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

In the matter of	)	
	)	
Telenor ASA, *Transferor*	)	DA No. 06-2565
	)	
and	)	IB Docket No. 06-225
	)	
Inceptum 1 AS, *Transferee*	)	File Nos.: SES-T/C-20061129-02062 to 02063
	)	0002817301
Consolidated Application for Consent to	)	0030-EX-TU-2006
Transfer of Control and Petition for	)	ITC-T/C-20061129-00529 to 00531
Declaratory Ruling	)	ITC-T/C-20061215-00575

REPLY OF INMARSAT GLOBAL LTD

Inmarsat Global Ltd ("Inmarsat") replies to the Consolidated Response of Telenor ASA ("Telenor") and Inceptum 1 AS ("Inceptum") (together, the "Applicants") to Inmarsat's Comments in these proceedings. As Inmarsat explained in its Comments, approval of the proposed transaction would represent a backward step in the Inmarsat privatization process by allowing the consolidation of the MSS businesses previously owned by two former Inmarsat Signatories, Telenor and France Telecom, which today are responsible for the distribution of approximately 40% of all Inmarsat services. The proposed common ownership of these businesses threatens to harm U.S. companies and governmental entities that rely on access to the Inmarsat system in the United States and around the world. This transaction thus appears inconsistent with Commission policies and the goals of the ORBIT Act. For these reasons, Inmarsat recommended that the Commission examine the many important issues raised by the proposed transaction, including requiring the Applicants to detail precisely how the public interest would be served by approving these applications.

In their Consolidated Response, the Applicants continue their failure to satisfy the burden of demonstrating that the benefits of the transaction outweigh the potential harms. Instead, the Applicants attempt to sweep away the serious issues posed by the common ownership of Telenor's and France Telecom's MSS businesses by mischaracterizing them as "a private contractual matter" that should be of no concern to the Commission.[1] Moreover, the Applicants fail to recognize that the Commission's general policy to avoid "private contractual matters" applies only in cases where the Commission has neither the competence nor the authority to address the matter. Fortunately, the ORBIT Act provides the mandate that the Commission consider the policy issues raised here, and the Communications Act provides plenary authority to address the harms created by the proposed combination.

I. THE PROPOSED CONSOLIDATION RAISES SIGNIFICANT PUBLIC INTEREST CONCERNS

Contrary to the Applicants' suggestion,[2] Inmarsat does *not* request that the Commission intercede in any contractual dispute, nor does Inmarsat ask that the Commission abrogate any existing contractual arrangements. Rather, Inmarsat asks the Commission to follow the mandate of the ORBIT Act to ensure that the privatization of Inmarsat "promote(s) a fully competitive global market for satellite communications services for the benefit of consumers and providers of satellite services and equipment . . . ."[3] As Inmarsat demonstrated in its Comments, the Commission has asserted continuing oversight authority with respect to the distribution arrangements of Inmarsat (and Intelsat), to ensure that the purposes of ORBIT are not frustrated by subsequent developments.[4] Specifically, the Commission recognized that the post-

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1 Consolidated Response at 2.

2 *Id.* at 2-3, 5.

3 ORBIT Act, Pub. L. No. 106-180, 15 Stat. 48, § 2 (2000).

4 *See* Inmarsat Comments at 6-8.

privatization structures of Intelsat (and Inmarsat) were developed by entities who were in a position to refuse to privatize if the distribution scheme did not meet their business goals, and the Commission indicated that it intended to "continue to pay close attention" to matters involving the distribution structure mandated by former Signatories.[5] Inmarsat has thus asked the Commission to closely examine the issues raised by the proposed common ownership of the MSS business of two former Signatories, and the associated impact on access to Inmarsat services by U.S. businesses and government users.

Contrary to what the Applicants assert,[6] Inmarsat's competitive environment does not end the inquiry. In an analogous context, Intelsat's competition from other providers was no barrier to the Commission taking a continuing interest in the effectiveness of competitive distribution channels for Intelsat's services.[7]

The policy issue is clear: Inmarsat's anachronistic distribution structure, imposed by former Signatories, (i) requires Inmarsat to sell its services through distribution "middlemen," and (ii) severely restricts Inmarsat's ability to appoint additional distributors. The anti-competitive incentives created by this structure limit the choices available to U.S.-based users of the Inmarsat system, even when they use the Inmarsat system outside the United States. Thus, the scope of France Telecom's provision of Inmarsat service *within* the United States does not limit the prospect for harm to those U.S. users of Inmarsat when they travel outside the United States, as many do.[8] The fact remains that if this transaction is consummated, there would remain only two third-party "gatekeepers" to the Inmarsat system that have the ability to provide

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5 *See Availability of INTELSAT Space Segment Capacity to Users and Service Providers Seeking to Access INTELSAT Directly*, 15 FCC Rcd 19160, 19174, ¶ 33 (2000).

