

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

In the Matter of)	WC Docket No. 07-73
)	
Stratos Global Corp. and Robert M. Franklin, Trustee)	DA 07-2557
)	
)	FCC File Nos.:
)	
Applications for Consent to Transfer of Control and Petition for Declaratory Ruling)	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

To: The Commission

PETITION TO DENY OF VIZADA SERVICES LLC

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SUMMARY

In this transaction, Inmarsat plc (“Inmarsat”) is attempting to acquire Stratos Global Corp. (“Stratos”), one of the main distributors of its services. However, rather than do so directly, Inmarsat is acquiring Stratos indirectly through a third party over which Inmarsat will exercise *de facto* control, and doing so without seeking Commission consent.

Inmarsat and Stratos have not provided all of the details of their transaction. Nevertheless, the scope of Inmarsat’s control over Stratos is evident from the selected information currently available. Specifically, Inmarsat controlled the negotiations with Stratos and has made statements consistent with the reality that it is the party that will control Stratos at closing. Inmarsat is providing all of the financing for this \$250 million transaction at below market rates. Inmarsat also has a fixed price option to take *de jure* control of Stratos in April 2009, and that option is exercisable for a mere fraction of the current value of Stratos: \$750,000 to \$1 million. The option price does not vary based on the success of Stratos over these two years. In essence, Inmarsat already will have paid over 99.6% of the consideration for Stratos before exercising the option.

Furthermore, until April 2009, Inmarsat will continue to be the primary provider of wholesale services to Stratos, dealing routinely with the company in that capacity, and enjoying the ability to influence key aspects of the Stratos business. Inmarsat will have every incentive to favor Stratos over other distributors of Inmarsat’s services, to the public injury with regard to competitive mobile satellite services. And Stratos management will have no incentive to do anything but follow the dictates of Inmarsat. Nothing management does will increase (or decrease) the option exercise price, or delay the date when Inmarsat can exercise the option. In

short, from Day 1 after closing of the acquisition of Stratos stock only Inmarsat will have a financial stake in the performance of Stratos.

The parties have two reasons for trying to structure the transaction as they have. First, they hope that the Commission will not examine the competitive and other public interest implications of Inmarsat taking control of one of its largest distributors. Second, Inmarsat is trying to avoid contractual restrictions with the indirect parent of VIZADA Services LLC (“VIZADA”) and others that until April 2009 expressly prohibit Inmarsat from acquiring a company like Stratos. Inmarsat essentially is trying to circumvent these matters while still achieving *de facto* control over Stratos now.

VIZADA recognizes that the Commission is not the place to address contractual matters arising between Inmarsat and its distributors. We simply note this background to explain why Inmarsat has a strong motive to evade the requirements of the Communications Act by failing to come forward as a real-party-in-interest here. Inmarsat clearly has an incentive not to confess to a *de facto* acquisition of Stratos before the FCC in view of the potential for contractual dispute in this area.

However, the Commission does have a statutory obligation under Sections 310(d) and 214 of the Communications Act to ensure that no party takes *de facto* control of a licensee without first receiving Commission consent based on a complete record. This would be true even if Inmarsat’s sole motive for its failure to appear here arose from its private contract. Private business reasons do not excuse non-compliance, and approving this transaction would create a dangerous precedent for future transactions where a party seeking *de facto* control does

not want to undergo Commission scrutiny. Comprehensive Commission review is all the more important given the competitive issues presented by the transaction.

In these circumstances, the Commission has no choice but to reject the Applications because they do not reflect the real-party-in-interest: Inmarsat. The parties may then choose to refile a proper set of applications reflecting the transfer of control to Inmarsat that they actually propose.

Alternatively, the Commission at least should designate the Applications for hearing and require the parties to file copies of all relevant documents related to their transaction. On its face the information available indicates that Inmarsat will exercise *de facto* control. If Inmarsat wants to prove otherwise, it should do so in a hearing where that position can be tested on the record.

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To: The Commission

PETITION TO DENY OF VIZADA SERVICES LLC

VIZADA Services LLC (“VIZADA” or the “Petitioner”) (formerly FTMSC US, LLC), 1/ pursuant to Section 25.154 of the Commission’s rules, 2/ hereby petitions to deny the above-captioned applications (the “Applications”) 3/ of Stratos Global Corp. (“Stratos”) and Robert M. Franklin (“Franklin” or the “Trustee,” and together with Stratos, the “Applicants”), seeking Commission consent to the transfer of control of Stratos subsidiaries that hold FCC

1/ FTMSC US, LLC changed its name to VIZADA Services LLC effective June 7, 2007.

2/ 47 C.F.R. § 25.154. By *Public Notice*, DA 07-2257 (rel. May 30, 2007) (the “*Public Notice*”), the Commission established a pleading cycle in this docket providing that petitions to deny are due June 29, 2007.

3/ The Applicants filed a “Narrative” to their “Consolidated Application for Consent to Transfer Control,” referred to herein as the “*Narrative*.”

authorizations to a trust for which Franklin is the trustee. As set forth herein, the Commission cannot grant the Applications on the record currently before it, as the record indicates that Inmarsat plc (“Inmarsat”) is the real-party-in-interest to the transfer, notwithstanding that the Applicants stress that Inmarsat is not even a party to the Applications. Inmarsat initiated negotiations with Stratos and suggested the third party/trust arrangement to Stratos, and even after Inmarsat decided to use CIP to acquire Stratos, it was Inmarsat that presented the bid proposal to Stratos. ^{4/} Indeed, while answering questions from the investment community regarding the Stratos stock acquisition and potential other bidders, Inmarsat’s Chairman and Chief Executive Officer committed a revealing slip when he stated “We think we have put in a strong fair bid [for Stratos].” ^{5/} And as discussed below, Inmarsat has implemented this bid through a set of agreements that finance the acquisition, give Inmarsat all material economic interest in Stratos, and fix the terms for a transition from *de facto* to *de jure* control at a time of Inmarsat’s choosing.

VIZADA has a strong and direct interest in this proceeding because it is authorized to distribute Inmarsat services in the United States, and its affiliates resell Inmarsat capacity in other parts of the world. As a result, VIZADA directly competes with Stratos, a provider of mobile satellite services in the U.S. and other countries. Also, VIZADA’s indirect parent company, Vizada SA (formerly FTMSC SA), is a party to the agreement that prohibits Inmarsat Global Ltd. (“Inmarsat Global”) from selling services directly to end users or from owning or controlling a distributor of Inmarsat services. Those restrictions help support a

^{4/} Stratos Global Corporation, “Notice of Annual and Special Meeting of Shareholders to be held on June 12, 2007 and Management Proxy Circular” at 14-16 (May 4, 2007) (the “*Proxy Circular*”) (available at www.sedar.com).

^{5/} Inmarsat plc Q1 2007 Earnings Call, May 14, 2007, CallStreet Transcript at 9 (www.CallStreet.com) (transcript available upon request).

competitive market in the distribution of Inmarsat's mobile satellite services. The agreement does not expire until April 2009, but in the transactions proposed here, Inmarsat seeks to evade its restrictions through the mechanism of a trust arrangement and a fixed-price option to acquire Stratos.

On the record currently before it, the Commission must either deny the Applications for failure to identify the real-party-in-interest, or, alternatively, designate the Applications for hearing and require the parties to file copies of all relevant documents related to their transaction.

I. THE RECORD BEFORE THE COMMISSION INDICATES THAT INMARSAT IS THE REAL-PARTY-IN-INTEREST

The Applications request Commission approval for the transfer of control of the Stratos licensees from the current shareholders of Stratos to the Trustee. The Trustee is identified in the Applications as the sole transferee party; indeed, the Applicants go to great pains to assert that only the "Trustee will have *de jure* and *de facto* control of Stratos." 6/

However, this characterization is belied by a close reading of the Applications' *Narrative*, and more illuminatingly, descriptions of documents not filed with the Commission but summarized to Stratos shareholders. These documents demonstrate that Inmarsat will control Stratos through a web of entanglements with the company and CIP that make it the only party with power over the Stratos finances and an economic interest in the company's success. These documents also guarantee Inmarsat's ultimate *de jure* ownership. As such, Inmarsat should be listed as the transferee on the Applications.

