

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

In the Matter of )  
 )  
**Report to Congress Regarding** ) IB Docket No. 04-158  
**the ORBIT Act** )

**REPLY COMMENTS OF MOBILE SATELLITE VENTURES SUBSIDIARY LLC**

Mobile Satellite Ventures Subsidiary LLC (“MSV”) hereby submits these Reply Comments in connection with the Commission’s Report to Congress on the Open-Market Reorganization for the Betterment of International Telecommunications Act (the “ORBIT Act”).<sup>1</sup> The Comments filed in this proceeding do nothing to refute MSV’s showing that the Commission’s Report to Congress should reflect that Inmarsat Ventures plc (“Inmarsat”) has ignored explicit requirements of the ORBIT Act and continues to engage in anticompetitive acts to maintain and increase its dominant share of the Mobile Satellite Services (“MSS”) market.<sup>2</sup>

**Background**

The ORBIT Act requires the Commission to submit a Report to Congress on June 15<sup>th</sup> of every year. 47 U.S.C. § 765e. The Report must include a discussion of the progress achieved with respect to each objective of the ORBIT Act, the views of the satellite industry and consumers on privatization, and the impact privatization has had on U.S. industry and jobs and the U.S. satellite industry’s access to the global marketplace. 47 U.S.C. § 765e(b).

In the above-captioned proceeding, the Commission is seeking comment in connection with its June 2004 Report. Comments were filed on May 7, 2004. In its Comments, MSV

---

<sup>1</sup>“Report to Congress Regarding the ORBIT Act,” *Public Notice*, Report No. SPB-183 (April 2, 2003).

<sup>2</sup> Comments of Mobile Satellite Ventures Subsidiary LLC, IB Docket No. 04-158 (May 7, 2004) (“*MSV Comments*”).

explained that the Commission’s Report to Congress should reflect two overriding themes. *MSV Comments* at i. First, the Report should reflect that Inmarsat has ignored clear requirements of the ORBIT Act, leaving the Commission with no option other than to prohibit Inmarsat from providing service in the United States. *Id.* at 7-16. Second, the Report should reflect that Inmarsat continues to engage in anticompetitive acts to maintain and increase its dominant share of the MSS market. *Id.* at 16-25. These acts include (i) hindering competing L-band MSS operators from gaining access to sufficient L-band spectrum (*id.* at 17-19); (ii) refusing to make available on reasonable terms the intellectual property that would enable owners of user equipment that uses Inmarsat-standard protocols to buy their service from MSV and would thus foster competition among MSS suppliers (*id.* at 20-21); (iii) unreasonably opposing MSV in its efforts to develop a more spectrum efficient and valuable satellite service through deployment of ancillary terrestrial facilities in the L-band (*id.* at 21-23); (iv) entering into restrictive distribution agreements that foreclose opportunities for competitors (*id.* at 23-24); (v) leveraging its dominant position in the maritime MSS market to gain further market share in other MSS markets (*id.* at 24); and (vi) using its influence with the International Maritime Organization to further bolster its share of the maritime MSS market (*id.* at 25).

In its Comments, SES AMERICOM, Inc. (“SES”) noted that the Commission is currently considering significant questions regarding the compliance of Inmarsat with the ORBIT Act.<sup>3</sup> SES explained that Inmarsat’s private equity and quasi-public debt offering have failed to meet the plain language or the spirit of the ORBIT Act. *SES Comments* at 7-8.

In its Comments, Inmarsat and Stratos Mobile Networks Inc. (“Stratos”) contended that Inmarsat’s private equity and quasi-public debt offering are “consistent with” the requirements of

---

<sup>3</sup> Comments of SES AMERICOM Inc., IB Docket No. 04-158 (May 7, 2004) (“*SES Comments*”), at 1.

the ORBIT Act and satisfy its purposes.<sup>4</sup> Inmarsat noted that Senator Conrad Burns and the National Telecommunications and Information Administration (“NTIA”) have expressed the view that Inmarsat has satisfied the goals of the ORBIT Act. *Inmarsat Comments* at 4. Inmarsat claimed that “weakness” in the public equity markets precluded it from conducting a public offering. *Id.* at 2. Inmarsat also claimed that it will launch the first of two next-generation Inmarsat-4 satellites in the second half of 2004 which will provide advanced mobile satellite broadband and voice services to U.S. consumers, including the military. *Id.* at 5.

### **Discussion**

The Comments of Inmarsat and Stratos do nothing to refute MSV’s showing that Inmarsat has failed to comply with the ORBIT Act and that it continues to act in an anticompetitive manner. While Inmarsat claims that its private equity and quasi-public debt offering are “consistent with” the requirements of the ORBIT Act, MSV explained in its Comments that neither Congress nor the Commission have ever stated or implied that the “consistent with” standard could be read so broadly as to eviscerate the core requirements of the ORBIT Act as Inmarsat has requested. *MSV Comments* at 10-12; *see also SES Comments* at 8-9. Moreover, even if the Commission were to find that Inmarsat has privatized “consistent with” the requirements of the ORBIT Act, the “consistent with” standard does not apply to Inmarsat’s provision of “additional services,” which include services on Inmarsat-4 satellites. *MSV Comments* at 10-12. Section 602(a) of the ORBIT Act expressly precludes Inmarsat from providing “additional services” until it complies with the requirements of the ORBIT Act. 47 U.S.C. § 761a(a).

