

Before the  
Federal Communications Commission  
WASHINGTON, D.C. 20554

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DEC 12 2007

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
Consolidated Application for Consent to Transfer	)	ITC-T/C-20070405-00135
of Control	)	ITC-T/C-20070405-00136
	)	SES-T/C-20070404-00440 through -00443
	)	0002961737 and
	)	ISP-PDR-20070405-00006

**MEMORANDUM OPINION AND ORDER  
AND DECLARATORY RULING**

**Adopted: December 7, 2007**

**Released: December 7, 2007**

**By the Commission:**

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## I. INTRODUCTION

1. In this Memorandum Opinion and Order and Declaratory Ruling, we consider a series of applications (collectively, "Application") filed by Stratos Global Corporation (Stratos Global) and Robert M. Franklin (Trustee) for authority to transfer control of the domestic and international section 214 authorizations<sup>1</sup> and Title III licenses<sup>2</sup> held by three subsidiaries of Stratos Global (Stratos Mobile Networks, Inc., Stratos Offshore Services Company, and Stratos Communications Inc.) (collectively, "Stratos Licensees"), from Stratos Global to a trust of which Mr. Franklin is the Trustee.<sup>3</sup> Applicants also filed a petition for a declaratory ruling that the public interest would be served by allowing indirect foreign ownership of the Stratos Licensees in excess of the 25 percent benchmark in section 310(b)(4) of the Communications Act of 1934, as amended (the "Act").<sup>4</sup> Based on the record established in this proceeding, we find that the grant of the Application and the petition for declaratory ruling will serve the public interest, convenience and necessity, subject to the conditions specified below. We also grant the

<sup>1</sup> Section 214 of the Communications Act of 1934, as amended, 47 U.S.C. § 214 (hereafter cited as the "Act").

<sup>2</sup> Section 309 of the Act, 47 U.S.C. § 309.

<sup>3</sup> The Application consists of 11 individual applications as follows: three FCC International 214 applications seeking consent to the transfer of Stratos Global's international section 214 authorizations, ITC-T/C-20070405-00136 (authorizations held by Stratos Communications, Inc.), ITC-T/C-20070405-00133 (authorizations held by Stratos Mobile Networks), and ITC-T/C-20070405-00135 (authorizations held by Stratos Offshore Services Company); four FCC Form 312's seeking consent to the transfer of Stratos Global's satellite earth-station, VSAT, and space-station authorizations, SES-T/C-20070404-00440, SES-T/C-20070404-00442, SES-T/C-20070404-00443 (authorizations held by Stratos Offshore Services Company), and SES-T/C-20070404-00441 (authorizations held by Stratos Communications, Inc.); two FCC Domestic 214 applications seeking consent to the transfer of Stratos Global's domestic section 214 authorizations (for Stratos Communications, Inc. and Stratos Offshore Services Company); one FCC Form 603 seeking consent to the transfer of Stratos Global's terrestrial radio licenses, File No. 0002961737 (authorizations held by Stratos Offshore Services Company); and one FCC Form 44 seeking consent to the transfer of Stratos Global's Certification as an Accounting Authority (authorization held by Stratos Mobile Networks, Inc.). The Application was accompanied by a Narrative description of the parties and the transaction (Narrative) and includes a petition for declaratory ruling, ISP-PDR-20070405-00006. Appendix A to this Memorandum Opinion and Order and Declaratory Ruling lists the transfer of control applications, and associated authorizations and licenses, filed in this proceeding.

<sup>4</sup> Section 310(b)(4) of the Act, 47 U.S.C. § 310(b)(4).

Petition to Adopt Conditions to Authorizations and Licenses filed by the United States Department of Justice, the Federal Bureau of Investigation and the United States Department of Homeland Security. We also deny the petitions filed in response to this transfer of control application.

## **II. BACKGROUND**

### **A. The Applicants**

#### **1. The Transferor**

2. Stratos Global, a Canadian corporation, through its subsidiaries the Stratos Licensees, is an independent retail distributor of satellite services for a variety of international satellite systems. The Stratos Licensees are wholly-owned direct subsidiaries of Stratos Holdings, Inc. (Stratos Holdings), a Delaware corporation that is wholly owned by Stratos Wireless, Inc. (Stratos Wireless), a Canadian corporation. Stratos Wireless is, in turn, wholly owned by Stratos Global. The Stratos Licensees provide Mobile Satellite Services (MSS), Fixed Satellite Services (FSS), and terrestrial communications services to users in the United States pursuant to section 214 and Title III of the Act.

#### **2. The Transferee (The Trustee)**

3. Applicants state that they have created a Canadian Trust (Trust) to hold the shares of Stratos Global upon the completion of this transaction. The Trustee is Robert M. Franklin, who is a Canadian citizen. Mr. Franklin is a businessman who has served on a number of corporate boards, including (1) serving as chairman of Glenayre Electronics Limited, a telecommunications hardware and software company, from 1990 to 1993; (2) sitting on the board of Call-Net Enterprises, a Canadian competitive carrier, from 2002 to 2005; and (3) serving as chairman of Placer Dome, Inc., a Canadian mining company, from 2003 to 2006. Mr. Franklin currently serves as a director of Barrick, a gold mining company and several other, non-telecommunications-related companies. The Trust will hold the Stratos Global shares for the benefit of CIP Canada Investments, Inc. (CIP Canada).

#### **3. CIP**

4. Communications Investment Partners Limited (CIP) is a limited partnership organized under the laws of the British Virgin Islands as an investment company with a focus on satellite service providers. The five directors, and sole equity holders, of CIP are three citizens of the Netherlands (Hans Lipman, Eric de Jong and Hans van Morsel), a citizen of France (Eric Le Proux) and one person who is a joint citizen of the United States and Mexico (Victor Horcasitas). Each of the directors holds a 20 percent equity and voting interest in CIP. Applicants report that, collectively, these individuals have extensive experience as directors of, and advisors to, satellite-service companies in the MSS and FSS sectors.

5. CIP has created two wholly-owned subsidiaries to carry out the transaction: CIP UK, a private limited company that was chartered under the laws of England and Wales, and CIP Canada, a corporation chartered under the laws of Canada. Applicants state that CIP Canada is wholly owned by CIP UK, which is, in turn, wholly owned by CIP.

