W.  
Washington, D.C. 20530



Federal Bureau of Investigation  
Assistant Director  
National Security Division  
935 Pennsylvania Ave., N.W.  
Washington, D.C. 20535

Federal Bureau of Investigation  
Office of General Counsel  
935 Pennsylvania Ave., N.W.  
Washington, D.C. 20535

Stratos Mobile Networks (USA) LLC  
Facilities Manager  
5 Teleport Drive  
Staten Island, NY 10311

with copy to:  
Alfred M. Mamlet  
Steptoe & Johnson, LLP  
1330 Connecticut Ave., N.W.  
Washington, D.C. 20036

This Agreement is executed on behalf of the Parties:

**Federal Bureau of Investigation**

Date: August 9, 2001  
Printed Name: Larry R. Parkinson  
Title: General Counsel

By:



**MarineSat Communications Network, Inc. and Stratos Mobile Networks (USA) LLC**

Date: August 7, 2001  
Printed Name: Carmen Lloyd  
Title: President

By:



United States Department of Justice

Date: 8/13/01 By: Mary Ellen Warlow  
Printed Name: Mary Ellen Warlow  
Title: Acting Deputy Assistant Attorney General

**Exhibit A****CONDITION TO FCC LICENSES**

IT IS FURTHER ORDERED, that the authorizations and licenses related thereto are subject to compliance with the provisions of the Agreement attached hereto between MarineSat Communications Network, Inc. and Stratos Mobile Networks (USA) LLC on the one hand, and the U.S. Department of Justice (the "DOJ") and the Federal Bureau of Investigation (the "FBI") on the other, dated August 7, 2001, which Agreement is designed to address national security, law enforcement and public safety issues of the DOJ and the FBI regarding the authority and licenses granted herein. Nothing in this Agreement is intended to limit any obligation imposed by Federal law or regulation including, but not limited to, 47 U.S.C. § 222(a) and (c)(1) and the FCC's implementing regulations.

Exhibit B

Amended Implementation Plan (Confidential)

## APPENDIX C

**Scope of Permitted Communications Between Stratos Global  
and the CIP Entities and Inmarsat**

Excerpt from Letter from Alfred Mamlet, Counsel for Stratos Global Corporation, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-73 (dated September 18, 2007):

**Question 4.**

**Trustee shall cause any director appointed or elected by it in accordance with this Agreement to execute and deliver to Trustee an agreement, in form and substance acceptable to Trustee, pursuant to which such director agrees that the director will not communicate with Bidco or Inmarsat or their respective officers, directors, employees, stockholders and Affiliates regarding the Company including the operations or management of Company; provided that any officer of the Company who is also a director may communicate with Inmarsat and its officers, employees and Affiliates regarding commercial matters in the ordinary course of business between the Company and Inmarsat and their respective Affiliates.**

**Please explain what you mean by communications in the “ordinary course of business” as the phrase is used in this section. What are the type of regular communications between satellite operator and major distributor to which you refer on page three of you September 6, *ex parte* filing?**

Answer: The Trust Agreement contains two constraints on communications between Stratos or the Trustee, on the one hand, and CIP and Inmarsat, on the other hand. Section 10 prohibits *any* communications between Inmarsat or CIP and the Trustee “regarding the operation or management” of Stratos. Section 4(b) goes a step further, and obligates the Trustee to cause the directors he appoints or elects to agree in writing not to communicate with CIP or Inmarsat regarding Stratos, including the “operations or management” of Stratos. The one exception to this prohibition is for an officer of Stratos who is also a director. That exception only applies to only one Stratos director, Jim Parm, who also is the Stratos CEO. This exception allows Mr. Parm to communicate with Inmarsat regarding “commercial matters in the ordinary course of business” between Inmarsat and Stratos. That exception was intended to allow Mr. Parm to continue his practice of communicating with one of Stratos’ major suppliers about normal commercial issues.

The term “ordinary course of business” means the normal commercial activities between Stratos and Inmarsat that they have regularly discussed for the last several years and would continue to discuss, regardless of the proposed transaction. Stratos is one of Inmarsat’s largest distributors and Inmarsat is one of Stratos’ largest suppliers. Accordingly, Stratos and Inmarsat personnel in many departments communicate regularly on a wide variety of matters including:

- **Network operations** – For the “Existing & Evolved” Inmarsat services, Inmarsat operates the satellite portion of the network that provides services to end-users while Stratos is one of the principal operators of the terrestrial portion of the network, with 4 land earth stations (“LESS”). For the “next generation” services like Broadband Global Network (“BGAN”), Inmarsat owns both satellites and the LESSs (with operation of one of the LESSs contracted out

to Stratos), and interconnects with Stratos, which provides value-added services to its customers. In addition, Stratos provides telemetry, tracking and control (“TT&C”) services for the Inmarsat satellites. Operational personnel from Inmarsat and Stratos communicate on a broad range of issues such as operations of the satellite that impact the LES portion of the network, operation of the LESs that impact the satellite portion of the network, maintenance schedules, quality improvement, introduction of new services, customer support, operation of the “next generation” LES owned by Inmarsat and operated by Stratos, and TT&C.

- **Sales and Marketing** – The respective Inmarsat and Stratos sales and marketing departments work together to sell services. They promote the Stratos distribution of Inmarsat services by discussing a range of subjects such as marketing programs and initiatives, development and deployment of new services, joint marketing efforts and value-added issues.
- **Finance** – Since they have a major supplier-vendor relationship, Inmarsat and Stratos financial personnel deal with each other regularly on billing, accounting, financial reporting and related financial issues.
- **Legal and Regulatory** – Inmarsat and Stratos have a number of legal agreements governing their commercial relationships. Their respective legal departments discuss issues arising under existing contracts, as well as negotiate agreements for new services. Inmarsat and Stratos also cooperate on regulatory issues related to obtaining licenses for BGAN and other services in the U.S. and in dozens of other countries.

Inmarsat also discusses most of these same issues with its other major distributors. Stratos discusses most of these same issues with its other major suppliers of satellite services.

The “ordinary course of business” discussions between Stratos and Inmarsat occur in various departments and at different levels of seniority within these departments. The Stratos CEO engages personally in discussions with Inmarsat on the issues of greatest importance, often if they have not been resolved by others.