

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

In the Matter of)	WC Docket No. 07-73
)	
Stratos Global Corporation)	DA 07-2557
)	
Consolidated Application for Consent to Transfer Control)	FCC File Nos.:
)	
)	ITC-T/C-20070405-00136
)	ITC-T/C-20070405-00133
)	ITC-T/C-20070405-00135
)	SES-T/C-20070404-00440
)	through -00443
)	0002961737 and
)	ISP-PDR-20070405-00006

PETITION TO DENY

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control of Stratos Global's wholly-owned FCC-authorized subsidiaries...from the current shareholders of Stratos Global to an irrevocable trust.”⁴ The Application references, but does not name as a party, the real party-in-interest to the proposed transaction – Inmarsat plc (“Inmarsat”). Inmarsat, through its subsidiary, has agreed to finance the trust's acquisition of Stratos and to purchase a call option to acquire the company in April 2009 when Inmarsat is no longer contractually prohibited from owning or controlling a distributor of its services.

The relief Inmarsat and Stratos request is an anti-competitive attempt to circumvent contractual obligations, Communications Act requirements and procedures established by the Commission to ensure that transfers of control serve the public interest. The Application proposes a multi-stage deal concocted to enable Inmarsat to acquire a company it is currently prohibited from owning or controlling. The proposed transfer of Stratos to a trust financed by Inmarsat is a blatant attempt to evade existing contractual prohibitions as well as to avoid scrutiny of the full transaction by the Commission. As such, the Application seeks extraordinary relief that is not only wholly unsupported in FCC precedent, but directly at odds with requirements designed to protect the public interest. For these reasons, Iridium urges the Commission to deny Stratos' Application.

I. INTRODUCTION AND SUMMARY.

Stratos, the target company in the proposed transaction, is an independent distributor of mobile satellite services (“MSS”). It serves as the distribution partner for numerous MSS providers, including Iridium (Stratos is one of Iridium's largest commercial distributors) and Inmarsat. Inmarsat currently is prohibited from acquiring an interest in Stratos or any of its

⁴ Stratos Global Corp. Consol. Application for Consent to Transfer Control, Docket No. WC Docket No. 07-73 (filed Apr. 5, 2007) (“Narrative”).

distributors pursuant to a distribution structure established at the time of Inmarsat's privatization. Specifically, Inmarsat's agreements with its numerous distributors prohibit the company from selling its service directly to end users,⁵ as well as from acquiring an interest in any of its distributors (except in extremely limited circumstances).⁶ These prohibitions were put in place to "protect distribution partners' investment in their distribution channels."⁷ They are a product of the privatization process as well as of commercial negotiation between Inmarsat and its distributors. These prohibitions are set to expire in April 2009.

Inmarsat and Stratos have now proposed an unprecedented multi-step transaction in an attempt to have the Commission authorize a structure that would allow them to bypass these contractual prohibitions, maintain a sham façade of neutrality, and evade full FCC review. Through this Application, Stratos proposes transferring control of its FCC licenses to an irrevocable trust, owned by CIP Canada Investment Inc., a wholly-owned subsidiary of CIP UK (collectively CIP).⁸ CIP's acquisition of Stratos is to be funded by Inmarsat, through "a loan facility under which CIP UK may draw up to \$250 million to fund the costs of CIP Canada's

⁵ See INMARSAT FINANCE PLC, INMARSAT GROUP LTD., INMARSAT INVESTMENTS LTD., Annual Report (Form 20-F), at 32 (Apr. 30, 2007), at <http://www.sec.gov/Archives/edgar/data/1291396/000119312507094923/d20f.htm> (last visited June 18, 2007) ("Under the Distribution Agreements, we are restricted from owning or establishing land earth stations that access our existing services (other than R-BGAN and BGAN) except in limited circumstances").

⁶ See *id.* at 85 (Inmarsat has "the right to establish, acquire or affiliate with [an entity owning or controlling] land earth stations" only "in an ocean region" under certain circumstances; "with the consent of distribution partners responsible for 66 2/3 percent of [its] revenues derived from all LESO Agreements in the previous 12 month period; or under certain defined circumstances where no distribution partner has agreed to match [its] offer of marketing funds to promote a specific service in a promotional scheme").

⁷ *Id.* at 84.