6/ *Narrative* at 6.

A. What the Applicants Have Told the Commission About the Transaction

The Applicants have conveniently failed to submit to the Commission the critical documents which govern this proposed transaction, instead preferring to file only a copy of the Trust Agreement, accompanied by their selective outline of the transaction set forth over three double-spaced pages in the *Narrative*. 7/

The *Narrative* states that under an agreement (one not filed with the Commission) between CIP UK Holdings Limited (“CIP UK”), CIP Canada Investment Inc. (“CIP Canada”) and Stratos, CIP Canada will purchase all of the shares of Stratos. 8/ The purchase of stock is subject to approval by an Ontario court and by a two-thirds vote of the shareholders. 9/ At the consummation of the acquisition of Stratos stock, the shares will be placed into the Trust. 10/ (The Trust Agreement and the form of Shareholder Agreement between Franklin and Stratos are the only transaction documents made available to the Commission by the Applicants. 11/) Funding for the acquisition of Stratos stock by CIP Canada will be provided by Inmarsat Finance III Limited (“Inmarsat Finance”). 12/ This loan facility may also be used by CIP Canada for refinancing Stratos’ existing debt or to buy back outstanding Stratos bonds. 13/ As stated in the *Narrative*, the Inmarsat loan facility:

7/ See *id.* at 6-8 (“II. Details of the Transaction”).

8/ See *id.* at 6. According to the Applicants, CIP Canada is a wholly-owned subsidiary of CIP UK, which, in turn, is a wholly-owned subsidiary of Communications Investment Partners Limited (“CIP Limited,” and collectively with CIP Canada and CIP UK, “CIP”). See *id.* at 4-5. Moreover, “CIP is a new investment company whose initial investment will be (and only proposed current investment is) in Stratos.” *Id.* at Appendix E at 2.

9/ *Narrative* at 6.

10/ *Id.*

11/ *Id.* at Appendix C.

12/ *Narrative* at 7.

13/ *Id.*

is a ten year term loan with an interest rate of 5.75% through December 31, 2010 and 11.5% thereafter (interest is on a “paid in kind” basis until April 14, 2009). The loan facility is unsecured until April 14, 2009 (when a security package subordinated to the existing Stratos indebtedness will be put in place).... 14/

Inmarsat Finance has paid or will pay CIP \$750,000 for a call option by which it can acquire CIP UK beginning in April 2009 and ending on December 31, 2010, for an exercise price of between \$750,000 and \$1,000,000, depending on when the call option is exercised. 15/ The Trust will terminate, subject to government approvals, on April 14, 2009. 16/ There are three disposition routes for the transfer of the shares of Stratos from the Trust: (1) to CIP UK, owned at that time by Inmarsat Finance pursuant to exercise of the call option; (2) to CIP Canada; or (3) to a third party purchaser. 17/

B. What the Applicants Have Not Told the Commission About the Transaction

By merely summarizing selective points of the Stratos transaction in their *Narrative*, and providing only two documents, the Applicants have left the Commission uninformed as to many material facts and agreements.

Under Canadian corporate law, in connection with setting a meeting for shareholder approval of the proposed transaction, Stratos was required to inform and educate its shareholders about the transaction by issuing a proxy circular. 18/ Although the *Proxy Circular* also lacks copies of most of the relevant transaction documents, it helps paint a clearer picture of

14/ *Id.*

15/ *Id.* at 8.

16/ *Id.*

17/ *Id.*

18/ *See supra* note 4.

the true nature of the proposed transaction; it is a road map that leads directly to Inmarsat as the real-party-in-interest.

1. The Commission Has Not Been Told What Transaction Documents Exist Nor Been Provided Copies of Such Documents

One of the “details” not shared with the Commission in the *Narrative* was the identification (not to mention submission) of the many transaction documents between and among Inmarsat, Stratos and CIP. As gleaned from the *Proxy Circular*, there are at least six in addition to the Trust Agreement: (1) the letter agreement between Stratos and Inmarsat dated March 19, 2007 (the “Letter Agreement”); (2) the arrangement agreement between Stratos, CIP UK and CIP Canada dated March 19, 2007 (the “Arrangement Agreement”); (3) the Plan of Arrangement Under Section 192 of the Canada Business Corporations Act (Ontario) (the “Plan of Arrangement”); (4) the call option agreement between CIP and Inmarsat Finance (the “Call Option Agreement”); (5) the commitment letter and term sheet dated as of March 19, 2007, between Inmarsat Finance and CIP (the “Commitment Letter”); and (6) the proposed loan agreement and related financing documents between Inmarsat Finance and CIP Canada (the “Inmarsat-CIP Loan Facility”). ^{19/} Without access to such key documents, the Commission cannot properly evaluate whether the proposed transaction should be approved, nor can third parties submit fully-informed comments.

At the least the Commission should require the Applicants to place these critical documents on the record in this docket, and, following such posting, provide an additional

^{19/} *Proxy Circular* at 25, 33-35. The Inmarsat-CIP Loan Facility should have been executed by this time, since, according to the *Proxy Circular*, such definitive agreement was to be executed no later than the day before the shareholder’s meeting. *Id.* at 33. On June 12, 2007, Stratos announced that shareholders’ approval to the CIP Canada acquisition of Stratos stock had been obtained earlier that day at the shareholders’ meeting. See News Release at http://www.stratosglobal.com/aboutStratos/page-aboutStratos_newsroom_newsItem.cfm?newsID=315 (“*Stratos News Release*”).

comment period on the Applications. However, given the facts discussed below, there is little reason to believe that the missing documents will do more than underscore Inmarsat's *de facto* control of Stratos as a result of this transaction.

2. The Applicants Did Not Mention That Inmarsat Initiated and Led Acquisition Negotiations with Stratos, Even After CIP Was Chosen By Inmarsat To Be The Acquiring Party

Under Canadian corporate law, Stratos was required to detail in the *Proxy Circular* to its shareholders the negotiations that led to the transaction. ^{20/} The *Proxy Circular* explains to the Stratos shareholders (but the *Narrative* did not explain to the Commission) that Inmarsat was the party that initiated the discussions with Stratos which led to this transaction, negotiated the sales price and developed the plan to use another company as legal acquirer along with the trust mechanism. ^{21/} Even after CIP was chosen by Inmarsat to be the acquiring party, Inmarsat alone continued the principal negotiations with Stratos. ^{22/} Inmarsat's role in negotiating and shaping this transaction is evidence that it is the real-party-in-interest.

Specifically, as documented in the *Proxy Circular*, Inmarsat alone initiated negotiations with Stratos in May 2006, originally proposed as a trilateral deal involving Inmarsat's acquisition of both Stratos and Telenor Satellite Services ("TSS"). ^{23/} A Special

^{20/} See *Proxy Circular* at 14-16.

^{21/} See *id.*

^{22/} See *id.* at 15-16.

^{23/} *Proxy Circular* at 14 ("On May 18, 2006 Andrew Sukawaty, Chairman and Chief Executive Officer of Inmarsat plc, Rupert Pearce, General Counsel of Inmarsat plc, Perry Melton, Vice-President, Sales and Marketing of Inmarsat plc, and Inmarsat plc's financial advisers visited Stratos in Bethesda, Maryland. The Inmarsat plc representatives met with Jim Parm (President and Chief Executive Officer), Al Giammarino (Executive Vice-President and Chief Financial Officer), Richard Harris (Chief Legal Officer) and David Oake (Executive Vice President, Corporate Development) of Stratos to discuss a possible transaction.... These initial talks amongst the parties contemplated a possible trilateral transaction involving Inmarsat plc, Stratos and TSS....").

