Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
Stratos Global Corporation, Transferor	)	WC Docket No. 07-73
	)	DA 07-2257
Robert M. Franklin, Transferee	)	
	)	FCC File Nos.
Transfer of Control of	)	ITC-T/C-20070405-00133
Stratos Global Corporation's	)	ITC-T/C-20070405-00135
FCC-Authorized Subsidiaries	)	ITC-T/C-20070405-00136
	)	SES-T/C-20070404-00440
	)	through -00443
	)	0002961737 and
	)	ISP-PDR-20070405-0006
	)	

JOINT OPPOSITION TO VIZADA's
PETITION FOR EXPEDITED CLARIFICATION OR CORRECTION

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Stratos Global Corp. ("Stratos"), Robert M. Franklin ("Trustee"), CIP Canada Investment Inc. ("CIP") and Inmarsat Finance III Limited ("Inmarsat Finance") hereby file this Joint Opposition to VIZADA's Petition for Expedited Clarification or Correction of the Commission's Memorandum Opinion and Order and Declaratory Ruling in this docket, FCC 07-213, (rel. Dec. 7, 2007)("*Order*").

I. INTRODUCTION AND SUMMARY

There is no dispute that the Trust Agreement generally prohibits communications by Inmarsat with either the Stratos directors or the Trustee, or that the Commission's *Order* is conditioned on compliance with those prohibitions. Under the guise of asking the Commission to "clarify" that a communications-related condition

actually is binding,[1] VIZADA wrenches a single sentence out of context, and seeks to expand the existing conditions in a manner that would chill other normal communications between Stratos and Inmarsat. Such a chill would undermine the current robust competition between VIZADA and Stratos (the two largest resellers of mobile satellite services), and therefore would harm the public interest. In reality, VIZADA is not asking for "clarification," but instead seeks reconsideration of the substance of the *Order*. For these reasons, and others presented below, the Commission should promptly dismiss the VIZADA petition.

In consenting to a trust owning and controlling Stratos for approximately sixteen months, the Commission approved the underlying Trust Agreement as consistent with general Commission policies, reminded the parties of their obligations to comply with the terms presented for Commission approval (including the restrictions on communications by Inmarsat with Stratos directors or the Trustee), and declined to assume that the Trustee would not fulfill his obligations to maintain control over Stratos.[2] Significantly, the Commission (i) did not expand the existing restrictions on director and Trustee communications in the Trust Agreement, and (ii) determined that the narrow exception allowing "ordinary course of business" communications between one director (who also is the Stratos CEO) and Inmarsat was "reasonable" under the circumstances. The only additional requirement the Order imposed is to keep records of communications falling within that limited exception.[3]

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[1] Contrary to VIZADA's suggestion, every requirement of a Commission order is relevant, even if not repeated in the Ordering Clauses. Moreover, the first ordering clause granted the applications "to the extent specified and as conditioned" in the 84 pages that comprise the Order. *Order* at ¶ 113. To this end, the undersigned parties are already implementing procedures to comply with the requirements of the Trust Agreement and ¶ 48 of the Commission's *Order*.

[2] *Order* at ¶¶ 49, 112.

[3] *Id.* at ¶ 48.

VIZADA and Stratos are the two largest distributors of Inmarsat services, and among the leading distributors of Iridium and other satellite services. This vibrant competition motivated VIZADA to pounce quickly on an opportunity to try to stifle every single Stratos employee from communicating with Inmarsat.[4] There are at least 30 Stratos employees (and likely similar numbers at VIZADA) who communicate with Inmarsat on a regular basis about a range of network, operational, sales, marketing, finance, legal and regulatory topics. VIZADA certainly appreciates that it could place Stratos (and Inmarsat) at a significant competitive disadvantage were it to succeed in hindering communications between Stratos and Inmarsat more broadly than the Commission's *Order* and the Trust Agreement require.