⁸ See Narrative at 6-8.

acquisition of Stratos.”⁹ In addition, Inmarsat will pay CIP \$750,000 for a call option to acquire CIP’s interest in Stratos beginning in April 2009.¹⁰ Inmarsat will pay an additional \$750,000 to \$1,000,000 to CIP when it exercises this option.¹¹

In an obvious attempt to evade contractual provisions prohibiting Inmarsat's acquisition of Stratos, the Application concocts a two-step transaction in which Stratos would be parked in a trust until these provisions expire in April 2009.¹² Although CIP is inserted as the beneficial owner of the trust, it is clear that its role is merely that of a strawman. Inmarsat's financing of the trust arrangement and call option make clear that the relationship between Inmarsat and Stratos would hardly be the arm's length neutrality required by the existing distribution agreements.

Stratos is an independent distribution channel today and has economic reasons not to discriminate against or in favor of any of its suppliers. However, during the pendency of the trust arrangement, Stratos would have strong and obvious reasons to favor Inmarsat services over those of other distribution partners, such as Iridium. If Inmarsat does not exercise its option, the interest rate on Inmarsat’s loan to CIP to finance the trust increases substantially – from 5.75% to 11.5%.¹³ Accordingly, despite the use of a trust to erect a façade of independence and neutrality, Stratos would have a substantial incentive to favor Inmarsat, a major competitor of Iridium. All of Stratos’ decisions will be made with an eye toward its ultimate transfer to Inmarsat. Further,

⁹ *Id.* at 7.

¹⁰ *Id.* at 8.

¹¹ *Id.*

¹² If FCC approval for the transfer to Inmarsat cannot be obtained, the trust will transfer control of Stratos to CIP UK or arrange for an investment bank to auction the shares. *Id.*

¹³ TMF Associates, *All Change for MSS Distribution?*, at <http://www.tmfassociates.com/Stratos.pdf> (last visited June 19, 2007).

since the financial benefits of the acquisition for CIP lie in cash flow from the Stratos business while it is held by the trust, CIP would be dissuaded from making any investments to promote services that might compete with Inmarsat, even if it would promote long term value for Stratos or benefit end users.¹⁴

The proposed transaction is a clear attempt by Inmarsat and Stratos to distort and manipulate the Commission's transfer processes to skirt their contractual obligations and secretly gain private anti-competitive advantage. The Application seeks extraordinary treatment – the parking of a company operating in a competitive market in a trust for nearly two years with no review of the ultimate transferee or the implications of its ownership of Stratos. The Application argues that the Commission can defer review of the company's role until it exercises its call option. However, this would turn the agency's transfer review policy on its head – all to secure Inmarsat private advantage in contravention of its contractual relationships. Under the approach proposed in the application, any entity could set up a trust arrangement to acquire FCC assets without triggering Commission review, regardless of the qualifications of the entity or whether its involvement violates agency rules or raises policy concerns. Such an approach is unsupportable in the Commission's rules and precedent and plainly contrary to the public interest.¹⁵

¹⁴ *Id.*

¹⁵ Stratos points to *Lockheed Martin Corp., Regulus, LLC and COMSAT Corp.*, Memorandum, Order and Authorization, 14 FCC Rcd 15,816 (1999), as permitting postponement of the Commission review of Inmarsat's ownership of Stratos. Narrative at 10-12. However, the Lockheed Martin case in no way supports what Inmarsat is attempting to do. That case did not involve a trust arrangement or an end run around commercial agreements. Rather, it involved a very typical scenario of a company acquiring a minority interest and then later a controlling interest in an FCC licensee. Significantly, in that case, the Commission specifically considered and passed on Lockheed Martin's qualifications in the step one portion of the transaction. This is exactly what Inmarsat would have the Commission not do with respect to the instant transaction.

Further, the transaction proposed is patently anti-competitive in effect. Inmarsat and Stratos are proposing a watershed change in the satellite distribution market – the elimination of Stratos' independence as a distributor of satellite services. Yet, they are attempting to do this through the use of a trust to mask this significant development from Stratos' suppliers and customers. The Commission must not permit this subterfuge.

II. THE TRANSACTION'S PROPOSED USE OF A TRUST DOES NOT COMPLY WITH COMMISSION POLICY AND PRECEDENT.

The Application's proposed use of a trust to park Stratos and avoid scrutiny of Inmarsat's influence and relationship with the company until some later date is unprecedented and wholly unsupported by FCC policy. The Commission has authorized the use of trusts only in limited circumstances, none of which is applicable here. The Application's reliance on the Commission's 1986 Policy Statement for Tender Offers and Proxy Contests ("Policy Statement")¹⁶ as precedent for its approach is extremely disingenuous. The Policy Statement obviously does not apply and in no way authorizes what Inmarsat and Stratos are proposing. Even if the Policy Statement were deemed to extend to the type of transaction presented – which it clearly does not – the Application would still fail to meet the requirements for grant. In addition, the other limited situations in which the Commission has authorized the use of trusts plainly do not apply here. Accordingly, the Application must be denied.

