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May 18, 2004

Marlene H. Dortch
Secretary
Federal Communications Commission
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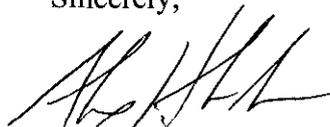
Re: Notice of *Ex Parte* Presentation
File No. SAT-MS-C-20040210-00027

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Please find attached for incorporation into the record in this proceeding copies of Inmarsat Venture Limited's Comments and Reply Comments previously filed in the Report to Congress regarding the ORBIT Act proceeding, IB Docket No. 04-158.

If you have any questions, please contact the undersigned.

Sincerely,



Alex Hoehn-Saric

Attachments

cc: Andrea Kelly
Marilyn Simon
Karl Kesinger
JoAnn Lucanik
Stephen Duall

Before the
FEDERAL COMMUNICATIONS COMMISSION
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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

To: The International Bureau

COMMENTS OF INMARSAT VENTURES LIMITED

Inmarsat Ventures Limited (“Inmarsat”) hereby submits its Comments in response to the *Public Notice* inviting input to be reflected in the Commission’s progress report to Congress on the Open-Market Reorganization for the Betterment of International Telecommunications Act (“ORBIT Act” or “Act”).¹ The ORBIT Act requires the Commission to annually report on the progress that has been made in the previous year to achieve the objectives of the Act. The current proceeding is associated with the Commission’s fifth report, which is due June 15, 2004.

The purpose of the Act is to “promote a fully competitive global market for satellite communications services for the benefit of consumers and providers of satellite services and equipment by fully privatizing . . . Inmarsat.”² The Act sets forth a series of criteria by which the Commission is to determine whether Inmarsat has privatized in a manner consistent with the goals of the ORBIT Act. In October 2001, the Commission determined that “Inmarsat’s privatization is consistent with the non-IPO criteria specified

¹ Public Notice, Report No. SPB-206 (April 23, 2004) (the “*Public Notice*”).

² *Public Notice* at 1.

in Sections 621 and 624 of the [ORBIT Act].”³ In doing so, the Commission stated that the Act conferred upon it “a degree of flexibility” that allows the Commission to find Inmarsat’s privatization “consistent with” the Act even if it has not strictly complied with each provision in the Act.⁴ This “flexibility allows [the Commission] to avoid frustrating Congressional intent to enhance competition in the U.S. telecommunications market by an overly narrow interpretation.”⁵

Last fall, Inmarsat was presented with a takeover proposal by Apax Partners and Permira that would achieve the goal of diluting the ownership interests of Inmarsat’s former Signatory owners, and also would result in Inmarsat issuing public securities. After taking into account the continued weakness in the public equity market, fiduciary obligations to its owners who wished to sell their interests, and legal obligations under the U.K. Takeover Code, the Inmarsat Board of Directors approved a takeover by funds advised by Apax Partners and Permira, coupled with a public offering of debt securities.

On February 3, 2004, Inmarsat closed its initial public offering of debt securities.⁶ The proceeds of the offering were used to partially finance the acquisition by investment funds managed by Apax Partners and Permira of a majority of the equity interest in Inmarsat from Inmarsat’s then existing shareholders, including foreign

³ See *In the Matter of Comsat Corporation d/b/a Comsat Mobile Communications, et al.*, 16 FCC Rcd. 21,661 at ¶ 4 (2001) (“*Market Access Order*”).

⁴ See *Market Access Order* at ¶ 35.

⁵ *Id.*

⁶ The full details of these transactions are set forth in Inmarsat’s February 10, 2004 letter to Marlene H. Dortch, Secretary, Federal Communications Commission, File No. SAT-MS-C-20040210-00027 (“*February 10th Letter*”), and Consolidated Response of Inmarsat, File No. SAT-MS-C-20040210-00027 (April 20, 2004) (“*Consolidated Response*”), which Inmarsat incorporates into this proceeding by reference.

governments and former Signatories. As a result of these integrated transactions, non-Signatory investors now hold approximately 57% of the equity interest in Inmarsat and the ownership interests of seventy of the eighty-five former Signatories were fully redeemed. This is over twice the level of dilution that the Commission determined was satisfactory in the context of New Skies Satellites, N.V.⁷ In sum, Inmarsat has managed to fully privatize by putting affirmative control into the hands of two entities that are neither affiliated with any former Signatory, nor controlled by any foreign government, and has achieved a level of independence far in excess of that mandated – or even contemplated – by the ORBIT Act.

As a result of the initial public offering, Inmarsat has listed its debt securities on the Luxembourg Stock Exchange, a major European exchange, and is now subject to the effective and transparent securities regulation of the Luxembourg Stock Exchange and the European Union. In addition, Inmarsat is in the process of effectuating a registration with respect to its debt securities with the U.S. Securities and Exchange Commission, at which time Inmarsat will become subject to U.S. federal securities regulations as well.

Nothing in the ORBIT Act mandates a securities offering in the United States, or a listing on a U.S. exchange. While the ORBIT Act specifies that Inmarsat list “shares” on a major exchange, the current listing of debt securities subjects Inmarsat to essentially the same level of transparency into its business and finances, and essentially the same level of securities regulation as if it listed equity securities on the Luxembourg Stock

⁷ See *In the Matter of New Skies Satellites, N.V. Request For Unconditional Authority to Access The U.S. Market*, 16 FCC Rcd 7482, 7488 (2001).

Exchange.⁸ Nor would a public *equity* offering have made the dilution of the aggregate ownership interests of former Signatories any more “substantial” than it already is – former Signatory owners already have ceded control over Inmarsat. Thus, Inmarsat’s actions are consistent with the ORBIT Act and satisfy the purpose of the Act.

On February 10, 2004, Inmarsat submitted a letter to the Commission describing the initial public offering and the equity transaction that it financed and sought a determination from the Commission that Inmarsat had satisfied the remaining “non-IPO requirements” of the Act. Since that filing, Senator Burns, a primary author of the Act, as well as the Administration have expressed their views that the steps taken by Inmarsat satisfy the goals of the ORBIT Act.⁹ The Commission placed Inmarsat’s *February 10th Letter* on public notice, the matter has been fully briefed and Inmarsat is awaiting a decision by the Commission.

The Commission already has determined that the presence of Inmarsat in the U.S. market “serve[s] the public interest by increasing competition and providing additional services for U.S. consumers.”¹⁰ A positive determination that Inmarsat has satisfied the ORBIT Act therefore is important to ensure the continuity of health competition in the U.S. market, as well as the continuity of critical services to the U.S. military, State Department, Department of Homeland Security, Federal Bureau of Investigation, Drug Enforcement Administration, Coast Guard, and U.S. state and local governments, all of whom have increased their reliance on Inmarsat services since the September 11 attacks on America.