Committee of the Stratos Board was formed to evaluate acquisition proposals, which Committee retained Bear Stearns as financial advisor. 24/ As part of negotiations with Stratos, Inmarsat executed a confidentiality agreement and was required to present to Stratos an evaluation of its value. 25/ Once it was announced that Apax France (an affiliate of the Petitioner here) would acquire TSS, it was Inmarsat who suggested and worked with Stratos to refine a bilateral agreement between Stratos and Inmarsat, using an intermediary acquirer and trust. 26/ It was to Inmarsat alone that Stratos made a presentation as to its value. 27/ Even after “Inmarsat plc had decided to work on an exclusive basis with CIP to structure and develop an acquisition proposal for Stratos,” 28/ Inmarsat continued to meet with Stratos without the participation of CIP to work out the details of the acquisition. 29/ Only Inmarsat and Stratos are identified as negotiating the

24/ *Id.*

25/ *Id.* at 14-15.

26/ *Id.* at 15 (“Mr. Sukawaty [Chairman and Chief Executive Officer of Inmarsat] approached Mr. Parm [President and Chief Executive Officer of Stratos] about a possible bilateral transaction whereby Inmarsat plc would finance an independent third party’s acquisition of Stratos in return for a call option to later acquire Stratos exercisable by Inmarsat plc after April 14, 2009 (the date of expiry of the [Commercial Framework Agreement]); “During the period of October 2006 to January 2007, Inmarsat plc and Stratos developed and refined a transaction structure whereby an independent entity would offer to acquire Stratos, but with the voting rights attached to the Common Shares to be exercised by an independent third party trustee pursuant to the terms of a trust agreement.”).

27/ *Id.* (“On November 21, 2006, a meeting took place in Washington, D.C. at which management of Stratos made a presentation regarding the Corporation’s business to senior representatives of Inmarsat plc and its financial advisers. At the end of the meeting, Inmarsat plc indicated that it wished to proceed with additional due diligence to be in a position to submit a non-binding indication of interest to participate in a transaction involving the acquisition of Stratos by a third party and to provide the preliminary indication of value as contemplated by the confidentiality agreement.”).

28/ *Id.*

29/ *Id.* at 16 (“On January 4, 2007, Messrs. Sukawaty and Pearce, together with Rick Medlock, Chief Financial Officer of Inmarsat plc, met with Charles Bissegger, Chairman of the Board of Directors [of Stratos], and Jim Parm [President and Chief Executive Officer of Stratos] in Washington, D.C., and presented a preliminary indication of interest to offer to finance the

price to be paid per Stratos share. 30/ Clearly, CIP was not seen by either Inmarsat or Stratos as having any say over the material terms of the transaction.

3. The Applicants Do Not Explain Why the First Phase Terms of the Inmarsat-CIP Loan Facility Are Such That No Arms-Length Lender Would Extend Such a Loan

The Applicants' selective summary of the transaction does recite the interest provisions of the Inmarsat-CIP Loan Facility. 31/ The description of the two-phase loan is damning evidence of the inevitability of Inmarsat's acquisition of Stratos and the corporate "golden handcuffs" CIP would be under in the interim. Specifically, phase one is a sweetheart deal of a below-prime interest rate (5.75 percent), 32/ no security, 33/ and with interest on a

(Continued . . .)

acquisition by the acquirer of Stratos at a price of C\$5.75 per share"; "on January 26, 2007, Bear Stearns [financial advisor to Stratos] met with representatives of Inmarsat plc and its financial advisers in London to discuss the terms proposed by Inmarsat plc on January 4, 2007.").

30/ *Id.* ("Bear Stearns advised Inmarsat plc that the Special Committee would not support a sale price of C\$5.75 per share. Inmarsat plc indicated that Inmarsat Finance would be willing to finance an increased CIP offer of C\$6.20 per share, and that a period of exclusivity would be required for Inmarsat plc to continue with due diligence and negotiate definitive agreements."; "On March 15 and 16, Bear Stearns and representatives of Inmarsat plc had further discussions about the sale price, and on March 16, 2007, following the close of the markets in Canada, Inmarsat plc indicated that Inmarsat Finance would be willing to finance an offer by CIP at C\$6.30 per share."; "following further discussions between Bear Stearns and Inmarsat plc, Inmarsat plc agreed that Inmarsat Finance would finance an increased CIP offer of C\$6.40 per share").

31/ *Narrative* at 7.

32/ The prime interest rate, as reported by the *Wall Street Journal*, is currently 8.25 percent. *See, e.g.*, <http://www.bankrate.com/brm/ratewatch/leading-rates.asp>.

33/ The *Proxy Circular* makes it clear that CIP currently has at best "minimal assets" *Id.* at 40 ("CIP Limited and [CIP Canada] are new investment companies whose initial investment will be (and only proposed current investment is) in Stratos. As a result, CIP Limited and [CIP Canada] have minimal assets. If CIP Limited and/or [CIP Canada] breach the Arrangement Agreement, Stratos can sue them, but there can be no assurance that CIP Limited and/or [CIP Canada] will have adequate property or assets to satisfy a judgment against them."). Nevertheless, upon consummation of the initial phase of the proposed transaction, CIP will be the beneficial owner of Stratos, and thus one would expect a truly arms-length lender to secure its substantial loan with a security interest in the Stratos assets. That was not done here.

“paid in kind” basis until April 14, 2009, 34/ which Inmarsat’s Chief Financial Officer explained means “that the interest will be rolled up and added to the loan balance at the end of each interest period.” 35/ However, on April 14, 2009 (none too coincidentally the day the restrictive covenants on Inmarsat end), the loan terms suddenly get teeth. Interest is no longer automatically “paid in kind” and the loan facility becomes secured by an unspecified “security package.” 36/ On December 31, 2010 (when the call option expires), 37/ the interest rate doubles to an above-market rate of 11.5 percent. 38/

It is inconceivable that a *bona fide*, arms-length lender would extend a loan to CIP under the phase one terms of below-market interest, no security and no on-going interest payments, and the Applicants do not explain why Inmarsat’s doing so does not undermine the Applicants’ claim that CIP is independent of Inmarsat. Nor do the Applicants address the financial realities that CIP would face as of April 2009 when the onerous phase two terms kick in, unless CIP was relieved of the debt by Inmarsat’s acquisition of Stratos itself. 39/

34/ *Narrative* at 7.

35/ *See* Inmarsat investor and analyst conference call, March 19, 2007, Thomson StreetEvents Transcript at 5 (www.streetevents.com) (transcript available upon request) (“Inmarsat Investor Conference Transcript”).

36/ *Narrative* at 7.

37/ *Id.* at 8.

38/ *Id.* at 7.

39/ A standard, arms-length loan agreement would allow the debtor to pre-pay the outstanding balance without penalty, thus allowing re-financing with a third party. The *Narrative* does not address whether a pre-payment clause is written into the Inmarsat-CIP Loan Facility.

4. The Applicants Have Not Told the Commission that Inmarsat Is Borrowing Money from Third Party Bankers At a Higher Interest Rate Specifically to Fund the Inmarsat-CIP Loan Facility

The *Proxy Circular* states: “Pursuant to the Letter Agreement, Inmarsat plc has also agreed to cause Inmarsat Finance to enter into a definitive facility agreement with Inmarsat plc’s third-party lenders and a separate definitive facility agreement with CIP Limited and [CIP Canada], in each case no later than one business day prior to the Meeting, in order to enable [CIP Canada] to fulfill its payment obligations under the Arrangement Agreement.” ^{40/} It is further explained: “In order to provide the loan facility to CIP Limited, Inmarsat Finance has also entered into a US\$411.5 million borrowing facility agreement with three banks. Borrowings under this facility will be structurally subordinated to all of Inmarsat plc’s other outstanding indebtedness, but will be guaranteed by Inmarsat plc. Subject to consummation of the Arrangement, Inmarsat Finance expects to draw \$260 million (U.S.) of the facility to fund the loan to CIP Limited contemplated by the Commitment Letter and to pay fees and expenses of the transaction.” ^{41/}

Thus, Inmarsat is borrowing from Peter to pay Paul. And Inmarsat is borrowing that money at market rates that will cost Inmarsat almost \$5 million in interest a year. ^{42/} Nor

^{40/} *Proxy Circular* at 35.

