

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

In the Matter of	)	
	)	
International Bureau Invites Comment on	)	IB Docket No. 07-23
Proposal to Remove Certain Non-U.S.-	)	DA 07-100
Licensed Satellites From the Exclusion List	)	
for Global International Section 214	)	
Authorization Purposes	)	

**Comments of Mobile Satellite Ventures Subsidiary LLC**

Mobile Satellite Ventures Subsidiary LLC (“MSV”) hereby files these Comments in the above-referenced proceeding in which the International Bureau (“Bureau”) is proposing to remove from the Section 214 Exclusion List all foreign-licensed satellites that have been permitted to enter the United States market pursuant to the Commission’s *DISCO II Order*.<sup>1</sup> MSV supports the proposal, provided the Bureau makes three important clarifications. First, the Bureau should clarify that foreign-licensed satellites permitted to provide service in the United States only pursuant to Special Temporary Authority (“STA”) prior to a *DISCO II* analysis will remain on the Section 214 Exclusion List. As discussed herein, the Bureau generally does not perform the requisite public interest analysis under *DISCO II* in authorizing foreign-licensed satellites pursuant to STA. Second, the Bureau should clarify that a foreign-licensed satellite claiming to be a “replacement” satellite for a previously authorized satellite will be placed on the Section 214 Exclusion List and will remain there unless and until the Bureau finds that operation of the satellite serves the public interest under *DISCO II*. Third, the Bureau should clarify that a foreign-licensed satellite previously authorized to provide service in the United States pursuant to *DISCO II* that is moved to a new orbital location will be placed back on the Section 214

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<sup>1</sup> See *Public Notice*, DA 07-100, IB Docket No. 07-23 (January 18, 2007) (“*Notice*”).

Exclusion List and will remain there unless and until the Bureau finds that operation of the satellite at the new location serves the public interest under *DISCO II*. As discussed herein, the Bureau must perform a new public interest analysis for operation of the foreign-licensed satellite at the new location.

### **Background**

*MSV*. *MSV* is the entity authorized by the Commission in 1989 to construct, launch, and operate a United States Mobile Satellite Service (“MSS”) system in the L band.<sup>2</sup> *MSV*’s licensed satellite was launched in 1995, and *MSV* began offering service in 1996. Today, *MSV* offers a full range of mobile satellite services, including voice and data, using both its own U.S.-licensed satellite and the Canadian-licensed L band satellite (MSAT-1) licensed to Mobile Satellite Ventures (Canada) Inc. (“*MSV Canada*”). In May 2005, the Bureau licensed *MSV* to launch and operate a replacement L band MSS satellite at 101°WL.<sup>3</sup> In April 2005, Industry Canada authorized *MSV Canada* to launch and operate a next-generation L band MSS satellite at

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<sup>2</sup> *Order and Authorization*, 4 FCC Rcd 6041 (1989); *remanded by Aeronautical Radio, Inc. v. FCC*, 928 F.2d 428 (D.C. Cir. 1991); *Final Decision on Remand*, 7 FCC Rcd 266 (1992); *aff’d, Aeronautical Radio, Inc. v. FCC*, 983 F.2d 275 (D.C. Cir. 1993); *see also AMSC Subsidiary Corporation, Memorandum Opinion and Order*, 8 FCC Rcd 4040 (1993).

Spectrum in the L band in North America is shared primarily among five operators: *MSV*, *MSV Canada*, Inmarsat, and Mexican and Russian systems. The five Administrations that license these systems reached an agreement in 1996 for a framework for future coordination of the L band spectrum in North America, called the Mexico City Memorandum of Understanding (“*Mexico City MoU*”).

<sup>3</sup> *See Mobile Satellite Ventures Subsidiary LLC, Order and Authorization*, DA 05-1492 (May 23, 2005).

