

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

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Office of the Secretary

In the Matter of)	WC Docket No. 07-73
)	
Stratos Global Corp. and Robert M. Franklin, Trustee)	DA 07-2557
)	
)	FCC File Nos.:
)	
Applications for Consent to Transfer of Control and Petition for Declaratory Ruling)	ITC-T/C-20070405-00136
)	ITC-T/C-20070405-00133
)	ITC-T/C-20070405-00135
)	SES-T/C-20070404-00440
)	through -00443
)	0002961737 and
)	ISP-PDR-20070405-00006

To: The Commission

REPLY OF VIZADA SERVICES LLC TO JOINT OPPOSITION

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VIZADA Services LLC (“VIZADA”) submits this Reply to the Joint Opposition to VIZADA’s Petition for Expedited Clarification or Correction (“Joint Opposition”) submitted on December 21, 2007 by Inmarsat Finance III Limited (“Inmarsat”), Stratos Global Corp. (“Stratos Global”), Robert M. Franklin (“Trustee”), and CIP Canada Investment Inc. (“CIP”), collectively, the “Transaction Parties.”

SUMMARY

The Transaction Parties have demonstrated exactly why the Commission should immediately clarify or correct its Order here. In their Joint Opposition they argue that the Order does not in any way restrict communications between Inmarsat and Stratos Global management and employees, with just one exception – the nominal limitation on the Stratos Global CEO referenced in their Trust Agreement. They take this position even though the Order contains an express prohibition on communications “by any employee or officer” and repeatedly relies on that condition as a basis for concluding that the transaction complies with Section 310 of the Act. The

Transaction Parties thus have taken exactly the position VIZADA anticipated in its Petition that they might. ^{1/}

The Commission should promptly address this overly-narrow reading of the Order's express instructions and intent. In doing so, the Commission should reject the Transaction Parties' attempt to argue that the communications safeguard required for this highly unusual transaction is either improper or overly burdensome. To the contrary, this modest constraint is the very foundation of the Commission's conclusion that Inmarsat will not be able to exercise the strong influence and control it otherwise holds due to its dominant economic and contractual position. But now the Transaction Parties concede that they intend to ignore even this simple condition of the Order.

VIZADA again emphasizes that prompt action is required here. The Transaction Parties already have closed, and they may already be violating the Order under their improper interpretation of its terms. Admittedly the Commission can take enforcement action later against such violations, and impose appropriate fines and other penalties on Inmarsat, Stratos Global, and their employees. But after-the-fact enforcement will not "unring the bell" and undo harm to third parties and the public interest ensuing from unauthorized communications. Equally important, this unusual transaction stands as a model for other parties who inevitably will consider a similar structure. It thus is all the more important that the Commission correct the view of Inmarsat and Stratos Global that no material communications restrictions apply between the companies.

As discussed in the Petition, the Commission need only issue a very brief *sua sponte* erratum clarifying or correcting the ordering clauses to more expressly restate the

^{1/} Petition for Expedited Clarification or Correction filed by VIZADA on December 13, 2007 (the "Petition"). The Petition seeks clarification or correction by the Commission of its ordering clauses in its Memorandum Opinion and Order and Declaratory Ruling, FCC 07-213 (released December 7, 2007) in the above-captioned docket (the "Order"). This Reply is timely filed pursuant to Sections 1.4 and 1.45 of the Commission's rules.

communications condition in the Order’s text. ^{2/} Such a simple action is sufficient because the Commission already has made all the substantive findings supporting its imposition of that condition in the Order. The Transaction Parties have now demonstrated in their Joint Opposition exactly why expedited action is needed here.