^{41/} *Id.* Likewise, if additional financing is needed to re-finance Stratos’ existing credit facility, Inmarsat has covenanted that it will obtain third party financing to funnel through CIP to Stratos. *Id.* at 33-34 (“Inmarsat plc will procure third-party financing sufficient to enable Inmarsat Finance to fund its obligations under the facility agreement with CIP Limited and [CIP Canada] related to the refinancing of the Stratos Credit Facility.”). Note that the *Narrative*, which states at page 7 that “CIP UK may draw up to \$250 million to fund the costs of CIP Canada’s acquisition of Stratos,” is inconsistent with the *Proxy Circular* statements that the full purchase amount, then estimated at \$260 million (U.S.), will be funded through the Inmarsat Finance loan. See *Proxy Circular* at 33-34.

^{42/} Inmarsat Investor Conference Transcript at 5 (Inmarsat Chief Financial Officer explains: “the impact will really be on Inmarsat in the net interest expense line and this arises as a result of Inmarsat III’s bank facility [with third party lenders], which will incur interest at a higher rate

will Inmarsat's interest to its third party lenders be paid-in-kind like the deal it extended to CIP, but instead will be cash paid to Inmarsat's lenders. ^{43/} Inmarsat is subsidizing its loan to CIP for the acquisition of Stratos on non-arms-length terms – an action that only makes sense in the context of Inmarsat's overall control of Stratos itself. Furthermore, with this substantial out-of-pocket investment in the CIP interest subsidy, ^{44/} the exercise by Inmarsat of its option is all the more inevitable.

5. The Applicants Have Not Explained to the Commission How Covenants and Reporting Conditions of the Inmarsat-CIP Loan Facility and Other Permitted Communications Would Not Undermine the Purported Insulation Provisions of the Trust Agreement

In creating a “trust,” the parties attempt to suggest that Inmarsat's influence over Stratos will be limited pending exercise of the option in April 2009. However, because the parties have not supplied the Inmarsat-CIP Loan Facility in the record, the Commission cannot determine whether and to what extent it contains covenants giving Inmarsat a degree of influence and/or control over the business of Stratos, and thereby negating the insulation provisions of the Trust Agreement. That Loan Facility probably gives Inmarsat rights to review Stratos' records and communicate on a regular basis with Stratos management. Moreover, leaving aside Inmarsat's rights as creditor, the Trust Agreement recognizes that Stratos and Inmarsat will have routine business dealings consistent with the reality that Inmarsat is the primary wholesale supplier of the services that Stratos sells.

(Continued . . .)

than we record on the interest on the loan investment with CIP UK. At current LIBOR rates, the annual impact will be approximately \$4.7 million of additional interest charge.”).

^{43/} *Id.* (Inmarsat Chief Financial Officer states: “interest in cash will be paid on the loan by Inmarsat III, whilst the loan to CIP UK will be payment in kind or PIK notes”).

^{44/} Indeed, Inmarsat's Chief Financial Officer stated that the Inmarsat loan to CIP would be reflected on the Inmarsat balance sheet as an “investment.” *See id.* He did not explain why, as a loan, it would not be reflected as a long-term debt asset.

What little is on the record strongly suggests that the Inmarsat-CIP Loan Facility is inconsistent with the nominal insulating provisions of the Trust Agreement. On the one hand, the Trust Agreement purports to bar the directors of Stratos from communicating with Inmarsat. ^{45/} On the other hand, that ban is subject to the proviso “that any officer of [Stratos] who is also a director may communicate with Inmarsat and its officers, employees and Affiliates regarding commercial matters in the ordinary course of business between [Stratos] and Inmarsat and their respective Affiliates.” ^{46/} Nowhere do the Applicants suggest that the “ordinary course of business” would not include communications with their lender – Inmarsat Finance – about every aspect of the Stratos business, because, after all, how the business is doing impacts the loan facility. Nor do the Applicants contend that Inmarsat and Stratos management would be hampered in any way under the Trust Agreement from communicating on distribution deals, as being in the “ordinary course of business.” Clearly, it is contemplated that there will be regular communications between Inmarsat and Stratos management, and the Trust Agreement is not intended to restrict those communications in any way.

6. The Applicants Did Not Explain Why, if the Transaction Is Arms-Length, CIP Would Extend a Fixed-Price Option to Inmarsat For Consideration of Less Than One Percent of the Current Value of Stratos Stock

As noted above, the Applicants did inform the Commission that Inmarsat Finance has been granted “a call option to acquire the stock of CIP UK, which is generally exercisable over a seventeen-month period beginning in April 2009 and ending on December 31, 2010.” ^{47/}

^{45/} See Trust Agreement, Section 4b at 6 (at Appendix C to *Narrative*).

^{46/} *Id.*

^{47/} *Narrative* at 2. The Applicants state that Inmarsat Finance “is a special purpose company established by its direct parent company, Inmarsat, to provide debt financing to CIP to fund the acquisition of Stratos.” *Id.* at 5. In other words, Inmarsat Finance was formed by Inmarsat just for the purposes of this transaction.

While the Call Option Agreement is not supplied to the Commission, the Applicants state that the call option was granted for a payment of \$750,000, and “the exercise price for the call option will be between \$750,000 and \$1,000,000, depending on when the call option is exercised.” 48/ Presumably, these are U.S. dollar figures.

Thus, as reported by the Applicants, as of April 2009, Inmarsat Finance, solely at its own option and without any further consent from CIP, at a fixed price not to exceed \$1 million, may acquire in its entirety CIP UK, “at which time the Trustee will transfer the shares [of Stratos] to CIP Canada [the CIP UK subsidiary].” 49/ Adding in the \$750,000 option payment already made, that means that Inmarsat Finance would acquire Stratos for a total consideration not to exceed \$1.75 million.

What is the current market value of the Stratos common stock? There are varying statements as to the total consideration that would be paid (with Inmarsat Finance funds) to the shareholders of Stratos for their stock under the first phase of the transaction: the *Narrative* suggests \$250 million; 50/ the *Proxy Circular* estimates \$260 million (U.S.) based on a payment of \$6.40 (Canada) for each of the 41,998,207 outstanding shares of common stock of Stratos; 51/ and the *Stratos News Release* of June 12, 2007, implies consideration in U.S. dollars of \$275 million based on an increase of the per share payment to \$7.00 (Canada). 52/

For argument’s sake, we can assume the lowest valuation of the outstanding Stratos stock: \$250 million (U.S.). So, in U.S. dollars, for a total payment of \$1.75 million,

48/ *Id.* at 8.

49/ *Id.*

50/ *Id.* at 7.

51/ *Proxy Circular* at 35.

52/ *Stratos News Release*. At \$7.00 (Canada) per share, total Canadian consideration would be \$293,987,449. At an exchange rate of 0.9356, that would be \$275,063,115 (U.S.).

Inmarsat will acquire 100 percent of the Stratos stock for only 0.7 percent of its current fair market value. Assuming the maximum \$1 million payment at the exercise of the option, the money left on the table to be paid CIP by Inmarsat Finance for the Stratos stock is just 0.4 percent of the current value of the stock. Why, if CIP is an independent entity negotiating at arms-length with Inmarsat, is it locking itself into a fixed-price option at so marginal a payment? The only logical conclusion is that CIP and the Trust will have no material interest in the operations of Stratos independent of Inmarsat.

The Commission has long been concerned with fixed-price options that do not give the optioned party the benefit of fair market value at the time of consummation, and thus take away the incentive to operate the business competitively in the public interest while the option is outstanding. Lacking any chance to share in upside gain, the party in *de jure* control of the licensee has no incentive to aggressively compete in the market or to innovate or to take other potentially beneficial business risks. For example, as stated in its 1995 interim policy (in force pending revisions to the Commission's attribution policy), the Mass Media Bureau will not approve options held by programmers of broadcast stations if the option "involve[s] upfront payments of all, or substantially all, of the station's value." ^{53/} Here, Inmarsat has in effect paid upfront over 99.6 percent of the value of the Stratos stock via its financing of the stock acquisition by CIP, with an inconsequential payment to be made at the back-end. There is no reason for management or the Trustee ^{54/} to do anything more than maintain the *status quo* and

^{53/} *Public Notice*, "Processing of Applications Proposing Local Marketing Agreements," Report No. 54161, 1995 FCC LEXIS 3593 (MMB rel. Jun. 1, 1995) ("*LMA Public Notice*").

