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July 31, 2007

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**VIA HAND DELIVERY**

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

**Re: In the Matter of Stratos Global Corporation and Robert M. Franklin,  
Trustee  
WC Docket No. 07-73**

Dear Ms. Dortch:

Enclosed for filing please find two copies of the Redacted Version of the Reply of Iridium Satellite, LLC in the above-referenced docket.

This filing contains confidential information. Pursuant to the terms of the Protective Order<sup>1</sup> adopted in this proceeding, Iridium is filing two copies of the redacted version of this filing with the FCC Secretary. Iridium is filing the original version of this filing, marked as Confidential Information, with the Secretary under separate cover. Additional copies of the redacted and confidential versions are being provided to members of the FCC staff and interested parties, also pursuant to the requirements of the Protective Order. Iridium is additionally submitting an electronic copy of the redacted version of this filing in the Commission's Electronic Comment Filing System.

Sincerely,

  
Nancy J. Victory

Enclosures

<sup>1</sup> *In the Matter of Stratos Global Corporation and Robert M. Franklin, Trustee, Protective Order, DA 07-3344 (July 20, 2007).*

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 ) FCC File Nos.:  
Transfer Control )  
) 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

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**REPLY OF IRIDIUM SATELLITE LLC  
TO OPPOSITIONS TO PETITIONS TO DENY**

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attempt by Inmarsat plc (“Inmarsat”) to circumvent its contractual obligations and the Commission’s rules. In response, Inmarsat, joined by Franklin and CIP Canada Investment Inc. (“CIP”), attempt to argue that Inmarsat will not have influence or control over Stratos; the use of trust procedures is consistent with past Commission precedents; and, there are no potential anti-competitive effects arising from the transaction.

As summarized below, however, the Application must either be denied or designated for evidentiary hearing for three basic reasons. First, the record before the Commission gives rise to substantial and material questions of fact concerning the actual control of Stratos if the transaction is approved. Second, the proposed use of a trust mechanism is clearly not permitted by or consistent with past Commission precedent. Third, the transaction will have serious anti-competitive effects and the applicants have failed to provide any showing whatsoever of public interest benefits arising from the transfer. Accordingly, the Commission should either deny the Application or designate it for evidentiary hearing.<sup>4</sup>

## **I. SUMMARY**

Under the Communications Act, an applicant seeking to acquire control of a licensee bears an obligation to demonstrate the requisite qualifications to hold FCC licenses and to show affirmatively the public interest benefits of the proposed transaction. Here, Stratos and Franklin – the actual applicants – have failed to meet the showings expected of transfer applicants. And, the additional showings of the “non-applicant” CIP and the “non-applicant” Inmarsat actually

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<sup>4</sup> 47 U.S.C. § 309(e) (“If . . . a substantial and material question of fact is presented, [the Commission] shall formally designate the application for hearing . . . ”); *see, e.g., Application of EchoStar Communications Corporation, (a Nevada Corporation), General Motors Corporation, and Hughes Electronics Corporation (Delaware Corporations) (Transferors) and EchoStar Communications Corporation (a Delaware Corporation) (Transferee)*, Hearing Designation Order, 17 FCC Rcd 20559 (2002) (designating for hearing an application for consent to transfer control of various Commission authorizations).

serve to underscore the concerns raised by Iridium and others concerning the actual control of Stratos and the competitive effects of the transaction.

**Ownership and Control of Stratos.** On the face of the Application, the current ownership and control of Stratos is being transferred to Franklin as the trustee for the benefit of CIP. The oppositions, however, fail to answer questions concerning what is actually happening and for the benefit of whom. The record shows the following:

- Inmarsat, who purportedly will not have any cognizable ownership or control of Stratos, states that the transaction is structured to meet its business objectives and to evade a legal impediment to its direct acquisition of Stratos. Moreover, the Trust Agreement and other transaction documents do not impose any restrictions on Inmarsat's ability to communicate with Stratos management. Inmarsat will be free to interact directly with Stratos management, who clearly will understand that their future employment will be decided by Inmarsat.
- CIP, who purportedly will be the beneficial and ultimate owner of Stratos, is unable or unwilling to explain how and why its principals became aware of and decided to participate in the Stratos "opportunity." As stated in CIP's filings, the company and its principals are buying a \$250 million company (1) that is almost entirely financed by Inmarsat; (2) in which they do not appear to be making any significant financial investment or bearing any real financial risks; (3) for which they might never actually do anything in terms of running, managing or funding; and, (4) for which they will nevertheless be compensated by Inmarsat.
- Franklin, who has been enlisted to be the trustee, appears to be limited to doing nothing other than having his name on the license issued by the Commission. Moreover, he has failed to demonstrate his basic qualifications to be a licensee. Specifically, he has failed to provide factual details and supporting affidavits to confirm his independence from Inmarsat, CIP and Stratos in the past, present and future.