107.3°W.<sup>4</sup> On January 11, 2006, MSV announced that it entered into a contract with Boeing Satellite Systems, Inc. (“Boeing”) for the construction and delivery of these satellites.<sup>5</sup>

*DISCO II*. In considering applications to access a foreign-licensed satellite for service in the United States, the Bureau conducts a public interest analysis established by the Commission in the *DISCO II Order*.<sup>6</sup> In conducting this analysis, the Bureau assesses public interest factors such as the effect on competition in the United States, eligibility and operating requirements, national security, law enforcement, and trade and foreign policy concerns, as well as whether the foreign-licensed satellite will cause interference to U.S.-licensed systems and whether there is sufficient spectrum available to permit the operation of the foreign-licensed system in the United States. *DISCO II* ¶¶ 7, 150. The Commission found in *DISCO II* that its exercise of spectrum management authority is consistent with the Chairman’s Note to the World Trade Organization (“WTO”) Basic Telecommunications Agreement,<sup>7</sup> which states that WTO Members may exercise their domestic spectrum and frequency management policies when considering whether to allow foreign-licensed satellites to serve the U.S. market.<sup>8</sup>

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<sup>4</sup> See Letter from Jan Skora, Director General, Radiocommunications and Broadcasting Regulatory Branch, Industry Canada, to Mr. Larry Boisvert, President, Mobile Satellite Ventures (Canada) Inc., File No. 6215-3-3 (April 5, 2005).

<sup>5</sup> See “Mobile Satellite Ventures Engages Boeing to Develop Next Generation Satellites” (Jan. 11, 2006), available at [http://www.msvlp.com/pr/news\\_releases\\_view.cfm?id=80](http://www.msvlp.com/pr/news_releases_view.cfm?id=80).

<sup>6</sup> See *Amendment of the Commission’s Regulatory Policies To Allow Non-U.S.-Licensed Space Stations To Provide Domestic and International Satellite Service in the United States, Report and Order*, IB Docket No. 96-111, 12 FCC Rcd 24094 (1997) (“*DISCO II*”).

<sup>7</sup> Fourth Protocol to the GATS (April 30, 1996), 36 I.L.M. 354 (1997).

<sup>8</sup> See *Chairman of the World Trade Organization Group on Basic Telecommunications, Chairman’s Note, Market Access Limitations on Spectrum Availability*, 36 I.L.M. at 372 (“under the GATS each Member has the right to exercise spectrum/frequency management”); *Space Imaging, LLC, Declaratory Order and Order and Authorization*, DA 05-1940, ¶ 18 (Chief, International Bureau, July 6, 2005) (“In *DISCO II*, the Commission determined that, given the scarcity of orbit and spectrum resources, it would consider spectrum availability as a factor in determining whether to allow a foreign satellite to serve the United States. This is consistent

*Foreign-Licensed Inmarsat 4F2 Satellite.* Beginning in August 2005, various entities filed Title III earth station as well as Section 214 applications to provide new and earlier-generation services in the United States with the uncoordinated Inmarsat 4F2 satellite licensed by the United Kingdom to Inmarsat Ventures Ltd. (“Inmarsat”), which Inmarsat claims is a replacement for its previously authorized Inmarsat 3F4 satellite.<sup>9</sup> In opposing these pending applications, MSV has explained that the *DISCO II* public interest analysis requires the Bureau to assess whether the uncoordinated Inmarsat 4F2 satellite will cause interference to U.S.-licensed systems.<sup>10</sup> MSV has demonstrated that, because there is no international L band coordination agreement covering the Inmarsat 4F2 satellite, there is no basis for the Bureau to conclude that permitting this satellite to provide service in the United States will not result in interference. Inmarsat’s failure to complete coordination results in the potential for at least three types of interference: (i) interference on spectrum that MSV and MSV Canada have coordinated for their own use and loaned temporarily to Inmarsat, and that Inmarsat now refuses to relinquish; (ii) interference resulting from the fact that Inmarsat 4F2 is technically different than the coordinated Inmarsat-3 satellites, and its technical characteristics are in no way contemplated

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with the Chairman’s Note to the WTO Basic Telecom Agreement, which states that WTO Members may exercise their domestic spectrum/frequency management policies when considering foreign entry. Thus, in *DISCO II*, we stated that when grant of access would create interference with U.S.-licensed systems, we may impose technical constraints on the foreign system’s operations in the United States or, when conditions cannot remedy the interference, deny access.”) (citing *DISCO II*).

