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April 5, 2002

BY HAND

William F. Caton
Acting Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: **Response of Inmarsat Ventures plc**
*In the Matter of Establishing Rules and Policies for the Use of Spectrum
for Mobile Satellite Services in the Upper and Lower L-band.*
IB Docket No. 96-132 /

Dear Mr. Caton:

Inmarsat Ventures plc ("Inmarsat"), by its counsel, hereby submits the enclosed Response, in the above-referenced docket.

Sincerely,


Alexander D. Hoehn-Saric

Enclosure

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Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

APR 05 2002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Establishing Rules and Policies for) IB Docket No. 96-132
the Use of Spectrum for Mobile)
Satellite Services in the Upper and)
Lower L-band)

Response of Inmarsat Ventures plc

Inmarsat Ventures plc ("Inmarsat") hereby responds to the Reply of Mobile Satellite Ventures LLC ("MSV") to Inmarsat's Petition for Clarification (the "Reply") in this proceeding.¹ MSV's pleading is non-responsive to the issues raised by Inmarsat and advocates for the imposition of significant restrictions on Inmarsat that would disrupt existing service to U.S. users over the Inmarsat system and are inconsistent with the Commission's prior rulings and the U.S.'s international obligations.

I. MSV's Reply is Non-Responsive

The *Order* provides that MSV² is authorized to use up to the first 20 megahertz of spectrum that it is able to coordinate under the Mexico City MOU³ and that the Commission will not authorize other U.S. licensed MSS satellite systems to use L-band spectrum until MSV has access to 20 megahertz of L-band spectrum. Certain language, if taken out of context in the *Order*, could be misinterpreted. Inmarsat therefore sought to clarify that (i) MSV would still be required to coordinate L-band spectrum under the Mexico City MOU based on a demonstrated

¹ See *In re Establishing Rules and Policies for the use of Spectrum for Mobile Satellite Services in the Upper and Lower L-band, Report and Order*, FCC 02-24 (released February 7, 2002) (the "*Order*").

² Motient has consummated the transfer of its licenses to MSV. We use MSV in this response even though the *Order* refers to Motient.

³ See "FCC Hails Historic Agreement on International Satellite Coordination," Report No. IN 96-16 (released June 25, 1996).

need for spectrum, as opposed to simply referencing the Commission's license of 20 megahertz of spectrum, and (ii) that nothing in the *Order* precludes earth station operators who wish to use Inmarsat's services in the U.S. from obtaining a license for such purpose from the Commission regardless of whether MSV has coordinated 20 megahertz of L-band spectrum.⁴

MSV does not oppose Inmarsat's proposed clarifications. Instead MSV chose to file a "Reply" that does not take issue with the proposed clarification, but instead asks the Commission to impose an unprecedented and legally unsustainable limit on the amount of spectrum that Inmarsat is allowed to coordinate.⁵ Effectively, by raising this new issue in its Reply, MSV has submitted an untimely petition for reconsideration that must be dismissed as procedurally deficient under Section 405 of the Communications Act of 1934, as amended.⁶

Because Inmarsat's Petition is unopposed and consistent with the *Order*, Inmarsat urges the Commission to adopt the clarifications Inmarsat has requested and to disregard MSV's requests. Even if the Commission decides to review MSV's request on the merits, the

⁴ See *Petition for Clarification of Inmarsat Ventures plc*, IB Docket No. 96-132 (filed March 11, 2002) (the "Petition").

⁵ See *MSV Reply* at 3.

⁶ See, e.g., *Fulton Contracting Co., Order on Reconsideration*, 15 FCC 16343 (2000) (holding that a licensing request of Fulton was actually an untimely petition for reconsideration of a Commission order that must be dismissed). MSV asserts that Inmarsat filed its petition in advance of the deadline to file motions for reconsideration. The *Order* modified MSV's license, finalized the earth station licenses of Inmarsat's U.S. service providers, and adopted new rules. Pursuant to § 1.106(f) of the Commission's rules, petitions for reconsideration must be filed within 30 days from the date of public notice of final action. Pursuant to § 1.4(b) of the Commission's Rules, for non-rulemaking decisions, such as the licensing aspects of the *Order*, the 30 day period begins upon the release date of the order, while for rulemaking decisions the 30 day period starts after publication in the Federal Register. The Commission's Rules specifically state that "[l]icensing and other adjudicatory decisions with respect to specific parties that may be associated with or contained in rulemaking documents are governed by the provisions of §1.4(b)(2)" which begin the 30 day period the date of release and not the Federal Register date. Thus, any petitions regarding licensing issues in the *Order* were due by March 11, 2002 when Inmarsat filed.