The oppositions show substantial confusion among and between the applicants and non-applicants about their roles once the transfer is approved. One thing clear in the record is that the transaction has been designed by Inmarsat for the benefit of Inmarsat and that the licensee of record and beneficial owner of record will be legally barred from managing Stratos. The other thing clear in the record is that the trust mechanism allows for interactions between Inmarsat and

Stratos management that are prohibited for the legal licensee (Franklin) and allegedly also for the beneficial owner (CIP).

**FCC Precedents Concerning the Use of Trusts.** Iridium's Petition to Deny fully documented the reasons why FCC precedents do not contemplate the use of a trust under the facts of this transaction. The oppositions attempt to rebut this by citing two cases in which the Commission purportedly allowed the use of trusts that were not time limited. However, in both of those cases, the trust procedures were permitted to enable a proposed transferee to comply with Commission requirements. Here, the applicants are proposing a transaction where the beneficial owner of the trust is not subject to any divestiture or compliance problems and the trust procedures are sought to circumvent a private contractual impediment of a non-applicant. With all due respect, the remedy sought by the applicants is unprecedented and inconsistent with past precedent.

**Public Interest and Competitive Effects of the Transfer.** The applicants bear an affirmative obligation to demonstrate the public interest benefits of the proposed transaction. Here, there is nothing but conspicuous silence on what those benefits might be. In contrast, Iridium and others have raised very real concerns about the competitive effects arising from the transfer. If the trust arrangement is permitted, Stratos will be left in the straightjacket of having to maintain the status quo for almost two years or more. How can Stratos possibly compete in that condition? If Inmarsat is free to interact with Stratos management, how is there any assurance that Stratos management, acting in logical long term self-interest, will not discriminate in favor of Inmarsat and against Iridium and other Inmarsat competitors. While the oppositions assert that such discrimination will not occur, there is no means provided for a workable and enforceable non-discrimination condition on the merger. Indeed, the practical reality is that

Stratos management will have significant incentives to want to please their future owner and employer by their actions during the trust period.

**II. THE TRANSACTION IS DESIGNED BY INMARSAT AND FOR INMARSAT'S BENEFIT.**

The responses to the petitions to deny highlight that this transaction has been structured to benefit Inmarsat, with CIP serving solely as Inmarsat's placeholder. Inmarsat expressly concedes that “the reason for this trust structure is to ensure that the proposed transaction complies with Inmarsat Global’s private contractual restrictions that prevent it from owning or controlling Stratos or any other distributor of Inmarsat services prior to April 2009.”<sup>5</sup> Although Inmarsat derides as “simply unavailing” claims that it is the real party-in-interest and that it will have *de facto* control,<sup>6</sup> its shadow falls over every aspect of this transaction.

Inmarsat’s Opposition does nothing to dispel the fact that Inmarsat is the lead player in this transaction. Inmarsat does not deny that it will be providing almost all of the financing – at least \$250 million – for the purchase of Stratos.<sup>7</sup> Further, Inmarsat’s response to the assertion that its loan to CIP UK is at below-market rates is that this low rate “is effectively additional consideration from Inmarsat Finance to CIP UK for granting the option.”<sup>8</sup> That is precisely the problem – CIP is earning consideration with no risk since Inmarsat, the real beneficiary, is

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<sup>5</sup> Inmarsat Opposition at 7 (footnote omitted), filed in WC Docket No. 07-73 (July 9, 2007).

<sup>6</sup> *Id.* at 3.

<sup>7</sup> Application Narrative at 7. Notably, the Facilities Agreement provides for a Facility A Commitment of \$275,000,000 and a Facility B Commitment of \$151,500,000, an aggregate of \$426,500,000 in financing for the deal. *See, e.g.*, Facilities Agreement dated 11 June 2007 for CIP UK Holdings Limited as Borrower CIP Canada Investment Inc. as Guarantor Inmarsat Finance III Limited as Lender (“Facilities Agreement”) at Schedule I Part II (p. 70).