<sup>9</sup> See, e.g., Stratos Communications, Inc., Application for Title III Blanket License, File No. SES-LFS-20050826-01175 (August 26, 2005); Stratos Communications, Inc., Application for Modification of Title III Blanket License, File No. File Nos. SES-MFS-20051122-01614; SES-MFS-20051122-01615; SES-MFS-20051122-01616; SES-MFS-20051122-01617; File No. SES-MFS-20051122-01618 (November 22, 2005).

<sup>10</sup> See, e.g., Mobile Satellite Ventures Subsidiary LLC, Petition to Hold in Abeyance, File No. SES-LFS-20060522-00852 (Call Sign E060179) (July 14, 2006); Mobile Satellite Ventures Subsidiary LLC, Reply, File No. SES-LFS-20060522-00852 (Call Sign E060179) (August 1, 2006). MSV incorporates these filings by reference.

in the 1999 Spectrum Sharing Arrangement (“SSA”) among the L band operators or any other Agreement or Understanding between the United States and Inmarsat’s licensing administration, the United Kingdom; and (iii) interference threatened by Inmarsat’s claim that it is entitled, contrary to its earlier commitments to operate only on spectrum it had coordinated pursuant to the 1999 SSA, to operate wherever it chooses in the L band.

To date, none of the applications for long-term Title III or Section 214 authority to operate with Inmarsat 4F2 has been granted. The Bureau has granted STAs to use the Inmarsat 4F2 satellite in the United States while the applications for long-term authority are pending.<sup>11</sup> The Bureau has explicitly conditioned grant of the STAs on the following conditions: (i) the grant is not based on a finding that Inmarsat 4F2 can operate on a non-interference basis and is without prejudice to any future determination that the Commission may make on this issue;<sup>12</sup> (ii) operation pursuant to the STA is at the STA holder’s own risk,<sup>13</sup> (iii) the STA can be terminated or modified at any time, and customers must be notified of this condition;<sup>14</sup> and (iv) grant of the STA is without prejudice to the underlying applications for permanent authority.<sup>15</sup> In granting this temporary authority to use Inmarsat 4F2, the Bureau never stated or implied that it completed the requisite public interest analysis under *DISCO II*.

*Foreign-Licensed Inmarsat 3F4 Satellite.* In 2001, the Commission authorized Inmarsat to operate its Inmarsat 3F4 satellite at the 54°W orbital location for service in the United States

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<sup>11</sup> See, e.g., *Telenor STA Grant*, File No. SES-STA-20060118-00055 *et al.* (granted January 18, 2006) (“*Earlier-Generation STA Grant*”); *Stratos STA Grant*, File No. SES-STA-20060310-00419 (granted May 12, 2006) (“*BGAN STA Grant*”).

<sup>12</sup> *Earlier-Generation STA Grant* at ¶¶ 5, 6; *BGAN STA Grant* at ¶¶ 6, 7.

<sup>13</sup> *Earlier-Generation STA Grant* at ¶ 4; *BGAN STA Grant* at ¶¶ 5.

<sup>14</sup> *Earlier-Generation STA Grant* at ¶¶ 7, 8; *BGAN STA Grant* at ¶¶ 8, 9.

<sup>15</sup> *Earlier-Generation STA Grant* at ¶ 9; *BGAN STA Grant* at ¶ 10.

after conducting the *DISCO II* public interest analysis.<sup>16</sup> In 2006, Inmarsat moved this satellite to the 142°W orbital location without a Commission finding that operation of this satellite at 142°W would serve the public interest under *DISCO II*. As with Inmarsat 4F2, there is no international L band coordination agreement covering the operation of this satellite at this location. As with Inmarsat 4F2, Inmarsat's failure to coordinate the Inmarsat 3F4 satellite at 142°W raises significant interference concerns.<sup>17</sup> While entities have applied to operate with this satellite in the MSS L band in the United States, the Bureau has not granted these applications.<sup>18</sup>

*Section 214 Exclusion List.* The Commission's Section 214 authorization procedures allow carriers with global facilities-based Section 214 authorizations to provide service to any country using any facilities, including satellites, provided those countries and facilities are not listed on the Section 214 Exclusion List. 47 C.F.R. § 63.22(b). The only satellites included on the Section 214 Exclusion List are those foreign-licensed satellites that are not listed on the Permitted Space Station List (the "Permitted List"). The Permitted List includes U.S.-licensed C- and Ku-band satellites as well as foreign-licensed C- and Ku-band satellites that have been authorized to provide service in the United States pursuant to *DISCO II* procedures. 47 C.F.R. § 25.201. Foreign-licensed MSS satellites are not eligible for inclusion on the Permitted List regardless of whether they have been authorized to provide service in the United States pursuant to *DISCO II* procedures. *See Notice* at 2. Because foreign-licensed MSS satellites do not appear on the Permitted List, they are included on the Section 214 Exclusion List. *Id.* Thus, any carrier,