Commission should reject MSV's proposal because (i) it contradicts the public interest because it would disrupt the current provisioning of Inmarsat services, (ii) this issue was briefed in the proceeding and not adopted by the Commission, and (iii) the proposed limitation would undermine Inmarsat's ability to coordinate spectrum and therefore contravene of the Mexico City MOU. These arguments are addressed in further detail below.

II. MSV's Proposal Would Cut-off Existing Inmarsat Services

Placing a limit on the amount of spectrum that Inmarsat is allowed to coordinate internationally would disrupt service to end users of Inmarsat's services and is not supported in the record in this proceeding. Currently, Inmarsat uses significantly more than 20 megahertz of L-band spectrum to provide its services in and around the United States and over neighboring waters. In the U.S. and surrounding areas, Inmarsat provides a wide range of safety, business, and consumer services to customers such as the U.S. Navy, the U.S. Coast Guard, most major airlines, transoceanic ships, businesses, farmers and various other users.

Thus, an arbitrary 20 megahertz cap on the amount of spectrum that Inmarsat is allowed to coordinate would require Inmarsat to cease services to some existing users. The U.S. military, U.S. airlines and U.S. shipping lines, all of which rely upon Inmarsat for communications and safety services, therefore, could be adversely affected.

In contrast, MSV has not even suggested that its existing services would be adversely affected by the 20 megahertz limit in its license. This is not a surprise. Inmarsat's experience is that the combined former Motient and TMI systems actually use far less than the amount of spectrum assigned to them in the Mexico City MOU process, and far less than the 20 megahertz authorized by the Commission.

While the Commission therefore may have reason to seek to reserve for another U.S. space station licensee any spectrum that the U.S. coordinates beyond the 20 megahertz

authorized to MSV,⁷ there is no basis in the record to extend this to Inmarsat and thereby decrease service to current Inmarsat users. Inmarsat actively uses significantly more than 20 megahertz now to meet the demands of its end users. As contemplated by the Mexico City MOU, the amount of spectrum coordinated for Inmarsat's use should be dictated by the amount of capacity that Inmarsat demonstrates that it needs.

III. MSV's Proposal Is Antithetical To The Mexico City MOU

MSV's proposal is a legally unsustainable attempt to handicap Inmarsat in the international coordination negotiations. It would be antithetical to the Mexico City MOU for the U.S. to try to limit the amount of spectrum that Inmarsat is allowed to coordinate. The Mexico City MOU was entered into by five different administrations pursuant to the ITU Radio Regulations as a solution to complex coordination issues. The Commission should not allow MSV to use the U.S. licensing process to stack the cards in its favor for the MOU negotiation process.

As an initial matter, MSV's proposal makes no sense as a matter of international law. The U.S. certainly has plenary power to determine how much spectrum it plans to coordinate for U.S. space station licensees, such as MSV, in the international coordination process. The Inmarsat system, however, is sponsored by the United Kingdom, and it is the United Kingdom alone that has the ability to determine the scope of spectrum coordination for U.K.-sponsored systems under the MOU.

Furthermore, to attempt to establish a constraint on Inmarsat would undercut Inmarsat's position in international spectrum process. If the Commission were to impose an artificial cap on Inmarsat of 20 megahertz, Inmarsat's services would be immediately impaired

⁷ See *Order* at ¶ 19.

because, as stated above, Inmarsat already uses substantially more than 20 megahertz. Use of Inmarsat's services would decrease because Inmarsat would not have the capacity to meet the demands of its end users. As a result, Inmarsat would not be able to demonstrate as great a need for spectrum in the next international coordination meeting. MSV, who currently uses less than 20 megahertz, would be allowed to grow its system, but Inmarsat would be constrained in its ability to serve its existing customers. Such a result would be patently unfair and contrary to foundations of the Mexico City MOU.

Thus, as the Commission has already recognized in granting market access to Inmarsat, Inmarsat should be allowed to continue to provide services to U.S. customers using the spectrum it has coordinated in the international process.⁸ As COMSAT stated in this proceeding in 1996, "it would not be consistent with the spirit of the [Mexico City MOU], or with the FCC's pro-competition policies, for the Commission to seek to increase the amount of L-band spectrum available for [MSV] by barring U.S. domestic MSS users from accessing Inmarsat's non-maritime services."⁹

This statement was true in 1996 is even more apt now when the U.S.'s WTO obligations are considered. Just over two years ago, MSV (then AMSC) asked the Commission to keep foreign-licensed L-band systems out of the U.S. market long enough for MSV to increase its market share and thereby justify an increased spectrum assignment in the MOU negotiations. The Commission rejected this proposal as inconsistent with the U.S.'s market access

⁸ See *In re COMSAT Corporation, et al.*, FCC 01-272 ¶ 72-8 (released October 9, 2001) ("*Inmarsat Market Access Order*") ("Spectrum limitation concerns are best addressed in the L-band coordination process").

