

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

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

**Consolidated Opposition and Comments of Mobile Satellite Ventures Subsidiary LLC on
Petitions for Reconsideration or Clarification**

Mobile Satellite Ventures Subsidiary LLC (“MSV”) hereby responds to the Petition for Clarification of Inmarsat Ventures plc (“Inmarsat”) filed on March 11, 2002, and the Petition for Clarification and Partial Reconsideration of Mobile Satellite Ventures (Canada) Inc. (“MSV Canada”) filed on September 6, 2002, regarding the Commission’s decision in the above-referenced proceeding.

Background

On February 2002, the Commission released an *Order* in this proceeding in which it modified MSV’s L-band mobile satellite service (“MSS”) license pursuant to Section 316 of the Communications Act by assigning it spectrum in both the upper and lower L-bands.¹ The Commission explained that the international coordination process made it difficult to secure sufficient spectrum for MSV in only the upper L-band. *Order* at ¶ 9. Thus, the Commission modified MSV’s license by assigning it lower L-band frequencies in addition to upper L-band frequencies. In doing so, the Commission also reversed its earlier determination that the first 28

¹Establishing Rules and Policies for the use of Spectrum for Mobile Satellite Services in the Upper and Lower L-band, *Order*, IB Docket No. 96-132 (2002) (“*Order*”).

MHz of spectrum coordinated in the L-band would be reserved for MSV.² Instead, the Commission decided to modify MSV's license by limiting it to a total of 20 MHz of coordinated spectrum in the upper and lower L-band for the remainder of its license period. *Order* at ¶ 19. The Commission concluded that it would serve the public interest to limit MSV to 20 MHz in order to reserve additional spectrum for another U.S.-licensed MSS provider in the L-band. *Id.* The Commission explained that applicants could apply for L-band spectrum if MSV acquires access to at least 20 MHz of L-band spectrum through the coordination process or through "other means, *i.e.* its proposed merger with TMI." *Id.* at ¶ 20.

On March 11, 2002,³ Inmarsat filed a Petition for Clarification of the *Order* asking that the Commission confirm that its decision will not "bias or prejudice the outcome" of the international frequency coordination process or preclude the Commission's grant of applications for U.S. earth stations to access Inmarsat space stations.⁴ Inmarsat claimed that any other interpretation would be inconsistent with the Commission's prior decisions to permit the use of foreign-licensed L-band space stations to provide U.S. service. *Id.* at 2.

On September 6, 2002, MSV filed a Petition for Clarification and Partial Reconsideration of the *Order*.⁵ MSV explained that the Commission's decision to reduce MSV's licensed

²*Order* at ¶¶ 18-19; Establishing Rules and Policies for the use of Spectrum for Mobile Satellite Services in the Upper and Lower L-band, *Notice of Proposed Rulemaking*, 11 FCC Rcd 11675, ¶ 11 (1996) ("*NPRM*").

³Inmarsat's Petition was filed in advance of the deadline for filing Petitions for Reconsideration of the *Order*. See 47 C.F.R. § 1.429 (requiring that Petitions for Reconsideration of an Order in a rulemaking proceeding be filed within 30 days of publication of the Order in the *Federal Register*).

⁴Inmarsat Ventures plc, Petition for Clarification, IB Docket No. 96-132 (March 11, 2002), at 2 ("Inmarsat Petition").

⁵Mobile Satellite Ventures Subsidiary LLC, Petition for Clarification and Partial Reconsideration, IB Docket No. 96-132 (September 6, 2002) ("MSV Petition").

spectrum from 28 MHz to 20 MHz violated Section 316 of the Communications Act. *See* MSV Petition at 6-9. MSV also demonstrated that the Commission failed to justify its decision to take 8 MHz of spectrum from MSV because MSV will need all of its licensed 28 MHz to serve its present and future customers and the Commission's position that competition is lacking in the L-band MSS market was not supported by evidence in the record. *See id.* at 9-11. In response to the Commission's statement that MSV could obtain access to additional L-band spectrum resulting from its "merger" with MSV Canada, MSV explained that it and MSV Canada are distinct entities and their relationship cannot justify attributing MSV Canada's coordinated L-band spectrum to MSV. *See id.* at 11-13. Moreover, MSV Canada is licensed by Industry Canada to serve Canadian users and the Commission cannot unilaterally limit the amount of spectrum Industry Canada can coordinate for its licensee. *See id.* at 12. Finally, Commission policies require that any spectrum cap apply to Inmarsat and any other, foreign-licensed L-band MSS systems if they provide service in the United States. *See id.* at 13-14.

On September 6, 2002, MSV Canada filed a Petition for Clarification and Partial Reconsideration of the *Order*.⁶ MSV Canada urged the Commission to clarify that the 20 MHz spectrum cap it imposed on MSV does not apply to the Canadian coordinated spectrum of MSV Canada. *See* MSV Canada Petition at 3.

⁶Mobile Satellite Ventures (Canada) Inc., Petition for Clarification and Partial Reconsideration, IB Docket No. 96-132 (September 6, 2002) ("MSV Canada Petition").

Discussion

I. THE COMMISSION CANNOT UNILATERALLY LIMIT THE AMOUNT OF SPECTRUM INDUSTRY CANADA CAN COORDINATE FOR MSV CANADA

The Commission should not penalize MSV for its joint venture with TMI. Both MSV and MSV Canada urged the Commission to reconsider its statement that it will license another U.S. system in the L-band if MSV “acquire[s] access to at least 20 megahertz of L-band spectrum through other means, *i.e.* its proposed merger with TMI.” *Order* at ¶ 19; *see* MSV Petition at 11-13; MSV Canada Petition at 3. MSV agrees with MSV Canada that the Commission’s characterization of the joint venture between Motient and TMI as a “merger” is incorrect. *See* MSV Canada Petition at 3; MSV Petition at 11-12. As MSV Canada aptly explains, “MSV Canada continues to be controlled by TMI and it continues to operate its own space segment, under the legislative authority and jurisdiction of Industry Canada.” MSV Canada Petition at 3.