^{54/} It is noteworthy that the Inmarsat loan is not the only below-market element to this transaction. The Trustee is being tasked with running a multi-national corporation, whose stock alone is worth at least \$250 million, but will not be compensated at the market rate as established by Stratos' current Chief Executive Officer ("CEO"); rather, the Trustee's services will be obtained for nearly half that of the CEO's salary, with no indication that there will be any

do Inmarsat's bidding. Even that effort is unnecessary; Inmarsat already bears all the economic risk in Stratos through the acquisition loan. Even if the value of Stratos slides downhill by April 2009, Inmarsat is all but compelled to exercise its option, paying relative pennies at that point.

Ironically, the Applicants claim "Stratos will continue to have the ability to expand its business, to the benefit of both existing and future customers." ^{55/} In reality, neither the Trustee nor the CIP principals appear to have any financial incentive to do so.

7. The Applicants Have Not Demonstrated that the CIP Principals Have Any Material Equity Stake in CIP/Stratos

Another important fact not disclosed by the Applicants is the amount of the equity contributions by the CIP principals, which would be illuminating as to whether they have a material financial stake in CIP, and therefore they, or their Trustee, acting on their behalf, would have a sufficient incentive to ensure that Stratos operates so as to maintain its FCC licenses. The Commission has often looked to a putative controlling party's financial stake to determine if there is an unauthorized real-party-in-interest. ^{56/} Moreover, the Commission has recognized that significant contributors of debt, as well as contributors of equity, can have influence over the licensee so as to require approval of their participation. ^{57/}

(Continued . . .)

incentive bonuses, as extended to the current CEO. *Compare Proxy Circular* at 46 (Stratos CEO base salary is \$418,000 (U.S), plus incentive bonuses) *with* Trust Agreement, Section 7b at 10 (*Narrative* at Appendix C) (Trustee salary of \$20,000 per month; no incentive bonuses).

^{55/} *Narrative* at 11.

^{56/} *See, e.g., Trinity Broadcasting of Florida, Inc.*, 14 FCC Rcd 13570, 13583 [¶¶ 29-30] (1999).

^{57/} *See Review of the Commission's Regulations Governing Attribution of Broadcast and Cable/MDS Interests*, Report and Order, 14 FCC Rcd 12559, 12580 [¶ 39] (1999) ("*Attribution R&O*"), *recon. granted in part and denied in part, Attribution MO&O*, 16 FCC Rcd 1097 (2001) ("*Attribution Recon. Order*").

What we do know from the Applicants is that CIP Canada is an indirect subsidiary of CIP Limited, a British Virgin Island limited partnership with five equity holders. 58/ It is stated that “[e]ach of these individuals holds a 20% equity and voting interest in CIP [Limited].” 59/ No statement is made, however, as to what cash amounts each of the five individuals paid in as capital, or whether such funds were drawn on personal accounts with no assistance from Inmarsat. It is admitted, in an Appendix to the *Narrative*, that “CIP [Limited] is a new investment company whose initial investment will be (and only proposed current investment is) in Stratos,” 60/ suggesting that the assets of CIP Limited and its subsidiaries would be solely the capital contributions made by its five equity partners, plus the \$750,000 option payment made by Inmarsat Finance.

The Applicants cite to a 1997 Commission case in the broadcast area, *WWOR-TV, Inc.*, 61/ and a note to Section 73.3555 of the Commission’s rules governing broadcast multiple and cross ownership restrictions, 62/ in support of their assertion that Inmarsat’s call option does not give it “any equity interest in Stratos, or control over its management or policies.” 63/

What the Applicants miss, however, is that another Commission rule note, as well as long-standing policies first formulated by the Commission in the broadcast context, mandate that the Commission find that Inmarsat’s loan or call option – either standing alone and certainly the two together – would give Inmarsat influence over CIP equivalent to an outright equity interest, thereby conferring *de facto* control over the Commission licensee.

58/ See *Narrative* at 1, 4.

59/ *Id.* at 4.

60/ *Narrative* at Appendix E at 2.

61/ *Narrative* at 8 n.8 (citing 6 FCC Rcd 6569 (1991)).

62/ *Id.* (citing 47 C.F.R. § 73.3555, note 2(e)).

63/ *Id.* at 8.

Indeed, the very Commission rule cited by the Applicants, Section 73.3555, includes another note of more relevance here. Specifically Note 2(i) 64/ sets forth the “equity-debt plus” attribution policy. The Commission established this policy to identify those interests in or relationships with licensees that “confer on their holders a degree of influence or control such that the holders have a realistic potential to affect the programming decisions of licensees or other core operating functions.” 65/ In defining those interests, the Commission determined that equity or debt interests held by certain parties, and totaling more than 33 percent of a licensee’s “total asset value,” were likely to confer such influence or control, and thus would be attributable. 66/ Specifically, the Commission set out specific definitions of these terms: “total asset value” equals the total of equity plus debt of a licensee or its parent; “equity” means all stock (whether common or preferred, voting or nonvoting) or equity held by insulated limited partners; and “debt” includes all short- or long-term liabilities. 67/

Thus, holders of debt that account for more than 33 percent of the total asset value of the entity are, when coupled with one of the “plus” factors of the equity-debt plus policy, 68/ considered to have sufficient influence and control over the licensee as to require subjecting such holders to the limits of multiple and cross ownership rules.

Here, while the Applicants have kept the Commission in the dark as to the amount of equity contribution of the five individual owners of CIP Limited, given the nominal amount

64/ 47 C.F.R. § 73.3555, note 2(i).

65/ *Attribution R&O*, 14 FCC Rcd at 12560 [¶ 1].

66/ *Id.* at 12579 [¶ 36].

67/ *Id.*

68/ The “plus” factors in the broadcast context are (a) supplying over 15 percent of a station’s total weekly broadcast programming hours, or (b) a same-market media entity subject to the broadcast multiple ownership rules. *See* Note 2(i) to 47 C.F.R. §73.3555.

they would recoup upon consummation of the Inmarsat call option, it is inconceivable that their collective equity contributions would not be dwarfed by the minimum \$250 million loan from Inmarsat Finance. 69/ While the Petitioner here is forced by the lack of documentation in the docket to surmise that Inmarsat's contributions to the CIP balance sheet through the loan and option payment greatly outweigh the equity contributions by the CIP principals, the Commission need not and should not guess, but instead should direct the Applicants to document the relative CIP balance sheet contributions and the sources of those funds (such as any loans to CIP individuals to fund their equity contributions). With a significant degree of domination over the CIP balance sheet, plus the competitive concerns of Inmarsat's investment in Stratos (*see* below), 70/ the Commission must consider Inmarsat a party to this proposed transaction. 71/

A Commission case that bears striking similarities to the facts here is *Edwin L. Edwards*. 72/ There the Commission found an unauthorized transfer of control when, *inter alia*, the real-party-in-interest loaned almost all the acquisition cost for station acquisitions by a

69/ Under the "equity-debt plus" policy, the FCC also includes the amount of consideration paid for an option in calculating the percentage of total assets attributable to a party. *Attribution Recon. Order*, 16 FCC Rcd at 1112-13 [¶ 32]. Thus, the \$750,000 option payment made by Inmarsat Finance to CIP counts in addition to the \$250 million loan amount.

70/ The broadcast multiple and cross ownership rules have traditionally fostered the Commission's goal of promoting competition, as well as diversity and localism, in the broadcast services. *See, e.g., 2002 Biennial Regulatory Review - Review of the Commission's Broadcast Ownership Rules and Other Rules*, 18 FCC Rcd 13620, 13624 [¶ 8] (2003) ("2002 Biennial Regulatory Review"), *aff'd in part and remanded in part, Prometheus Radio Project, et al. v. FCC*, 373 F.3d 372 (3d Cir. 2004), *cert. denied*, 125 S. Ct. 2902, 125 S. Ct. 2903, 125 S. Ct. 2904 (2005).