I. THE TRANSACTION PARTIES MISREAD THE ORDER AS RESTRICTING COMMUNICATIONS BETWEEN INMARSAT AND ONLY A SINGLE STRATOS GLOBAL EMPLOYEE

In Paragraph 48 of the Order, the Commission expressly stated that it will “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 at ¶ 48 (emphasis added). This prohibition is subject to a broad carve-out for communications in a multiplicity of categories that the Transaction Parties have characterized to be “in the ordinary course of business” – and the Commission stated that it intended to “incorporate into this Order that list of permissible communications” in Appendix C. *Id.*

This would seem to be a reasonably straightforward, if overly modest, limitation. As VIZADA has made clear, it does not view the restriction as sufficient to wall off Stratos Global from unauthorized *de facto* control by Inmarsat. *See* Petition at 5. However, the Commission reached a different conclusion in its Order. It repeatedly relied on the fact that Inmarsat would not communicate with Stratos Global regarding corporate policy and operations to support its conclusion that Inmarsat’s influence would not be sufficiently strong to allow it to direct company affairs. *See, e.g.,* Order at ¶¶ 56-57.

The Commission was properly concerned about the scope of Inmarsat’s communications with Stratos Global given the unique circumstances here, and the associated

^{2/} VIZADA has suggested the text of such an erratum in its Petition at 8.

breadth and depth of Inmarsat's other control rights. Specifically, the Commission recognized that Inmarsat's "loan facility is equivalent to a 100 percent indirect beneficial ownership interest." *Id.* at ¶ 77. It understood that CIP's anticipated debt/equity ratio would be 137,000 to 1. *Id.* at ¶ 83. The Commission concluded that Inmarsat's Call Option, together with its loan, demonstrated that Inmarsat expects CIP to repay the note by transferring the Stratos Global stock. *Id.* at ¶ 84. The Commission also acknowledged other contractual provisions that reinforced Inmarsat's position, such as the interest and subordination clauses. *Id.* at ¶¶ 81-82.

Based on this record, the Commission required Inmarsat to provide information regarding its foreign ownership as if it were the acquiring party itself. *Id.* at ¶ 95. And based on this record, the Commission also imposed the Paragraph 48 Condition on post-closing communications between Inmarsat and Stratos Global.

The primary response of the Transaction Parties is that the Commission did not mean what it said. According to their reading of the Order, the Commission only meant to restrict communications prohibited by the Trust Agreement. They then argue that because the only Stratos Global employee restricted by the Trust Agreement is the Stratos Global CEO (and only so long as he is a director), the Paragraph 48 Condition does not restrict any other communications between Inmarsat and Stratos Global employees in any respect whatsoever.

This makes no sense and is inconsistent with the Order's expressed intent. The Commission clearly was concerned about the ability of Inmarsat to influence Stratos Global operations, and properly so given the multiple levers Inmarsat holds. The Commission agreed that it "cannot ignore the possibility that awareness of Inmarsat's [financial and contractual] interest would influence the Trustee or management in their operation of Stratos Global." *Id.* at ¶ 57 (emphasis added). But the Commission decided that this problem was addressed, notwithstanding all the other circumstances here, because of the communications restriction. The Commission

states that because Inmarsat may not “communicate with the Trustee or the Stratos Global management about the operation of Stratos Global, it is not clear how the Trustee or company management would know what Inmarsat would want them to do in a particular situation.” *Id.* at ¶ 56 (emphasis added). The Commission went on to conclude that because Inmarsat may not “discuss corporate policy or operations with the Trustee or Stratos Global management,” it would not conclude that Inmarsat would exercise the “overwhelming influence” that it otherwise held over Stratos Global through its other powers. *Id.* at ¶ 57 (emphasis added).

As VIZADA has previously noted elsewhere, restrictions on communications between Inmarsat and the Trustee are largely irrelevant. The Trustee himself has disclaimed any intention to control Stratos Global operations. *See* Trustee Opposition to Petitions to Deny at 2. And much more important, Inmarsat is not constrained by the Trustee-level restriction in the Trust Agreement so long as it can deal directly with Stratos Global company management and employees anyway. ^{3/}

The Transaction Parties accuse VIZADA of “wrench[ing] a single sentence out of context” when citing the all-important Paragraph 48 Condition on communications between Inmarsat and Stratos Global. Joint Opposition at 2. This is ironic given the weight the Commission puts on that Condition for its fundamental *de facto* control conclusion.