A. The FCC's Policy Statement Governs Proxy Contests and Tender Offers and Does Not Support Grant of the Application.

The Application repeatedly cites to the Policy Statement as authorizing the proposed transaction. Yet, these references express an obviously distorted and wholly unsupportable

¹⁶ See *Tender Offers and Proxy Contests*, Policy Statement, 59 Rad. Reg. 2d (P&F) 1536 (1986) ("*Tender Offer Policy Statement*").

interpretation of this authority. The Policy Statement is plainly inapposite as it establishes procedures only for temporary voting trusts created as part of a time-sensitive “takeover bid” tender offer or proxy contest.¹⁷ Indeed, the Commission has clarified that the Policy Statement’s procedures *apply only to* (1) hostile takeovers by tender offer, which by their nature require prompt action, and (2) friendly tender offers where “a competing offer already exists, so that the second offeror must be promptly empowered to present its offer to the shareholders.”¹⁸

This Policy Statement was adopted to afford comity to the securities laws by allowing for expedited approvals and the use of trusts to ensure that shareholders have a choice, and to eliminate lengthy regulatory procedures that could prevent shareholder choice from occurring. Here, there is neither urgency nor concern that FCC procedures will not allow for shareholder choice. Rather, the proposed transaction would do just the opposite – lock up Stratos for an ineligible buyer, thereby limiting shareholder choice.

Clearly, the proposed transaction has none of the characteristics of a hostile “takeover bid” tender offer – it is not hostile and obviously cannot be characterized as a “takeover bid”

¹⁷ *Tender Offer Policy Statement*, 59 Rad. Reg. 2d at 1557-1562 (¶¶ 27-33) (noting that the Commission was implementing special procedures governing changes in licensee control in the context of tender offers and proxy contests).

¹⁸ *Rogers Commc'ns Inc., for Consent to Interim Transfer of Control of Maclean Hunter Ltd.*, Memorandum Opinion and Order, 9 FCC Rcd 7350, 7356 (¶14) (Cable Services Bureau 1994) (citing *Frank K. Mayers, Herbert M. Shayne, Jackson W. Smart, Jr., and Robert L. Stone, Voting Trustees for JB Acquisition Corp.; Application for Consent to Interim Transfer of Control of John Blair and Company*, Memorandum Opinion and Order, 60 Rad. Reg. 2d 1095, (¶ 3) (1986)). Although the Commission has allowed the grant of an STA to a trustee when there is friendly tender offer, it has done so to remain neutral when there is a competing tender offer. *See Applications of Viacom Inc. for Comm'n Consent to Interim Transfer of Control of Paramount Communications, Inc.* Memorandum Opinion and Order, 8 FCC Rcd 8439 (1993). The Commission has repeatedly made clear that such procedures are not normally necessary in the case of a friendly tender offer. *Rogers Commc'ns Inc.*, 9 FCC Rcd at 7355-56 (¶ 13) (citing *Frank K. Mayers, Herbert M. Shayne, Jackson W. Smart, Jr., and Robert L. Stone, Voting Trustees for JB Acquisition Corp.; Application for Consent to Interim Transfer of Control of John Blair and Company*, Memorandum Opinion and Order, 60 Rad. Reg. 2d 1095, (¶ 3) (1986)).

transaction because the incumbent management is not being replaced.¹⁹ There is also no competing offer here. As such, the Policy Statement's procedures expressly do not apply to the transfer of Stratos' FCC licenses to a trust. That the Applicants repeatedly cite to it as precedent for their proposed transaction is frankly outrageous.