⁸ See *February 10th Letter* at 9-15 (discussing the securities regulations applicable to Inmarsat); see also *Consolidated Response* at 24-30.

⁹ See *Consolidated Response* at Exhibits A and B.

¹⁰ *Market Access Order* at ¶ 1.

Inmarsat anticipates that its new ownership will invigorate the company and promote the continued growth and development of Inmarsat's MSS services. Currently, Inmarsat is developing its next generation service, BGAN, which will provide voice and broadband speed data services to land-based users. To implement this service, Inmarsat is building three Inmarsat-4 spacecraft, as part of a network with a total cost of over \$1.5 billion.

Inmarsat anticipates that the first Inmarsat-4 satellite will be launched during the second half of 2004 and the second in 2005.¹¹ Under this timeframe, Inmarsat would be in a position to offer the advanced mobile satellite broadband and voice services of its next generation network to U.S. consumers by 2005. The U.S. military has expressed to Inmarsat a compelling need to be able to access the Inmarsat-4 spacecraft here in the U.S. in order to train troops with the next generation Inmarsat services within the U.S., so they are prepared to use those advanced services to achieve U.S. interests in other parts of the world.

As Congressman Dingle recognized just two days ago in commenting on the passage of legislation extending the deadline in the Act with respect to Intelsat, today's financial markets remain unfavorable to equity offerings:

[T]he Government should not be forcing companies to go public when market conditions are unfavorable. Unfortunately, that is exactly what is now happening, unless we approve the bill before us. The ORBIT Act requires INTELSAT to complete its IPO by June 30-just two short months away. And while we all hope that our economy is on the upswing by then, forcing INTELSAT to conduct an IPO next month is bad policy and will cost INTELSAT's owners, including many U.S. investors, hundreds of millions of dollars.¹²

¹¹ Inmarsat currently is maintaining the third Inmarsat-4 satellite as a ground spare.
¹² Congressional Record (House) at H2600 (May 5, 2004).

Particularly in light of this observation, it should be clear that Inmarsat has achieved far greater dilution of the aggregate ownership interests of former Signatories than any realistic scenario involving a public offering of equity securities. Funds managed by Apax Partners and Permira are able to control Inmarsat, and the remaining former Signatories who retained an interest in the company, in the aggregate, constitute a minority of the ownership interests. Such a result is fully consistent with the ORBIT Act, as both the NTIA and Senator Burns have recognized.

In conclusion, Inmarsat has substantially diluted the aggregate ownership interests of former Signatories, reduced the level of foreign government ownership, and become subject to transparent and effective securities regulation. In doing so, Inmarsat has engendered a more competitive market for MSS services, which has benefited U.S. consumers, U.S. industry, and the U.S. government. For these reasons, Inmarsat urges the Commission to find that Inmarsat has satisfied the remaining requirements of the ORBIT Act and so report to Congress in the Commission's fifth report on June 15th.

Respectfully submitted,

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May 7, 2004

SUMMARY

Since the Commission last reported to Congress, Inmarsat has fully privatized by putting affirmative control into the hands of two entities that are neither affiliated with any former Signatory, nor controlled by any foreign government. By diluting former Signatory ownership by 57%, Inmarsat has achieved a level of independence far in excess of that mandated – or even contemplated – by the ORBIT Act, and a level of dilution twice that previously approved by the Commission. This dilution was achieved through a series of integrally-related transactions that were reliant upon (i) an initial public offering of debt securities that are now listed for trading on a major stock exchange (the Luxembourg Stock Exchange), and (ii) a forthcoming registration of debt securities with the U.S. Securities and Exchange Commission that will subject Inmarsat to U.S. federal securities regulation.

Inmarsat's competitors, MSV and SES, assert that Inmarsat's initial public offering and listing of debt securities do not meet the requirements of the ORBIT Act, and urge the Commission to require Inmarsat to conduct a further public offering – one involving equity securities. The plain language of the ORBIT Act, however, provides for an "initial public offering of securities," which can only be read to sanction a public offering of either debt or equity securities. Moreover, Inmarsat is currently subject to essentially the same level of transparency into its business and finances, and essentially the same level of securities regulation, as if Inmarsat had issued public equity securities. Because nothing in the ORBIT Act requires Inmarsat to list securities on a United States securities exchange, MSV's and SES's references to regulation by the NYSE or NASDAQ are wholly irrelevant. In short, neither the goal of "substantial" dilution, nor the goal of transparent and effective securities regulation, would be furthered by requiring Inmarsat to also offer and list public equity securities for trading on a major stock exchange.

The Commission has the authority to find Inmarsat's actions "consistent with" the Act, particularly here where, as recognized by the Administration and Senators Burns and Breaux, Inmarsat has met all the policy goals of the Act. With respect to next-generation, "additional services," there is no substantively different standard of review. Dictionary definitions of the term "in accordance with" are virtually synonymous with the term "consistent with." Moreover, there is no public policy reason to support the imposition of a more stringent standard with respect to "additional services."

The Commission fortunately need not spend much time responding to MSV's continued "smear campaign." All of MSV's assertions that Inmarsat is acting anti-competitively are either (i) recycled claims, which the Commission has repeatedly dismissed, or (ii) allegations and speculation that have no factual basis. MSV's actions border on an abuse of process.

Inmarsat has acted in a manner consistent with the requirements of the ORBIT Act, and also has satisfied all the express purposes of the ORBIT Act. Inmarsat has substantially diluted the aggregate ownership interests of former Signatories, reduced the level of foreign government ownership, and become subject to transparent and effective securities regulation. In doing so, Inmarsat has engendered a more competitive market for MSS services, which has benefited U.S. consumers, U.S. industry, and the U.S. government. Inmarsat urges the Commission to report to Congress that Inmarsat has complied with the ORBIT Act.

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**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 OF INMARSAT VENTURES LIMITED

Inmarsat Ventures Limited (“Inmarsat”), by counsel, hereby replies to the Comments submitted in response to the Commission’s *Public Notice* in the above-captioned proceeding.¹ Specifically, Inmarsat addresses issues raised in the comments of Mobile Satellite Ventures Subsidiary LLC (“MSV”) and SES AMERICOM, Inc. (“SES”). The comments filed with respect to Inmarsat fall into two categories: (i) comments on whether Inmarsat has complied with the remaining requirements of the *Open-Market Reorganization for the Betterment of International Telecommunications Act* (“ORBIT Act” or “Act”), and (ii) baseless and repetitive claims of “anticompetitive” behavior alleged by MSV. Inmarsat addresses each category in turn.