### **B. Inmarsat**

6. Inmarsat plc (Inmarsat) is not a party to the Application. Inmarsat established a subsidiary, Inmarsat Finance III Limited (Inmarsat Finance), a company formed under the laws of England and Wales, as a "special purpose" company to provide debt financing to CIP to fund the acquisition of Stratos Global.<sup>5</sup>

7. Inmarsat was created in 1979 by the INMARSAT Convention as an intergovernmental

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<sup>5</sup> Narrative at 5.

organization (IGO) to develop a global maritime satellite system to meet commercial maritime and safety communications needs of the United States and other countries.<sup>6</sup> Each national government that subscribed to the INMARSAT Convention designated an operating company to become a “Signatory” by signing the INMARSAT Operating Agreement and acquiring an ownership interest in INMARSAT. Signatories, but not INMARSAT, could also operate terrestrial gateways called “Land Earth Stations” (LESs) to interconnect INMARSAT satellite services to the public switched network. Historically, INMARSAT’s role was limited to that of a wholesaler, providing MSS to Signatories who operated LESs and distributed INMARSAT services to end users.

8. The INMARSAT IGO privatized in 1999 by converting to a U.K. private company (Inmarsat), headquartered in London. In 2005, Inmarsat became a public company, listed on the London Stock Exchange. Applicants state that Inmarsat’s shares are widely held and that no shareholder owns 10 percent or more of the company.<sup>7</sup> Applicants further state that, in aggregate, over 85 percent of Inmarsat’s shares are owned by citizens of or entities formed under the laws of countries that are Members of the World Trade Organization (WTO).<sup>8</sup>

9. As part of the Inmarsat privatization, Inmarsat Global LTD (Inmarsat Global), the Inmarsat subsidiary that provides MSS services, is contractually barred from owning or controlling a distributor of Inmarsat services until April 14, 2009.<sup>9</sup> Applicants state that these restrictions, which are contained in Inmarsat Global’s current distribution contracts, expire on that date.<sup>10</sup>

### C. The Transaction

10. The Applicants state that the Transfer of Control Application before us is the “first step of an eventual two-step transaction.”<sup>11</sup> In this first step, Applicants seek Commission consent for a transfer of control of Stratos Global to an irrevocable Canadian trust (Trust). Applicants further state that “in connection with the future dissolution of the Trust, Commission consent will be sought again for control of Stratos [Global] to be acquired, as applicable, by CIP Canada, Inmarsat Finance or a third party.”<sup>12</sup> This Memorandum Opinion and Order and Declaratory Ruling addresses only the first step, the transfer of Stratos Global to the Trust.

11. In the Application now before us, Applicants state that CIP UK, CIP Canada and Stratos

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<sup>6</sup> See *Comsat Corporation d/b/a Comsat Mobile Communications*, Memorandum Opinion, Order and Authorization, FCC 01-272, 16 FCC Rcd 21661, 21669, ¶ 3 (2001).

<sup>7</sup> Narrative at 5. Subsequently, Inmarsat reported that two affiliated private equity funds have acquired, in the aggregate, more than 10% of its shares in public trading on the London Stock Exchange. Letter from Diane Cornell, Vice President, Government Affairs, Inmarsat, to Marlene H. Dortch, Secretary, FCC, dated October 29, 2007 (October 29 Letter). See fn. 276, *infra*.

<sup>8</sup> *Id.* at 5-6.

<sup>9</sup> *Id.* at 6. The language in the distribution contracts that creates the bar reads as follows: “During the Extended Term [*i.e.*, until April 14, 2009], [Inmarsat Global] shall not be entitled to establish any LES [land earth station] or to acquire an existing LES or to become the affiliate (or have any other direct or indirect interest in) an entity that operates an LES, save in the circumstances set out in Clauses 2.9, 2.10, 2.11 and 2.12 below.” Letter from Robert M. Franklin, Trustee, Alfred M. Mamlet (Counsel for Stratos Global), Patricia Paoletta (Counsel for CIP Canada Investments, Inc.), and John P. Janka (Counsel for Inmarsat Finance III Ltd) to Marlene H. Dortch, Secretary, FCC, dated October 3, 2007 (citing Land Earth Station Operating Agreement, Clause 2.8).

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

<sup>11</sup> *Id.* at 10.

<sup>12</sup> *Id.* at 10-11.

Global have entered into a definitive arrangement under which CIP Canada will purchase all the shares of Stratos Global through a Plan of Arrangement under the Canadian Business Corporations Act. Applicants further state that the Plan of Arrangement will require approval by an Ontario court and by 66 2/3 percent of votes cast at a special meeting of the Stratos Global shareholders.<sup>13</sup>

12. On April 2, 2007, CIP Canada and Robert M. Franklin, Trustee, entered into the Trust. Under the terms of the Trust, CIP Canada will acquire the stock of Stratos Global and transfer the stock to the Trust. The Trustee will hold the legal title to and exercise the voting rights with respect to the stock. Applicants state that such ownership will give the Trustee *de jure* and *de facto* control of Stratos Global through his power to elect members of the Board of Directors of Stratos Global. Everyday management of the company will remain with current Stratos Management. The Trust will hold the stock for the benefit of CIP Canada. The Trust prohibits CIP or any of its affiliates or employees from communicating with the Trustee and prohibits the Trustee from communicating with Inmarsat or its affiliates “regarding the management or operation of [Stratos Global].”<sup>14</sup>

13. **The Facilities Agreement.** Inmarsat Finance will provide the funding for CIP Canada’s acquisition of the Stratos Global stock. On June 11, 2007, Inmarsat Finance and CIP UK entered into a “Facilities Agreement” (Loan Facility) with CIP UK as the “Borrower” and CIP Canada as the “Guarantor.”<sup>15</sup> Under the Loan Facility, CIP UK may borrow up to US\$275,000,000 (Facility A)<sup>16</sup> to fund CIP Canada’s acquisition of the stock of Stratos Global.<sup>17</sup> CIP UK may borrow an additional sum of up to US\$151,500,000 (Facility B)<sup>18</sup> for CIP UK to finance CIP Canada’s repurchase of Stratos Global’s existing senior bank debt or to make a tender offer for Stratos Global’s outstanding bonds.<sup>19</sup> Applicants state that they do not anticipate that CIP UK will draw upon Facility B because Stratos Global intends to seek agreement from its current lender to leave the existing debt facility in place upon completion of the transaction and because Stratos Global’s existing bonds currently trade “substantially above the required tender price.”<sup>20</sup>