If anything, it is the Transaction Parties who are taking Commission statements out of context. The Commission’s basic intent could not have been more clear – to limit

^{3/} The Trust Agreement also restricts communications by Inmarsat with Stratos Global directors if they are appointed by the Trustee, but the Paragraph 48 Condition is directed at every Stratos Global “employee or officer” – appropriately so given that those are the very people most susceptible to strong Inmarsat influence based on their “awareness of Inmarsat’s possible future ownership of Stratos Global.” *See* Order at ¶ 57. Moreover, the Paragraph 48 Condition language regarding “any employee or officer of Stratos Global” is tailored to address Stratos Global’s own statement that its personnel in “various departments and at different levels of seniority within these departments” communicate directly with Inmarsat. *See* Letter from A. Mamlet, Counsel for Stratos Global Corporation, to Secretary, FCC (Sep. 18, 2007) (excerpted at Appendix C to Order).

communications between Inmarsat and Stratos Global employees and management on operational and policy matters outside the “list of permissible communications” related to “ordinary course of business” matters. On some occasions in the Order the Commission makes statements that seem to suggest that it understands such a restriction to be included in the Trust Agreement, and hence that if the Transaction Parties comply with the Trust then such communications will be limited as required in the Paragraph 48 Condition. *See, e.g.*, Order at ¶¶ 56-57. As the Transaction Parties observe, this is a mistake. The Trust Agreement itself does not contain the communications restriction that the Order deems essential to the *de facto* control finding. But the Commission nevertheless has clearly and adequately “conditioned its consent” on the broader restriction on communications by “any” Stratos Global employees expressly stated in Paragraph 48. The Commission’s intention is obvious from the Order text, and the condition is captured by the general ordering clause in Paragraph 113. ^{4/} The deficiencies of the Trust Agreement are not relevant to and do not undercut the Paragraph 48 Condition itself, or relieve the Transaction Parties from its terms.

Put another way, the Commission clearly meant what it said when it repeatedly discussed the significance of restrictions on communications between Inmarsat and “any” Stratos Global “employees and officers.” The Transaction Parties’ hyper-technical reading only makes sense if one assumes that such language is meaningless surplus, included by the Commission for no purpose. Their argument requires one to conclude that, even though the Commission gave great weight to its expectation that Inmarsat and Stratos Global would limit their communications, the Commission did not actually care if such communications occurred. Obviously this position is absurd and inconsistent with any plain reading of the Order itself.

^{4/} The Transaction Parties concede this point, acknowledging that “every requirement of a Commission Order is relevant, even if not repeated in the Ordering Clauses.” Joint Opposition at 2 n.1.

The Commission should reject the gamesmanship of Inmarsat and Stratos Global, and reiterate that any communications between the two companies by “any employee or officer” outside the “ordinary course of business” are prohibited as a “condition” on the “consent to transfer of control” of Stratos Global, whether or not such communications also would be prohibited by the Trust Agreement.

II. THE TRANSACTION PARTIES CANNOT READ THE PARAGRAPH 48 CONDITION OUT OF THE ORDER BY CITING UNRELATED CASES

The Transaction Parties also contend that no “FCC rule or policy concern [is] at issue here that would justify the Commission going beyond the Trust Agreement terms and imposing a “new communications restriction.” Joint Opposition at 7. This assertion is patently incorrect and tantamount to a petition for reconsideration of the grant of consent to the transaction. The “FCC rule or policy concern” here is Section 310 of the Communications Act itself, and the fundamental integrity of the Commission’s duty to prevent unauthorized transfers of control. The petitioners here presented extensive evidence that Inmarsat would hold *de facto* control of Stratos Global as a result of the proposed transactions. The Commission found otherwise, but only because Inmarsat would not be able to communicate with Stratos Global outside a specific “list of permissible communications.” Order at ¶ 48.