<sup>8</sup> Inmarsat Opposition at 10.

putting up the financing. Moreover, as explained below, Inmarsat will be allowed to have continued contact with Stratos management – Inmarsat’s future employees, giving Inmarsat the clear opportunity to ensure that its own operations are favored over those of Iridium and other competitors.

CIP’s Opposition corroborates that it is nothing but a shell company contrived to allow Inmarsat to make an end-run around its contractual obligations. CIP states that its five principals “chose of their own volition to enter into the investment opportunity represented by the applications before the Commission” and that they “were not established nor unilaterally selected by Inmarsat.”<sup>9</sup> CIP further states that these individuals “explored and acted upon an investment opportunity.”<sup>10</sup> Despite CIP claims that these individuals were not “unilaterally selected” by Inmarsat, CIP fails to give any explanation of how these individuals knew each other, what relationships they have with principals at Inmarsat or Stratos, or how they learned of this “investment opportunity.” [REDACTED]<sup>11</sup> [REDACTED]

Although CIP argues that it “does bear risk” in this transaction, any such risk is practically nonexistent. CIP claims that “subject to Inmarsat Finance’s exercise of its option and

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<sup>9</sup> CIP Opposition at 4, filed in WC Docket No. 07-73 (July 9, 2007).

<sup>10</sup> *Id.*

<sup>11</sup> [REDACTED]

Commission approval, CIP will legally and beneficially own, as well as control and operate, Stratos and thereby bears the risk of such investment.”<sup>12</sup> However, it does not appear that CIP or its principals have actually invested any funds in this transaction. [REDACTED]<sup>13</sup>  
[REDACTED]<sup>14</sup> [REDACTED]<sup>15</sup>

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<sup>12</sup> *Id.* at 5.

<sup>13</sup> [REDACTED]

<sup>14</sup> [REDACTED]

<sup>15</sup> [REDACTED]

Even a cursory examination of the financial arrangements in the Facilities Agreement demonstrates that CIP would be under the *de facto* control of Inmarsat. For example:

- 100 percent of CIP’s financing for the acquisition of Stratos and repurchase of Stratos’ debt appears to come from Inmarsat.
- Inmarsat’s financing can be used only for the acquisition of Stratos.<sup>16</sup>
- All of CIP’s “out of pocket” transaction-related expenses (including its professional advisors) are paid for out of the financing—*i.e.*, by Inmarsat.<sup>17</sup>
- CIP is not obligated to repay the financing in the ordinary course until such time as CIP can exercise its call option to transfer Stratos to Inmarsat.<sup>18</sup>
- Attempts by CIP to dispose of interests or engage in public offerings will result in acceleration of the entire debt.<sup>19</sup>
- Except for nominal amounts for such things as tax payments, all money received by CIP from the Trustee is used to prepay the debt to Inmarsat.<sup>20</sup>
- Inmarsat is providing a below market interest rate for the funds, although the interest rate doubles to usurious levels in 2011, shortly after the Call Option Exercise Date.<sup>21</sup>
- [REDACTED]<sup>22</sup>
- [REDACTED]<sup>23</sup>

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<sup>16</sup> Facilities Agreement Section 3.1, p. 22.

<sup>17</sup> *Id.* at 3.1(a)(ii), p. 22.

<sup>18</sup> *Id.* at 6.1, p. 27 (noting that “[CIP] shall repay the aggregate Facility A Loans in equal semi-annual instalments [sic] on each Facility A Repayment Date up to the Termination Date, details of which will be notified in writing by [Inmarsat] to [CIP] on the Call Option /Exercise Date,” and the Call Option Exercise Date is the date the option becomes exercisable) (emphasis added).

<sup>19</sup> *Id.* at 9.1, p. 28.

<sup>20</sup> *Id.* at 9.2, p. 28, and 9.4, p. 31.

<sup>21</sup> *Id.* at 11.1, p. 34.

<sup>22</sup> [REDACTED]

<sup>23</sup> [REDACTED]

- [REDACTED]<sup>24</sup>

The bottom line is that CIP appears to be committing nothing and getting compensated by Inmarsat – [REDACTED]<sup>25</sup> – for doing nothing. CIP does not appear to be making any real financial investment. CIP does not appear to bear any significant risks. By its own admission, CIP is barred from doing anything in managing or running Stratos during the trust.<sup>26</sup> And, CIP contemplates never having any direct ownership or control of Stratos – but rather flipping the company to Inmarsat. Inmarsat has, in effect, placed Stratos in a cryogenically-sealed, financial bubble through which no money enters or exits without Inmarsat’s consent until such time as Inmarsat acquires Stratos.