14. The Loan Facility provides that the loan has a term of ten years from the date that CIP

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<sup>13</sup> *Id.* at 6. On June 12, 2007, Stratos Global announced that shareholders had voted to approve the Plan of Arrangement. [http://www.stratosglobal.com/aboutStratos/page-aboutStratos\\_newsroom\\_newsItem.cfm?newsID=315](http://www.stratosglobal.com/aboutStratos/page-aboutStratos_newsroom_newsItem.cfm?newsID=315)

<sup>14</sup> Trust at 16-17, Section 10 (c). *See also* Section 4 (b) of the Trust (p.6), which obligates the Trustee to require directors that he appoints to promise in writing not to communicate with CIP or Inmarsat regarding Stratos Global, “including the management or operation of [Stratos Global].”

<sup>15</sup> Inmarsat Finance III Limited and CIP UK Holdings Limited, Facilities Agreement (Loan Facility) at 3, dated June 11, 2007.

<sup>16</sup> Loan Facility at 25, Clause 5.3 (a) (i).

<sup>17</sup> *Id.* at 22, Clause 3.1 (a) (i).

<sup>18</sup> *Id.* at 25, Clause 5.3 (a) (ii).

<sup>19</sup> *See* Narrative at 7. *See also* Loan Facility, which states that Facility B proceeds may be used for “repurchase of the Target Notes [defined in Clause 1.1 of the Loan Facility as “the indenture governing the 9 7/8% senior notes of [Stratos Global] due 13 February 2013] by the Guarantor [*i.e.*, CIP Canada] tendered in the mandatory tender offer for such Target Notes.” Loan Facility at 22, Clause 3.1 (b). *See also* Trust, which states that, subsequent to the acquisition and transfer of the Stratos Global stock to the Trust, CIP Canada will “implement a mandatory tender offer for Company’s [*i.e.*, Stratos Global’s] issued and publicly tradable bonds.” Trust at 1, preamble.

<sup>20</sup> Narrative at 7.

UK acquires the stock of Stratos Global.<sup>21</sup> The interest rate for the loan is 5.75 percent through December 31, 2010 and 11.5 percent thereafter.<sup>22</sup> The Loan Facility does not require CIP UK to repay the loan until after the exercise of the Call Option by Inmarsat, at which time the Borrower is required to repay the loan “in equal semi-annual installments up to the Termination Date.”<sup>23</sup> The Loan Facility provides that interest shall be accrued for each “Interest Period,”<sup>24</sup> which it defines as “three months, or any other period agreed between the Borrower and the Lender.”<sup>25</sup> The Loan Facility, however, does not require the Borrower to make interest payments until after the exercise of the call option (on or about April 14, 2009).<sup>26</sup> Prior to that date, the Loan Facility provides that interest is to be “capitalized at the end of each Interest Period and shall be added to the amount of the Facility A loan.”<sup>27</sup> The Loan Facility does require CIP UK to make payments for interest accrued between the exercise of the call option (on or about April 14, 2009) and December 31, 2010, and for interest accrued after January 1, 2011.<sup>28</sup>

15. The Applicants state that the loan is not secured until after April 14, 2009, “when a security package subordinate to the existing Stratos [Global] indebtedness will be put in place.”<sup>29</sup> They note, however, that, in the event of a default, Inmarsat will have the right to require CIP UK to divest its shares in CIP Canada and pay the net proceeds of sale to Inmarsat Finance.<sup>30</sup>

16. **The Call Option Agreement.** CIP and Inmarsat Finance also entered into a Call Option Agreement (Option), under which CIP, in return for \$750,000, granted Inmarsat Finance an option to acquire CIP UK.<sup>31</sup> Inmarsat’s payment of the \$750,000 is contingent upon completion of the acquisition of the stock of Stratos Global.<sup>32</sup> Applicants state that Inmarsat may exercise the option over a seventeen-month period beginning in April 2009 and ending on December 31, 2010.<sup>33</sup> They further state that the

<sup>21</sup> Loan Facility at 27, Clause 6.1 (a) requires CIP UK to repay the loan until the “Termination Date,” which the Loan Facility defines as “10 years from the date of Completion.” Loan Facility at 18, 1.1. The Loan Facility defines “Completion” as “the completion of the Acquisition in accordance with the Plan of Arrangement.” *Id.* at 7. The Loan Facility defines “Acquisition” as “the Acquisition of the Target Shares and the cancellation and termination of the Target Options in accordance with the Plan of Arrangement.” *Id.* at 3. The Loan Facility defines the “Plan of Arrangement” as “the plan of arrangement in the form of Schedule C to the Arrangement Agreement.” *Id.* at 16. The Loan Facility defines “Arrangement Agreement” as “the arrangement agreement between the Borrower [CIP UK], Guarantor [CIP Canada] and the Target [Stratos Global] dated 19 March 2007, as amended from time to time.”

<sup>22</sup> Loan Facility at 34, Clause 11.1.

<sup>23</sup> *Id.* at 27, Clause 6.1 (a). The referenced “call option” will be discussed in paragraph 16, *infra*.

<sup>24</sup> *Id.* at 34, Clause 11.2 (a).

<sup>25</sup> *Id.* at 35, Clause 12.1 (a).

<sup>26</sup> *Id.* at 34, Clause 11.1.

<sup>27</sup> *Id.* at 34, Clause 11.2 (a).

<sup>28</sup> *Id.* at Clause 11.2 (b).

<sup>29</sup> Narrative at 7.

<sup>30</sup> *Id.*

<sup>31</sup> Communications Investment Partners Limited and Inmarsat Finance III Limited, Call Option Agreement (Option) (dated March 19, 2007).

<sup>32</sup> Option at 4, Clause 2.1.