II. THE COMMUNICATIONS RESTRICTIONS APPLY ONLY TO THE TRUSTEE AND THE STRATOS DIRECTORS

In Section III. C. 2. of the *Order*, the Commission carefully analyzed the "Adequacy of the Trust in This Proceeding" to ensure that the Trustee would retain both *de jure* and *de facto* control. The Commission summarized that entire section in the very first sentence: "After reviewing the arguments of VIZADA, we find that the Trust in this proceeding will, if properly administered by the Trustee, adequately insulate Stratos Global from CIP and Inmarsat Finance."[5]

In approving the terms of the Trust Agreement, the Commission first reiterated in ¶ 45 the six criteria it generally employs to ensure, in certain circumstances involving a trust, that a licensee remains independent from the beneficiary:

(1) trust should be irrevocable;

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[4] VIZADA Petition at 8.

[5] *Order at* ¶ 45.

(2) the trustee should be independent, with no familial or business relationship with the beneficiary;

(3) the trust should forbid communications with the trustee regarding the management and operations of the licensee;

(4) the trust may permit written communications from the trustee to the beneficiary;

(5) all permissible communications between the beneficiary and the trustee should be in writing; and

(6) the trustee should impose these same independence criteria on **every corporate director** the trustee may appoint.[6]

The Commission concluded: "After reviewing the Trust Agreement in this transaction, we agree that it does contain all of the elements the Commission has required to ensure the independence of the Trustee from CIP and Inmarsat Global," including a general prohibition on communications between Inmarsat and either the Stratos directors or the Trustee.[7]

In the next paragraph, the Commission recognized that the Trust Agreement created a limited exception to the ban on Inmarsat communications with Stratos directors, enabling a Stratos director who is also a Stratos officer to communicate with Inmarsat regarding commercial matters in the ordinary course of business. The Commission further acknowledged (without dispute) the Applicants' position that this exception currently applies to the Stratos CEO, "the only employee of the company who is also a Director."[8]

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[6] *Id.* at ¶ 45 (footnotes omitted and emphasis supplied). The Trustee is imposing these independence criteria on all Stratos directors, regardless of whether they are incumbents or new members appointed by the Trustee.

[7] *Id.* at ¶ 46. Inmarsat and CIP may communicate with the Trustee to obtain information from Stratos as required to ensure compliance with securities laws and other applicable laws. Trust Agreement, Section 10.b.

[8] *Id.* at ¶ 47 (footnote omitted).

To be clear, the Trust Agreement generally forbids communications between Inmarsat and Stratos **directors**, Trust Agreement at Section 4.b, but the Trust Agreement contains no restriction at all on communications between Inmarsat and Stratos **employees** who do not also serve as directors. It is equally clear from the Commission's application of the six criteria in ¶ 45 of the *Order* and enumerated above that the broad prohibitions on communications apply only to the Trustee, and to the directors. The Commission did not extend those types of communications restrictions in the Trust to every Stratos employee, and there is no basis under the ¶ 45 criteria to do so.

Accordingly, the Commission accepted the communications restrictions in the Trust Agreement, and concluded that the limited exception for the Stratos CEO/Director is "reasonable":

> The only way in which the Trust in this transaction departs from the criteria listed in the *Tender Offer Policy Statement* is that, while generally forbidding communications between Stratos Global and Inmarsat Finance, it does provide that "**any officer [of Stratos Global] 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 Global] and Inmarsat and their respective Affiliates."
>
> * * *
>
> We agree, therefore, that **the provision in the Trust allowing limited communications between the CEO of Stratos and Inmarsat related to the exchange of technical information is reasonable,** and do not find that it violates the Commission's requirements for valid trusts. On the other hand, while we do not agree that **the Trust provision** is intended to permit unrestricted communications, we agree with VIZADA that it is necessary to ensure that there is no abuse of **this provision**. Accordingly, we remind Inmarsat, CIP and Stratos Global that they have an obligation to adhere strictly to the limited purposes for which communication is permitted **under the Trust**. 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**.**

Order ¶¶ 47, 48 (footnotes omitted) (*quoting* Trust Agreement at Section 4.b) (emphasis added).

This last sentence is the language VIZADA cites in arguing for a broad prohibition on communications with every other individual at Stratos who is not a director. However, VIZADA ignores the prior language where the Commission acknowledged (without dispute) the explanation that this provision relates to the Stratos CEO, "the only employee of the company who is also a Director."[9] Moreover, immediately following this sentence, the Commission refers to and incorporates Appendix C, again making it clear that the only Stratos employee at issue is the Stratos CEO. Appendix C states directly that the "exception only applies to only one Stratos director, Jim Parm, who also is the Stratos CEO."[10] Thus, the language that VIZADA strips out of context references only the restriction on communications with the Stratos CEO/Director.

