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

In the Matter of	)	
	)	
Stratos Global Corporation, Transferor	)	WC Docket No. 07-73
	)	
Robert M. Franklin, Transferee	)	FCC File Nos.:
	)	ITC-T/C-20070405-00133
Applications for Consent to Transfer of	)	ITC-T/C-20070405-00135
Control and Petition for Declaratory Ruling	)	ITC-T/C-20070405-00136
	)	SES-T/C-20070404-00440
	)	through -00443
	)	0002961737 and
	)	ISP-PDR-20070405-00006

To: The Commission

PETITION FOR EXPEDITED CLARIFICATION OR CORRECTION

VIZADA Services LLC ("VIZADA") submits this Petition for Expedited Clarification or Correction ("Petition") of the Commission's Memorandum Opinion and Order and Declaratory Ruling, FCC 07-213 (released December 7, 2007) in the above-captioned docket (the "Stratos Order" or "Order").

INTRODUCTION

Expedited action is needed to clarify or correct the ordering clauses of this decision with respect to its fundamental condition restricting communications between Inmarsat plc and Stratos Global Corporation ("Stratos Global"). Specifically, the Commission states in Paragraph 48 of the Order that its consent is conditioned on a "prohibition on communications by any employee or officer" of Stratos Global – relating to management and operation of the company – with either Inmarsat plc ("Inmarsat") or Communications Investment Partners Limited and its affiliates (collectively, "CIP"). Order at ¶ 48. However, it is not clear that the

ordering clauses of the decision adequately restate this prohibition; instead they could be read to apply the prohibition to only a single person.

Expedited action is required here. The "Paragraph 48 Condition" goes to the heart of the Commission's approval of the transaction, and the public interest requires that the ordering clauses in the Stratos Order clearly reflect the Commission's intent as expressed in the Order itself. The parties already have closed their deal, 1/ and thus are subject to the Paragraph 48 Condition today, including both its substantive restrictions and its associated recordkeeping requirements. However, the risk exists that Inmarsat and Stratos Global will engage in prohibited communications on the hyper-technical theory that the ordering clauses do not expressly forbid them, notwithstanding the condition stated in Paragraph 48. In that case the parties would be violating the key principle underlying the Commission's approval of the transaction under Section 310. Inmarsat and Stratos Global also might later try to use this situation to challenge the Commission's ability to audit and enforce its intended condition on communications between the companies.

As we discuss, the Commission can address this matter very quickly because it already has made the underlying substantive decisions in the Order itself. All that is required is the issuance of a very brief erratum or further order with a supplemental ordering clause consistent with the Commission's intent as explained in the Order's text. The Commission should do so as rapidly as possible to minimize the risk of harm to the public interest that would arise from impermissible inter-party communications. 2/

1/ The parties announced that they closed the transaction on December 11, two days ago.

2/ This pleading is not a petition for reconsideration; it seeks only correction or clarification of ordering clauses appropriate to address the substantive decisions made in the Order. While VIZADA disagrees with some of those substantive conclusions, it will separately continue to review the Order and decide at a future time whether it will file either a petition for

I. THE ORDER RESTS ON STRICT LIMITATIONS IN PARAGRAPH 48 ON COMMUNICATIONS BETWEEN INMARSAT AND STRATOS GLOBAL EMPLOYEES AND MANAGEMENT

The fundamental issue in this proceeding has been whether Inmarsat will exercise *de facto* control over Stratos Global by virtue of the proposed transaction. VIZADA presented extensive evidence to demonstrate the degree to which Inmarsat would be able to dominate the affairs of Stratos Global through its financing, call option, and other sources of control and influence. Two other parties – Iridium Satellite, LLC and Vizada, Inc., f/k/a Telenor Satellite Services, Inc. (collectively with VIZADA, the "Opponents") – raised the same objections.

The Commission recognized that Inmarsat's "loan facility is equivalent to a 100 percent indirect beneficial ownership interest." Order at ¶ 77. The Commission noted that it does "not rely on the labels that parties put on arrangements" and instead looks at "the totality of the circumstances, the economic reality and substance of the transaction." *Id.* at ¶ 80 (*citing Fox II*) 3/. In this case the Commission observed that CIP's anticipated debt/equity ratio would be an astounding 137,000 to 1, far in excess of the 14 to 1 ratio the Commission had found to evidence ownership in another transaction. *Id.* at ¶ 83. The Commission concluded that the Call Option, together with the loan, demonstrate that Inmarsat expects CIP to repay the note by handing over the Stratos Global stock. *Id.* at ¶ 84. The Commission took notice of other features of the transaction that reinforced Inmarsat's position, such as the interest and subordination provisions. *Id.* at ¶¶ 81-82. Based on these conclusions, the Commission required Inmarsat to provide information regarding its foreign ownership as if it were the acquiring party itself, notwithstanding Inmarsat's claims that it is not a real party in interest to the Application.