Moreover, the purpose behind the Policy Statement underscores that the trust procedure it sets forth can not apply to the instant transaction. The Commission created the concept of the trust as an intermediate transferor in order to alleviate problems associated with lengthy processing times for "long form" or traditional transfers of control.²⁰ A key objective in establishing the policy statement was to avoid unnecessary delay, which "can [] deprive shareholders of an effective choice in determining whether to tender their stock or to vote their shares by proxy."²¹ The Commission found that unless it allowed an expedited procedure that provided temporary authorization to a trustee, its regulatory process would effectively preclude the use of tender offers as a means by which to obtain control over companies.²² The Commission also sought to assure that its policies ensured government neutrality, so that marketplace considerations, rather than the artificial dictates of governmental procedures, should influence the decisions of the shareholders.²³ The Commission, therefore, authorized the use of a trust mechanism in order not to constrain shareholder choice and to minimize the danger that its regulatory process could aid either side in the battle for corporate control.²⁴

¹⁹ *Tender Offer Policy Statement*, 59 Rad. Reg. 2d at 1540, 1555-56, 1558-59, and 1560 (¶¶ 6-7, 24, 28, 30).

²⁰ *Id.*, 59 Rad. Reg. 2d at 1538, 1540-41 (¶¶ 1, 8).

²¹ *Id.* at 1539 (¶ 5).

²² *Id.* at 1570 (¶ 46).

²³ *Id.* at 1540 (¶ 6).

²⁴ *Id.* at 1562-63, 1570 (¶¶ 35, 46).

These concerns clearly do not exist in the instant transaction. Here, the proposed use of a trust would limit, rather than enhance, shareholder choice. There is no emergency in this case and no basis for concern that Commission procedures will somehow constrain shareholder decision-making. Further, “long form” consideration of the transfer to Inmarsat would in no way prevent its acquisition of Stratos. Accordingly, the Policy Statement's justifications for utilizing an intermediate trust are entirely and completely absent here. Indeed, the Application does not point to any corporate urgency that warrants use of the trust procedures in the Policy Statement. Therefore, those procedures – upon which Stratos relies almost exclusively – plainly fail to provide precedent for the proposed transaction.

B. The Application Must Also Be Found Deficient under Other Aspects of the Policy Statement.

Even if the Policy Statement were somehow deemed to authorize the use of a trust for the type of transaction proposed in the Application – which it clearly does not – the relief sought and the proffered showings would still not be eligible for grant under the Policy Statement’s requirements.

First, the Application's request for “regular” transfer authority is inconsistent with the Policy Statement's procedures. The Policy Statement contemplates only the transfer of FCC licenses to a trust that is limited in duration.²⁵ Relying upon Section 309(f), the Commission in the Policy Statement determined it necessary to issue special temporary authorizations (“STAs”), given the extraordinary circumstances of a “takeover bid” tender offer.²⁶ The STA would, the Commission reasoned, allow a trustee to act as a temporary conservator or caretaker charged with preserving the nature and character of the corporation in order to facilitate the

²⁵ *Id.* 59 Rad. Reg. 2d at 1566-67 (¶ 42).

²⁶ *Id.* at 1568-1578 (¶¶ 45-59).

Commission's consideration of the transfer to the ultimate purchaser.²⁷ The Policy Statement does not permit or even contemplate a grant of permanent authority to a trust. The Application nonetheless requests exactly that – a grant of permanent authority to the trust for almost two years (or perhaps longer if Inmarsat does not exercise its option). This extended timeframe is clearly inconsistent with the “limited” duration of an STA. Thus, the grant of permanent authority, as requested in the Application, is not permitted under the Policy Statement.

The Application also fails to provide sufficient information regarding the qualifications of the proposed trustee to acquire control of Stratos, a global satellite company. Under Section 310(d) of the Communications Act, the Commission must consider the qualifications of the proposed transferee as if it were applying for licenses directly under Section 308.²⁸ The Policy Statement and the precedent under it make clear that trustee transferees are no exception to this requirement.²⁹ Yet, the Application does not provide the information required for such an evaluation. The proffered one-paragraph description of Mr. Franklin and his Curriculum Vitae

²⁷ *Id.* at 1581 (¶ 66). *Rogers Commc'ns Inc.*, 9 FCC Rcd at 7355-56 (¶ 13) (“[m]echanically, the first step of the bifurcated procedure entails the grant of an STA to a trustee to permit the collection and purchase of the tendered shares and to operate the licensed facilities, subject to specified conditions”).

²⁸ 47 U.S.C. § 310(d), 308(b) (applications must set forth such facts as the Commission may require as to citizenship, character, and financial, technical and other qualifications); *see also Applications of AirTouch Commc'ns, Inc., Transferor, and Vodafone Group, PLC, Transferee, For Consent to Transfer of Control of Licenses and Authorizations*, Memorandum Opinion and Order, 14 FCC Rcd 9430, 9432-34 (¶¶ 5-9) (1999).