Under the transaction and transfer applications designed by Inmarsat, Franklin would be the trustee. As a threshold matter, Franklin, a Canadian citizen, has not demonstrated his qualifications to serve as a trustee. The Commission requires that the trustee be independent from the beneficial owner and the grantor.<sup>27</sup> Yet, neither the Application nor the oppositions

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<sup>24</sup> [REDACTED]

<sup>25</sup> [REDACTED]

<sup>26</sup> In its Opposition, CIP asserts that it is "prohibited under the Trust Agreement from communicating with Stratos on management and all communications must be in writing." CIP Opposition at 8. However, the Trust Agreement does not broadly restrict communications between CIP and Stratos management, only between CIP and the trustee. It is essential that CIP clarify whether it is or is not restricted in its communications with Stratos management. If it is not broadly restricted, any insulating function of the trust arrangement is completely unavailing.

<sup>27</sup> See *Tender Offers and Proxy Contests*, Policy Statement, 59 Rad. Reg. 2d (P&F) 1536, 1579 (¶ 63) (1986) ("*Tender Offer Policy Statement*") (finding that when a trust is used in the proxy contest or tender offer situation, the trustee must be an independent person); *Corporate Telecom Services, Inc. for Facilities in the Domestic Public Cellular Telecomms. Radio Service on Frequency Block A, in Market No. 537, Nebraska 5-Boone*, Memorandum Opinion and Order, 6 FCC Rcd 5814, 5815 (¶¶ 8-9) (1991) (finding that for use of a trust in the broadcast and the cross-ownership context, the Commission will "examine [whether] the trust provisions adequately insulate the trustee from the beneficiary or grantor of the trust . . . the trustee must be an independent person with no familial or business relationship with the beneficiary or grantor").

make the required showing of the proposed trustee's past, present, or future independence from Inmarsat and CIP. Although the Application and various responsive filings praise Franklin's business expertise, there is no attempt to demonstrate Franklin's independence. Nor, more importantly, are the Applicants' assertions regarding his independence supported by any affidavit or declaration. The Application's blanket statement that "[t]he Trustee has no direct or indirect familial ties or business relationships with CIP, apart from the Trust Agreement, or with Inmarsat"<sup>28</sup> is not sufficient to make this demonstration of independence.<sup>29</sup> Indeed, the service list attached to CIP's Opposition lists Franklin's address as the same as that of Stratos. If Franklin is already working with Stratos, this raises questions regarding his independence from the other parties involved in this proposed transaction.

Under the proposed trust agreement, Franklin is merely a figurehead with no power to run Stratos or to second guess Stratos management. Reduced to this caretaker role, the Applicants fail to demonstrate how Franklin would ensure that Stratos continues to operate as a healthy and competitive company and how he would ensure that Stratos management does not discriminate against competitors of Inmarsat like Iridium. Franklin emphasizes that he "will not manage the company. The existing management team has that job."<sup>30</sup> However, given that Inmarsat will have a continuing business relationship with Stratos and that it is highly likely,

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<sup>28</sup> Application Narrative at 6 (footnote omitted).

<sup>29</sup> Similarly, Franklin's statement that "Petitioners' arguments that CIP Canada or Inmarsat will influence me during the trust period are based on an unsupported assumption that I will not fulfill my contractual obligations," Franklin Response at 6, filed in WC Docket No. 07-73 (July 9, 2007), is inadequate to make this showing.

<sup>30</sup> Franklin Response at 5.

given the low price of the call option, that Inmarsat will acquire Stratos, current management will have a strong incentive to favor Inmarsat in order to protect their employment positions after Inmarsat's probable takeover. Although Stratos notes that there is a compensation incentive plan in place that ties senior management bonuses to business performance,<sup>31</sup> management will have even greater incentives to guard future Stratos employment prospects by favoring Inmarsat over other competitors.