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reconsideration with the Commission or a judicial appeal.

3/ *See Fox Television Stations, Inc.,* Second Memorandum Opinion and Order, FCC 95-313, 11 FCC Rcd 5714 (1995).

Despite all of the above, however, the Commission has declined to find that Inmarsat will exercise *de facto* control over Stratos Global during the period that the Trust is in place. The Commission "recognize[s] that the loan in this transaction will give Inmarsat an economic interest in Stratos Global and that all parties to the proceeding are aware of it." *Id.* at ¶ 56. Indeed, the Commission correctly finds that the economic stake is 100%. *Id.* at ¶ 77. However, the FCC declines to find that Inmarsat will exercise *de facto* control for essentially one major reason; the Commission relies on a broad restriction it imposes on communications between Inmarsat and Stratos Global. Specifically, in Paragraph 48 of the Order the Commission expressly stated: "We shall, therefore, condition our consent to the transfer of control of Stratos Global to the Trust upon compliance with the prohibition on communications by any employee or officer of Stratos Global and Inmarsat or CIP relating to the management and operation of Stratos Global." *Id.* at ¶ 48 (emphasis added). 4/ This prohibition is not absolute. Inmarsat and Stratos Global employees may engage in certain communications associated with "the exchange of technical information" necessary to deliver Inmarsat services to end users. *Id.* "Permissible communications" are those that occur "in the ordinary course of business" as that term is defined by Stratos Global in its September 18, 2007 *ex parte* letter. *Id.* No other communications between Inmarsat and Stratos Global personnel are allowed.

4/ This is not new. The Commission has previously restricted communications between the shielded party and employees of the licensee company, in addition to restricting communications with the trustee. *See e.g.*, *Lorimar Telepictures Corp.*, 3 FCC Rcd 6250, 6255 [¶ 35] (1988) (approving trust with conditions prohibiting communications with Trustee and with "personnel of trust assets"); *KKR Associates L.P.*, 2 FCC Rcd 7104, 7107 [¶ 22] (1987) (approving trust with conditions restricting communications with Trustee and with "personnel" of licensee corporations). Restricting communications at all levels of the company under a trust clearly promotes the policy set forth in the Commission's *Tender Offer Policy Statement* that "the offeror will be strictly prohibited from either becoming involved in, or seeking to influence, directly *or indirectly*, the operation or management of the corporation." *See* 59 RR 2d 1536, 1578 [¶ 60] (1986) (emphasis added).

Because this restriction is so important, the Commission established tools to facilitate compliance audits and enforcement. The Commission required that the parties "keep records" of all their communications and make them available for review. *Id.* Only then, relying on the "Paragraph 48 condition" and the surrounding enforcement mechanism, was the Commission able to conclude that "Inmarsat cannot control the operation of Stratos Global during the pendency of the Trust. *Id.*

II. THE COMMISSION SHOULD CONFIRM THAT THE ORDERING CLAUSES REFLECT THE INTENDED COMMUNICATIONS PROHIBITION

To be clear, VIZADA does not agree with the Commission's conclusion regarding *de facto* control. We do not think this communications prohibition is sufficient to prevent Inmarsat from exercising undue influence over Stratos Global while sidestepping the requirements of Section 310(d) of the Communications Act. While we agree that *de facto* control is determined based on the totality of the circumstances, we believe that Inmarsat has stepped far over that line here based on its financial levers, contractual rights, and ability to exert influence over fundamental Stratos Global business policies, notwithstanding the restrictions on communications imposed by the Commission. 5/

This Petition, however, goes to a much more narrow point. Having found that the "Paragraph 48" communications prohibition condition is central to its *de facto* control analysis, the Commission should be certain that this prohibition is adequately reflected in its ordering clauses. This is necessary so that no communications occur that involve impermissible

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5/ Even by their own terms, the "ordinary course of business" discussions permissible under the Paragraph 48 condition could be read to go beyond the mere technical discussions necessary to service end users, *see* Stratos Order at ¶ 48, and easily slip into operational and policy matters. The FCC will need to ensure that the parties keep sufficiently detailed records of their communications in these areas so that the Commission has a foundation upon which to undertake any requisite audit and enforcement action.

operational and policy matters. It also is necessary so that Inmarsat and Stratos Global cannot pose hyper-technical objections to future audit and enforcement actions by the Commission based on an argument that they are not formally bound by the Paragraph 48 Condition.