²⁹ *Tender Offer Policy Statement*, 59 Rad. Reg. 2d at 1562-63 (¶ 35 fn.124) (the FCC will “require [the informational short form] application to contain sufficient information on the qualifications of the trustee to permit us to make a determination that the grant of temporary authorization is in the public interest”); *QVC Network, Inc.*, Memorandum Opinion and Order, 8 FCC Rcd 8485, 8486 (¶ 4) (1993) (“the Commission . . . consider[s] the trust instrument, the trustee’s legal qualifications, and, if challenged, the bidder’s ability to finance the tender offer”); *CNCA Acquisition Corp.*, Memorandum Opinion and Order, 3 FCC Rcd 6088, 6094 (¶ 40) (1988) (“review at [the STA] stage will generally be on the procedures proposed and on the qualifications of the trustee”); *Macfadden Acquisition Corp.*, 104 F.C.C. 2d 545, 565-66 (¶¶ 36-40) (1986).

lack any meaningful detail and provide no evidence that Mr. Franklin is qualified to control a global satellite company. Under the proposed transaction, Mr. Franklin will be the trustee of Stratos for almost two years or more. The information included in the Application is deficient under the Communications Act and the Policy Statement to permit the Commission to find that Mr. Franklin is qualified to control the licenses at issue and that the proposed transfer to him would serve the public interest, convenience and necessity.

C. The Proposed Transaction Is Inconsistent with the Other Limited Situations in Which the FCC Has Allowed Use of a Trust.

Apart from the tender offer/proxy contest scenario, the Commission has authorized the use of a trust to hold FCC licensees only in very limited circumstances.³⁰ These are: (1) in the bankruptcy context, and (2) in the aftermath of a merger where the buyer is required to divest its spectrum holdings as a condition of grant of the transaction. Clearly, these other situations in which trusts have been authorized are not applicable to the instant transaction.

In the bankruptcy context, the Commission allows the transfer of control of FCC licenses to a trustee within 30 days of the involuntary transfer.³¹ The trustee then finds a qualified purchaser and structures the sale.³² This practice prevents conflicts with federal bankruptcy court orders and furthers the public interest of protecting creditors.³³ The use of a trust in such

³⁰ See, e.g., *Shareholders of Jacor Commc'ns, Inc. (Transferor) and Clear Channel Commc'ns, Inc. (Transferee)*, Memorandum Opinion and Order, 14 FCC Rcd 6867, 6895-96 (¶ 35) (1999) (noting that trusts should be “employed only where necessary”).

³¹ See, e.g., 47 C.F.R. §63.24(g) (pertaining to Section 214 authorizations); 47 C.F.R. §24.839 (pertaining to PCS authorizations).

³² *La Rose v. F.C.C.*, 494 F.2d 1145, 1146 n. 2, 1148 (D.C. Cir. 1974) (“[t]he Commission’s regular practice is to approve an involuntary assignment of the license to a receiver in bankruptcy, who must then find a qualified purchaser and structure the sale”).

³³ *Id.* at 1148 (noting that administrative agencies have been required to consider other federal policies and further stating that “in recognition of the public interest in protecting innocent creditors, the Commission will approve the sale and assignment of the bankrupt’s

cases is generally temporary – lasting only until the bankruptcy proceeding is completed and the assets can be transferred to a qualified purchaser. In this case, Stratos has not filed for bankruptcy protection and thus this basis for utilizing a trust plainly cannot apply.

In the divestiture context, the Commission has found that “trusts [may be] *occasionally* established specifically to effect compliance with the Commission’s rules for holdings which would violate the rules if held outright.”³⁴ Thus, the Commission has authorized the use of a trust to permit a company to close a transaction before it fully transfers licenses it is required to divest as a condition of the transaction grant or to comply with FCC rules.³⁵ The Commission

(Continued . . .)

license when the transaction will not unduly interfere with the FCC mandate to insure that broadcast licenses are used and transferred consistently with the Communications Act.”); *D.H. Overmyer Telecasting Co., Inc., Debtor in Possession - Bankruptcy Court S.D. New York (Assignor)*; and *D. H. Overmyer Telecasting Co., Inc., (Assignee)*, Memorandum Opinion and Order, 94 F.C.C. 2d 117, 126 (¶ 13) (1983) (noting that the *La Rose* Court emphasized the need for the Commission to reconcile its policies under the Communications Act with those of other federal laws and statutes).