I. INMARSAT HAS SATISFIED THE REMAINING REQUIREMENTS OF THE ORBIT ACT

As Inmarsat discussed in its Comments, the Commission found in the *Market Access Order* that “Inmarsat has privatized in a manner consistent with the non-IPO requirements of Sections 621 and 624 of the ORBIT Act.”² The primary purpose of the ORBIT Act requirement that Inmarsat conduct an initial public offering of securities is to “substantially dilute” the ownership interests of its former Signatories. Through an initial public offering of debt securities

¹ Public Notice, Report No. SPB-206 (April 23, 2004) (the “*Public Notice*”).

² *In the Matter of Comsat Corporation d/b/a Comsat Mobile Communications, et al.* 16 FCC Rcd. 21,661 at ¶ 58 (2001) (the “*Market Access Order*”).

that financed in part the acquisition of a controlling equity interest in Inmarsat by funds managed by Apax Partners and Permira, Inmarsat managed to dilute former Signatory ownership by 57%. As a result of that offering, Inmarsat public debt securities are now listed for trading on a major stock exchange (the Luxembourg Stock Exchange), which subjects Inmarsat to essentially the same level of transparency into its business and finances, and essentially the same level of securities regulation, as if Inmarsat had issued public equity securities. As a final step in this transaction, those debt securities soon will be exchanged for virtually identical securities in a transaction that will subject Inmarsat to regulation by the U.S. Securities and Exchange Commission.³

On February 10, 2004, Inmarsat submitted a letter to the Commission describing its initial public offering of debt securities and the related equity transaction that it financed, and Inmarsat sought a determination that Inmarsat has satisfied the remaining requirements of the Act.⁴ The Commission placed Inmarsat's letter on public notice and sought comment.⁵ MSV and SES opposed Inmarsat's submission, while Stratos Mobile Networks, Inc. ("Stratos"), Deere & Co. and Telenor Satellite Services, Inc. ("Telenor") have filed in support.

The comments filed by SES and MSV in this proceeding related to the *February 10th Letter* are substantially a summary of the arguments they made in the *ORBIT Compliance Proceeding*. While addressed more fully in its *Consolidated Response* in that other proceeding,⁶

³ See Inmarsat's February 10, 2004 letter to Marlene H. Dortch, Secretary, Federal Communications Commission, File No. SAT-MS-20040210-00027 at 2-5 ("*February 10th Letter*").

⁴ See *id.*

⁵ See Report No. SAT-00197. This related proceeding is referred to herein as the "*ORBIT Compliance Proceeding*."

⁶ See Consolidated Response of Inmarsat Ventures Limited, File no. SAT-MS-20040210-00027 (filed Apr. 20, 2004) (the "*Consolidated Response*").

Inmarsat takes this opportunity to address certain of the issues raised by SES and MSV in their comments here. Inmarsat, however, urges the Commission to review the full record in the *ORBIT Compliance Proceeding* in formulating its Report to Congress.

A. The ORBIT Act Provides for an Initial Public Offering of Securities

Section 621(5)(A) of the Act requires Inmarsat to conduct an “initial public offering of securities.” MSV and SES urge the Commission to conduct a plain language reading of the text and with this Inmarsat agrees. A plain reading of this provision allows Inmarsat to conduct an offering of either debt or equity securities. MSV in advocating for a “plain reading” of the statute meticulously omits the words “of securities” whenever it refers to the initial public offering requirement in the Act.⁷ Neither SES nor MSV dispute that the term “securities” encompasses both debt and equity securities. Instead they argue that Congress must have meant a public offering of “equity” securities based on inferences from other provisions in the ORBIT Act.⁸

If Congress had intended to require Inmarsat to conduct an offering of equity securities, it would have done so by using specific language in the Act. For example, in the Communications Satellite Act of 1962 (the “Satellite Act”), the predecessor of the ORBIT Act, Congress set forth very explicit requirements as to what kinds of securities Comsat was authorized to issue.⁹ Congress amended the Satellite Act to create the ORBIT Act and in doing so eliminated very specific provisions mandating broad American public ownership of voting stock and adopted more general language in section 621(5)(a) providing for an initial public offering *of securities*.¹⁰

⁷ See, e.g., Comments of Mobile Satellite Ventures Subsidiary LLC, IB Docket No. 04-158 at 7 (filed May 7, 2004) (“*MSV Comments*”).

⁸ See *MSV Comments* at 7 and Comments of SES AMERICOM, Inc., IB Docket No. 04-158 at 6 (filed May 7, 2004) (“*SES Comments*”).

⁹ See, e.g., *Satellite Act* § 304(a) and (c).

¹⁰ See *id.* § 304(a)

Where a statutory term is absent in one statute, but is explicit in an analogous statute, “Congress’ silence . . . speaks volumes.”¹¹ This case is even more compelling than one involving an analogous statute because the ORBIT Act *amended* the Satellite Act with more general language. Congress could have, but did not, limit the types of securities Inmarsat could offer. The language “initial public offering of securities” must be given its clear meaning as written and not interpreted in a manner that would render the phrase “of securities” superfluous.¹²

B. Inmarsat’s Public Offering and Takeover Constitute a Single Transaction

The ORBIT Act states that Inmarsat’s public offering “shall substantially dilute the aggregate ownership” of its former Signatories.¹³ MSV asserts that Inmarsat’s public offering did not substantially dilute Signatory ownership because debt is not an ownership interest.¹⁴ MSV, however, ignores that Inmarsat’s public offering and equity transaction are fundamentally interrelated and cannot be examined separately.

Inmarsat has explained how its offering of debt securities financed the 57% dilution of former Signatory ownership interests, as provided in Section 621(5)(A). As Inmarsat has stated in the past, without expectation of its public offering, Apax Partners and Permira would not have been able to obtain a bridge loan necessary to fund the equity transaction and, without the equity

¹¹ *United States v. Shabani*, 513 U.S. 10, 14 (1994).

¹² *See TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001) (“It is ‘a cardinal principle of statutory construction’ that ‘a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant,’” quoting *Duncan v. Walker*, 533 U.S. 167, 174 (2001)); *see also Gustafson v. Alloyd Co.*, 513 U.S. 561, 574 (1995)(“[T]he Court will avoid a reading which renders some words altogether redundant.”).

¹³ ORBIT Act § 621(2).

¹⁴ *See MSV Comments* at 7.

deal, there would have been no need for a public debt offering.¹⁵ Thus, there is a clear and direct causal link between the issuance of Inmarsat debt securities and the substantial dilution of Inmarsat's former Signatory's ownership interests. The fact that in other contexts a debt issuance may not result in ownership dilution is irrelevant. The public debt here is part and parcel of the dilution transaction.