<sup>33</sup> Narrative at 8. The option provides that Inmarsat Finance may exercise the option on April 14, 2009, Option at 4-5, Clause 3.1.1 or earlier if the contractual provisions barring Inmarsat from owning a distributor of satellite (continued....)

cost for exercising the option will be an additional payment of between \$750,000 and \$1,000,000, "depending upon when the call option is exercised."<sup>34</sup> Finally, Applicants state that, unless and until Inmarsat exercises the Option and necessary regulatory approvals are obtained, Inmarsat will not have any equity interest in Stratos Global, or control over its management or operation.<sup>35</sup>

17. **Termination of the Trust.** The Trust provides that, subject to necessary regulatory approvals, the Trust will terminate automatically on April 14, 2009, unless the Trustee has not yet been able to transfer the Stratos Global shares (and any bonds that were purchased pursuant to the tender offer) to one of three possible Transferees specified in the Trust.<sup>36</sup> In that event, the Trust provides that the Trust shall be extended until the earliest of three possible outcomes occurs.<sup>37</sup> First, Inmarsat Finance exercises its option to acquire CIP UK, at which time the Trustee will transfer the Stratos Global shares to CIP Canada.<sup>38</sup> Second, if Inmarsat Finance does not exercise the option, CIP Canada elects to acquire the shares.<sup>39</sup> Third, if neither Inmarsat Finance nor CIP Canada elects to acquire the Stratos Global shares, the Trustee arranges for an investment company to sell the shares through an auction and remit the proceeds to CIP Canada.<sup>40</sup>

#### D. Comments on the Transfer of Control Application

18. The Commission placed the Application on Public Notice on May 30, 2007.<sup>41</sup> On June 29, 2007, the Commission received two petitions and a comment opposing a grant of the Application. Iridium Satellite, LLC (Iridium) filed a petition to deny the Application,<sup>42</sup> and VIZADA Services LLC (VIZADA) filed a petition seeking denial of the Application or a hearing to determine disputed facts.<sup>43</sup> Telenor Satellite Services, Inc. (Telenor) filed comments supporting the VIZADA Petition.<sup>44</sup> On the same day, the Federal Bureau of Investigation (FBI), on behalf of itself and the U.S. Department of Homeland Security (DHS), requested the Commission to defer action on the Application until such time as the U.S. Department of Justice (DOJ), FBI and DHS completed their review of any national security,

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services have been "waived, terminated, or otherwise have expired." Option at 4, Clause 3.1.2 The option provides that the option expires as of 5:00 GMT on the "Final Maturity Date," Option at Clause 3.3, which the Option defines as December 31, 2010 "or such other date as the parties hereto may agree in writing from time to time." Option at 2, Clause 1.1.

<sup>34</sup> Narrative at 8.

<sup>35</sup> *Id.*

<sup>36</sup> Trust at 15, Section 9 (a).

<sup>37</sup> *Id.*

<sup>38</sup> *Id.* at 7-8, Section 5 (b).

<sup>39</sup> *Id.*

<sup>40</sup> *Id.* at 8, Section 5 (c).

<sup>41</sup> See *Stratos Global Corp. and Robert M. Franklin, Trustee, Seek FCC Consent to the Indirect Transfer of Control of Stratos Global's Wholly-Owned, FCC-Authorized Subsidiaries from Stratos to an Irrevocable Trust*, Public Notice, WC Docket No. 07-73, 22 FCC Rcd 10005 (rel. May 30, 2007).

<sup>42</sup> Iridium Satellite, LLC, Petition to Deny, filed June 29, 2007 (Iridium Petition).

<sup>43</sup> VIZADA Services LLC, Petition to Deny of VIZADA Services LLC, filed June 29, 2007 (VIZADA Petition).

<sup>44</sup> Telenor Services, Inc., Comments of Telenor Satellite Services, Inc., filed June 29, 2007 (Telenor Comments).

law enforcement or public safety implications of that Application.<sup>45</sup>

19. On July 9, 2007, Stratos Global,<sup>46</sup> CIP Canada,<sup>47</sup> and Inmarsat Finance III<sup>48</sup> filed Oppositions to the petitions to deny. The Commission also received on that date a "Response" from Robert M. Franklin, the Trustee, opposing the Petitions to Deny.<sup>49</sup> On July 31, 2007, Iridium,<sup>50</sup> VIZADA<sup>51</sup> and Telenor<sup>52</sup> filed Replies to the Oppositions.<sup>53</sup>

20. The International Bureau adopted a protective order, dated July 20, 2007, pursuant to which Petitioners would be allowed to review confidential or proprietary information in the Loan Facility and the Call Option.<sup>54</sup> On July 31, pursuant to the protective order, Iridium,<sup>55</sup> VIZADA<sup>56</sup> and Telenor<sup>57</sup>

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<sup>45</sup> Letter from Elaine Lammert, Deputy General Counsel, U.S. Department of Justice, Federal Bureau of Investigation, to Marlene H. Dortch, Secretary, Federal Communications Commission, dated June 29, 2007 (DOJ Petition to Adopt Conditions).

<sup>46</sup> Stratos Global Corporation, Opposition to Petitions to Deny, filed July 9, 2007 (Stratos Global Opposition). The Opposition included five attachments: (1) a document, dated May 4, 2007, and entitled "Arrangement involving Stratos Global Corporation and CIP Canada Investment Inc." (Proxy Circular); (2) Amendments to the Arrangement Agreement and Loan Commitment Letter; (3) Ontario Superior Court of Justice Order; (4) Stratos Global and Inmarsat plc Letter Agreement; and (5) Stratos CEO Letter to Customers.

<sup>47</sup> CIP Canada Investment Inc., Opposition of CIP to Petitions to Deny, filed July 9, 2007 (CIP Canada Opposition). The Opposition included two attachments filed under a request for confidential treatment: (1) the Loan Facility; and (2) Call Option. CIP Canada also filed redacted versions of the two attachments for the public file. CIP Canada offered to make unredacted versions of the Loan Facility and the Call Option available to Petitioners under an appropriate protective order. CIP Canada Opposition at 2.

<sup>48</sup> Inmarsat Finance III Ltd, Opposition of Inmarsat Finance III Limited, filed July 9, 2007 (Inmarsat Finance Opposition).

<sup>49</sup> Robert M. Franklin, Trustee, Response of Trustee to Petitions to Deny Consolidated Application of Stratos Global and Robert M. Franklin, Transferee, for Consent to Transfer Control of Stratos to and Irrevocable Trust, filed July 9, 2007 (Trustee Response).

<sup>50</sup> Iridium Satellite LLC, Reply of Iridium Satellite LLC to Oppositions to Petitions to Deny, filed July 31, 2007.