³⁴ *Attribution of Ownership Interests*, Report and Order, 97 F.C.C. 2d 997, 1023-24 (1984) (emphasis added). See, e.g., *Stockholders of Infinity Corp.*, 12 FCC Rcd 5012, 5040-41 (1996); *Viacom Inc.*, 9 FCC Rcd 1577, 1578 (1994).

³⁵ See, e.g., *Jacor Commc’ns, Inc.*, 14 FCC Rcd at 6895-96 (¶ 35) (approving divestiture of licenses to a trust to effect compliance with the Commission’s local radio ownership rules if any of the proposed divestitures to third parties could not be consummated at the time of the merger); *SFX Broad., Inc. (Transferor) and SBI Holding Corp. (Transferee)*, Memorandum Opinion and Order, 13 FCC Rcd 12,366, 12,378-379, (¶ 20) (1998) (approving divestiture of licenses to a trust where the trust was used to ensure local radio ownership rule compliance in the event that the merger and some of the required divestitures could be consummated concurrently); *Stockholders of Infinity Broad. Corp. (Transferor) and Westinghouse Elec. Corp. (Transferee)*, Memorandum Opinion and Order, 12 FCC Rcd 5012, 5041-42 (¶¶ 57-60) (1996) (approving assignment to a trust for the limited purpose of providing a means for the merger to proceed should the good faith and diligent efforts of the parties to close the divesting transactions fail); *Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from Tele-Commc’ns, Inc., Transferor to AT&T Corp., Transferee*, Memorandum Opinion and Order, 14 FCC Rcd 3160, 3160 (¶ 1) (1999) (conditioning approval of a proposed merger on the transferor placing its ownership interest in a wireless licensee in a trust and Commission approval of that Trust Agreement prior to closing because the interest would violate the Commission’s spectrum cap).

permits the use of trusts in such cases because it may not be possible to consummate all other third party divestitures prior to or concurrently with the merger.³⁶ Nevertheless, the Commission has emphasized that “[g]iven the trusts’ limited purpose of effecting compliance with the Commission’s rules . . . as well as their potential for abuse, it follows that insulated trust arrangements . . . should be employed only where necessary, and then to as limited an extent as possible.”³⁷ For this reason, the length of such trusts are generally strictly circumscribed by the Commission, generally to a six-month timeframe.³⁸ This allows a reasonable period of time for the necessary divestitures to be completed and the trust to be terminated.³⁹

In this case, no party to the Application is attempting to divest an interest or otherwise comply with FCC rules by placing its licenses in a trust. Quite the contrary, Inmarsat wants to *acquire* the FCC licenses held by the trust as soon as its contractual obligations permit. For this reason, the Commission's past authorization of trusts in the divestiture context – as well as in the bankruptcy context – plainly do not and cannot serve as precedent for the proposed transaction.

³⁶ See, e.g., *Applications of Shareholders of AMFM, Inc. (Transferor) and Clear Channel Commc 'ns, Inc. (Transferee)*, Memorandum Opinion and Order, 15 FCC Rcd 16,062, 16,072 (¶ 22) (2000) (approving assignment to a trust where Clear Channel had not secured third party buyers acceptable to DOJ in three markets and was unsure it would be possible to consummate all other third party divestitures prior to or concurrently with the merger); *Shareholders of Am. Radio Sys. Corp., Transferor and CBS Corp., Transferee*, Memorandum Opinion and Order, 13 FCC Rcd 12,430, 12,441-442 (¶ 24) (1998) (finding approval of assignment to trusts would facilitate the merger where the merger would otherwise not consummated because the parties had not filed applications to assign a sufficient number of stations in local radio markets in three areas to new parties).

³⁷ *Jacor Commc 'ns, Inc.*, 14 FCC Rcd 6895-96 (¶ 35) (citations omitted).

³⁸ See, e.g., *Am. Radio Sys. Corp.*, 13 FCC Rcd at 12,441-442 (¶ 24) (limiting the trust to six months); *Jacor Commc 'ns, Inc.*, 14 FCC Rcd at 6894-95 (¶ 33) (limiting the trust to six months); *SFX Broad., Inc.*, 13 FCC Rcd at 12,389 (¶ 50) (limiting the trust to six months).

³⁹ *Jacor Commc 'ns, Inc.*, 14 FCC Rcd 6867 at 6895 (¶ 33) (“a limited period of up to six months [] will allow a reasonable period of time for the necessary divestitures to be completed and the trust to be terminated”); *Am. Radio Sys. Corp.*, 13 FCC Rcd at 12,442 (¶ 24) (“approval of the trust applications will allow for a reasonable period of time for the necessary divestitures to be completed and the trusts to be terminated”).