C. Inmarsat's Public Listing of Debt Securities Is Consistent with the ORBIT Act

1. Inmarsat Is Subject to Transparent and Effective Securities Regulations

Inmarsat demonstrated in the *ORBIT Compliance Proceeding* that its listing of debt securities on the Luxembourg Stock Exchange subjects the company to the transparent and effective securities regulations of that exchange and to applicable European Union regulations as well.¹⁶ A plain reading of the ORBIT Act's listing requirement indicates that Section 621(5)(B) is intended only to ensure that Inmarsat is subject to the transparent and effective securities regulations of a major stock exchange. The listing of Inmarsat debt securities on the Luxembourg Stock Exchange has done just that. No one disputes the effectiveness of European securities regulation.

Citing its pleadings in the *ORBIT Compliance Proceeding*, SES asserts that Inmarsat would be subject to additional regulation if Inmarsat had conducted an equity public offering.¹⁷ SES fails to mention that this assertion is based on SES' underlying *assumption* that Inmarsat (i) would conduct an equity offering in the U.S. and (ii) would list on the New York

¹⁵ See *February 10th Letter* at 7.

¹⁶ See *February 10th Letter* at 10-12; see also Consolidated Response of Inmarsat, File No. SAT-MS-C-20040210-00027 at 25-27 (filed Apr. 20, 2004) ("*Consolidated Response*").

¹⁷ See *SES Comments* at 9.

Stock Exchange (“NYSE”) or NASDAQ.¹⁸ There is, however, *no requirement* in the ORBIT Act that Inmarsat, a U.K.-based company, conduct a public offering in the U.S. or list its securities on the NYSE or NASDAQ. SES’ argument collapses when this unfounded assumption is removed. As Inmarsat has demonstrated, it is subject to substantially the same securities regulation as a result of its listing of debt securities on the Luxembourg Stock Exchange than it would be if it had listed equity securities on that exchange.¹⁹ No one disputes this.

2. The Listing of Debt Securities Is Consistent With the ORBIT Act

The Commission’s has the authority to determine that Inmarsat’s listing of debt securities is consistent with the ORBIT Act.²⁰ This flexibility allows the Commission to avoid frustrating Congressional intent by an overly narrow interpretation of the statute.²¹ As discussed above, listing debt securities on the Luxembourg Stock Exchange has subjected Inmarsat to transparent and effective securities regulations. The Administration, Senator Conrad Burns – a principal author of the Act, and Senator John Breaux all agree that that Inmarsat’s actions have satisfied the goals of the ORBIT Act.²²

Finding that Inmarsat has not complied with the Act because it has listed debt, and not stock, would be an overly technical reading and would serve no legitimate statutory

¹⁸ See Reply of SES AMERICOM, Filed no. SAT-MS-C-20040210-00027 at 20 (filed Apr. 30, 2004) (“It is thus fair to assume that, had Inmarsat conducted an equity offering, it would have similarly sought to avail itself of U.S. capital markets in the manner typical of equity public offerings – *i.e.*, with a listing on a major U.S. stock exchange.”).

¹⁹ See *Consolidated Response* at 27.

²⁰ See *Consolidated Response* at 14-16.

²¹ See *Market Access Order* at ¶ 35.

²² See Letter from Senator John Breaux to Chairman Michael K. Powell, FCC dated May 6, 2004, attached hereto as Exhibit A and *Consolidated Response* at Exhibits A and B.

purpose. First, the former Signatory ownership interests in Inmarsat have been diluted to such an extent that the remaining former Signatory interests together do not constitute a controlling interest in the company. Moreover, Apax Partners and Permira have the right to “flood the board” by appointing “any number of additional directors to the Inmarsat Group Holdings Limited board” in certain circumstances, to ensure they retain control.²³ Second, requiring a public offering of equity securities would not result in substantially greater transparent or effective securities regulation in Luxembourg or Europe.

The Commission has already interpreted the “consistent with” standard as allowing it the flexibility to approve the privatization of Intelsat 109 days after the April 1, 2001 deadline, when the Act provided no basis for an extension of that deadline.²⁴ Certainly, this contradicts MSV’s assertion that the Commission has only applied the “consistent with” standard to permit “minor deviations” from the Act.²⁵ In any event, Inmarsat’s request that the Commission equate listed debt securities with shares for purposes of Section 621(5)(B) fully satisfies the goals of transparent and effective securities regulations for the reasons explained in its *February 10th Letter and Consolidated Reply*.²⁶

SES asserts that Inmarsat’s public offering did not transform Inmarsat into a publicly held and traded corporation with broad ownership and control.²⁷ This is neither a stated

²³ See *February 10th Letter*, Ex. A, Offering Memorandum at 115 (the “Offering Memorandum”).

²⁴ See *Applications of Intelsat LCC*, Memorandum Opinion Order and Authorization, 16 FCC 12280 at ¶ 55 (rel. May 29, 2001). SES does not even acknowledge this fact when it asserts that the “consistent with” standard has never been interpreted to abrogate an entire provision of the ORBIT Act. See *SES Comments* at 8-9.

²⁵ See *MSV Comments* at 10.

²⁶ See *February 10th Letter* at 9-14; *Consolidated Reply* at 24-30.

²⁷ See *SES Comments* at 9; see also *MSV* at 13.

purpose of the Act nor necessarily would result from a public offering of equity securities. As Inmarsat discussed in the *ORBIT Compliance Proceeding*, many companies conduct equity public offerings of minority interests in their company while existing stockholders retain control.²⁸ As a result, initial public offerings do not necessarily result in diffuse ownership or control of a company. Moreover, it is not unusual for a company to structure an initial public offering in a way that ensures that control does not transfer to the public. For example, in the most anticipated offering of the year, Google, Inc. has structured its offering so that the Class B common stock owned by the founders, officers, and directors of Google will have 10 times the votes as the Class A stock offered to the public.²⁹ Therefore, contrary to SES' and MSV's claims, an initial public offering of equity securities would not necessarily result in diffuse ownership and control. Inmarsat should not be held to a standard that is neither support by the Act nor mandated by public markets.

D. The Commission Has Flexibility in Authorizing "Additional Services"

MSV argues that with respect to "additional services," the Commission should not use a "consistent with" standard, because Section 602(a) of the ORBIT Act states that until Inmarsat is "privatized in accordance with the requirements of" with ORBIT Act, Inmarsat shall not be permitted to provide additional services.³⁰ Instead, MSV asserts that the Commission should determine whether Inmarsat's actions are "in accordance with" the Act.³¹

²⁸ See *Consolidated Response* at 32 ("New Skies conducted an IPO of only 23% of the company and, as the Commission noted, the initial public offerings of PanAmSat, SES Astra, and JSAT were for even smaller amounts of 18.92%, 14.93%, and 9.51%, respectively.").

²⁹ See Google, Inc. Registration Statement at 21 (filed April 29, 2004).

³⁰ ORBIT Act § 602(a).