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<sup>16</sup> *See Comsat Corporation et al, Memorandum Opinion, Order and Authorization*, 16 FCC Rcd 21661, ¶ 115(c) (2001) ("*COMSAT Order*").

<sup>17</sup> *See Mobile Satellite Ventures Subsidiary LLC, Petition to Hold in Abeyance*, File No. SES-STA-20061221-02206 et al (December 22, 2006); *Mobile Satellite Ventures Subsidiary LLC, Reply*, File No. SES-STA-20061221-02206 et al (February 1, 2007). MSV incorporates these filings herein by reference.

<sup>18</sup> *See, e.g., Amtech Systems LLC, File No. SES-STA-20061221-02206* (December 21, 2006).

including one with a global facilities-based Section 214 authorization, must receive a separate Section 214 authorization before providing service with a foreign-licensed MSS satellite. 47 C.F.R. § 63.22(c).

*Public Notice.* In the above-referenced proceeding, the Bureau is proposing to revise its Section 214 authorization procedures by removing from the Section 214 Exclusion List all foreign-licensed satellites that have been authorized to provide service in the United States pursuant to *DISCO II* procedures, regardless of whether those satellites appear on the Permitted List. *Notice* at 2. Thus, if adopted, any carrier with a global facilities-based Section 214 authorization would be permitted to access any foreign-licensed satellite, including MSS satellites, that have been authorized under *DISCO II* procedures. *Id.*<sup>19</sup>

### **Discussion**

MSV supports the Bureau's proposal to remove from the Section 214 Exclusion List all foreign-licensed satellites that have been permitted to enter the United States market pursuant to the policies established in the *DISCO II Order*. As the Bureau acknowledges in the *Notice*, the *DISCO II* and Section 214 public interest analyses are essentially identical, thereby making duplicative a second public interest analysis for a foreign-licensed satellite that has already been approved under *DISCO II* procedures. *Notice* at 2. Thus, adoption of the Bureau's proposal will eliminate the unnecessary cost and delay resulting from the current rules requiring a carrier with a global facilities-based Section 214 authorization to seek a separate Section 214 authorization prior to accessing a foreign-licensed MSS satellite that has already been authorized under *DISCO*

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<sup>19</sup> The Bureau's proposal does not affect the separate requirement that a satellite earth station operator obtain a Title III license prior to transmitting. 47 C.F.R. § 25.115(a)(1).

*II* procedures.<sup>20</sup> MSV notes that the Commission has already authorized the current-generation Canadian-licensed L band MSS satellite licensed to MSV Canada (MSAT-1) for service in the United States under *DISCO II* procedures.<sup>21</sup> Thus, if adopted, the Bureau’s proposal would remove MSAT-1 from the Section 214 Exclusion List.

If the Bureau adopts its proposal, however, it should clarify that foreign-licensed satellites permitted to provide service in the United States only pursuant to STA prior to a *DISCO II* analysis will remain on the Section 214 Exclusion List. In authorizing foreign-licensed satellites to provide service pursuant to STA, the Bureau generally does not perform the public interest analysis required under *DISCO II*.<sup>22</sup> Indeed, in issuing STAs authorizing access to the Inmarsat 4F2 satellite, the Bureau never stated or implied that it had completed the requisite public interest analysis under *DISCO II* and explicitly stated that the grant of the STA was without prejudice to action on the pending applications for permanent authority. *See Earlier-Generation STA Grant* at ¶ 9; *BGAN STA Grant* at ¶ 10. Removing the Inmarsat 4F2 satellite from the Section 214 Exclusion List based merely on grant of an STA prior to completion of the *DISCO II* analysis will unduly prejudice the outcome of that analysis. Indeed, removing a foreign-licensed satellite from the Section 214 Exclusion List implies that the requisite public interest analysis has already been performed, which is not the case in situations where the Bureau has granted access only pursuant to STA. Moreover, removing a satellite from the Section 214 Exclusion List based merely on grant of an STA will lead to confusion among

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<sup>20</sup> *Streamlining the International Section 214 Authorization Process, Report and Order*, 11 FCC Rcd 12884, ¶ 9 (March 13, 1996) (noting that global Section 214 authorization “enable carriers to enter new markets rapidly and use new facilities without the delays and costs associated with filing separate Section 214 applications for each new market or facility”).