III. ALLOWING USE OF THE TRUST WILL HARM THE PUBLIC INTEREST.

Pursuant to Section 310(d) of the Communications Act, the Commission may approve a transfer of control only if it affirmatively determines that the grant will serve the public interest, convenience, and necessity.⁴⁰ To make this determination, the Commission must weigh “the potential public interest harms [of the transaction] against the potential public interest benefits.”⁴¹ In this case, the potential harms of the proposed transfer of Stratos to the trust far outweigh the minimal private benefit asserted by the applicants.

The Application asserts that the transaction will promote the public interest because it will allow Stratos shareholders to sell their shares quickly and at a fair price.⁴² This alleged benefit is really no benefit at all. The Application provides no evidence that Stratos shareholders would be unable to sell their shares absent the proposed transaction. Indeed, Stratos’ stock has been steadily increasing for the last nine months.⁴³ *Thus, all this transaction will really accomplish is to limit to whom shareholders may sell their stock.* In addition, even if credited, the articulated benefit is a private benefit, rather than the kind of “public interest” benefit that the Commission typically considers in its review.⁴⁴

⁴⁰ 47 U.S.C. § 310(d) (“No...station license...shall be transferred, assigned, or disposed of in any manner...except upon application to the Commission and upon finding by the Commission that the public interest, convenience, and necessity will be served thereby”).

⁴¹ See, e.g., *Loral Satellite, Inc. (Debtor-in-Possession) and Loral SpaceCom Corp. (Debtor in Possession), Assignors and Intelsat North America, LLC, Assignee*, Order and Authorization, 19 FCC Rcd 2404, 2411-2412 (¶ 18) (2004); Stratos Application at 9.

⁴² Narrative at 11.

⁴³ See Reuters Stock Quote Home Page, Stratos Global Corp. SGB.TO (TSX) <http://stocks.us.reuters.com/stocks/overview.asp?symbol=SGB.TO> (last visited June 19, 2007).

⁴⁴ See *Application of EchoStar Commc 'ns Corp., (a Nevada Corp.), General Motors Corp., and Hughes Electronics Corp. (Delaware Corps.) (Transferors) and EchoStar Commc 'ns. Corp. (a Delaware Corp.) (Transferee)*, Hearing Designation Order, 17 FCC Rcd 20,559, 20,663 (¶ 200) (2002) (rejecting a claim a private benefit should be considered a public interest benefit).

In any event, on the other side of the coin, there are very substantial harms that will result from the proposed transaction. As an initial matter, parking Stratos in a trust for two years (or more) will significantly hamper the company's ability to compete effectively in the marketplace. The satellite market is a fast-paced, evolving industry.⁴⁵ Consumers' and other users' needs are constantly expanding and more advanced technologies are being developed and deployed every day to meet those needs. A trustee, however, is expected to act in a manner that preserves the status quo and maintains the general character of the corporation.⁴⁶ Indeed, the primary obligation of the trustee is to conserve, rather than enhance, corporate assets and, in this regard, the Commission expects that trustees will act cautiously.⁴⁷ The Trust Agreement's provisions concerning itemized accounting reporting and removal of the trustee reinforce conservative behavior on the part of the trustee.⁴⁸ Accordingly, the placement of Stratos in a trust will necessarily limit the company's ability to respond to quickly changing market trends, essentially putting Stratos in a straightjacket to the detriment of its customers and distribution partners.

In the few scenarios where the Commission has authorized the use of a trust in the past, the duration of the trust has been limited – generally to a several month time frame. This has been in recognition of the fact that a company held in trust cannot be a nimble, effective competitor in the marketplace.⁴⁹ Here, the Application proposes to place Stratos in a trust for

⁴⁵ *Annual Report and Analysis of Competitive Market Conditions with Respect to Domestic and Int'l Satellite Commc'ns. Servs.*, First Report, 22 FCC Rcd 5954, 5955 (¶ 1) (2007) (concluding that there is effective competition in both the wholesale and retail satellite services markets).

⁴⁶ *Tender Offer Policy Statement*, 59 Rad. Reg. 2d at 1582 (¶68).

⁴⁷ *Id.* at n.206.

⁴⁸ Trust Agreement, §§ 7(c), (h), attached as Appendix C to the April 5, 2007 lead application.