³¹ See *MSV Comments* at 12.

The Commission determined that the use of the words “consistent with” in the Act grants the Commission flexibility in determining whether Inmarsat has complied with the requirement of the Act. The Commission stated that “[w]hen preceding the preposition ‘with,’ the courts recognize ‘consistent’ as meaning ‘agreeing’ or according in substance or in a form that is congruous or compatible.”³²

The plain language meaning of “in accordance with” is similar to and, if anything, less restrictive than, “consistent with.” The Oxford English Dictionary defines “in accordance with” to mean “in agreement or harmony with; in conformity to.”³³ In turn “agreement” means “accordance in sentiment, opinion, action, or purpose; harmony, concord; absence of dissension.”³⁴ Similarly, “harmony” means “in agreement or accordance, consistent, congruous.”³⁵ And as the Commission recognized “consistent with” means “agreeing” or “in a form congruous,”³⁶ which are both synonymous with “in accordance with.”

The interchangeability of these terms is highlighted by the Commission’s statement in the *Market Access Order* that applying the “consistent with” standard “will allow the Commission to act *in accordance with* Section 601(c) which requires the Commission to construe the licensing requirements of the Act *in accordance with* United States trade obligations

³² See *Market Access Order* at ¶ 35.

³³ See Oxford English Dictionary no. b (Online) (Second Edition 1989) (http://dictionary.oed.com/cgi/entry/00001334/00001334se1?single=1&query_type=word&queryword=in+accordance+with&edition=2e&first=1&max_to_show=10&hilite=00001334se1).

³⁴ See Oxford English Dictionary no. 6 (Online) (Second Edition 1989) (http://dictionary.oed.com/cgi/entry/00004658?single=1&query_type=word&queryword=agreement&edition=2e&first=1&max_to_show=10).

³⁵ See Oxford English Dictionary no. b (Online) (Second Edition 1989) (http://dictionary.oed.com/cgi/entry/00102740?single=1&query_type=word&queryword=harmony&edition=2e&first=1&max_to_show=10).

³⁶ See *Market Access Order* at ¶ 35.

under the General Agreement on Trade in Services (GATS).”³⁷ Thus, the Commission has already recognized that the standard based on “consistent with” language is virtually the same as that based on “in accordance with” language.

Determining whether Inmarsat acted “in accordance with” the Act therefore does not require that Inmarsat’s actions strictly meet every word. Instead, the Commission should determine whether the purpose of the Act has been met by Inmarsat’s actions. Inmarsat has explained how its actions have satisfied the purpose of the Act and this view is supported by the Administration, as well as by Senators Burns and Breaux.³⁸

Such an interpretation is support by public policy considerations as well. There is no public benefit to applying a more stringent standard of review to Inmarsat’s provision of “additional services.” If the Commission determines that Inmarsat has satisfied the ORBIT Act requirements with respect to non-core services and therefore Inmarsat’s provision of those services is in the public interest, there is no rational reason that Inmarsat should be held to a different standard for the provision of “additional services.” To impose a different standard may mean that Inmarsat would able to offer its current services in the U.S. but unable to offer new and improved MSS services over next generation spacecraft, which would impede competition and harm U.S. consumers.

E. Inmarsat’s Contingent Extension Request is Sufficient

Inmarsat believes that it has met the remaining requirements of the ORBIT Act and awaits a Commission determination on this issue. In the unlikely event that the Commission finds that Inmarsat has not complied with the ORBIT Act, Inmarsat requested that the

³⁷ *Id.* (emphasis added).

³⁸ See Letter from Senator John Breaux to Chairman Michael K. Powell, FCC dated May 6, 2004, attached hereto as Exhibit A and *Consolidated Response* at Exhibits A and B.

Commission extend the ORBIT Act deadline until December 31, 2004 to allow Inmarsat to resolve the basis of any finding of non-compliance.³⁹ MSV argues that Inmarsat has not attempted to provide the Commission with evidence of current “market conditions” or “business factors” that warrant an extension and therefore no extension should be granted.⁴⁰

The ORBIT Act as amended authorizes the Commission to grant Inmarsat an extension at its discretion.⁴¹ Prior to the amendment of the ORBIT Act in 2001, the Commission could grant an extension “in consideration of market conditions and relevant business factors.” In 2001, Congress amended the Act and struck this language. The statute currently reads that Inmarsat must conduct an initial public offering of securities “not later than June 30, 2004, except that the Commission may extend this deadline to not later than December 31, 2004.”⁴² The amendment authorized broader discretion to the Commission in determining whether to grant Inmarsat’s extension request.

In any event, the current adverse conditions of the equity markets are a matter of public record. Representative John Dingell recently stated in support of extending INTELSAT’s ORBIT deadline:

At the very least, however, the Government should not be forcing companies to go public when market conditions are unfavorable. Unfortunately, that is exactly what is now happening, unless we approve the bill before us. The ORBIT Act requires INTELSAT to complete its IPO by June 30--just two short months away. And while we all hope that our economy is on the upswing by then, forcing INTELSAT to conduct an IPO next month is bad policy and will cost

³⁹ See *Consolidated Response* at 38.

⁴⁰ See *MSV Comments* at 15

⁴¹ See 47 U.S.C. § 763(5)(A)(ii).

⁴² 47 U.S.C. § 763(5)(A)(ii).

INTELSAT's owners, including many U.S. investors, hundreds of millions of dollars.⁴³

The Commission should determine that Inmarsat has complied with the ORBIT Act. If the Commission disagrees and finds that Inmarsat has not complied with all the requirements of the ORBIT Act, Inmarsat would need time to address any specific concern the Commission may have.

F. The Provision of Inmarsat Services to U.S. Government Customers Must Be Protected

MSV asserts, without support, that Inmarsat's government customers should not be impacted even if the Commission finds that Inmarsat has not complied with the ORBIT Act, because U.S. government users do not need a Commission license to use Inmarsat's services in the U.S.⁴⁴ Inmarsat would welcome such a determination by the Commission that it has no jurisdiction over such matters, but believes the situation to be ambiguous at best. Under Section 2.103 of the Commission's Rules, government stations may be authorized to use non-government frequencies if the Commission finds that such a use is necessary and provided that the operation does not cause harmful interference to other services.⁴⁵ Therefore, if the Commission prohibited Inmarsat from operating commercially in the U.S., a government user of Inmarsat's services arguably would need Commission consent to use the Inmarsat service and then could do so only on a non-interference basis. This interpretation appears consistent with the carve-out for government users in the ORBIT Act.⁴⁶ If no exemption were necessary in the first place, why would Congress have put it in the Act? And it hardly would appear acceptable for

⁴³ Congressional Record H2600 (House of Representatives – May 5, 2004).

⁴⁴ *See MSV Comments* at 16, n.44.

