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July 31, 2007

FILED/ACCEPTED

JUL 31 2007

Federal Communications Commission
Office of the Secretary

BY HAND DELIVERY

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Subject: Reply of Telenor Satellite Services, Inc., WC Docket No. 07-73
FOR PUBLIC INSPECTION

Dear Ms. Dortch:

Telenor Satellite Services, Inc. (“Telenor”) hereby files the enclosed **REDACTED – FOR PUBLIC INSPECTION** Reply as directed by the Protective Order released by the Commission in the above-referenced docket.¹

Please contact the undersigned with any questions about this filing.

Respectfully submitted,

Robert W. Swanson
Associate Counsel

¹ *In the Matter of Stratos Global Corporation and Robert M. Franklin, Trustee, Consolidated Application for Consent to Transfer Control of Stratos Global Corporation’s FCC-Authorized Subsidiaries and Petition for Declaratory Ruling, Protective Order, WC Docket No. 07-73 (released July 20, 2007) (“Protective Order”).*

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Federal Communications Commission
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	WC Docket No. 07-73
)	
Stratos Global Corp. and Robert M. Franklin, Trustee)	DA 07-2557
)	
)	FCC File Nos.:
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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

REPLY OF TELENOR SATELLITE SERVICES, INC.

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FOR PUBLIC INSPECTION**

**Before the
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REPLY OF TELENOR SATELLITE SERVICES, INC.

Telenor Satellite Services, Inc. (“Telenor”) respectfully submits its Reply to the Oppositions to Petitions to Deny filed by Stratos Global Corporation (“Stratos”), Inmarsat Finance III Limited (“Inmarsat”), CIP Canada Investment Inc. (“CIP”), and Robert M. Franklin (“Franklin” or “Trustee”) concerning the above-referenced applications for consent to the transfer of control of Stratos (the “Applications”).¹

¹ The Oppositions are referred to herein respectively as the Stratos Opposition, the Inmarsat Opposition, the CIP Opposition and the Franklin Opposition, and collectively as the Oppositions.

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I. SUMMARY

Telenor believes that there are substantial and material questions of fact that must be resolved regarding a number of issues related to the above-referenced Applications and the Oppositions filed in this proceeding.

Chiefly, Telenor is concerned that the proposed transaction would result in Inmarsat exercising *de facto* control over Stratos, and should be included as a party to the Applications. Inmarsat has used smoke and mirrors to structure the proposed transaction, namely a newly-formed equity investor group (CIP), a willing trustee (Franklin), and a generous US\$426M in funding. This situation mandates Commission review and approval of a transfer, not only of *de jure* control to the Trustee, but also of *de facto* control to Inmarsat. Clearly, the Trustee and CIP are mere contrivances. It is the Inmarsat purchase that drives the entire scheme and is the sole purpose for the transaction that Applicants have asked the FCC to approve.

Telenor hereby requests that the Applications be denied for the Applicants' failure to disclose Inmarsat as a real party-in-interest. In the alternative, Telenor requests that the Commission designate the Applications for evidentiary hearing in order to resolve the substantial and material questions of fact presented by the Applications and the Oppositions.²

² Pursuant to Section 309(e) of the Communications Act of 1934, as amended, the Commission is required to designate an application for evidentiary hearing if a substantial and material question of fact is presented regarding whether grant of the application would serve the public interest, convenience, and necessity. 47 U.S.C. § 309(e).

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II. THE PROPOSED TRANSACTION RAISES SERIOUS QUESTIONS ABOUT THE CONTROL INMARSAT WILL HAVE OVER STRATOS

A. The Proposed Transaction Has Been Designed and Controlled by Inmarsat and Is Clearly Structured For Inmarsat's Benefit

Telenor recognizes that the Commission is not the forum to arbitrate private contractual matters and agreements. Nevertheless, the Commission is well aware of the current distribution structure of Inmarsat services and the restrictions that Inmarsat is under as a result of its agreements with its distributors. With the proposed transaction, Inmarsat has contrived a work-around of its contractual restrictions via a scheme that will allow it to virtually purchase Stratos shares today while those restrictions still exist, rather than delay its legal acquisition to a future date when its contractual restrictions expire. If Inmarsat were to identify itself accurately in the Application, it could expect an attack from its distributors that it has breached its contractual commitments.³ Simply put, in this case, Inmarsat is using the Commission's willingness to recognize a trust as a valid transferee in order to perpetuate the disguise it is engaging in to avoid distributor claims.

Stratos is using sleight of hand to distract the Commission in its analysis of who will control the licensee when this transaction is consummated. Stratos and Inmarsat both assert that the Commission needs to look no further than to the Trust, which Stratos

³ Inmarsat acknowledges as much in its opposition, stating that “[a]s a practical matter, Inmarsat has a strong interest in ensuring that it does not assert de facto control over Stratos, even if it could...in order to ensure that the actual implementation of this transaction remains consistent with Inmarsat Global's contractual obligations.” Inmarsat Opposition at 10.