To summarize, the Commission's *Order* consistently recognizes that the communications restrictions apply only to the Trustee and Stratos directors:

- the text of ¶ 45 explains that Commission policy and precedent may require restrictions on communications with the Trustee and directors;
- the text of the Trust Agreement imposes communications restrictions only on the Trustee and directors;
- the text of ¶ 46 concludes that the Trust Agreement contains all of the required elements to ensure the independence of the Trust;

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[9] *Id.* at ¶ 47 (footnote omitted).

[10] *Id.* at Appendix C.

- the text of ¶ 47 notes that the one exception to general policy is a limited restriction for a Stratos director who is also an officer, and that this limited restriction currently applies only to the Stratos CEO;
- the text of ¶ 48 concludes that allowing "ordinary course" communications restriction with the Stratos CEO is reasonable; and
- the text of Appendix C establishes that the only Stratos employee with a communications restriction is the CEO.

Finding no legal support in the Commission's *Order* for restricting communications with *all Stratos employees*, VIZADA relies on two broadcast attribution cases to argue that the Commission should go beyond the terms of the Trust Agreement and its own precedent and impose a new communications restriction.[11] The cases Vizada cites are wholly inapposite. Stratos is not a media company. There is no requirement for CIP or Inmarsat to avoid holding an "attributable interest" in Stratos, nor for that matter is any other FCC rule or policy concern at issue here.

Similarly, this is not a tender offer case where a Trustee is installed on an STA basis before the public had an opportunity to comment on a transaction. Under the *Tender Offer Policy Statement*, the Commission ensures that the "status quo" remains in place and that the offeror will have no "influence" while the Commission is reviewing a "long form" application.[12] Long form approval was sought and obtained here prior to vesting the Trustee with control.

In contrast to an attribution or tender offer trust, this case involves the use of a trust as an accepted legal vehicle to control a Commission licensee after a full notice and comment pleading cycle. *Order* at ¶ 39. Here, as the Commission held, the

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[11] VIZADA Petition at 4 n.4, *citing Lorimar Telepictures Corp*., 3 FCC Rcd 6250, 6255 (1988); *KKR Associates L.P.*, 2 FCC Rcd 7104, 7107 (1987).

[12] *See, e.g., Tender Offers and Proxy Contests,* 59 Rad. Reg. 2d (P&F) 1536, ¶¶ 8, 60, 76 (1986) ("*Tender Offer Policy Statement*") (approving use of trusts on an STA basis, but preventing offeror from exerting "influence," as well as control, over operation or management of licensee while "long form" application is pending).

touchstone is whether the Trustee would be expected to retain requisite control for Section 310(d) purposes, or whether another person has *de facto* control (*i.e*., the power to dominate corporate affairs).[13] As the Commission's *Order* explains, "influence and control are not the same thing."[14] In other words, that someone may be able to communicate with the employees of a company does not mean that person has control.

As VIZADA recognizes, the Commission properly declined to speculate that Inmarsat will, prospectively, exercise *de facto* control over Stratos.[15] In addressing *de facto* control issues, Commission policy is expressly not to speculate about how or why people or entities may act in the future.[16] Specifically, the Commission has determined that it will not speculate that companies and individuals will act in a manner inconsistent with their representations to the Commission, or will be controlled in a manner different from the contractual terms presented to the Commission.[17] Rather, the Commission examines ***existing contractual and legal documents, and ascertainable facts,*** and then determines (i) whether rights that exist (as a matter of contract or law) provide a mechanism by which someone can exercise control, and (ii)

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[13] *Id.* at ¶¶ 32-37 (rejecting VIZDA arguments that Inmarsat would have *de facto* control because it would have some "influence" over Stratos).