<sup>51</sup> VIZADA Satellite Services LLC, Reply of VIZADA Services LLC, filed July 31, 2007.

<sup>52</sup> Telenor Satellite Services, Inc., Reply of Telenor Satellite Services, Inc., filed July 31, 2007 (Telenor Reply).

<sup>53</sup> On July 12, Telenor, individually, and Iridium and VIZADA, jointly filed Requests for Extension of Time to reply to the Oppositions on the grounds that CIP Canada had filed redacted copies of the Inmarsat Loan Facility and the Call Option Agreement, and that it would not be possible to reply to the Oppositions until they had seen the unredacted copies of the Loan Facility and Call Option. Telenor Satellite Services, LLC, Request for Extension of Time, filed July 12, 2007; Iridium Satellite LLC and VIZADA Satellite Services, Inc., Joint request for Extension of Time, filed July 12, 2007. Stratos Global, CIP Canada and Inmarsat Finance filed oppositions to the Telenor and joint Iridium/VIZADA requests on the grounds that Iridium VIZADA and Telenor could base their replies on the redacted documents. Stratos Global Corporation, CIP Canada Investment Inc. and Inmarsat Finance III Limited, Joint Opposition to Requests for Extension of Time, filed July 12, 2007. Subsequently, on the same day, CIP Canada filed unredacted copies of the Loan Facility and Call Option Agreements, under a request for confidential treatment. CIP Canada Investment Inc., Request for Confidential Treatment of Redacted Portions of the Call Option Agreement and Loan Facility Agreement, filed July 9, 2007.

<sup>54</sup> *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*, WC Docket No. 07-72, Protective Order, DA 07-3344 (rel. July 20, 2007).

filed Replies to the Oppositions containing confidential information. All three Petitioners also filed redacted versions of their Replies for the public record.

21. On July 31, 2007, Iridium filed a confidential request for the Commission to require Applicants to make available, under the protective order, a document referred to in the documents they had previously submitted on a confidential basis. On August 8, 2007, Inmarsat requested the International Bureau to modify its July 20, 2007 protective order to cover the document sought by Iridium. By letter dated August 15, 2007, the International Bureau modified its prior protective order requiring Applicants to make the subject document available to Petitioners.<sup>58</sup>

22. On August 17, 2007, Inmarsat Finance filed, under a request for confidentiality, a copy of a document entitled "Project Sprite—Proposed Acquisition Structure" ("Sprite Document") that addresses the structure of the transaction.<sup>59</sup> On September 11, 2007, VIZADA, pursuant to the modified protective order, filed supplementary comments on the Sprite Document.<sup>60</sup>

23. On August 30, 2007, DOJ, FBI and DHS filed a joint Petition to Adopt Conditions to Authorizations and Licenses.<sup>61</sup>

24. On August 23, 2007, and September 26, 2007, the Applicants met *ex parte* with Commission staff to supplement the information filed with their Application.<sup>62</sup> On September 18, 2007, Applicants filed answers to questions from Commission staff providing additional information concerning capitalization of the CIP entities.<sup>63</sup> On October 16, 2007, in response to a request by Commission staff, Applicants submitted additional ownership information for Inmarsat.<sup>64</sup> On October 26, 2007, Stratos

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<sup>55</sup> Iridium Satellite LLC, Reply of Iridium Satellite LLC to Oppositions to Petitions to Deny, filed July 31, 2007 (Iridium Reply).

<sup>56</sup> VIZADA Satellite Services LLC, Reply of VIZADA Services LLC, filed July 31, 2007 (VIZADA Reply).

<sup>57</sup> Telenor Satellite Services, Inc., Reply of Telenor Satellite Services, Inc., filed July 31, 2007 (Telenor reply).

<sup>58</sup> Letter from John Giusti, Deputy Chief, International Bureau, to Diane J. Cornell, Vice President, Government Affairs, Inmarsat, Inc., dated August 15, 2007.

<sup>59</sup> Letter from John P. Janka and Jeffrey Marks, Counsel for Inmarsat Finance III Limited, to Marlene H. Dortch, Secretary, FCC, dated August 17, 2007. (Sprite Document). Inmarsat Finance also submitted a redacted version of the Sprite Document for the public record.

<sup>60</sup> VIZADA Satellite Services LLC, "Comments of VIZADA Services LLC on 'Project Sprite Proposed Acquisition Structure' Memorandum," filed September 11, 2007. VIZADA also filed a redacted version of its supplemental comments for the public record.

<sup>61</sup> U.S. Department of Justice, Federal Bureau of Investigation and Department of Homeland Security, Petition to Adopt Conditions to Authorizations and Licenses, filed August 30, 2007 (DOJ Petition to Adopt Conditions)

<sup>62</sup> See Letters from Patricia Paoletta, Counsel for CIP Canada Investment Inc., Alfred M. Mamlet, Counsel for Stratos Global, and John P. Janka, Counsel for Inmarsat Finance III Limited, to Marlene H. Dortch, Secretary, FCC, dated August 24, 2007 (August 23 *ex parte* Letter) and September 27, 2007 (September 27 *ex parte* Letter).

<sup>63</sup> Letter from Alfred M. Mamlet, Counsel for Stratos Global, to Marlene H. Dortch, Secretary, FCC, dated September 18, 2007 (September 18 Letter).

<sup>64</sup> Letter from John P. Janka and Jeffrey A. Marks, Counsel for Inmarsat Finance III Limited, to Marlene H. Dortch, Secretary, FCC, dated October 16, 2007 (Inmarsat Finance October 16 Letter).