⁴⁵ *See* 47 C.F.R. § 2.103.

⁴⁶ *See* ORBIT Act § 761(b)(1)(C).

government users, such as a Coast Guard or U.S. Navy ship coming into port, to stop using their Inmarsat terminals if they caused interference to another user of the spectrum.

II. MSV'S SPECIOUS COMPETITION CLAIMS

Inmarsat provides a diverse range of high quality MSS services to U.S. customers. As the Commission is aware, these include critical services to the military, safety and navigation services for maritime and aeronautical use, and land based services to entities such as the Red Cross, pipeline workers and farmers – basically anyone who is not in a position to use traditional wireline or cellular telecommunications services. Inmarsat continues to develop its service offerings and anticipates that, with the launch of its next generation satellites, it will be able to provide voice and broadband speed data services to U.S. consumers by 2005. This new service, called BGAN, will be competitive not only with other MSS services but also with VSAT services such as those provided by SES.

If MSV is having difficulty competing against Inmarsat, as MSV's comments imply, the fault does not lie with Inmarsat but with MSV, and its predecessors Motient and AMSC. AMSC began offering service in 1996⁴⁷ and for four years benefited from a regulatory monopoly in the provision of land mobile services in the U.S. During this period, AMSC, leased capacity on Inmarsat spacecraft, but Inmarsat was not permitted to providing competitive land mobile services in the U.S. AMSC, and then Motient, fought against the opening of the U.S. market for years. After TMI gained access to the U.S. market, Motient regained *de facto* monopoly status in the U.S. by forming a joint venture with TMI and forming MSV. It was only in October 2001 that Inmarsat was able to gain full market access to the U.S. and consumers were able to have a true choice in MSS service providers. Since that time, MSV has used every opportunity to terminate Inmarsat's

⁴⁷ See *MSV Comments* at 1.

ability to provide commercial services in the U.S. and regain MSV's status as the sole MSS provider in the L-band.

Instead of focusing on improving its MSS services, MSV has made the business decision to invest millions of dollars in developing an ancillary terrestrial component ("ATC") offering as a secondary service in the L-band. Inmarsat has stated that as long as the ATC service does not cause significant interference into Inmarsat's network and MSV abides by the Commission's ATC service rules, Inmarsat does not have an issue with MSV deploying such a system.

What Inmarsat does object to is MSV's smear campaign in which MSV attempts to portray Inmarsat in a poor light based on allegations that are unfounded, wrong and – in many cases – previously dismissed by the Commission. If a legitimate dispute exists, MSV should state its complaint clearly, support its assertions with facts instead of innuendo, and then accept the Commission's reasoned decision and move on. The Commission should not countenance MSV's taking up the Commission's time with baseless allegations and arguments that have been previously dismissed by the Commission.

A. MSV's Competition Claims Are Frivolous and Irrelevant

For over two years, MSV has raised the same baseless claims alleging that Inmarsat has been engaged in "anticompetitive" acts. Each time, the Commission has dismissed MSV's claims and yet MSV takes every opportunity to raise them again in hopes of painting Inmarsat as a bad actor. In this proceeding, MSV once again makes the same allegations and adds three additional claims that are based on fanciful conjecture. MSV's resuscitation of arguments that have already been fully address by the Commission and its baseless allegations border on an abuse

of process.⁴⁸ Moreover, MSV's arguments are irrelevant to this proceeding as they have no relation to whether Inmarsat has privatized consistent with the ORBIT Act. Until the Commission puts an end to this nonsense, Inmarsat, can do little but respond to MSV's claims yet again, and untangle the twisted facts that form the basis of MSV's comments.

B. MSV Was the Dominant MSS Provider in the U.S.

MSV alleges that Inmarsat was "established as a legal monopoly" and Inmarsat has developed a "dominant position" as a result of this "heritage."⁴⁹ For years, MSV has alleged that Inmarsat's IGO "heritage" lead to MSV being placed at a competitive disadvantage.⁵⁰ MSV repeated this allegation in the market access proceeding⁵¹ and again a year ago when the Commission requested comments regarding its Fourth Report to Congress regarding the ORBIT Act.⁵² The Commission has repeatedly rejected the proposition that Inmarsat's provision of services in the U.S. has an anticompetitive impact. In the *Market Access Order*, the Commission found to the contrary, stating that granting Inmarsat access to the U.S. market "serve[s] the public interest by increasing competition and providing additional services for U.S. consumers."⁵³ Less than year after Inmarsat began to provide land mobile services in the U.S., the Commission further found that:

⁴⁸ See *Commission Taking Tough Measures Against Frivolous Pleadings*, Public Notice, 11 FCC Rcd. 3030 (Feb. 9, 1996) ("frivolous complaint is one 'filed without any effort to ascertain or review the underlying facts' or 'based on arguments that have been specifically rejected by the Commission'" citing *Implementation of Cable Television Consumer Protection Act*, 9 FCC Rcd. 2642, 2657 (1993)).

⁴⁹ *MSV Comments* at 16.

⁵⁰ See, e.g., Reply of Inmarsat Ventures plc, In the Matter of Inmarsat Ventures plc Request for Extension of Time, File No. SAT-MSV-20010405-00029 at 9 (filed May 7, 2001).

⁵¹ See *Market Access Order* at ¶ 32 (urging the Commission to take into account alleged "past anti-competitive conduct by Inmarsat").

⁵² See *MSV Fourth Report Comments* at 2.

⁵³ *Market Access Order* at ¶ 1.

Inmarsat's privatization has also had a positive impact on the domestic U.S. market. Privatization has provided Inmarsat the opportunity to develop new, innovative services for the U.S. market that promises to result in the expansion of options and resources for U.S. customers. This also promises to lead to increased industry competition.⁵⁴

Despite the Commission's findings, MSV continues to claim that Inmarsat's past IGO status somehow harms MSV in the U.S. market. In this proceeding, MSV takes language from Inmarsat's Offering Memorandum out of context in an attempt to give its old claims a new look.

As an initial matter, as Inmarsat has explained before, Inmarsat was not established as a "legal monopoly."⁵⁵ Article VIII of the Inmarsat Convention to which MSV refers was never used by Inmarsat to block new entrants. Decisions about international market access were left to regulators in each national market. MSV is well aware of this, as the AMSC system in the U.S. was coordinated under Article VIII. The result was that MSV's predecessor enjoyed a regulatory monopoly in the U.S. until 2000, when the Commission opened the U.S. market to non-U.S. MSS providers in the L-band.

Inmarsat's statement that it is a leading provider of global mobile satellite communications services is correct. Inmarsat is one of the few providers that has a global footprint and it provides excellent service to its customers. The relevant market in this proceeding, however, is the U.S. and it is here that Inmarsat is a latecomer to the game. MSV has had years to establish itself and its customer base in the U.S. without competition. If consumers prefer

⁵⁴ FCC Report to Congress as Required by the ORBIT Act, FCC 02-170 at 12 (June 14, 2002).