6 Consolidated Response at 3-4.

7 *Direct Access to the INTELSAT System*, 14 FCC Rcd 15703, 15723, ¶ 41 (1999).

8 *Cf.* Consolidated Response at 4.

the full suite of Inmarsat services wherever a U.S. user demands, and Inmarsat would remain unable to provide those services itself.[9]

The Commission policy on which the Applicants rely—a general reluctance to become enmeshed in "private contractual matters"—applies in an entirely different context than the one presented here. The Commission typically avoids contractual issues in cases where state courts are able to address the problem, and the Commission lacks the competence or authority to do so itself.[10] That simply is not the case here. Rather, the issues raised by the proposed transaction fall squarely within the Commission's jurisdiction and mandate under both the ORBIT Act and Section 310 of the Communications Act. They cannot be swept aside as a mere "contractual dispute."

II. THE APPLICANTS STILL HAVE NOT SHOWN HOW THE PROPOSED TRANSACTION WOULD SERVE THE PUBLIC INTEREST

In its Comments, Inmarsat noted that the applications failed to delineate precisely how end users and resellers of Inmarsat services could be expected to benefit from this transaction, and failed to show that the benefits of the transaction outweigh the potential harms to those persons and entities. In its Comments, Inmarsat noted that the proposed transaction could (i) reduce the incentives to sell new BGAN offerings that provide important public interest benefits (such as greater spectrum efficiency and lower cost); and (ii) increase the incentives to promote traditional Inmarsat services (over new services), thereby potentially delaying the actual deployment of new technology. The Applicants respond by curiously claiming that they will have "ample incentive" to do so, as long as BGAN is made available to them on "reasonable"

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[9] This type of duopoly structure thus is reminiscent of the preferential access that COMSAT once had to the Intelsat system in the United States. *Cf.* Consolidated Response at 5 n.12.

[10] *See, e.g., WHOA-TV, Inc.*, 11 FCC Rcd 20041, 20043, ¶ 4 (1996).

terms.[11] That issue is *precisely* the type of condition Inmarsat has asked the Commission to examine: whether the distribution terms established in the privatization process will continue to provide the right incentives to an entity who seeks to control the MSS business of two former Signatories.

Moreover, while the Applicants do not dispute that they bear the burden to demonstrate that approval of the transaction will serve the public interest,[12] they simply fail to provide any delineation of the public interest benefits of the transaction. Because of these deficiencies, there simply is no basis on which to grant the applications.

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For the reasons provided above and in Inmarsat's Comments, the Commission should not grant the applications. At a minimum, the Commission should condition its grant to ensure that the potential harms from the transaction do not occur.

Respectfully submitted,

/s/

John P. Janka
Jeffrey A. Marks
LATHAM & WATKINS LLP
555 Eleventh Street, N.W.
Suite 1000
Washington, D.C. 20004
Telephone: (202) 637-2200

Counsel for Inmarsat Global Ltd

Diane J. Cornell
Vice President, Government Affairs
INMARSAT, INC.
1101 Connecticut Avenue, N.W.
Suite 1200
Washington, D.C. 20036
Telephone: (202) 248-5155

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[11] Consolidated Response at 5 n.13.

[12] 47 U.S.C. § 310(d); *see General Motors Corp. et al.*, 19 FCC Rcd 473, 483, ¶ 15 (2004).

CERTIFICATE OF SERVICE

I, Jeffrey A. Marks, hereby certify that on this 6th day of February, 2007, I caused to be served a true copy of the foregoing by first class mail, postage prepaid, upon the following:

Peter Rohrbach
Karis Hastings
Hogan & Hartson L.L.P.
555 13th Street, N.W.
Washington, D.C. 20004
Counsel for Inceptum 1 AS

Nancy J. Victory
Catherine M. Hilke
Wiley Rein LLP
1776 K Street, N.W.
Washington, DC 20006
Counsel for Telenor

Bruce D. Jacobs
David S. Konczal
Pillsbury Winthrop Shaw Pittman LLP
2300 N Street, N.W.
Washington, D.C. 20037-1128
Counsel for MSV

Jennifer A. Manner
Vice President, Regulatory Affairs
Mobile Satellite Ventures Subsidiary LLC
10802 Parkridge Boulevard
Reston, VA 20191

Stewart A. Baker
Lonnie Kishiyama
Department of Homeland Security
245 Murray Drive, Building 410
Washington, D.C. 20528

/s/
Jeffrey A. Marks