In sum, the transaction is designed by Inmarsat for the benefit of Inmarsat. CIP plays no role in funding and disavows any role in managing Stratos. Franklin "will not manage" Stratos. Stratos management will be left to its own discretion. But, Stratos management knows full well that Inmarsat will be their future owner if the FCC approves this transaction. Stratos management like everyone else in this application charade will be the instrument for achieving the interests of Inmarsat – a purportedly disinterested "non-applicant."

### **III. THE OPPOSITIONS DO NOT EXPLAIN WHY A TRUST IS NECESSARY FOR THIS TRANSACTION.**

The oppositions undermine the Applicants' claims regarding Inmarsat's true role by failing to clarify why a trust is required for this transaction. Inmarsat states that "the Commission has recognized a trust as a permissible way by which a trust beneficiary can enjoy the benefit of a Commission license, even when holding the license outright would violate Commission rules."<sup>32</sup> It then goes on to allege that "[a]part from [the private] contractual restrictions, there is no Commission policy or competition-related reason why Inmarsat (or CIP) could not directly own Stratos today."<sup>33</sup> Then, why doesn't CIP purchase Stratos outright

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<sup>31</sup> Stratos Opposition at 19, filed in WC Docket No. 07-73 (July 9, 2007).

<sup>32</sup> Inmarsat Opposition at 7 (footnote omitted).

<sup>33</sup> *Id.* at 8.

without a trust mechanism? Inmarsat argues that “there are legitimate business reasons unrelated to any Commission rule or policy for establishing a trust to control Stratos, and to ensure that neither CIP nor Inmarsat controls Stratos during the term of the Trust.”<sup>34</sup> If, as claimed, CIP (1) “is an independent party in the transactions, unaffiliated with Inmarsat”<sup>35</sup> and (2) will bear the risk of its investment in Stratos, CIP can purchase Stratos directly, with no need to, or benefit from, interposing a trust. Moreover, Inmarsat could today purchase a call option to be exercised after April 2009, when Inmarsat’s contractual obligations expire, if the parties so desired.

As discussed below, the use of a trust for no apparent reason is not appropriate under Commission precedent. Moreover, it raises questions in and of itself regarding who the real party-in-interest is in the proposed transaction. Inmarsat argues that questions regarding the relationship between CIP and Inmarsat Finance are “a classic ‘red herring’” and that the only relevant issue is the terms of the trust.<sup>36</sup> However, the real “red herring” in this transaction is the introduction of CIP. If CIP is in reality an entity independent of Inmarsat that wants to invest in Stratos, why is a trust mechanism needed? Conversely, if CIP is simply a façade behind which Inmarsat has effective control, then Inmarsat is the real party-in-interest, and the Commission must evaluate the proposed transfer as if Inmarsat is the beneficiary of the trust.

**IV. THE USE OF A TRUST IS NOT SUPPORTED BY PRECEDENT AND IS CONTRARY TO THE PUBLIC INTEREST.**

As Iridium explained at length in its Petition to Deny, the Commission has authorized the use of an irrevocable trust to hold FCC licensees only in very limited circumstances.<sup>37</sup>

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<sup>34</sup> *Id.* at 7.

<sup>35</sup> CIP Opposition at 1.

<sup>36</sup> Inmarsat Opposition at 8.

<sup>37</sup> Iridium Petition to Deny at 6-13, filed in WC Docket No. 07-73 (June 29, 2007).

Typically, these are: (1) in the proxy contest or tender offer context, (2) in the bankruptcy context, and (3) in the aftermath of a merger where the buyer is required to divest some of its holdings as a condition of grant of the transaction. These situations are plainly not applicable to the instant transaction, or even analogous. Thus, the Tender Offer Policy Statement and the limited other precedent permitting control of FCC licenses by a trust do not apply.

In its Opposition, Stratos identifies two cases that it asserts permit the use of a trust here merely because the facts in these cases fall outside the three categories listed above.<sup>38</sup> While Stratos is correct that these two cases fall outside the three categories in which the FCC has typically permitted the use of trusts, it is wholly off-base in suggesting these cases have any relevance to Stratos' proposed transaction. In *Lockheed Martin*,<sup>39</sup> the Commission approved the transfer of North American Numbering Plan Administrator (“NANPA”) functions from Lockheed Martin to NeuStar, a company controlled by a voting trust. In that case, the voting trust was necessary to insulate the beneficial owner, Warburg, Pincus & Co., so that NeuStar could comply with the FCC-mandated neutrality requirements applicable to the NANPA. In *Twentieth Holdings Corporation*,<sup>40</sup> the Commission approved the transfer of control of a UHF television station to a trust. There, the trust was necessary to insulate the beneficial owner, who would otherwise run afoul of the FCC's newspaper/broadcast cross-ownership prohibition.