Faced with this reality, the Transaction Parties offer nothing but red herrings. For example, they try to ignore the express language of the Paragraph 48 Condition and instead focus at length, and irrelevantly, on the Commission’s approval of the provisions of the Trust Agreement as insulating the Trustee from Inmarsat. Joint Opposition at 4. But adequate insulation of the *Trustee* was never an issue raised by VIZADA. The Paragraph 48 Condition addresses direct communications between Inmarsat and Stratos Global officers and employees.

The Joint Opposition next attempts to distinguish VIZADA’s citation of two

examples where the Commission imposed communications restrictions upon employees of the company in trust, 5/ claiming they are inapposite because they arose in the broadcast context and/or involved tender offers, neither of which is present here. *See* Joint Opposition at 7-8. This is ironic given that the Transaction Parties had no trouble relying on broadcast and tender offer precedent themselves to support their contention that the Trustee was the real party in interest, rather than Inmarsat (the architect of the transaction with all the financial interest). *See, e.g.,* Stratos Global Opposition to Petitions to Deny at 2, 5.

More importantly, the Commission’s analysis here is based on the specific facts and circumstances before it, applying the case by case review required in *de facto* control analysis. *See* Order at ¶ 36. The Commission imposed the Paragraph 48 Condition to address the specific risk of undue influence presented by the highly unusual transaction structure of the Parties.

For that reason, the cases cited by the Transaction Parties regarding communications restrictions in other cases are irrelevant, even if they were not read out of context as they are in the Joint Opposition. For example, the Transaction Parties contend that *Lockheed Martin/Warburg* 6/ should be controlling here. Joint Opposition at 10-11. But *Lockheed Martin/Warburg*, which involved a trust for the North American Numbering Plan Administrator, is not a Section 310 decision and never mentions the term “*de facto* control.” No Commission licenses were involved in the proceeding, which arose instead under Section 251(e), relating to NANPA neutrality requirements. *Lockheed Martin/Warburg*, 14 FCC Rcd at 19793 [¶ 2].

To the extent *Lockheed Martin/Warburg* is relevant at all, it supports the relief

5/ *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).

6/ *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 (1999) (“*Lockheed Martin/Warburg*”).

requested in the Petition. For example, the Commission relied heavily on the presence of directors unaffiliated with Warburg to counterbalance any attempt by Warburg to compromise the neutrality of the administrator. ^{7/} No such checks are present here. To the contrary, the Order expressly recognizes the possibility that “awareness of Inmarsat’s interest [via the financial interest, loan facility and call option] would influence the Trustee or management in their operation of Stratos Global.” Order at ¶ 57. The Commission implicitly acknowledges that human nature would drive Stratos Global management and employees to take actions under the Trust to please their (only) current financial stakeholder and all-but certain future owner. Yet, rather than mandating neutrality as was done in *Lockheed Martin/Warburg*, ^{8/} here the Commission is essentially crossing its fingers and hoping that human nature will not rule. The only teeth in the Order in furtherance of this hope is the employee/officer communications restriction that the Parties are now protesting.

Finally, the Transaction Parties take VIZADA (and implicitly the Commission) to task for speculating about how the companies will act in the future with respect to *de facto* control. See Joint Opposition at 8-9. This argument is yet another red herring, since all the conditions in the Order are addressed to future behavior by the parties. For example, the Transaction Parties do not object to the Commission’s incorporation of the communications restrictions on the Trustee

^{7/} *Id.* at 19811-12 [¶¶ 32-33] (transaction documents provide a strong basis for the non-Warburg directors “to act independently and prevent any attempt by Warburg to exercise improper influence.”).