Global<sup>65</sup> and CIP<sup>66</sup> filed additional ownership information. On October 29, 2007, Inmarsat further supplemented its ownership information.<sup>67</sup>

25. Petitioners argue that the Commission should deny the Application because they are concerned that Inmarsat's acquisition of Stratos Global would give Stratos Global, which now distributes the satellite services of many satellite providers, an incentive to discriminate in favor of Inmarsat services.<sup>68</sup> Petitioners also seek denial of the application because they argue that, notwithstanding the provisions of the Trust, Inmarsat Finance will control Stratos Global, thus making Inmarsat plc (the parent of Inmarsat Finance) the "real party in interest" in this proceeding. Because Inmarsat was not included as a party to the Application, Petitioners argue that the transaction constitutes an unauthorized transfer of control under section 310(d) of the Act that requires the Commission to deny the Application.<sup>69</sup> In the event that the Commission does not deny the Application, Petitioners ask that the Commission set the Application for hearing on the control question.<sup>70</sup> Iridium argues that the proposed transfer of Stratos Global to a Trust is novel and unsupported by Commission precedent, which has authorized trusts only in cases of hostile takeover "tender offers," bankruptcy or post-merger divestitures.<sup>71</sup> Additionally, Iridium and VIZADA argue that Inmarsat's proposed acquisition of Stratos Global will raise significant anticompetitive issues.<sup>72</sup>

26. Stratos Global, CIP Canada and Inmarsat Finance all dispute Petitioners' arguments that the transaction documents will allow Inmarsat to control Stratos Global during the Trust period. They argue that the Trust gives *de jure* and *de facto* control of Stratos Global to the Trustee and that its provisions create a "firewall" that will insulate Stratos Global from CIP or Inmarsat.<sup>73</sup> The Applicants further argue that, under the Trust, the Trustee will control Stratos Global by voting the Stratos Global stock and appointing Directors to the Stratos Global Board. Stratos Global and CIP Canada agree with this, arguing that, subject to the Trustee's control, existing Stratos Global management will continue to run the corporation from day to day.<sup>74</sup> The Trustee characterizes Petitioners' arguments as a baseless attack on his qualifications and states that he can and will carry out his duties under the Trust.<sup>75</sup>

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<sup>65</sup> Letter from Alfred M. Mamlet and Marc A. Paul, Counsel for Stratos Global Corporation, to Marlene H. Dortch, Secretary, FCC, dated October 26, 2007 (Stratos Global October 26 Letter). Stratos Global provided principal place of business information for Stratos Global and Stratos Wireless.

<sup>66</sup> Letter from Patricia Paoletta, Counsel for CIP Canada Investment Inc., to Marlene H. Dortch, Secretary, FCC, dated October 26, 2007 (CIP October 26 Letter). CIP provided principal place of business information for CIP, CIP UK and CIP Canada.

<sup>67</sup> Letter from Diane Cornell, Vice President, Government Affairs, Inmarsat, Inc., to Marlene H. Dortch, Secretary, FCC, dated October 29, 2007 (Inmarsat October 29 Letter).

<sup>68</sup> Inmarsat Finance Opposition at 16; Inmarsat Finance Reply at 16; and VIZADA Petition at 26.

<sup>69</sup> VIZADA Petition at 32; Telenor Reply at 13.

<sup>70</sup> VIZADA Petition at 32; Telenor Reply at 13.

<sup>71</sup> Iridium Petition at 6-13.

<sup>72</sup> Iridium Petition at 16; VIZADA Petition at 23-31.

<sup>73</sup> Stratos Global Opposition at 16.

<sup>74</sup> Stratos Global Opposition at 19.; CIP Opposition at 8. *See also* Trustee Response at the fourth unnumbered page.

<sup>75</sup> Trustee Response at fourth and fifth unnumbered pages.

### III. PUBLIC INTEREST ANALYSIS

#### A. Framework of Analysis

27. Pursuant to sections 214(a) and 310(d) of the Act,<sup>76</sup> the Commission must determine whether the proposed transfer of control to the Trust of licenses and authorizations held and controlled by Stratos Global and its subsidiaries will serve the public interest, convenience and necessity.<sup>77</sup> In making this determination, we first assess whether the proposed transaction complies with the specific provisions of the Act, other applicable statutes, and the Commission's rules. If the proposed transaction would not violate a statute or rule, the Commission considers whether it could result in public-interest harms by substantially frustrating or impairing the objective or implementation of the Act or related statutes. The Commission then employs a balancing test, weighing any potential public interest harms against the potential public interest benefits.<sup>78</sup> The applicants bear the burden to prove by a preponderance of the

<sup>76</sup> Sections 214(a) and 310(d) of the Act, 47 U.S.C. §§ 214(a), 310(d).

<sup>77</sup> 47 U.S.C. § 310(d) requires that we consider applications for the transfer of Title III licenses under the same standard as if the proposed transferee were applying for the licenses directly under section 308 of the Act, 47 U.S.C. § 308. See *Applications of Guam Cellular and Paging, Inc. and DoCoMo Guam Holdings, Inc.*, Memorandum Opinion and Order and Declaratory Ruling, WT Docket No. 06-96, FCC 06-167, 21 FCC Rcd 13580, 13588-9, ¶ 13 (rel. Nov. 13, 2006) ("*DoCoMo-Guam Cellular Order*"); *Applications of Midwest Wireless Holdings, L.L.C. and ALLTEL Communications, Inc.*, WT Docket No. 05-339, Memorandum Opinion and Order, FCC 06-146, 21 FCC Rcd 11526, 11535, ¶ 16 (rel. Oct. 2, 2006) ("*ALLTEL-Midwest Wireless Order*"); *SBC Communications, Inc. and AT&T Corp. Applications for Approval of Transfer of Control*, WC Docket No. 05-65, Memorandum Opinion and Order, FCC 05-183, 20 FCC Rcd 18290, 18300, n.60 (2005) ("*SBC/AT&T Order*"); *Verizon Communications Inc. and MCI, Inc. Applications for Approval of Transfer of Control*, WC Docket No. 05-75, Memorandum Opinion and Order, FCC 05-184, 20 FCC Rcd 18433, 18443, n.59 (2005) ("*Verizon/MCI Order*"); *Applications of Western Wireless Corporation and Alltel Corporation for Consent to Transfer Control of Licenses and Authorizations*, WT Docket No. 05-50, Memorandum Opinion and Order, FCC 05-138, 20 FCC Rcd 13053, 13062-63, ¶ 17 (2005) ("*Alltel/Western Wireless Order*"); *Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation*, WT Docket 04-70, Memorandum Opinion and Order, FCC 04-255, 19 FCC Rcd 21522, 21542, ¶ 40 (2004) ("*Cingular/AT&T Wireless Order*"); *General Motors Corporation and Hughes Electronics Corporation, Transferors, and The News Corporation Limited, Transferee*, MB Docket No. 03-124, Memorandum Opinion and Order, FCC 03-330, 19 FCC Rcd 473, 485, ¶ 18 (2004) ("*News Corp./Hughes Order*").