71/ Of course, not being in the broadcast context, there is not a "plus" factor here involving programming or local broadcast interests. The broadcast "plus" factors were designed to bring under the ownership restrictions entities and individuals who are in the position to impact the market and who have the motive to avoid being a party to the FCC licensee. Here, Inmarsat has the motive to avoid being considered a party to the Applications, both because of its contractual constraints and because of competitive concerns that would negatively impact the market, as discussed below.

72/ 16 FCC Rcd 22236 (2001).

purportedly in-control third party and obtained an option from the licensee with a very small payment due upon exercise. ^{73/} The Inmarsat loan, dwarfing by a huge magnitude the option consideration, appears to constitute the vast majority of the balance sheet of CIP, just like the financial undertaking by the unauthorized controlling party in *Edwards*. Also a factor in the Commission finding of unauthorized control in *Edwards* was that the debtor-creditor relationship did not reflect an arms-length agreement: in *Edwards*, just as here, the interest rate was below market rate and the loan was unsecured. ^{74/}

The Commission is well aware that options, along with debt financing, particularly at non-market rates, are features often associated with an unauthorized real-party-in-interest. For example, when the Commission tightened the definition of “radio markets” leading to certain radio station holdings exceeding the statutory limits, the Commission allowed only small business “eligible entities” to acquire existing over-limit combinations. ^{75/} To maintain the integrity of this exception, the Commission prohibited such eligible entities “from granting options to purchase, or rights of first refusal to prevent non-eligible entities from financing an acquisition in exchange for an option to purchase the combination at a later date.” ^{76/} Similarly, prior to revisions in its attribution policies which made certain broadcast programming agreements attributable, the Mass Media Bureau would not approve arrangements where an entity providing programming also sought to finance the station acquisition and to hold an option

^{73/} *Id.* at 22250 [¶ 26].

^{74/} *Id.* at 22244-45 [¶ 10].

^{75/} *2002 Biennial Regulatory Review* at 13811-12 [¶ 490].

^{76/} *Id.*

to purchase the station in the future. ^{77/} That these factors are all present here are alarm bells requiring further Commission inquiry.

8. The Applicants Failed to Inform the Commission that Inmarsat Is Guaranteeing CIP's Performance to Stratos

Because the Applicants did not supply a copy of the executed Letter Agreement between Stratos and Inmarsat, nor even mention it in their *Narrative*, the Commission was not informed by the Applicants that Inmarsat has covenanted to Stratos that if CIP fails to perform under the Arrangement Agreement (for the acquisition of Stratos stock), Inmarsat will step into the breach and cure the default, even to the extent of securing a substitute purchaser. ^{78/} Taking on a third party's contractual obligations and liabilities by guaranteeing to fix their default under a purchase agreement is hardly indicative of an arms' length arrangement. It is yet further evidence that CIP is not a *bona fide* party independent of Inmarsat. ^{79/}

C. The Record Before The Commission Supports Denial of the Applications

Viewed together, all of Inmarsat's entanglements in this matter demonstrate that it is the real-party-in-interest. In public statements, Inmarsat has acknowledged its role as the driving force in negotiations with Stratos, and has characterized itself as "bidding" for the company. This is borne out by a collective review of the few admissions made in the Applications, along with information from the *Proxy Circular* sent to Stratos shareholders, which

^{77/} *LMA Public Notice.*

^{78/} *See Proxy Circular* at 33 ("the Letter Agreement provides that Inmarsat plc shall use reasonable best efforts to assist CIP Limited and [CIP Canada] to perform their obligations under the Arrangement Agreement and to collaborate with Stratos to remedy any material breach of the Arrangement Agreement by CIP Limited or [CIP Canada], including, if such breach cannot be remedied, seeking a suitable replacement acquirer of Stratos so that the Arrangement can be completed without a material delay").

^{79/} Another means by which Inmarsat is insulating CIP from all financial risk is that the Inmarsat loan to CIP covers not just the payments to Stratos shareholders for their stock, but also all the "fees and expenses of the transaction." *See Inmarsat Investor Conference Transcript* at 3.

point over and over again to Inmarsat as the real-party-in-interest behind CIP: Inmarsat negotiated the material terms of the acquisition and selected CIP as the acquirer; Inmarsat is financing the acquisition of the Stratos stock from its current shareholders (plus any additional draws relating to the current Stratos credit facility and bonds) at a below-market interest rate and other unusually-favorable terms, doing so by borrowing funds from third party lenders at market rates; Inmarsat will have a loan agreement with CIP that may give it reporting rights and covenants conferring influence and control; Inmarsat is guaranteeing the obligations of CIP to Stratos; Inmarsat has a fixed-priced option to acquire the Stratos stock for a fraction of its market value; and only Inmarsat appears to have a financial stake in CIP, investing the vast majority of the balance sheet of that new venture.

In these circumstances, the Commission has no choice but to deny the Applications as filed. Section 310(d) of the Communications Act provides that no station license shall be transferred or assigned until the Commission, upon application, determines that the public interest, convenience, and necessity will be served thereby. ^{80/} In making this assessment, the Commission must first determine whether the proposed transaction would comply with the specific provisions of the Act, other applicable statutes and the Commission's rules. ^{81/}

^{80/} 47 U.S.C. § 310(d). Section 310(d) requires that the Commission review the transferee as if it were applying for the licenses directly. *See SBC Communications Inc. and AT&T Corp. Applications for Approval of Transfer of Control*, 20 FCC Rcd 18290, 18300 [¶16] (2005) (“*SBC-AT&T Order*”); *Verizon Communications, Inc. and MCI, Inc. Applications for Approval of Transfer of Control*, 20 FCC Rcd 18433, 18442-43 [¶16] (2005) (“*Verizon-MCI Order*”); *Applications of Nextel Communications, Inc. and Sprint Corporation*, 20 FCC Rcd 13967, 13976 [¶20] (2005) (“*Sprint-Nextel Order*”).

^{81/} *See, e.g., SBC-AT&T Order*, 20 FCC Rcd at 18300 [¶16]; *EchoStar Communications Corp., General Motors Corp. and Hughes Electronics Corp., and EchoStar Communications Corp., Hearing Designation Order*, 17 FCC Rcd 20559, 20574 [¶25] (2002) (“*EchoStar-DIRECTV HDO*”).

As it now stands, the record before the Commission requires the denial of the Applications because the only conclusion reasonably drawn from the many contractual ties binding Inmarsat with CIP, Stratos and the Trust is that Inmarsat would be in *de facto* control of Stratos. At the least, the Commission should require Inmarsat to supply all of the documents relevant to this transaction, and designate the Applications for hearing to investigate Inmarsat's role here.

II. THE PROPOSED TRANSACTION RAISES COMPETITIVE CONCERNS WARRANTING DENIAL OF THE APPLICATIONS

Even regardless of whether the Commission concludes that the proposed transaction represents an unauthorized transfer of control of Stratos to Inmarsat, the Applications must be denied because the public interest harms of the transaction outweigh any public benefits. The proposed financing and option arrangements would give both Inmarsat and Stratos strong incentives to discriminate, harming other Inmarsat distributors and their customers. Furthermore, these significant competitive harms would not be offset by any meaningful public interest benefits. ^{82/} Accordingly, the Commission must find that the Applicants have failed to make the required demonstration that the transaction would serve the public interest.

^{82/} Commission consideration of the impact of the transaction on competition is particularly important here, because it appears the parties may have structured the transaction with a view toward avoiding or limiting review of Inmarsat's intended acquisition of Stratos under U.S. antitrust law. In particular, it is possible that the parties will argue that step two of the proposed transaction, in which Inmarsat would exercise its option to acquire Stratos, would not be subject to a clearance requirement under the Hart-Scott-Rodino Antitrust Improvements Act (the "HSR Act"). For example, the parties could take the position that the acquisition price for Stratos should be based only on the \$750,000-\$1,000,000 payment associated with exercise of the option by Inmarsat and that the \$250 million in debt financing Inmarsat has committed should be ignored. Under that theory, the applicable thresholds for filing under the HSR Act would not be triggered by step two, and the parties could consummate that step without antitrust clearance.