⁹ See *COMSAT Comments* at 3 (footnote omitted); see also Reply of COMSAT Corporation, IB Docket No. 96-132 at 4 (filed October 7, 1996) ("it would be contrary to the spirit of [the] Mexico City accord for the Commission to seek to artificially increase the amount of L-band spectrum available for [MSV] by barring U.S. consumers from accessing competitive land-based digital services [such as Inmarsat's]").

commitments in the WTO Agreement.¹⁰ MSV's proposal here is nothing but a thinly-veiled attempt to re-litigate an argument that the Commission has previously rejected. MSV's proposal to constrain Inmarsat from using its entire amount of currently-coordinated spectrum is just another way of impermissibly trying to constrain Inmarsat's ability to serve the U.S. market in the hope that MSV can increase its market share and justify more bandwidth for itself or for TMI. As the Commission stated in its order granting market access to TMI, "If the United States is to obtain 20 megahertz of spectrum for its system, it should be done in the normal course of the international coordination process."¹¹

IV. MSV's Proposal Was Considered Earlier And Not Adopted

The Commission also should reject MSV's proposal because this issue already was raised in this proceeding and the Commission indicated last October that nothing in this *Order* would significantly affect its grant of U.S. market access to Inmarsat.¹² In its comments in this proceeding, COMSAT Corporation ("COMSAT") urged the Commission not to limit the choices of U.S. consumers by displacing Inmarsat services through this rulemaking:

Given the paramount obligation to coordinate spectrum internationally, it follows that the FCC should not attempt by this rulemaking to limit consumer choices in the U.S. through displacement of existing L-band intersystem operators, including Inmarsat. The proper forum in which to address the amount of L-band spectrum available to Inmarsat, or to other non-U.S. licensed L-band systems, is the intersystem coordination process.¹³

As the Commission noted in the *Order*,¹⁴ it considered the comments of various parties, including Motient and COMSAT, and based its ruling on the input of those parties. And,

¹⁰ *SatCom Systems, Inc. and TMI Communications and Co.*, 14 FCC Rcd 20798, ¶¶ 17-18 (1999), *aff'd AMSC Subsidiary Corporation v. FCC*, 216 F.3d 1154 (D.C. Cir. 2000).

¹¹ *Id.*

¹² *See Inmarsat Market Access Order* at ¶ 81.

¹³ *See Comments of COMSAT Corporation*, IB Docket No. 96-132 at 2 (filed September 17, 1996).

¹⁴ *See Order* at fn. 16.

having reviewed the positions of the parties, the Commission did not decide to impose any such limitations on Inmarsat in the *Order*. Thus, the *Order* is fully consistent with the Commission's commitment in its order granting market access to Inmarsat that "[t]he authorizations we grant here allowing the applicants to operate with Inmarsat in the lower L-band will not be significantly affected by policies adopted in the *Lower L-band* proceeding."¹⁵ MSV's suggestion has already been considered and was not adopted. There is no good reason for revisiting this issue now.

V. MSV and TMI Must Be Considered Together Under Any Cap

For the reasons set forth above, there is no basis for limiting the amount of spectrum that Inmarsat is allowed to internationally coordinate. And, for the record, Inmarsat has not advocated that the U.S. limit MSV to 20 megahertz. However, should the Commission nonetheless impose a cap on Inmarsat, it must impose a similar cap on the combined operations of MSV and TMI. First, a combined limit would be consistent with the *Order* in which the Commission notes "should MSV acquire access to at least 20 megahertz of L-band spectrum through other means, *i.e.* its proposed merger with TMI, we find that the public interest benefit derived from reserving the additional spectrum to enable the creation of competitive MSS providers outweighs any benefits that might stem from assigning additional L-band spectrum to Motient."¹⁶ Second, it would be fundamentally unfair to limit Inmarsat to 20 megahertz, but allow MSV to use 40 megahertz of spectrum based on a 20 megahertz assignment to MSV by the Commission and a 20 megahertz assignment to TMI by Industry Canada. Third, effectively doubling MSV's spectrum while reducing Inmarsat's capacity would undermine the objective of the *Order* to allow competitive MSS operators the opportunity to enter the U.S. market.

¹⁵ *Inmarsat Market Access Order* at ¶ 81.

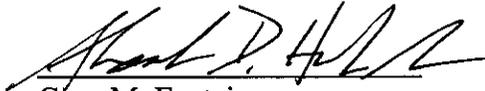
¹⁶ *Order* at ¶ 19.