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alleges was properly constructed using the Commission’s guidance from its tender offer and attribution policy statements.⁴ They have carefully constructed the Trust to give the appearance that the Trustee will control Stratos, thus eliminating any reason for Inmarsat to be part of the transfer application. But it is not simply a question of whether the Trustee or the Trust beneficiary controls the stock, or whether the Trust Agreement comports with Commission policies. The Commission must consider whether Inmarsat will actually control the licensee immediately through the structured acquisition, or only in the future after it executes its call option. We believe that this control would be present upon approval of these Applications, albeit co-existing to some extent with control allocated to the Trustee.

While the Oppositions generally go to great lengths to argue that the Trust insulates Stratos from influence and control by Inmarsat and CIP,⁵ the facts and events surrounding the proposed transaction clearly demonstrate that Inmarsat will exert (and is already exerting) substantial *de facto* control. Far from being the “red herring” that Inmarsat labels it in its opposition,⁶ the relationship between CIP and Inmarsat (and Stratos) is at the heart of the control issues here.

⁴ See Stratos Opposition at 11, Inmarsat Opposition at 6-8.

⁵ See *id.* at 3 “[T]he Trust creates a firewall, effectively shielding Stratos from any influence, much less control, from CIP and Inmarsat.” See also *id.* at 16-18.

⁶ See Inmarsat Opposition at 4.

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With respect to Inmarsat’s call option, Stratos argues that “[i]t is not a forgone conclusion that after April 2009 Inmarsat Finance will exercise its option to acquire control over Stratos.”⁷ Additionally, Stratos notes that, “[e]ven if Inmarsat Finance does elect to exercise its option in 2009, the exercise will be conditioned on FCC and other government approvals.”

This line of argument is merely an attempt to divert the Commission away from the substance of the transaction. Stratos and Inmarsat would have the Commission defer its consideration of a transfer of control to Inmarsat until a later date, asserting that a finding of *de facto* control must rely on facts and events that have occurred and not speculation as to what might occur in the future. However, the record before the Commission is replete with facts and events that have already occurred and that clearly document Inmarsat’s *de facto* control:

- CIP’s role of purchaser is in title and form only. [REDACTED] See Stratos Opposition, Attachment A, Appendix H, Arrangement Agreement (“Arrangement Agreement”), Schedule B Term Sheet (“Term Sheet”) at “Non-Financial Undertakings”; [REDACTED]

⁷ Stratos Opposition at 20.

⁸ [REDACTED]

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The purchase negotiations have been conducted between Inmarsat and Stratos. Inmarsat performed extensive due diligence of the target (*see* Stratos Opposition, Attachment A, Stratos Management Proxy Circular at 15 (“Proxy Circular”)) and Inmarsat, not CIP, agreed to the final share price to be paid. *Id.* at 15-16. Moreover, Stratos and Inmarsat (not Stratos and CIP) entered into an exclusivity agreement once the final price was agreed. *Id.* at 16.

- CIP is merely a vehicle in this transaction. The company and its affiliates were not even formed until mid-2006 (*Id.* at 39). CIP has no assets, has made no other acquisitions, and has no current plans to add to its portfolio. *Id.* at 39-40. And yet Inmarsat chose this company to work with on an exclusive basis within fewer than five calendar days from receiving its proposal. *Id.* at 15. CIP admits that it will not have any operational control of Stratos. *See* CIP Opposition at 8. This admission is relevant insofar as it documents the very limited role that CIP plays in this transaction. It is interesting to note how confounding the control structure is here, where for example, [REDACTED]
[REDACTED].⁹ CIP only exists to satisfy a structural need, and can be replaced by an alternate vehicle if necessary. *See* Proxy Circular at 33, paraphrasing the Letter Agreement between Inmarsat and Stratos, “Inmarsat plc shall use reasonable best efforts to... collaborate with Stratos to remedy any material breach of the Arrangement Agreement by CIP Limited or CIP Acquireco, including, if such breach cannot be remedied, seeking a suitable replacement acquirer for Stratos so that the Arrangement can be completed without a material delay.”
- Inmarsat already has delivered undertakings and covenants to Stratos. *See* Stratos Opposition, Attachment D, Letter Agreement of March 19, 2007 (“Letter Agreement”). This is not a future event. One such commitment is to attend weekly meetings between Inmarsat and Stratos. A fuller discussion of Inmarsat and Stratos communications is below at II.B.
- Inmarsat has retained negative control over the transaction by imposing its required approval of any modifications to various documents and agreements to which it is not a party as a condition precedent to its financing commitment. *See* Term Sheet at “Conditions Precedent to Completion,” where Inmarsat consent or satisfaction is required for the terms of the Trust Agreement, the Articles of Arrangement, the Stratos Proxy Circular, the Plan of Arrangement, and the form of consent that may be available under the Senior Loan Facility that Stratos carries. Inmarsat even has secured the right to concur whether the conditions

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9 [REDACTED]

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precedent have been satisfied under the various agreements to which it is not a party.