MSV also agrees with MSV Canada that any spectrum cap that the Commission applies to its own licensee should have no impact on the amount of spectrum Industry Canada can coordinate for MSV Canada. *See* MSV Canada Petition at 3. MSV Canada is licensed by Canada to serve Canadian users and needs access to sufficient spectrum to serve these users. By apparently attributing MSV Canada’s spectrum to MSV for purposes of calculating MSV’s spectrum cap, however, the *Order* impermissibly restricts the amount of spectrum Industry Canada can coordinate for its licensee. *See* MSV Petition at 11-13.

II. IF THE COMMISSION MAINTAINS ITS 20 MHZ SPECTRUM CAP ON MSV, IT MUST BE APPLIED TO ALL SYSTEMS – U.S.- OR FOREIGN-LICENSED – IF THEY PROVIDE SERVICE IN THE UNITED STATES

In its Petition, Inmarsat argues the Commission’s decision to impose a 20 MHz spectrum cap on MSV should have no impact on the ability of Inmarsat to serve the United States market

with spectrum it has coordinated pursuant to the Mexico City Memorandum of Understanding (“MOU”). *See* Inmarsat Petition at 2.⁷ MSV disagrees. Having capped the amount of spectrum that can be used with a particular L-band satellite, *DISCO II*⁸ as well as principles of competitive parity and fundamental fairness dictate that the same limit apply to all L-band satellites if they provide service in the United States market. Indeed, in adopting the *DISCO II Order*, the Commission addressed this very issue of competitive parity, explaining:

[W]e will require non-U.S. satellite operators to comply with all Commission rules applicable to U.S. satellite operators. To do otherwise would place U.S. and foreign operators on an uneven competitive footing when providing identical satellite services in the United States and would defeat our public policy objectives in adopting these service rules in the first place. . . We find that this overall approach does not violate U.S. national treatment obligations because we will be treating foreign service suppliers identically to U.S. service suppliers with respect to their provision of service within the United States.⁹

In the *Order*, the Commission has determined that one L-band satellite operator, MSV, will be limited to no more than 20 MHz of coordinated spectrum. While foreign space station licensees are permitted to coordinate for as much L-band spectrum as possible, MSV is now restricted to 20 MHz. If the Commission maintains this policy, then to ensure parity among L-band operators the 20 MHz limit must be applied fairly to all L-band MSS systems if they provide service in the U.S. market. To implement this parity, the Commission must address how to enforce and monitor such a cap.

⁷Like MSV, Inmarsat does not support a 20 MHz spectrum cap on MSV. *See* Inmarsat, Response, IB Docket No. 96-132, at 7 (April 5, 2002).

⁸Amendment of the Commission’s Regulatory Policies to Allow Non-U.S. Licensed Satellites Providing Domestic and International Service in the United States, *Report and Order*, 12 FCC Rcd 24094 (1997) (“*DISCO II*”).

⁹*Id.* at ¶ 173.

MSV also notes that allowing foreign-licensed L-band systems to use more than 20 MHz of L-band spectrum would also defeat the Commission's reason for imposing a 20 MHz cap on MSV in the first place -- to permit the licensing of additional space stations in the L-band. *Order* at ¶ 19. If foreign-licensed satellites have unlimited access to L-band spectrum, there will be no spectrum remaining for the Commission to license additional U.S. systems.

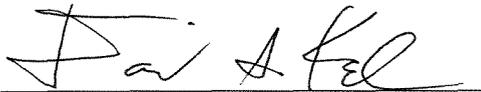
Finally, MSV notes that the favored treatment the *Order* affords foreign-licensed L-band satellites may very well incent prospective L-band operators to pursue licenses from foreign administrations rather than the United States. If Commission policy is to hamstring its own licensees, but not foreign licensees, with spectrum access limitations, then operators have a disincentive to pursue licenses from the United States.

Conclusion

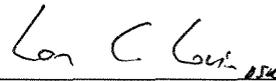
For the reasons stated above, MSV requests that the Commission act consistently with the views expressed herein.

Respectfully submitted,

MOBILE SATELLITE VENTURES SUBSIDIARY LLC



Bruce D. Jacobs
David S. Konczal
SHAW PITTMAN LLP
2300 N. Street, N.W.
Washington, D.C. 20037
(202) 663-8000



Lon C. Levin
Vice President and Regulatory Counsel
MOBILE SATELLITE VENTURES
SUBSIDIARY LLC
10802 Park Ridge Boulevard
Reston, Virginia 20191
(703) 758-6000

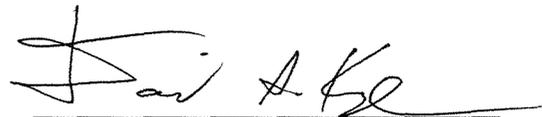
October 7, 2002

CERTIFICATE OF SERVICE

I, David S. Konczal, of Shaw Pittman LLP, hereby certify that on this 7th day of October 2002, served a true copy of the foregoing by first class United States Mail, postage prepaid, upon the following:

Robert Power
Vice-President, Regulatory Matters
Mobile Satellite Ventures (Canada) Inc.
1601 Telesat Court
Ottawa, Ontario K1B 5P4

Gary M. Epstein
John P. Janka
Alexander D. Hoehn-Saric
Latham & Watkins
555 11th Street, N.W.
Suite 1000
Washington, DC 20004

A handwritten signature in black ink, appearing to read "David S. Konczal", written over a horizontal line.

David S. Konczal