[14] *Order* at ¶ 57, *quoting News Int'l, Plc.*, 97 FCC 2d 349, 355-56, ¶ 16 (1984) ("*News Int'l*"). *See also American Mobile Radio Services Corp.*, 16 FCC Rcd 21431, 21436, ¶ 10 (2001) ("*AMRC*"); *Lockheed Martin Corp. Regulus*, LLC, 14 FCC Rcd 15816, 15830-31, 15833, ¶¶ 27, 31, 32 (1999) ("*Lockheed Martin*").

[15] VIZADA Petition at 4.

[16] *William S. Paley*, 1 FCC Rcd 1025, 1026 (1986) ("Unlike a *de jure* transfer of control, where the mere potential to exercise majority vote requires prior Commission consent . . . a finding that a *de facto* transfer of control has occurred depends largely upon a review of the actual operation of the licensee – *not upon the potential for some hypothetical future exercise of control*.") (emphasis added); *see also Fox I*, 10 FCC Rcd at 8516, ¶¶ 159-60 ("We have held that a showing of de facto control must rely on facts and events that have occurred and not on speculation as to what might occur in the future.").

[17] *News Int'l*, 97 FCC 2d at 356, 358, ¶¶ 17, 21; *Lockheed Martin*, 14 FCC Rcd at 5832, ¶ 30.

whether parties have already acted in a manner where one party had usurped or abdicated control.[18] ***No such rights exist and there is no record evidence that any such actions have occurred here***.

It is significant under Commission precedent that the terms of the Trust expressly **require the Trustee** (and not some third party) **to maintain *de facto* control**, and expressly **require the Trustee** to comply with all Commission requirements, rules, and policies, including the requirement **to seek prior Commission consent to any transfer of control**.[19]

For these reasons, the Commission rejected VIZADA's request to "assume that the Trustee will not fulfill his obligations", and will abdicate control to someone else.[20] Moreover, the *Order* concludes that Inmarsat Finance does not have the right to dominate Stratos with respect to *a single one of* the *Intermountain Microwave* criteria.[21] It does not have any equity or debt interests in Stratos. It does not have the right to appoint any Stratos director or officer. In fact, while the Trust owns

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[18] *See News Int'l*, 97 FCC 2d at 356, ¶ 17 ("This is not a case where we can review retrospectively the operations of a corporation and the conduct of its principals . . . . Rather, we must review prospectively the materials before us and representations as to future conduct . . . . [W]e believe it is not appropriate to infer, in the absence of information to the contrary, that [the party asserting that it will be in control] will not faithfully carry out its representations or that it will be controlled and operated in a manner that differs from the agreement under consideration."); *Manahawkin Comm. Corp.*, 16 FCC Rcd 342, 346, ¶¶ 8, 14 (2001)(distinguishing precedent in which the Commission found an unauthorized transfer of control because the precedent involved a licensee who abdicated control of the station and a third party that assumed control); *VisionStar, Inc. and Echostar VisionStar Corp.*, 16 FCC Rcd 19187, 19194-95, ¶¶ 24-26 (2001) (examining the rights conferred by the contracts for the transaction at issue in conjunction with whether the facts indicated a usurpation of control).

[19] Trust Agreement at §§ 2(a), 5(e), 11(h); *Fox I*, 10 FCC Rcd at 8516, ¶ 159 (contractual provisions designed to ensure where control rests are relevant in *de facto* control analysis).

[20] *Order* at ¶ 49; *see Lockheed Martin*, 14 FCC Rcd at 15835-36, ¶ 37.

[21] *Order* at ¶ 37.

and controls Stratos, Inmarsat Finance has no contractual or other legal rights whatsoever that provide it with negative or positive control over Stratos. Control over each of the relevant *Intermountain Microwave* activities rests with the Trustee, who elects the Stratos board.

A much closer precedent than the attribution cases VIZADA cites is *Lockheed Martin/Warburg*, where the trust was used outside of the tender offer or broadcast attribution context. In that case, the Commission recognized that Warburg would be interested in the decisions made by NeuStar but approved the trust arrangement even though Warburg had two of the five seats on the NeuStar board of directors.[22] Consistent with the law on *de facto* control, there was no restriction on those Warburg representatives on the NeuStar board communicating directly with the other NeuStar board members or with NeuStar employees.