- Stratos states: “There is nothing in the loan covenants that gives Inmarsat Finance any control over Stratos.” Stratos Opposition at 17. While this statement may be valid with regard to the covenants, it understates the scope of the Facilities Agreement and the control that that Agreement imposes over Stratos. For example, Schedules 9, 10 and 11 of the Facilities Agreement recite terms and conditions for Inmarsat to acquire legal ownership of the Stratos shares. It is not realistic that CIP negotiated these representations and undertakings without Stratos’ participation. Moreover, CIP cannot independently provide these representations and undertakings on the Option Exercise Date because, as CIP has admitted, it will have no operational or management control of Stratos. These are clearly obligations of the incumbent Stratos officers and employees.

- Stratos has negotiated a deal to sell its shares to Inmarsat. It has agreed to a two-stage process to accommodate Inmarsat’s contractual commitments, but not without exacting protection. It has retained control over the consequences of a delay in the transaction, of finding another third party interim investor, of modifications to the acquisition structure, and of changes to the option exercise terms – all through its negotiations with Inmarsat. *See generally* Letter Agreement.

In short, the record before the Commission is crystal clear: This is an Inmarsat deal, and nothing more. The Commission should require Inmarsat to be named as a real party-in-interest on the Applications.

B. The Proposed Transaction Does Not Prevent Inmarsat From Exercising Control Over Stratos Going Forward

One of the most problematic elements of the proposed transaction is that despite the protestations to the contrary by CIP, Inmarsat and Stratos that the Trust will not allow any control by Inmarsat over Stratos, the fact remains that Inmarsat is not restricted in its communications with Stratos management during the trust period.

The presence of the Trustee as a legal shareholder is as substantively irrelevant as the presence of CIP as a buyer in this transaction. It is of little value that Inmarsat has

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committed not to communicate with the Trustee regarding the operations or management of Stratos,¹⁰ or that the Trustee may not communicate with Inmarsat regarding the operation or management of Stratos.¹¹ This Trustee has no role in the operations or management of Stratos in the first instance.¹² The scheme of this particular transaction structure is to place before the Commission a petitioner who has no *de facto* control over the licensee, and who may resign from his *de jure* control position on a mere 90 days notice.¹³ As well, various Oppositions have noted that under the Trust Agreement, CIP has no ability to control either the Trustee or Stratos.

So while both the proposed licensee (the Trustee) and the ultimate beneficial owner of Stratos (CIP) are restricted in their communications with Stratos management, the Trust structure does not place the same such restrictions on Inmarsat. In fact, as noted earlier, Inmarsat has already delivered undertakings and covenants to Stratos.¹⁴ Inmarsat and Stratos have committed to weekly meetings to discuss completion of the Arrangement. Letter Agreement at 2.9. Neither CIP nor the Trustee is an intended participant in those meetings. In addition, Inmarsat and Stratos have mutually agreed to refrain from settling any complaint in respect of the transaction without first obtaining the

¹⁰ See Stratos Opposition, Attachment A, Appendix H, Arrangement Agreement (“Arrangement Agreement”), Schedule B Term Sheet at “Lender Undertaking.”

¹¹ See Stratos Opposition, Attachment A, Appendix I, Trust Agreement, at cl. 10 (c).

¹² CIP Opposition at 6, noting that the Trustee “will have no operational or managerial control.”

¹³ Trust Agreement at § 7 (g).

¹⁴ See generally Letter Agreement.

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consent and approval of the other party. Letter Agreement at 2.7. Inmarsat has also committed to inform Stratos of any material communications to or from any of its distribution partners concerning the implementation of the transaction or renegotiation of any distribution agreements. Letter Agreement at 2.2. Clearly, these undertakings go far beyond the limited permitted contact that Stratos characterizes as “the regular communications between satellite operator and major distributor that Inmarsat and Stratos have had for the last fifteen years.”¹⁵ But Stratos goes even further, stating that such communications with Stratos “will not give Inmarsat control over Stratos any more than Inmarsat controlled Stratos, VIZADA or TSS previously, or will control VIZADA or TSS in the future.”¹⁶ The glaring flaw in Stratos’ reasoning is that Inmarsat has not had any financial interest in Stratos, *until now*. At no time over the last 15 years did Inmarsat have a call option that allows it to take *de jure* control over Stratos at a nominal fixed price, *until now*. Thus, Inmarsat has not had the incentive to exercise *de facto* control over Stratos, *until now*.