---

<sup>4</sup> Comments of Inmarsat Ventures Limited, IB Docket No. 04-158 (May 7, 2004) (“*Inmarsat Comments*”), at 1, 3-4; Comments of Stratos Mobile Networks Inc., IB Docket No. 04-158 (May 7, 2004) (“*Stratos Comments*”), at 1.

Inmarsat and Stratos also claim incorrectly that, even if the private equity and quasi-public debt offering do not comply with the specific requirements of the ORBIT Act, they at least satisfy its purposes. *Inmarsat Comments* at 3-4; *Stratos Comments* at 1. In fact, Inmarsat has not shown that its private equity offering resulted in more substantial reform of Inmarsat's ownership structure and greater dilution of ownership than that which would have resulted from a public equity offering. *MSV Comments* at 13; *SES Comments* at 9. Moreover, as SES has previously shown, a public equity offering would have subjected Inmarsat to more meaningful securities regulations than its debt offering.<sup>5</sup>

While Inmarsat cites letters submitted by a Senator and NTIA, these letters address only whether Inmarsat may have met the spirit of the ORBIT Act, not whether Inmarsat is in compliance with the terms of the law. *Inmarsat Comments* at 4. As Inmarsat itself has noted previously, when the language of a statute is clear, as it is in the case of the ORBIT Act, statements from Members of Congress or NTIA are legally irrelevant.<sup>6</sup>

Inmarsat states that "weakness" in the public equity markets precluded it from conducting a public equity offering, but this is untrue. *Inmarsat Comments* at 2. MSV has provided un rebutted evidence that economic conditions in general and the market for public equity offerings in particular have improved dramatically since Inmarsat's public equity offering deadline was extended by Congress in June 2003. *MSV Comments* at 3.

Stratos argues that denying Inmarsat access to the U.S. market would not be good for MSS consumers. *Stratos Comments* at 2. As an Inmarsat customer, Stratos should direct its

---

<sup>5</sup> Comments of SES Americom, Inc., File No. SAT-MSC-20040210-00027 (April 5, 2004), at 18-20.

<sup>6</sup> Consolidated Response of Inmarsat Ventures Limited, File No. SAT-MSC-20040210-00027 (April 20, 2004) ("*Inmarsat Response*"), at 23 (citing *Davis v. Michigan Dep't of Treasury*, 489 U.S. 803, 808 n.3 (1989) ("legislative history is irrelevant to the construction of an unambiguous statute")).

concerns to Inmarsat and not Congress or the Commission. The requirements of the ORBIT Act could not be more clear. Inmarsat has no one to blame for its failure to comply with these unambiguous requirements other than itself, not market conditions or MSV. Inmarsat chose to flout U.S. law and to put its customers at risk of losing service.

Finally, the Commission has requested input on the impact privatization has had on U.S. industry and jobs and the U.S. satellite industry's access to the global marketplace. 47 U.S.C. § 765e(b). In its Comments, MSV provided extensive evidence that Inmarsat has not privatized in a manner that promotes competition in the telecommunications markets of the United States, which is the goal of the ORBIT Act. *MSV Comments* at 16-25. Other than a brief paragraph citing a 2001 Commission decision, Inmarsat provides no explanation of how its privatization has impacted jobs and competition in the MSS industry. *Inmarsat Comments* at 5. The record thus reflects that Inmarsat's privatization has not served the goals of the ORBIT Act.

## Conclusion

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

Respectfully submitted,

/s/Bruce D. Jacobs

Bruce D. Jacobs

David S. Konczal

**SHAW PITTMAN LLP**

2300 N Street, N.W.

Washington, D.C. 20037

(202) 663-8000

/s/Lon C. Levin

Lon C. Levin

Vice President

**MOBILE SATELLITE VENTURES**

**SUBSIDIARY LLC**

10802 Park Ridge Boulevard

Reston, Virginia 20191

(703) 390-2700

Dated: May 14, 2004

## CERTIFICATE OF SERVICE

I, Sylvia A. Davis, a secretary with the law firm of Shaw Pittman LLP, hereby certify that on this 14th day of May 2004, served a true copy of the foregoing "Reply Comments" by first-class United States mail, postage prepaid, upon the following:

Andrea Kelly\*  
Satellite Division  
International Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, DC 20554

Marilyn Simon\*  
Satellite Division  
International Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, DC 20554

Gary M. Epstein  
John P. Janka  
Alexander D. Hoehn-Saric  
Latham & Watkins LLP  
555 Eleventh Street, NW, Suite 1000  
Washington, DC 20004-1304

Alfred M. Mamlet  
Chung Hsiang Mah  
Steptoe & Johnson LLP  
1330 Connecticut Avenue, NW  
Washington, DC 20036

Counsel for Stratos Mobile Networks, Inc.

Counsel for Inmarsat

Scott B. Tollefsen  
Nancy Eskenazi  
SES AMERICOM, INC.  
4 Research Way  
Princeton, NJ 08540

Phillip L. Spector  
Patrick S. Campbell  
Brett M. Kitt  
Paul, Weiss, Rifkind, Wharton & Garrison LLP  
1615 L Street, NW  
Suite 1300  
Washington, DC 20036

Counsel for SES Americom, Inc.

Qualex International  
Portals II  
Room CY-B402  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

/s/Sylvia A. Davis  
Sylvia A. Davis

\*By hand delivery