If the parties are found to have deliberately structured the transaction in order to evade HSR review, however, that would be a violation of Section 801.90 of the HSR rules. *See* 16 C.F.R. § 801.90 ("Any transaction(s) or other device(s) entered into or employed for the purpose

The applicable standard of review here is well-recognized. Under Sections 214(a) and 310(d) of the Communications Act the Commission engages in “a balancing process that weighs the potential public interest harms of the proposed transactions against the potential public interest benefits. The Applicants bear the burden of proving, by a preponderance of the evidence, that the proposed transaction, on balance, serves the public interest.” ^{83/} The Commission’s “public interest evaluation necessarily encompasses the ‘broad aims of the Communications Act,’ which includes, among other things, preserving and enhancing competition in relevant markets, ensuring that a diversity of voices is made available to the public, and accelerating private sector deployment of advanced services.” ^{84/} In evaluating competitive effects of a proposed transaction, the Commission is informed by antitrust law, but is not limited by traditional antitrust principles, given the Commission’s broader public interest mandate. ^{85/} The Commission’s public interest analysis must consider the effect of the proposed transaction “on implementation of Congress’ pro-competitive, deregulatory policies aimed at developing and encouraging competitive markets, as well as the Commission’s well-established policies intended to carry out these Congressional mandates.” ^{86/} If the Commission is unable to

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of avoiding the obligation to comply with the requirements of the act shall be disregarded, and the obligation to comply shall be determined by applying the act and these rules to the substance of the transaction.”).

^{83/} *EchoStar-DIRECTV HDO*, 17 FCC Rcd at 20574 [¶25] (footnotes omitted).

^{84/} *Id.* at 25275 [¶ 26] (footnotes omitted).

^{85/} *Id.* at 25275-76, [¶ 27] (“The Commission and the Department of Justice (“DOJ”) each have independent authority to examine communications mergers, but the standards governing the Commission’s review differ from those of DOJ. DOJ reviews mergers pursuant to Section 7 of the Clayton Act, which prohibits mergers that are likely to substantially lessen competition in any line of commerce. The Commission, on the other hand, as stated above, is charged with determining whether the transfer of licenses serves the broader public interest.”) (footnotes omitted).

^{86/} *Id.* at 20586 [¶ 56].

find that the proposed transaction serves the public interest, or if the record presents a substantial and material question of fact, Section 309(e) of the Act requires that the applications be designated for hearing. 87/

Applying this framework here, it is clear that the parties have utterly failed to sustain their burden to demonstrate by a preponderance of the evidence that the proposed transactions would produce net public interest benefits. The *Narrative* does not adequately address the competitive threats posed here and provides no substantiation that any cognizable benefits to the public would result from the transaction.

Indeed, the Applicants attempt to assert the lack of public interest harm by hiding Inmarsat behind a curtain, just as they do in failing to identify Inmarsat as an applicant. The public interest analysis in the *Narrative* relies on the fiction that the asserted independence of the Trustee will prevent either Stratos or Inmarsat from taking actions to discriminate against other providers despite the strong economic incentives to do so provided by the structure of the transactions here. For example, the *Narrative* states that subsequent to acquisition of Stratos shares by the trust, “current Stratos management will have full latitude to operate the Stratos business in the best interests of the company.” 88/

There is no need to repeat here all of the discussion above regarding how the interests of Inmarsat and Stratos will intertwine, or how Inmarsat will have the incentive and ability to control Stratos for its own benefit. Suffice it to note that public statements made by Stratos concerning the transaction make clear that the company views the transaction as an acquisition by Inmarsat, noting that consummation will “eliminate potential risk associated with

87/ 47 U.S.C. § 309(e); see also *News Corp.-Hughes Order*, 19 FCC Rcd at 483 n.49; *EchoStar-DIRECTV HDO*, 17 FCC Rcd at 20574 [¶25].

88/ *Narrative* at 11.

renewal of [the Inmarsat] Distribution Agreements in April 2009.” ^{89/} The same presentation states that the transaction will “[p]romote [the] stability of Stratos’ business over the next few years,” implying that Stratos does not expect to continue dealing with Inmarsat on an arm’s length basis. ^{90/}

In addition, whatever efficacy the insulation provisions of the trust mechanism may have on the actions of Stratos management, the transaction terms impose no constraints on the ability of Inmarsat to discriminate in favor of Stratos. Inmarsat will clearly benefit if Stratos’ share of mobile satellite services distribution increases during the time when the trust is in place, so Inmarsat has strong incentives to provide preferential treatment to Stratos.

Other service providers and end users face serious harms if Inmarsat and Stratos act on these incentives to discriminate. For example, if Inmarsat gives Stratos access to satellite capacity, network capabilities or service enhancements on more favorable terms than are available to VIZADA and other Inmarsat service distributors, both competing distributors and their customers will be harmed. Prospective new entrants may also be deterred from introducing new options for consumers based on the perception that they will not be able to achieve service terms that are comparable to those available to Stratos. Similarly, Stratos actions that prefer Inmarsat over other underlying satellite capacity providers will skew competition and could result in reduced options for end users.

The anti-discrimination protections in the current distribution agreement may constrain Inmarsat’s ability to act on these incentives between now and the agreement’s expiration in April 2009. Even during this period, however, VIZADA and other Inmarsat

^{89/} See Stratos Global Corporation Investment Presentation (Mar. 19, 2007), available at <http://www.stratosglobal.com/documents/reports/AnalystPresentation.pdf>.

^{90/} *Id.*

distributors may not be fully protected because Inmarsat may be able to favor Stratos in ways not contemplated when the agreement was entered into. Moreover, once the agreement expires, Inmarsat will be free to discriminate in favor of Stratos, even if it has not been authorized to acquire Stratos outright.

It is important to note that these risks to competition would be presented by the transaction even if Inmarsat was not in a position to effectively control Stratos while its shares are held in trust. As discussed above, the available information on the transaction suggests that Inmarsat should be viewed as the transferee at this stage, but a finding of Inmarsat control is not necessary to conclude that competition will be harmed. Courts in antitrust cases arising under Section 7 of the Clayton Act have frequently condemned transactions where one company acquires partial control or a non-voting financial interest in a horizontal competitor or a vertical supplier or distributor. 91/

The Supreme Court's decision in *United States v. DuPont* ("DuPont I") directly addresses the anticompetitive effects of non-controlling interests in the vertical context. In that case, DuPont, a supplier of automotive finishes and fabrics for General Motors ("GM") vehicles, acquired a 23% stake in GM. The Court found that this interest, although insufficient to allow DuPont to control GM, gave both parties a financial incentive to exclude third party upholstery suppliers in favor of DuPont, thereby reducing competition in the car upholstery market. 92/ In a

91/ See, e.g., *Denver & Rio Grande Western*, 387 U.S. 485 (1967) (20% interest in competitor warrants Section 7 scrutiny by the ICC); *United States v. E. I. du Pont de Nemours & Co.*, 353 U.S. 586 (1957) ("DuPont I") (DuPont's 23% share of GM, DuPont's customer, impermissibly reduced competition); *United States v. Dairy Farmers of America*, 426 F.3d 850 (6th Cir. 2005) (a milk provider's non-voting equity interest in another milk provider violated Section 7); *United Nuclear Corp. v. Combustion Eng'g, Inc.*, 302 F. Supp. 539, 552-55 (E.D. Pa. 1969) (finding a Section 7 violation where defendant acquired 21% of the stock of a competitor and supplier).

92/ *DuPont I*, 353 U.S. at 607. GM was not, of course, the only maker or cars and buyer of

subsequent decision in the proceeding, the Supreme Court rejected the lower court's attempt on remand to address the competitive harms by limiting DuPont's ability to exert influence over GM's decisions. ^{93/} The Supreme Court found this remedy inadequate because it would not have unwound the common financial interests between the companies and would have been exceedingly difficult to enforce. ^{94/} Similarly here, the trust provisions intended to keep Inmarsat from directly influencing Stratos' actions do not address the underlying financial incentives created by the option agreement.