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<sup>38</sup> Stratos Opposition at 8-9.

<sup>39</sup> *Request of Lockheed Martin Corp. and Warburg, Pincus & Co. for Review of the Transfer of the Lockheed Martin Commc'ns Ind. Servs. Business*, Order, 14 FCC Rcd 19,792, 19,807 (¶ 22) (1999) (“*Lockheed Martin*”).

<sup>40</sup> *Twentieth Holdings Corp. (Transferor) and Edward W. Brooke and Hugh L. Carey, Trustees (Transferees)*, Decision, 4 FCC Rcd 4052, 4052-53 (¶¶ 3, 6) (1989) (“*Twentieth Holdings Corp.*”).

The fact patterns of these two cases have nothing to do with the proposed transaction. In fact, they are completely inapposite. Like the limited situations in which the FCC has previously approved the use of a trust (described in Iridium's Petition to Deny), in both of these cases the trust was necessary to enable the beneficial owner to comply with FCC rules that it would otherwise violate. That has no analogy to the instant transaction. Here, the use of the trust is completely discretionary on the part of the Applicants. The Applicants have not asserted any need for the use of a trust to insulate CIP to ensure compliance with FCC rules. Indeed, CIP has acknowledged that "the trust is not being justified as an emergency matter . . ."<sup>41</sup> Given that the Commission has repeatedly stated that trusts should be "employed only where necessary, and then to as limited an extent as possible,"<sup>42</sup> the proposed discretionary use of a trust in this case is not only wholly unsupported by agency precedent, but completely inconsistent with it.

In the limited circumstances in which the Commission has permitted trusts to acquire control of FCC licenses, the Commission has generally authorized them to do so for only a short duration because of the difficulties surrounding running a business successfully through a trust mechanism. This is particularly the case in fast-paced, evolving industries like the telecommunications sector. The Commission recently confirmed that there is effective

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<sup>41</sup> CIP Opposition at 7.

<sup>42</sup> *Applications of Shareholders of AMFM, Inc. (Transferor) and Clear Channel Commc'ns, Inc. (Transferee)(For Consent to the Transfer of Control of AMFM Tx. Licenses Ltd. P'ship, AMFM Radio Licenses, LLC, Capstar Tx. Ltd. P'ship, WAXQ License Corp., WLTW License Corp., Cleveland Radio Licenses, LLC, and KLOL License Ltd. P'ship Licensees of WTKE(FM), Andalusia, AL, et. al.)*; Memorandum Opinion and Order, 15 FCC Rcd 16,062, 16,073 (2000). *See also 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").

competition in both the wholesale and retail satellite markets.<sup>43</sup> Yet, a company held in trust will have difficulty effectively responding to this level of competition. As Iridium explained in its Petition to Deny, a trustee is charged with managing assets in a conservative manner that preserves the status quo and maintains the general character of the corporation.<sup>44</sup> The Application's Trust Agreement confirms this view, particularly its itemized accounting reporting and trustee removal provisions.<sup>45</sup>

The Applicants propose that Stratos be held by the trust at least until April 2009, a little less than two years from now. During that time, it is entirely possible, and even likely, that Stratos will need to adjust its business plan to take into account the dynamic satellite market. Given that the trustee cannot communicate with either CIP or Inmarsat regarding operational and management issues,<sup>46</sup> it is unclear how such decisions will be made. It is similarly unclear whether business changes proposed by the trustee or current management could be effectively implemented. Moreover, Stratos may well require additional funding either for its current operations or to expand into new areas. Given that the trustee must act in a conservative manner and cannot communicate with CIP or Inmarsat regarding obtaining additional funding, important business opportunities may have to be delayed or abandoned.

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<sup>43</sup> *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).

<sup>44</sup> Iridium Petition to Deny at 15.

<sup>45</sup> Trust Agreement, §§ 7(c), (h), attached to Appendix C to the Apr. 5, 2007 lead application.

<sup>46</sup> *Id.*, § 10(c). Although the trustee is barred from communicating with Inmarsat, there is no bar to Stratos management communicating with Inmarsat regarding "commercial matters in the ordinary course of business." Trust Agreement, § 4(b).