⁵⁵ See Reply Comments of Inmarsat Ventures plc, In the Matter of Report to Congress Regarding Implementation of the ORBIT Act, Report No. SPB-183 at 1 (filed Apr. 24, 2003).

Inmarsat's MSS services to those of MSV, that is called a competitive choice and, as the Commission noted, it is in the public interest.

C. MSV's Spectrum-Based Complaints Have Been Repeatedly Rejected

MSV repeats several spectrum related claims that it has raised before and simply ignores Inmarsat's past responses and the fact that the Commission has dismissed these complaints already.

First, MSV complains that Inmarsat continues to operate Inmarsat-A terminals that are less efficient than newer terminals and that this has impacted MSV's use of L-band spectrum.⁵⁶ MSV raised this same issue in the *Market Access* proceeding and the Commission found that "[a]s for technical efficiency, we conclude that the use of Standard A terminals, which Motient cites as inefficient, bears no immediate relationship to the Commission's inability to coordinate additional spectrum for Motient."⁵⁷ Despite this finding, MSV raised the issue again last year in its comments⁵⁸ in the *Fourth Report Proceeding*.⁵⁹ In response, Inmarsat explained that the reason the Inmarsat-A terminals are not being phased out until 2007 is that the International Maritime Organization required Inmarsat to give ship owners five years notice and that, in the meantime, Inmarsat and its distributors are offering hefty financial incentives to Inmarsat-A terminal users to upgrade.⁶⁰ MSV has simply ignored Inmarsat's explanation.

⁵⁶ See *MSV Comments* at 19.

⁵⁷ *Market Access Order* at ¶ 74.

⁵⁸ See Comments of Mobile Satellite Ventures plc, SPB-183 at 7-8 (filed Apr. 17, 2003).

⁵⁹ See Public Notice, SPB-183 (Apr. 2, 2003) (the proceeding related to the Public Notice is referred to herein as the "*Fourth Report Proceeding*").

⁶⁰ Reply Comments of Inmarsat Ventures plc, Report No. SPB-183 at 3 (filed Apr. 24, 2003) ("*Inmarsat Fourth Report Reply Comments*").

Moreover, the Commission recently conducted a proceeding in which comments were sought on the compliance deadline for Inmarsat A terminals. MSV did not comment on the Inmarsat A terminals and the Commission set December 31, 2007 as the compliance deadline.⁶¹ Thus, MSV has no grounds for continuing to complain about this issue, which has been explicitly dealt with in both the *Market Access Order* and a separate rulemaking proceeding.

Second, MSV claims that Inmarsat “continually opposed generic spectrum allocations in international forums.”⁶² Inmarsat responded to this same claim in the *Fourth Report Proceeding* and explained that Inmarsat opposed generic allocations before 1997 because of concerns about the potential impact of such allocations on maritime and aeronautical distress and safety communications.⁶³ Since then, those issues have been addressed and, as MSV was made aware last year, Inmarsat supported generic allocations during the 1997 World Radio Conference and in proceedings since the conference.⁶⁴ MSV’s insinuations to the contrary are frivolous and purposefully misleading.

Third, MSV claims that Inmarsat “controls” L-band spectrum “whether or not it makes use of this spectrum” and refuses to consent to a long-term coordination agreement.⁶⁵ Again this is repetitive of a claim in the *Fourth Report Proceeding* which the Commission

⁶¹ See *In the Matter of Amendment of Parts 2 and 25 to Implement the Global Mobile Personal Communications by Satellite (GMPCS) Memorandum of Understanding and Arrangements; Petition of the National Telecommunications and Information Administration to Amend Part 25 of the Commission’s Rules to Establish Emissions Limits for Mobile and Portable Earth Stations Operating in the 1610-1660.5 MHz Band*, Second Report and Order, IB Docket No. 99-67 and RM No. 9165 at ¶¶ 116-117 (rel. Nov. 18, 2003) (“GMPCS Order”).

⁶² *MSV Comments* at 17.

⁶³ See *Inmarsat Fourth Report Reply Comments* at 2.

⁶⁴ See *id.*

⁶⁵ See *MSV Comments* at 18-19.

dismissed because “[t]he issue of obtaining sufficient spectrum for MSV is being addressed in continuing annual L-Band coordination meetings, including MSV, Inmarsat and others.”⁶⁶

Once again, Inmarsat notes that it does not “control” access to L-band spectrum.⁶⁷ Instead five administrations, including the U.S., agreed to a method of coordinating L-band spectrum based on demonstrated need and memorialized this in the Mexico City Memorandum of Understanding. Contrary to MSV’s assertion, if Inmarsat does not make use of the L-band spectrum, that spectrum would be reassigned to another provider during the annual coordination meetings. Inmarsat welcomes the opportunity to conduct multi-lateral coordination meetings under the Mexico City MOU and invites MSV to reconsider its refusal to participate in such meetings.

D. Inmarsat Has No Obligation to Provide Its Intellectual Property To MSV

In the *Market Access Order*, the Commission found “no basis to require that Inmarsat make certain proprietary technical information available to Motient.”⁶⁸ This finding was in response MSV’s assertion that Inmarsat was obligated to provide proprietary intellectual property to MSV. Almost three years later, MSV continues to argue that Inmarsat is acting in an anticompetitive manner by not licensing its intellectual property to MSV even though MSV admits that Inmarsat has no obligation to do so.⁶⁹

⁶⁶ FCC Report to Congress as Required by the ORBIT Act, FCC 03-131 at 16 (rel. June 16, 2003) (“*Fourth Report*”)

⁶⁷ See *Inmarsat Fourth Report Reply Comments* at 2.

⁶⁸ *Market Access Order* at ¶ 76.

⁶⁹ See *MSV Comments* at 20 (“Inmarsat may no longer be obligated by the Inmarsat Convention to license its intellectual property to competing systems . . .”).

There is nothing new to MSV's arguments and Inmarsat incorporates its past responses on this point by reference.⁷⁰ With respect to MSV's citation to Inmarsat's Offering Memorandum, there is nothing anticompetitive about being able to maintain existing customers who would have to incur costs to change service providers. As the Commission is well aware such "stickiness" exists for all sorts of consumer services. Presumably it also works to MSV's advantage with respect to U.S. land mobile MSS consumers to whom MSV had unchallenged access for years. Better offers from a competitor should overcome any such consumer inertia. Indeed, appealing to such individuals with better services is at the heart of healthy competition.