CONCLUSION

Inmarsat in its Petition sought to clarify that (i) MSV would still be required to coordinate L-band spectrum under the Mexico City MOU based on a demonstrated need for spectrum, as opposed to simply referencing the Commission's license of 20 megahertz of spectrum and (ii) that nothing in the *Order* precludes earth station operators who wish to use Inmarsat's services in the U.S. from obtaining a license for such purpose from the Commission, regardless of whether MSV has coordinated 20 megahertz of L-band spectrum. MSV has not opposed those clarifications but instead made a late-filed petition for reconsideration seeking new limits on the spectrum that Inmarsat is allowed to coordinate. Based on the current operation and spectrum needs of Inmarsat, reducing Inmarsat's spectrum would disrupt service to end users and therefore would not be in the public interest. Moreover, any such limitation would also be contrary to the Mexico City MOU and unfairly advantage MSV in international coordination negotiations. Finally, such restrictions were discussed previously in this proceeding and the Commission declined to adopt any such limitations in its *Order*. There is no reason to

change that decision now. Therefore, Inmarsat urges the Commission to dismiss MSV's proposal as untimely or to reject MSV's proposal. In any case, the Commission should adopt Inmarsat's proposed clarifications.

Respectfully submitted,



Gary M. Epstein
John P. Janka
Alexander D. Hoehn-Saric
LATHAM & WATKINS
555 11th Street, N.W.
Suite 1000
Washington, D.C. 20004
(202) 637-2200 (phone)
(202) 637-2201 (fax)

Counsel for INMARSAT VENTURES PLC

April 5, 2002

CERTIFICATE OF SERVICE

I, Daniel P. Ryan, hereby certify that on this 5th day of April, 2002 copies of the attached Response of Inmarsat Ventures plc, were either hand delivered (*) or sent by first class postage pre-paid mail, to the following:

Thomas S. Tycz*
Chief
Satellite and Radiocommunications Division
International Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

James L. Ball*
Satellite and Radiocommunications Division
International Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Bruce D. Jacobs
David S. Konczal
Shaw Pittman
2300 N Street, N.W.
Washington, DC 20037
Counsel for Mobile Satellite Ventures LLC.

Bruce A. Henoeh
Robert A. Mansbach
COMSAT Corporation
6560 Rock Spring Drive
Bethesda, MD 20817

Peter A. Rohrbach
Karis A. Hastings
Hogan & Hartson LLP
555 Thirteenth Street, NW
Washington, DC 20004
Counsel for GE Americom

Stephen L. Goodman
Halprin Temple Goodman & Maher
555 12th Street, NW
Suite 950 North
Washington, DC 20004
Counsel for SITA

Joseph A. Godles
Goldberg, Godles, Wiener & Wright
1229 Nineteenth Street, NW
Washington, DC 20036
Counsel for PanAmSat Corp.

Alfred M. Mamlet
James M. Talens
Colleen A. Sechrest
Steptoe & Johnson LLP
1330 Connecticut Avenue, NW
Washington, DC 20036
Counsel for Stratots

Ian D. Volner
Venable, Baetjer, Howard & Civiletti, LLP
1201 New York Avenue, NW
Suite 1000
Washington, DC 20005
Counsel for Honeywell

Lon C. Levin
Vice President and Regulatory Counsel
Mobile Satellite Ventures LLC
10802 Parkridge Boulevard
Reston, VA 20191

William D. Wallace
Crowell & Moring, LLP
1001 Pennsylvania Avenue, NW
Washington, DC 20004
Counsel for Globalstar & L/Q Licensee, Inc.

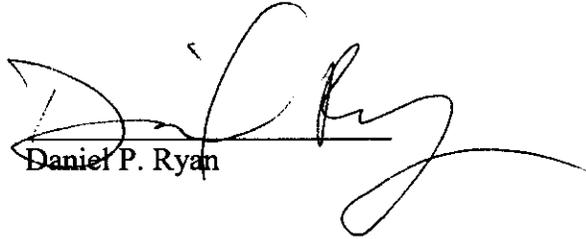
Helen E. Disenhaus
Swidler Berlin Shereff Friedman LLP
3000 K Street, NW
Suite 300
Washington, DC 20007
Counsel for Deere & Company

Gerald Musarra
Lockheed Martin Global Telecommunications
Crystal Sq. 2, Suite 403
1725 Jefferson Davis Highway
Arlington, VA 22202

Maury D. Shenk
Steptoe & Johnson
1330 Connecticut Avenue, NW
Washington, DC 20036
Counsel for Motorola, Inc.

J.D. Hersey, Jr.
Chief, Spectrum Management Division
United States Coast Guard
2100 Second Street, SW
Washington, DC 20593

David Otten
President & CEO
Celsat America, Inc.
3460 Torrance Blvd.
Suite 220
Torrance, CA 90503



Daniel P. Ryan