In an abundance of caution, the parties here have prohibited communications by Inmarsat with either the Trustee or the Stratos directors (with a limited exception for the CEO/Director) even though there was no such prohibition in *Lockheed Martin/Warburg*. In this context, there is no basis for a communications restriction going beyond the Trustee and the Stratos directors, who control Stratos.

To the contrary, the Trust Agreement imposes far more restrictions on Inmarsat than is required by Commission precedent. Indeed, while Inmarsat is prohibited from communicating with the Stratos board, Commission precedent allows option holders, even those with significant equity stakes, to have representation on the licensee's board without leading to *de facto* control. For example, in *Lockheed Martin*, the Commission found no *de facto* control of Comsat even though Lockheed had (i) 3 of

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[22] *In the Matter of Request of Lockheed Martin Corporation and Warburg, Pincus & Co. for Review of the Transfer of the Lockheed Martin Communications Industry Services Business*, 14 FCC Rcd 19792, 19801 (1999).

15 board seats, (ii) a 49% equity stake, and (iii) a contractual obligation to acquire the remaining 51% following statutory amendments. *Lockheed Martin,* 14 FCC Rcd at 15838, ¶ 40. Similarly, in *AMRC*, the Commission found no *de facto* control by an entity which had (i) provided 100% of critical funding, (ii) an option to acquire a majority equity stake and *de jure* control, (iii) its CEO as one of three board members of the licensee, and (iv) representation among the officers of the licensee. *AMRC*, 16 FCC Rcd at 21435-36, ¶ 10. Inmarsat and Stratos should not, as VIZADA asserts, be held to a different *de facto* control standard.

III. EXTENDING THE COMMUNICATIONS RESTRICTIONS AND RECORD-KEEPING REQUIREMENTS TO ALL INDIVIDUALS AT STRATOS WOULD DISSERVE THE PUBLIC INTEREST

VIZADA's strong interest in muzzling Stratos is clear. VIZADA seeks to hamper its chief competitor. At least 30 individuals at Stratos who are not directors communicate regularly with Inmarsat. Since VIZADA has the same level of communications with Inmarsat, VIZADA appreciates that these communications with the principal supplier are essential to developing, marketing and delivering critical mobile satellite services to the public. Extending the communications restriction beyond directors, and extending the record-keeping obligations, would have a chilling effect that would undermine competition. Many individuals at Stratos would seek legal advice before making a routine operational call or simply decide not to have a communication if it would be logged and subject to "compliance audits and enforcement."[23]

Stratos' biggest customer is the U.S. government. The Departments of Defense and Homeland Security and other first responders would not be aided by chilling communications between Inmarsat and Stratos operating personnel. Those

[23] VIZADA Petition at 5.

security agencies, and the public they serve, would be harmed by such an unnecessary restriction. Only VIZADA would benefit from such an overly broad restriction

The legitimate objective of the Commission's *Order* -- to ensure that Inmarsat does not exercise *de facto* control over Stratos -- is achieved by the existing communications restrictions on the decision-makers on the Stratos board of directors and on the Trustee (who appoints those directors, and votes 100% of the Stratos shares). The Commission's record-keeping obligation will ensure that the limited, ordinary course communications between Inmarsat and the Stratos CEO/Director do not become an avenue for Inmarsat to exercise *de facto* control. There is no basis to speculate otherwise.

IV. CONCLUSION

For the reasons stated above, VIZADA's Petition for Clarification should be summarily dismissed. If the Commission does not do so, to remove any possible ambiguity created by VIZADA's filing, the Commission should confirm that the *Order* (1) adopted the communications restrictions in the Trust Agreement as a condition to the transfer of control (¶ 48); (2) did not impose any communications restrictions beyond those in the Trust Agreement (¶¶ 46-48); and (3) imposed an additional record-keeping requirement on any "ordinary course" communications with Stratos directors who are

also Stratos officers (¶ 48). The Commission could do so with a *sua sponte* clarification of just the language that VIZADA takes out of context.

Respectfully submitted,

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December 21, 2007

CERTIFICATE OF SERVICE

I, Marc Paul, an attorney with the law firm of Steptoe & Johnson LLP, hereby certify that on December 21, 2007, I served a true copy of the foregoing Joint Opposition by first class mail, postage pre-paid (or as otherwise indicated) upon the following:

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