E. Inmarsat's Concerns in the ATC Proceeding Are Motivated Solely By Interference Concerns

MSV mischaracterizes Inmarsat as objecting to the deployment of ATC in the L-band for other than interference reasons. This is simply wrong and Inmarsat has said so every time MSV raised this issue with the Commission.⁷¹ Incredibly, MSV implies that Inmarsat somehow "pulled the wool over" the Commission's eyes in the ATC proceeding and convinced the Commission to "adopt unnecessarily stringent limits on MSV's terrestrial operations."⁷² The ATC proceeding lasted over two years and included hundreds of pages of submissions, including technical analyses, to the Commission from both Inmarsat and MSV. Inmarsat's interference

⁷⁰ See, e.g., *Inmarsat Fourth Report Reply Comments* at 3-4; *Consolidated Response* at 37; Reply Comments of Inmarsat Ventures Ltd, In the Matter of Mobile Satellite Ventures Subsidiary LLC, File Nos. SAT-MOD-20031118-00333, SAT-AMD-20031118-00332, and SES-MOD-20031118-01879 at 16-17 (Apr. 26, 2004) ("*April 26th Reply Comments*").

⁷¹ See, e.g., *Inmarsat Fourth Report Reply Comments* at 4; *April 20th Consolidated Response* at 37-38; *April 26th Reply Comments* at 13-14; see also Offering Memorandum at 20 (Grant of [MSV's request to relax the ATC service rules] would result in increased interference into our satellite network and to mobile terminals communicating with our network. We therefore have opposed or will oppose these [MSV] requests for relaxation of the ATC technical rules.").

⁷² See *MSV Comments* at 22.

concerns were validated by the Commission's imposition of limits that are designed to protect Inmarsat's network from interference. MSV may disagree with the Commission's and Inmarsat's interference analyses, but there are no grounds to allege an improper motivation on Inmarsat's part.

F. Allegations Regarding Inmarsat's Distribution Agreements Are Unfounded and Unsubstantiated

MSV admits that it has not reviewed Inmarsat's distribution agreements, but nonetheless asserts that they "foreclose opportunities for competitors."⁷³ It is inconceivable that MSV would make such allegations without any knowledge other than "it understands that a number of these agreements are exclusive in nature." To accuse Inmarsat of anticompetitive behavior based on such admitted ignorance is untenable. This is especially true where MSV knows that in the U.S., Stratos is a distributor of both Inmarsat and MSV products and services. Inmarsat urges the Commission to disregard MSV's unsubstantiated accusation.

G. Inmarsat Offers New and Additional Services to Existing Customers

MSV takes a single sentence out of Inmarsat's Offering Memorandum and attempts to argue that Inmarsat is engaged in antitrust violations.⁷⁴ The use of the term "leverage" in the Offering Memorandum was not meant to imply any illegal activity. Having access to its customers, Inmarsat is able to inform them of additional services and promote new applications in a more efficient and effective manner than it can with individuals with whom Inmarsat has no relationship. This is what Inmarsat meant in its Offering Memorandum and such activity is fully consistent with advancing healthy competition. MSV took a word and twisted the meaning of the sentence past the breaking point. MSV cites no factual support for its anticompetitive "leveraging" allegations.

⁷³ See *MSV Comments* at 23.

⁷⁴ See *MSV Comments* at 24.

H. The Maritime GMDSS Market Is Open to Competition

MSV also alleges that “Inmarsat is the only MSS provider that participates in the International Maritime Organization (“IMO”)” and that “it is *likely* that Inmarsat or its surrogates *would hinder* efforts by its competitors to become a part of the GMDSS process.”⁷⁵ The first claim is factually incorrect and the second is pure speculation. As MSV should know, only government administrations are permitted to participate directly in the IMO process. Inmarsat has no special influence on the IMO process. It merely has attended IMO meetings as part of the U.K. delegation as Iridium did as part of the U.S. delegation and Argos did as part of the French delegation.

MSV’s reference to the International Mobile Satellite Organization (“IMSO”) is not relevant to its assertion that Inmarsat has influence with the IMO process. IMSO is a distinct entity from the IMO and it is the IMO – not IMSO – that sets the Global Maritime Distress and Safety System (“GMDSS”) standards.

Most telling, however, is that MSV makes no allegation that Inmarsat actually has taken any steps to influence the IMO process to harm competition. Instead, without any evidence, MSV asserts that it is *likely* Inmarsat would hinder competitors.⁷⁶ Such speculation is groundless. Inmarsat neither has the intent to nor the ability to influence the IMO process in the manner MSV

⁷⁵ *MSV Comments* at 25 (emphasis added).

⁷⁶ *Id.*

suggests. A more likely reason that MSV will be “foreclosed from competing for much maritime business” with respect to *Global* Maritime Distress and Safety System services is that MSV does not have a global satellite network, or any plans to develop one.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'A. D. Hoehn-Saric', written over a horizontal line.

Gary M. Epstein

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Counsel for INMARSAT VENTURES LIMITED

May 14, 2004

EXHIBIT A

JOHN BREAUX
LOUISIANA

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CHIEF DEPUTY WHIP

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Chairman Michael K. Powell
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Dear Chairman Powell:

I share the Administration's view, as expressed by NTIA, that with the recent transaction with Apax Partners and Permira, Inmarsat has satisfied the remaining requirements of the ORBIT Act. I hope the Commission agrees with our view and will act swiftly to concur before the June 30, 2004 deadline.

Inmarsat is now majority owned by funds advised by Apax Partners and Permira, and has recently conducted a public offering of debt securities. By listing those bonds on the Luxembourg Stock Exchange, Inmarsat has become subject to the securities regulations of the Exchange and the European Union. Inmarsat also intends to register with the U.S. Securities and Exchange Commission with respect to these debt securities. Based on these actions, I agree with the Administration's view, as expressed by NTIA, that Inmarsat has satisfied the purpose of the ORBIT Act.

The objectives of the ORBIT Act were (1) the substantial dilution of the aggregate ownership interests of former signatories of Inmarsat and (2) subjecting Inmarsat to transparent and effective securities regulation. The Apax Partners and Permira fund's acquisition of a majority interest in Inmarsat more than meets the substantial dilution goal. The imposition of EU securities regulations on Inmarsat through the listing of its bonds in the Luxembourg satisfies the transparent securities regulation goal.

I believe the goals of the ORBIT Act have been met and urge the Commission to make its determination in this matter to avoid the need for any further regulatory or legislative action.

Sincerely,


JOHN BREAUX
United States Senator

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of May, 2004, I caused a true copy of the foregoing "Reply of Inmarsat Ventures Limited" to be served by first-class mail and, where noted, electronically (*) on the following:

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A handwritten signature in black ink, appearing to read "A.D. Hoehn-Saric", written over a horizontal line.

Alexander D. Hoehn-Saric