Because Stratos is a substantial distributor of Iridium's services, Stratos's vigorous operation is an important element for Iridium's commercial success. Putting Stratos in an operational straightjacket for almost two years would likely harm Iridium's, and other satellite providers', competitive positions. The inability to expand and adjust to changing market conditions, combined with Stratos management's natural incentives to favor their future employer – Inmarsat – will likely discourage Stratos from investing in any new applications or services for Iridium. Severely shackling such a crucial distributor in the market for satellite services is plainly not in the public interest.

**V. THE TRANSACTION RAISES SIGNIFICANT COMPETITIVE HARMS.**

As Iridium noted in its Petition to Deny, the potential harms of the proposed transaction far outweigh the purely private benefits alleged by the Applicants.<sup>47</sup> As discussed previously, parking Stratos in a trust for almost two years or more clearly hampers full and fair competition in the market and disserves the public interest. The proposed transaction will also trigger competitive harms by substantially altering the current distribution market for satellite services.

Stratos is an independent distribution channel today. However, 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.<sup>48</sup> As noted earlier, this arrangement also plainly discourages

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<sup>47</sup> Iridium Petition to Deny at 14-17.

<sup>48</sup> Allowing Inmarsat to influence Stratos, one of Iridium's major distributors, raises significant competitive concerns. Inmarsat's introduction of a new handheld product is one example of how Inmarsat is developing and implementing new products to compete directly with Iridium. See John C. Tanner, *Inmarsat and ACeS collaborate on handheld voice*, Asia Satellite News, Sept. 4, 2006, [http://www.telecomseurope.net/article.php?id\\_article=2977](http://www.telecomseurope.net/article.php?id_article=2977) (quoting Inmarsat Chairman and CEO Andrew Sukawaty as stating "It's a market that's growing 30% a year, and in a few years Iridium and Globalstar will be coming to the end of their service

Stratos from investing in any new Iridium applications or services. Such behavior would clearly result in significant competitive harm to Iridium and Stratos' other suppliers. It could also result in harm to Inmarsat's other distributors, who would potentially suffer from favored relationships between Inmarsat and Stratos.

While the oppositions try to assert that this will not happen because the trustee will be insulated from CIP and Inmarsat,<sup>49</sup> the reality is that Inmarsat's influence will clearly be felt. In his filing, the Trustee admits that Stratos management will be running the company and making the day-to-day business decisions.<sup>50</sup> Nowhere in the Application or the oppositions do the parties point to any limitations on Inmarsat communicating with Stratos management. And, as Stratos management will be fully aware of impending Inmarsat ownership and control, communications from Stratos will likely have added importance. Even putting aside the issue of direct communications from Inmarsat, it is reasonable to expect that Stratos management will behave in a manner to position themselves favorably in the eyes of their future owners – a manner that will favor Inmarsat's business interests over others'.

Acknowledging these concerns, CIP asserts that that neither it nor Inmarsat will influence Stratos to discriminate in favor of Inmarsat and against Inmarsat's competitors.<sup>51</sup> Similarly,

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life” and noting that Sukawaty hopes to capture at least 10% of the handheld satellite telephony market by 2010).

<sup>49</sup> CIP Opposition at 6, note 13; Stratos Opposition at 18-19; Inmarsat Opposition at 18.

<sup>50</sup> Franklin Response at 5.

<sup>51</sup> CIP Opposition at 8 & 6, n.13 (stating that CIP is prohibited under the Trust Agreement from attempting to influence Stratos and has no legal ability to do so and that there is no incentive and no ability for Inmarsat to influence Stratos to discriminate against other distributors).

Stratos states that it does not intend to discriminate among its suppliers.<sup>52</sup> If the Commission determines to move forward in approving this transaction, the Commission should hold CIP and Stratos, as well as Inmarsat and the Trustee, to a commitment not to discriminate.<sup>53</sup> Given the strong competitive harms inherent in this transaction, the public interest requires – at a minimum – such a condition on the transaction grant to protect competition in the satellite services market. Iridium also submits that, for this condition to be meaningful, the Commission should adopt a mechanism for enforcing this condition and addressing any matters arising under it.