<sup>78</sup> See, e.g., *DoCoMo-Guam Cellular Order*, FCC 06-167, 21 FCC Rcd at 13588, ¶13; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd T 11535, ¶16; *SBC/AT&T Order*, 20 FCC Rcd at 18300, ¶ 16; *Verizon/MCI Order*, 20 FCC Rcd at 18443, ¶ 16; *Applications of Nextel Communications, Inc. and Sprint Corporation for Consent to Transfer Control of Licenses and Authorizations*, WT Docket No. 05-63, Memorandum Opinion and Order, FCC 05-148, 20 FCC Rcd 13967, 13976, ¶ 20 (2005); *Alltel/Western Wireless Order*, 20 FCC Rcd at 13062-63, ¶ 17; *Cingular/AT&T Wireless Order*, 19 FCC Rcd at 21542-43, ¶ 40; *News Corp./Hughes Order*, 19 FCC Rcd at 483, ¶ 15; *Application of GTE Corporation, Transferor, and Bell Atlantic Corporation, Transferee*, CC Docket 98-184, Memorandum Opinion and Order, FCC 00-221, 15 FCC Rcd 14032, 14046, ¶¶ 20, 22 (2002); *Applications of VoiceStream Wireless Corporation and Powertel, Inc., Transferors, and Deutsche Telekom AG, Transferee*, IB Docket No. 00-187, Memorandum Opinion and Order, FCC 01-142, 16 FCC Rcd 9779, 9789, ¶ 17 (2001) ("*Deutsche Telekom/VoiceStream Order*"); *Applications of Ameritech Corp., Transferor, and SBC Communications Inc., Transferee, for Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Section 214 and 310(d) of the Communications Act and Parts 5, 22, 24, 25, 63, 90, 95 and 101 of the Commission's Rules*, CC Docket No. 98-141, Memorandum Opinion and Order, FCC 99-279, 14 FCC Rcd 14712, 14737-38, ¶ 48 (1999) ("*SBC/Ameritech Order*"); *Application of WorldCom, Inc. and MCI Communications Corporation for Transfer of Control of MCI Communications Corporation to WorldCom, Inc.*, CC Docket No. 97-211, Memorandum Opinion and Order, FCC 98-225, 13 FCC Rcd 18025, 18031, ¶ 10 (1998) ("*WorldCom/MCI Order*"); *Applications of NYNEX Corporation, Transferor, and Bell Atlantic Corporation, Transferee, for Consent to Transfer Control of NYNEX Corporation and its Subsidiaries*, Memorandum Opinion and Order, FCC 97-286, 12 FCC Rcd 19985, 19987, ¶ 2 (1997).

evidence that the proposed transaction, on balance, serves the public interest.<sup>79</sup> If we are unable to find that the proposed transaction serves the public interest for any reason, or if the record presents a substantial and material question of fact, we may designate the Transfer of Control Application for hearing.<sup>80</sup>

28. Our public interest evaluation necessarily encompasses the “broad aims of the Communications Act,”<sup>81</sup> which include, among other things, 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>82</sup> Our public interest analysis may also entail assessing whether the proposed transaction will affect the quality of communications services or will result in the provision of new or additional services to consumers.<sup>83</sup> In conducting this analysis, the Commission may consider technological and market changes, and the nature, complexity, and speed of change of, as well as trends within, the

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<sup>79</sup> See, e.g., *DoCoMo-Guam Cellular Order*, 21 FCC Rcd at 13588, ¶13; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11535, ¶16; *SBC/AT&T Order*, 20 FCC Rcd at 18300, ¶ 16; *Verizon/MCI Order*, 20 FCC Rcd at 18443, ¶ 16; *Cingular/AT&T Wireless Order*, 19 FCC Rcd at 21542-44, ¶ 40 (citing, e.g., *News Corp./Hughes Order*, 19 FCC Rcd at 483, ¶ 15; *Applications for Consent to the Transfer of Control of Licenses from Comcast Corporation and AT&T Corp., Transferors, to AT&T Comcast Corporation, Transferee*, MB Docket No. 02-70, Memorandum Opinion and Order, FCC 02-310, 17 FCC Rcd 23246, 23255, ¶ 26 (2002) (*AT&T/Comcast Order*); *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)*, CS Docket No. 01-348, Hearing Designation Order, FCC 02-284, 17 FCC Rcd 20559, 20574, ¶ 25 (2002) (*EchoStar/DirecTV Order*)).

<sup>80</sup> We are not required to designate for hearing applications for the transfer or assignment of Title II authorizations when we are unable to find that the public interest would be served by granting the applications. See *ITT World Communications, Inc. v. FCC*, 595 F.2d 897, 901 (2d Cir. 1979). We may, however, do so if we find that a hearing would be in the public interest. However, with respect to the applications to transfer licenses subject to Title III of the Act, if we are unable to find that the proposed transaction serves the public interest, or if the record presents a substantial and material question of fact, section 309(e) of the Act requires that we designate the application for hearing. 47 U.S.C. § 309(e); see *DoCoMo-Guam Cellular Order*, 21 FCC Rcd at 13588, ¶ 13; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11535, ¶ 16; *EchoStar/DirecTV Order*, 17 FCC Rcd at 20574, ¶ 25; *Cingular/AT&T Wireless Order*, 19 FCC Rcd at 21542-44, ¶ 40.

<sup>81</sup> See *DoCoMo-Guam Cellular Order*, 21 FCC at 13591, ¶ 15; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11536, ¶ 18; *SBC/AT&T Order*, 20 FCC Rcd at 18301, ¶ 17; *Verizon/MCI Order*, 20 FCC Rcd at 18443, ¶ 17; *Cingular/AT&T Wireless Order*, 19 FCC Rcd at 21544, ¶ 41 (citing, e.g., *News Corp./Hughes Order*, 19 FCC Rcd at 483-84, ¶ 16; *AT&T/Comcast Order*, 17 FCC Rcd at 23255, ¶ 27; *EchoStar/DirecTV Order*, 17 FCC Rcd at 20575, ¶ 26).