We believe some of the ordering clauses here reflect the "Paragraph 48 Condition." For example, the Commission incorporated this critical restriction in the general Ordering Clause Paragraph 113, which references conditions set forth in the Order:

> Accordingly, having reviewed the Transfer of Control Application, the petitions, and the record in this matter, IT IS ORDERED that, pursuant to sections 4(i) and (j), 214, 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), (j), 214, 309, 310(d), the Transfer of Control Application for consent to transfer control of the licenses and authorizations from Stratos Global Corporation to Robert M. Franklin, is GRANTED, <u>to the extent specified and as conditioned</u> in this Memorandum Opinion and Order and Declaratory Ruling. (emphasis added)

By its terms this provision incorporates the "Paragraph 48 Condition" in full.

If the Stratos Order contained no other ordering provisions, we would not be filing this Petition. However, the Commission appears to have unintentionally introduced ambiguity elsewhere, potentially inviting Inmarsat and Stratos Global to violate the Commission's condition on their authorization. Specifically, Ordering Paragraph 119 states that the grant also is conditioned on "compliance with the Trust provisions forbidding communications from Inmarsat or the CIP entities <u>to the Trustee</u> during the Trust relating to the operations of Stratos Global and its U.S. licensed subsidiaries, except those communications necessary to permit the offering of Inmarsat services to end users of the types specified in Appendix C." Order at ¶ 119 (emphasis added).

This condition is clearly much more narrow than the one in Paragraph 48. It relates only to communications by Inmarsat with the Trustee, not Inmarsat's potential communications with Stratos Global management and employees. Thus, this condition is largely

irrelevant to the underlying goals of the "Paragraph 48 Condition" – to prevent Inmarsat from exercising *de facto* control directly over Stratos Global. 6/

In that regard, we note that Appendix C references another communications limitation in the Trust Agreement, also much more narrow than the "Paragraph 48 Condition." Specifically, Section 4(b) of the Trust Agreement provides that directors appointed by the Trustee may not communicate with Inmarsat. However, this restriction also is far removed from the broad communications prohibition in the "Paragraph 48 Condition." As VIZADA discussed in its Petition to Deny and Reply, (1) the restriction does not apply to those directors not appointed by the Trustee; and (2) the restriction does not apply at all to any Stratos Global management and employees who are not directors. Individuals in those capacities can communicate with Inmarsat at will and on any subject without any restriction arising from either the Trust Agreement or any other source – except as restricted by the "Paragraph 48 Condition" in the Commission's Order.

Confusion may exist because Section 4(b) of the Trust Agreement does limit communications with Inmarsat by one Stratos Global employee – its CEO – who can communicate on defined "ordinary course of business" matters even though he also is a Stratos Global director. But the "Paragraph 48 Condition" by its terms applies these same communications restrictions to every other Stratos Global employee, and imposes recordkeeping requirements for such communications.

Again, the general ordering clause in Paragraph 113 by its terms cross-references all conditions in the Order, including Paragraph 48. However, the Order leaves open the risk that

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6/ Indeed, the restriction on Inmarsat communications with the Trustee is largely irrelevant given that the Trustee has expressly disclaimed any intention to oversee the operations of Stratos Global himself. *See* VIZADA Reply at 2.

Inmarsat and Stratos Global will act otherwise, violating the communications restrictions underpinning the Commission's decision regarding *de facto* control of Stratos Global. The Commission's ability to enforce its condition also will be strengthened if the ordering clauses are clarified.

The Commission has a simple and straightforward path to resolve this matter, and it should do so as quickly as possible given that the parties already have closed their transaction. The Commission should issue a brief erratum or supplemental order adding an additional ordering clause expressly restating the Paragraph 48 Condition. Specifically, to make the insulation provisions perfectly clear, the Commission should clarify its intent as follows:

> IT IS FURTHER ORDERED that the above grant IS CONDITIONED UPON no employee or officer of Stratos Global engaging in any communications to, from or with Inmarsat or CIP relating to the management and operation of Stratos Global and its U.S. licensed subsidiaries, except those communications necessary to permit the offering of Inmarsat services to end users of the types specified in Appendix C.

This clarification would simply restate a condition the Commission already has imposed in the text of the Order, so no additional work is required to render this action. However, the Commission should act quickly. Until such clarification is given, the public interest is at risk that this communications restriction, deemed so critical by the Commission to ensure that Inmarsat does not exercise unauthorized control over Stratos Global, will not be fully implemented by the parties.

Respectfully submitted,

VIZADA SERVICES LLC

By: *_/s/ Peter A. Rohrbach_*

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December 13, 2007

CERTIFICATE OF SERVICE

I, Cecelia Burnett, hereby certify that on this 13th day of December, 2007, I caused to be served a true copy of the foregoing "PETITION FOR EXPEDITED CLARIFICATION OR CORRECTION" by hand delivery, electronic mail or by first-class, postage-prepaid U.S. mail upon the following:

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