⁴⁹ *See Tender Offer Policy Statement* 59 Rad. Reg. 2d at 1581-82 (¶¶ 66, 68) (“the trustee should recognize that he or she receives a special temporary authorization for a limited purpose –

two years or more, just to accommodate a buyer who cannot move forward now. Parking a vital business in trust for that length of time is unprecedented – and for good reason. Constraining Stratos for such a duration will limit its ability to compete effectively and thwart business investment. Stratos not only will be unable to “expand” its business as it contends,⁵⁰ but its business likely will recede. As a result, Stratos’ customers and distribution partners, including Iridium, will be significantly harmed. Such a result is clearly and substantially contrary to the public interest.

The proposed transaction will also trigger competitive harms by substantially altering the current distribution market for satellite services – and doing so through subterfuge. As noted previously, Stratos is an independent distribution channel today. As such, it distributes the services of multiple satellite providers – Inmarsat, Iridium and others. As discussed in Section I above, the pendency of the call option and the fact that Inmarsat is financing the trust cannot help but create incentives for Stratos to favor and promote the distribution of Inmarsat’s services over those of Iridium and Inmarsat’s other competitors. The arrangement also plainly discourages Stratos from investing in any new Iridium applications or services. Such behavior would obviously result in significant competitive harm to Iridium and Stratos’ other suppliers. It could also result in competitive harm to Inmarsat’s other distributors, who would potentially suffer from the favored relationship between Inmarsat and Stratos.

(Continued . . .)

that of a temporary conservator or caretaker charged with preserving the nature and character of the corporation . . . The trustee is a temporary steward with a limited mission”); *Rogers Commc’ns. Inc.*, 9 FCC Rcd at 7368 (¶ 4) (“the trustee [must] act so as to maintain the present management and operations of [the corporation]. The trustee will have the discretion to oppose only actions inconsistent with the preservation of corporate assets or actions that would be inconsistent with the transfer of control, if approved . . .”).

⁵⁰ Narrative at 11 (“Stratos will continue to have the ability to expand its business, to the benefit of both existing and future customers”).

Additionally, the manner in which Inmarsat and Stratos are attempting to invoke this watershed change in the distribution market is particularly troubling. By utilizing a trust, they seek to preserve for Stratos a sham façade of independence. But this approach will only mislead the public and harm consumers, who may be unaware of Stratos' incentives to favor Inmarsat during the trust period in their dealings with Stratos to purchase satellite service. The ultimate effect is to reduce full and fair competition in the satellite distribution market, which could have substantial negative effects on end users. Such subterfuge to hoodwink customers and other market participants must not be permitted.

Finally, the proposed transaction, if granted, will turn the FCC's transfer review policy on its head, providing a huge loophole for permitting a party to place an asset in trust while evading rigorous Commission review. Under the Application's approach, any entity could establish a trust to acquire FCC assets without triggering agency scrutiny, regardless of the qualifications of the entity or whether its involvement violates agency rules or raises policy concerns. Such a result is inconsistent with the Commission's established licensing policy⁵¹ and is clearly contrary to the public interest.

⁵¹ See *Lone Cypress Radio Associates, Inc.*, Initial Decision of Chief Administrative Law Judge Joseph Stirmer, 7 FCC Rcd 415, 422 (¶ 75) (1992) (“[t]he Commission considers an individual a real party-in-interest if such person has an ownership interest or will be in a position to control, actually or potentially, the operation of the station”) (citing *San Joaquin Tel. Improvement Corp.*, 2 FCC Rcd 7004, 7008, (1987); *High Sierra Broad., Inc.*, 96 F.C.C. 2d 423, 435 (1983)).

IV. CONCLUSION

For these reasons, Iridium strongly urges the Commission to move promptly to deny the Application to transfer control of Stratos to a trust.

Respectfully submitted,

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Dated: June 29, 2007

CERTIFICATE OF SERVICE

I, Christopher Ryan, do hereby certify that on this 29th day of June 2007, I caused copies of the foregoing "Petition to Deny of Iridium Satellite, LLC" to be delivered to the following via First Class U.S. mail:

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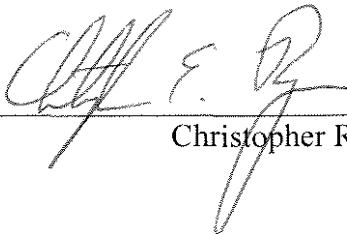
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