<sup>21</sup> *See TMI Communications and Company, Order and Authorization*, 14 FCC Rcd 20798 (1999).

<sup>22</sup> *Report and Order*, DA 98-2431 (Nov. 30, 1998) (granting STA to access foreign-licensed satellite but deferring *DISCO II* analysis to underlying applications for permanent authority).

carriers and their customers if the Bureau subsequently denies market access after completing its *DISCO II* analysis, thereby placing the satellite back on the Section 214 Exclusion List.

Accordingly, foreign-licensed satellites permitted to provide service in the United States only pursuant to STA should remain on the Section 214 Exclusion List.

The Bureau should also clarify that a foreign-licensed satellite claiming to be a “replacement” for a previously authorized satellite will be placed on the Section 214 Exclusion List and will remain there unless and until the Bureau finds that operation of the satellite serves the public interest under *DISCO II*. As demonstrated in the case of the Inmarsat 4F2 satellite, a satellite that is alleged to be a “replacement” satellite may be technically different than satellite it is purportedly replacing, requiring the Bureau to assess interference and spectrum management concerns under *DISCO II* prior to authorizing the satellite for service in the United States. To avoid prejudicing the outcome of the Bureau’s *DISCO II* analysis in these situations, the Bureau should clarify that an alleged “replacement” for a previously authorized foreign-licensed satellite will be placed on the Section 214 Exclusion List and will remain there unless and until the Bureau finds that operation of the satellite serves the public interest under *DISCO II*.

The Bureau should also clarify that a foreign-licensed satellite previously authorized to provide service in the United States pursuant to *DISCO II* that is moved to a new orbital location will be placed back on the Section 214 Exclusion List and will remain there unless and until the Bureau finds that operation of the satellite at the new orbital location serves the public interest under *DISCO II*. As discussed above, Inmarsat recently moved its Inmarsat 3F4 satellite previously authorized under *DISCO II* to a new orbital location prior to any Commission finding that operation of the satellite at this new orbital location satisfies the *DISCO II* criteria. In fact, operation of this satellite at this new orbital location raises serious interference and spectrum

management concerns under *DISCO II* that Inmarsat did not provide the Bureau with an opportunity to address prior to the move. To avoid prejudicing the outcome of the Bureau's *DISCO II* analysis in this and similar situations, the Bureau should clarify that a previously authorized foreign-licensed satellite moved to a new orbital location will be placed back on the Section 214 Exclusion List and will remain there unless and until the Bureau finds that operation of the satellite at the new orbital location serves the public interest under *DISCO II*.

### **Conclusion**

Based on the foregoing, the Bureau should remove all foreign-licensed satellites that have been permitted to enter the United States market pursuant to the Commission's *DISCO II* criteria from the Section 214 Exclusion List, provided that (i) a foreign-licensed satellite permitted to provide service in the United States only pursuant to STA prior to a *DISCO II* analysis remains on the Exclusion List; (ii) an alleged "replacement" for a previously authorized foreign-licensed satellite will be placed on the Section 214 Exclusion List and will remain there unless and until the Bureau finds that operation of the satellite serves the public interest under *DISCO II*; and (iii) a foreign-licensed satellite previously authorized to provide service in the United States pursuant to *DISCO II* that is moved to a new orbital location will be placed back on the Section 214 Exclusion List and will remain there unless and until the Bureau finds that operation of the satellite at the new orbital location serves the public interest under *DISCO II*.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I, Sylvia A. Davis, a secretary with the law firm of Pillsbury Winthrop Shaw Pittman LLP, hereby certify that on this 2nd day of April 2007, I served a true copy of the foregoing by first-class United States mail, postage prepaid, upon the following:

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