^{8/} In order to ensure neutrality, the Commission conditioned its consent on compliance with a “Code of Conduct” implementing several communications restrictions which did apply at the employee/officer level. See *id.* at 19816 (Appendix A) (*e.g.*, “Confidential information about NeuStar’s business services and operations will not be shared with employees of any telecommunications service provider.” “No person employed by, or serving in the management of any shareholder of NeuStar will be directly involved in the day-to-day operations of NeuStar. No employees of any company that is a telecommunications service provider will be simultaneously employed (full-time or parttime) by NeuStar.”). Furthermore, the Commission required as a condition to its consent in *Lockheed Martin/Warburg* independent neutrality audits with quarterly reports to the Commission and the North American Numbering Council. *Id.* at 19813-14 [¶ 35].

into the Order – their dispute is with the Order’s related but equally important restrictions on direct communications between Inmarsat and Stratos Global. But the Commission always is free to condition its consent to a transaction on safeguards to protect the public interest. In this particular case, the Commission found that the risk of unauthorized control was sufficiently strong to warrant the limited, but crucial, Paragraph 48 Condition as an advance safeguard. It is entirely within the Commission’s power and responsibility to do so.

In sum, the Commission examined the facts and circumstances here, and approved the transfer of control of Stratos Global based on the Paragraph 48 Condition. The Transaction Parties present no evidence that the Commission intended otherwise.

III. THE PARAGRAPH 48 CONDITION IS NOT BURDENSOME

The Transaction Parties also claim that applying the communications restriction to employees and officers would be burdensome, as it would affect “[a]t least 30 individuals at Stratos,” who might be “chilled” in conducting necessary communications with Inmarsat, allegedly undermining competition. Joint Opposition at 11-12. 9/

First of all, by definition, the Paragraph 48 Condition allows a large category of communications in the “ordinary course.” It only prohibits communications regarding corporate policies and operations that could, in the Commission’s view, permit undue Inmarsat influence should they occur. Put another way, the only communications that would be chilled are the ones the Commission has determined should not take place.

Second, as a practical matter the condition is no more burdensome than the restrictions typically imposed by any standard non-disclosure or confidentiality agreement that a company may enter into in the ordinary course of business. Sophisticated entities such as

9/ The Transaction Parties even try to raise the specter of national security being impacted by the “chilling effect.” *Id.* Suffice it to say that this empty claim is completely unsupported.

Inmarsat and Stratos Global must on a daily basis comply with local, national and international laws and regulations, as well as confidentiality agreements in any number of ongoing commercial contracts. These two companies surely have the resources to educate employees as to permissible communications, supply each with a log form, and provide legal consultation in areas of doubt.

Third, insofar as the 30 Stratos Global employees referenced in the Joint Opposition are concerned, the Commission should note that they constitute less than four percent of that Company's work force. ^{10/} One cannot help but conclude that the Transaction Parties are crying wolf. If Inmarsat and Stratos Global can present real-world situations requiring waiver of the Paragraph 48 Condition, they are free to file appropriate requests. VIZADA has trouble imagining such circumstances, but the Transaction Parties have the right to come forward with specific facts if they can. What they cannot do is ask the Commission to reconsider and relieve them of a basic condition governing the approval of this transaction – in full and on no facts whatsoever.

CONCLUSION

The Joint Opposition proves why expedited action is needed here. A basic condition of the Order is in dispute. The Transaction Parties have made clear that they believe that the Commission's prohibition on certain "communications by any employee or officer of Stratos Global and Inmarsat" only restricts one Stratos Global employee. For the benefit of the public, all interested parties, and its own enforcement processes, the Commission should expeditiously issue an order correcting or clarifying its Order on this point. As VIZADA has noted, such an Order can be as simple as a one paragraph erratum, but it should be issued as soon as possible.

^{10/} See Stratos Global Corp, SEC Form 40-F, Exhibit 99.1 at 22 (Mar. 30, 2007) ("The Corporation employed approximately 800 people as at December 31, 2006.").

Respectfully submitted,

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January 3, 2008

CERTIFICATE OF SERVICE

I, Cecelia Burnett, hereby certify that on this 3rd day of January, 2008, I caused to be served a true copy of the foregoing "Reply of VIZADA Services LLC to Joint Opposition" by electronic mail or by first-class, postage-prepaid U.S. mail upon the following:

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