**VI. THE APPLICANTS HAVE FAILED TO MAKE ANY SHOWING OF PUBLIC INTEREST BENEFITS FROM THE TRANSFER.**

The Commission requires applicants to demonstrate affirmatively that a proposed transfer results in public interest benefits. The Commission will approve a proposed transfer of control if, after weighing “the potential public interest harms of the [transaction] against the public interest benefits,” it concludes that, “on balance,” doing so would serve the public interest, convenience, and necessity.<sup>54</sup> The Commission evaluates the impact of the transaction on

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<sup>52</sup> Stratos Opposition at 25 (“Stratos fully intends to . . . use various satellite suppliers including Globalstar, Inmarsat, Intelsat, Iridium, MSV and SES . . . Stratos will continue to pursue Iridium sales aggressively.”)

<sup>53</sup> See, e.g. *Craig O. McCaw, Transferor, and AT&T Co., Transferee, for Consent to the Transfer of Control of McCaw Cellular Commc’ns, Inc. and its Subs.*, Memorandum Opinion and Order, 9 FCC Rcd 5836, 5871 (¶ 56) (1994) (where parties sought approval for McCaw to merge with, and become, a wholly-owned subsidiary of AT&T, the Commission imposed “as a condition on [its] grant of the applications, a requirement that there be no unreasonable discrimination in the provision of products and services by AT&T/McCaw against purchasers of cellular networks . . .”).

<sup>54</sup> 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, 2411-12 (¶18) (2004) (“*Loral/Intelsat*”); *Comcast Corp., AT&T Corp., and AT&T Comcast Corp.*, Memorandum Opinion and Order, 17 FCC Rcd 23246, 23255 (¶ 26) (2002) (“*AT&T/Comcast*”); *Applications for Consent to The Transfer of Control of Licenses and Sect. 214 Authorizations by Time Warner Inc. and America Online, Inc., Transferors, AOL Time Warner Inc., Transferee*, Memorandum Opinion and Order, 16 FCC Rcd 6547, 6554 (¶ 19)

Commission objectives, assessing the transaction in light of the “broad aims of the Communications Act,” which include “a deeply rooted preference for preserving and enhancing competition in relevant markets, accelerating private sector deployment of advanced services, ensuring a diversity of license holdings, and generally managing the spectrum in the public interest.”<sup>55</sup>

The record before the Commission is devoid of any cognizable public interest benefit resulting from the transfer. In the face of significant competitive and public interest harms resulting from a trust straightjacket on Stratos, the applicants have offered nothing except claims that shareholders will get a good price for their stock. However, such private benefits are not considered public interest benefits. In the face of abject silence about public interest benefits and a clear showing of potential harms, the Commission must deny the Application for failing to meet the requirements imposed under the Act and agency policies.

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(2001) (“AOL/Time Warner”); *Applications for Consent to The Transfer of Control of Licenses and Sect. 214 Authorizations from MediaOne Group, Inc. and AT&T Corp.*, Memorandum Opinion and Order, 15 FCC Rcd 9816, 9820 (¶ 8) (2000); *see also* 47 U.S.C. § 310(d).

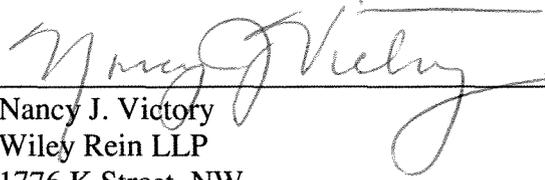
<sup>55</sup> *Constellation, LLC, Carlyle PanAmSat I, LLC, Carlyle PanAmSat II, LLC, PEP PAS, LLC, and PEOP PAS, LLC, Transferors, and Intelsat Holdings, Ltd., Transferee, Consolidated Application for Authority to Transfer Control of PanAmSat Licensee Corp. and PanAmSat H-2 Licensee Corp.*, Memorandum Opinion and Order, 21 FCC Rcd 7368, 7379 (¶ 18) (2006) (footnote omitted) (“*Intelsat-PanAmSat Order*”).

**VII. CONCLUSION**

For these reasons, Iridium urges the Commission to deny the Application to transfer control of Stratos to a trust, or, at a minimum, to designate the Application for evidentiary hearing.

Respectfully submitted,

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Dated: July 31, 2007



## CERTIFICATE OF SERVICE

I, Patricia Destajo, do hereby certify that on this 31<sup>st</sup> day of July 2007, I caused copies of the foregoing "Reply of Iridium Satellite LLC to Oppositions to Petitions to Deny" (redacted) to be delivered to the following via First Class U.S. mail (or by email where noted):

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