Courts have also made clear that debt investments, without any voting rights or rights of control, can have sufficient anticompetitive effects to trigger scrutiny under Section 7 of the Clayton Act. ^{95/} In light of this precedent, the Applicants' failure here to meaningfully address the competition issues raised by the transaction simply cannot be justified.

Instead, the Applicants attempt to dismiss in just a few sentences the idea that the transaction could raise competitive concerns. They argue that the Commission has found that vertical integration of the kind that would result from Inmarsat's control over Stratos can create

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automotive finishes when this case was adjudicated. Like Inmarsat, it was one of several large companies capable of adversely affecting downstream markets.

^{93/} *United States v. E. I. DuPont de Nemours & Co.*, 366 U.S. 316, 331-34 (1961) (“*DuPont I*”) (on remand from *DuPont I*, the trial court entered an order against DuPont forbidding it from influencing the choice of GM's directors and officers, directly exercising its voting rights in GM stock, or entering into any preferential trade agreements with GM).

^{94/} *Id.*

^{95/} *See, e.g., Metro-Goldwyn-Mayer Inc. v. Transamerica Corp.*, 303 F.Supp. 1344 (S.D.N.Y. 1969) (loan secured by security interest in stock violated Section 7); *Mr. Frank, Inc. v. Waste Management, Inc.*, 591 F.Supp. 859 (N.D. Ill.1984) (finding that a debt investment warranted Section 7 scrutiny); *see also* United States Department of Justice, Antitrust Division Policy Guide to Merger Remedies (2004) (noting for divestiture remedies that seller financing is disfavored because seller may effectively retain control over the asset in question, and because the seller will have financial incentives to collude with the owner of the divested asset).

efficiencies and reduce transaction costs. ^{96/} This discussion, however, conveniently ignores the numerous cases in which the Commission has addressed the competitive risks created by vertical integration and concluded that those risks required protective action by the Commission to prevent abuses. ^{97/} One particular concern in this context has been the possibility of a “price squeeze,” in which a vertically integrated supplier raises prices to drive competing distributors out of the market. ^{98/} Once the protections of the current distribution agreement expire, Inmarsat will be in a position to engage in this type of behavior.

Commission precedent also requires a balancing of prospective benefits against harms of a transaction as part of the public interest analysis. The Commission must consider the negative impact on competition raised by the incentives and ability to discriminate associated with the proposed transaction. Here, however, the *Narrative* does not present any evidence of significant countervailing benefits to the public that would result from the transfer of Stratos to the trust.

^{96/} *Narrative* at 14.

^{97/} See, e.g., *Applications for Consent to the Assignment and/or Transfer of Control of Licenses from Adelphia Communications Corporation to Time Warner Cable Inc., from Adelphia Communications Corporation to Comcast Corporation, from Comcast Corporation to Time Warner Inc., and from Time Warner Inc. to Comcast Corporation*, 21 FCC Rcd 8203, 8238 [¶ 71] (2006) (“a vertically integrated firm that competes both in an upstream input market and a downstream output market may have the incentive and ability to (1) foreclose rivals from inputs or customers or (2) raise the costs to rivals generally”); *id.* at 8284 [¶ 181] (adopting conditions to address applicants’ “incentive and ability to discriminate against unaffiliated” providers); *Merger of MCI Communications Corporation and British Telecommunications plc*, 12 FCC Rcd 15351, 15410 [¶ 155] (1997) (describing harms to end users that can result from vertical integration, including price and non-price discrimination in the provision of necessary inputs and predatory price squeezes).

^{98/} See, e.g., *Americatel Corporation and Telecom Italia of North America, Inc.*, 18 FCC Rcd 26811, 26823 [¶ 22] (IB 2003) (denying carrier’s request for non-dominant treatment in part because of concern about the threat of price discrimination in the form of a predatory price squeeze).

The Commission's decisions make clear that to be entitled to consideration, any asserted benefits of a transaction must be to public, not private interests. ^{99/} Furthermore, claimed benefits must be transaction specific and verifiable and must mitigate any anticompetitive effects of the transaction. ^{100/} Finally, the Commission "applies a sliding scale approach to evaluating potential benefits, under which it will require applicants to demonstrate that claimed benefits are more likely and more substantial, the greater the likelihood and magnitude of potential harms." ^{101/}

The *Narrative* introduces no evidence of public interest benefits that would satisfy these standards. The Applicants claim that the proposed transaction will allow "existing Stratos shareholders to sell their shares quickly," while permitting review of the qualifications of the ultimate planned owner of Stratos to be deferred. ^{102/} These asserted benefits are clearly to private, not public, interests, and are not specific to the transaction proposed here.

The Applicants' statements regarding operation of Stratos during the period the shares are held in trust – even if accepted at face value – likewise fail to demonstrate any cognizable benefits to the public under Commission precedent. The *Narrative* alleges that Stratos management "will have full latitude to operate the Stratos business in the best interests of the company," and "will continue to execute Stratos' current business strategy," allowing Stratos to expand its business "to the benefit of both existing and future customers."^{103/} As discussed

^{99/} See *EchoStar-DIRECTV HDO*, 17 FCC Rcd at 20586 [¶ 57] (efficiencies that would benefit the parties but not the public are not relevant to Commission review).

^{100/} *Id.* at 20630-31 [¶¶ 189-91].

^{101/} *Id.* at 20631 [¶ 192].

^{102/} *Narrative* at 10-11. See also *id.* at 11 (the "transaction provides a substantial opportunity to the Stratos public shareholders to sell their shares quickly and at a fair price") (footnote omitted).

^{103/} *Id.*

above, the financial relationships created here cast doubt on these assertions given the strong incentives Stratos' management will have to conform to Inmarsat's wishes. But even if the statements were true, they do not suggest that transaction-specific public benefits will result from the proposed transfer, since they imply that Stratos operations will continue as they do today.

In any event, none of these alleged benefits is verifiable, and none would in any way mitigate the harms to competition the transaction would create. Finally, the significance of the harms presented requires the Commission to impose a stricter standard in evaluating any evidence of benefits under the sliding scale discussed above. The flimsy statements in the *Narrative* clearly do not meet this test.

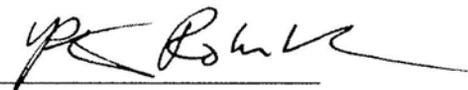
Given the clear risks to competition and harms to rival operators and their customers that would stem from the proposed transaction and the absence of evidence of material, relevant, public benefits, the Commission must conclude that the proposed transactions would not serve the public interest, convenience and necessity.

III. CONCLUSION

For the reasons set forth herein, the Petitioner respectfully submits that the Commission should deny the Applications or designate them for hearing. In no event are the Applications suitable for grant currently on the record before the Commission.

Respectfully submitted,

VIZADA SERVICES LLC

By: 

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Karis A. Hastings
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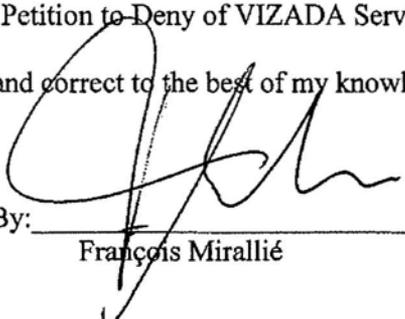
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Its Counsel

June 29, 2007

DECLARATION

I, François Mirallié, Manager of VIZADA Services LLC, hereby declare under penalty of perjury that I have reviewed the foregoing Petition to Deny of VIZADA Services LLC and that the factual statements made therein are true and correct to the best of my knowledge, information and belief.

By: 
François Mirallié

June 29, 2007

CERTIFICATE OF SERVICE

I, Maggie Sklar, hereby certify that on this 29th day of June, 2007, I caused to be served a true copy of the foregoing "Petition to Deny of VIZADA Services LLC" by electronic mail and by first-class, postage-prepaid U.S. mail upon the following:

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