C. Exercise of the Call Option is a Virtual Certainty

Stratos and Inmarsat would have the Commission defer any review of an acquisition by Inmarsat until Inmarsat exercises its option to purchase the Shares.¹⁷

¹⁵ Stratos Opposition at 13.

¹⁶ *Id.*

¹⁷ *Id.* at 20, Inmarsat Opposition at 11. Interestingly, Inmarsat chooses a middle ground. Though it alleges that Inmarsat is not a party-in-interest to the Applications, it devotes substantial discussion advancing its public interest arguments in favor of Inmarsat’s ownership of the shares. *Id.* at 23-27.

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However, efficiency and reality indicate that today is the proper time to take that consideration under review based on the substance of the transaction in the current Applications. If the Commission approves these Applications, Inmarsat will immediately have substantial control over the licensee; that control will merely expand when Inmarsat executes its call option. Whether the Trust Agreement comports with Commission policies and whether the Trustee is qualified to hold legal control of the shares are not the only relevant questions. The reality is that the Trustee does not have full independent control over the licensee; Inmarsat has control, also.

Stratos' Opposition seeks to minimize the possibility that Inmarsat will exercise its call option,¹⁸ but it defies credulity that Inmarsat may not exercise its option. Since mid-2006, Inmarsat has devoted senior management time and significant financial resources to pursuing its objective to acquire Stratos.¹⁹ Inmarsat has committed in excess of US\$426M to fund the acquisition,²⁰ at below-market interest rates,²¹ with deferred repayment obligations.²² When challenged that the option exercise price and interest rate do not reflect an arm's length financial transaction, Inmarsat has responded simply that these arrangements are based upon the economics of the entire transaction.²³ Yet the

¹⁸ “[I]t is not yet even known whether Inmarsat Finance will exercise its option, and no application has been filed by Inmarsat Finance or CIP for transfer of control.” *Id.* at 21.

¹⁹ *See generally* Proxy Circular at 13-16.

²⁰ Facilities Agreement at 5.3(a).

²¹ *Id.* at cl. 6.

²² *Id.* at cls. 11-13.

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“entire transaction” has, at its very core, the option granted to Inmarsat which Stratos suggests may not be exercised. Inmarsat clearly did not contemplate such a possibility when committing to these financing terms.

The Commission must decide whether the option is so insignificant that it can ignore Inmarsat’s future legal ownership of Stratos shares, or whether the option’s role in justifying the financing terms elevates its significance to a level that makes it sufficiently definite as an element of the current transaction as to justify a full consideration of Inmarsat’s participation as a real party-in-interest to the Applications today.

While we do not question whether Stratos has negotiated a sale that permits its shareholders to sell their stock to the highest bidder,²⁴ we do believe that Stratos has negotiated with a realistic understanding that Inmarsat will have *de facto* control of the company upon approval of the Applications and *de jure* control no later than April 2009. Stratos’ demands from Inmarsat signal that it believes Inmarsat is the buyer today. Stratos has negotiated terms that Inmarsat must honor. It has reserved negative control vis-à-vis any changes CIP and Inmarsat may desire in the Call Option Agreement, even though it is not a party to that agreement. *See* Arrangement Agreement at Article 6.3(e), “Additional Conditions Precedent to the Obligations of Stratos”: “The Call Option Agreement shall be in full force, unamended from the form of such agreement executed as of the date hereof, except for such amendments consented to in writing by Stratos, acting reasonably.” Furthermore, Stratos has secured unique treatment among Inmarsat’s distributors in negotiating with Inmarsat. Inmarsat has agreed to extend the Stratos

²³ Inmarsat Opposition at 10.

²⁴ Stratos Opposition at 6, 23.

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distribution agreements beyond their contractual expiration dates under certain conditions, even though Inmarsat openly despises these commitments. *See* discussion of Conditional Distribution Agreements in the Letter Agreement at 2.1(c). Inmarsat's concession to Stratos' requirements evidences the lengths to which Inmarsat is prepared to go in order to consummate its purchase of Stratos, and Stratos has used this intention and desire to maximize its benefit from today's bargain.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

25 [REDACTED]

[REDACTED] 26 [REDACTED]

[REDACTED] 27

III. CONCLUSION

For the forgoing reasons, Telenor respectfully requests that the Applications be either denied for the applicant's failure to disclose Inmarsat as a real party-in-interest. In the alternative, Telenor requests that the Commission designate the Applications for evidentiary hearing in order to resolve substantial and material questions of fact presented by the Applications and the Oppositions.

26 [REDACTED]

27 [REDACTED]

CERTIFICATE OF SERVICE

I, Robert W. Swanson, hereby certify that on this 31st day of July, 2007, I caused to be served a true copy of the foregoing **REDACTED** "Reply of Telenor Satellite Services, Inc." by electronic mail upon the following:

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