<sup>82</sup> See 47 U.S.C. §§ 157 nt. (incorporating section 706 of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (1996 Act)), 254, 332(c)(7)); 1996 Act, Preamble; *DoCoMo-Guam Cellular Order*, 21 FCC Rcd at 13591, ¶ 18; *SBC/AT&T Order*, 20 FCC Rcd at 18301, ¶ 17; *Verizon/MCI Order*, 20 FCC Rcd at 18443-44, ¶ 17; *Cingular/AT&T Wireless Order*, 19 FCC Rcd at 21544, ¶ 41; see also *WorldCom/MCI Order*, 13 FCC Rcd at 18030-31, ¶ 9; *2000 Biennial Regulatory Review Spectrum Aggregation Limits for Commercial Mobile Radio Services*, Report and Order, FCC 01-328, 16 FCC Rcd 22668, 22696, ¶ 55 (2001) (citing 47 U.S.C. §§ 301, 303, 309(j), 310(d)); cf. 47 U.S.C. §§ 521(4), 532(a).

<sup>83</sup> See *DoCoMo-Guam Cellular Order*, 21 FCC Rcd at 13591, ¶ 15; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11536, ¶ 18; *SBC/AT&T Order*, 20 FCC Rcd at 18301, ¶ 17; *Verizon/MCI Order*, 20 FCC Rcd at 18443-44, ¶ 17; *Cingular/AT&T Wireless Order*, 19 FCC Rcd at 21544, ¶ 41 (citing, e.g., *AT&T/Comcast Order*, 17 FCC Rcd at 23255, ¶ 27; *WorldCom/MCI Order*, 13 FCC Rcd at 18030-31, ¶ 9).

communications industry.<sup>84</sup>

29. Our analysis starts with an examination of whether the Applicants are qualified to hold and transfer licenses pursuant to sections 214(a) and 310(d) of the Act.<sup>85</sup> Next, we consider the arguments raised by commenters regarding the potential harms and benefits of the proposed transaction, as well as its effects on competition. Next, we consider whether this transaction implicates our international dominant carrier regulation. Then we consider foreign-ownership issues. Finally, we consider issues related to national security, law enforcement, foreign policy, and trade policy.

### B. Qualifications of the Applicants

30. As a threshold matter, we must determine whether the Applicants meet the requisite qualifications to hold and transfer licenses under section 310(d) of the Act and the Commission's rules. In general, when evaluating assignments under section 310(d), we do not re-evaluate the qualifications of the transferor.<sup>86</sup> The exception to this rule occurs where issues related to basic qualifications have been designated for hearing by the Commission or have been sufficiently raised in petitions to warrant the designation of a hearing.<sup>87</sup> This is not the case here, so we need not re-evaluate the basic qualifications of Stratos Global or its subsidiaries. Moreover, as we discuss below, we are not persuaded, based on the record in this proceeding, that Inmarsat is the real party in interest in the first step of this two-step transaction.

31. After reviewing Petitioners' arguments, we find that they have failed to demonstrate that either the Trust or the Trustee lacks sufficient financial, legal, technical or other basic qualifications to be a licensee under the Communications Act. Section 310(d) requires us to consider the qualifications of the proposed transferee as if the transferee were applying for the license directly under section 308 of the Act.<sup>88</sup> In the first step of the transaction, which is the only step before us, the transferee will be the Trust and, more specifically, the Trustee, Robert M. Franklin. The Commission has previously held that the

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<sup>84</sup> See *DoCoMo-Guam Cellular Order*, 21 FCC Rcd at 13591, ¶ 15; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11536, ¶ 18; *SBC/AT&T Order*, 20 FCC Rcd at 18301-02, ¶ 17; *Verizon/MCI Order*, 20 FCC Rcd at 18444, ¶ 17; *Cingular/AT&T Wireless Order*, 19 FCC Rcd at 21544, ¶ 41.

<sup>85</sup> 47 U.S.C. §§ 214(a), 310(d).

<sup>86</sup> See *DoCoMo-Guam Cellular Order*, 21 FCC Rcd at 13590, ¶ 14; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11536, ¶ 17; *Sprint Nextel-Nextel Partners Order*, 21 FCC Rcd at 7362, ¶ 10; *SBC-AT&T Order*, 20 FCC Rcd at 18379, ¶ 171; *Verizon-MCI Order*, 20 FCC Rcd at 18526, ¶ 183; *Sprint-Nextel Order*, 20 FCC Rcd at 13979, ¶ 24; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13063-4, ¶ 18; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21546, ¶ 44; *Deutsche Telekom/VoiceStream Order*, 16 FCC Rcd at 9790, ¶ 19.

<sup>87</sup> See *DoCoMo-Guam Cellular Order*, 21 FCC Rcd 13590, ¶ 14; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11536-7, ¶ 17; *Sprint Nextel-Nextel Partners Order*, 21 FCC Rcd at 7362, ¶ 10; *SBC-ATT Order*, 20 FCC Rcd at 18379, ¶ 171; *Verizon-MCI Order*, 20 FCC Rcd at 18526, ¶ 183; *Sprint-Nextel Order*, 20 FCC Rcd at 13979, ¶ 24; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13063-4, ¶ 18; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21546, ¶ 44; *Deutsche Telekom/VoiceStream Order*, 16 FCC Rcd at 9790, ¶ 19.

<sup>88</sup> Section 308 requires that applicants for Commission licenses set forth such facts as the Commission may require as to citizenship, character, and financial, technical, and other qualifications. 47 U.S.C. § 308. See also *DoCoMo-Guam Cellular Order*, 21 FCC Rcd at 13590, ¶ 14; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11536-7, ¶ 17; *Sprint Nextel-Nextel Partners Order*, 21 FCC Rcd at 7362, ¶ 10; *SBC-ATT Order*, 20 FCC Rcd at 18379, ¶ 171; *Verizon-MCI Order*, 20 FCC Rcd at 18526, ¶ 183; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13063-4, ¶ 18; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21546, ¶ 44.

requirement for the Commission to review a transferee's qualifications applies to trustees as well.<sup>89</sup> We find, below, that a trust is a valid mechanism to hold the Stratos Global stock. We also conclude, based on the evidence in the record, that the Trust and Robert M. Franklin as Trustee of the Trust possess the basic qualifications to be the transferee of Stratos Global and the licenses and authorizations held by the Stratos Licensees. We find that Robert M. Franklin's business experience, including experience specifically related to telecommunications, qualifies him to be a licensee under Section 308.<sup>90</sup> Iridium has not adequately explained why the information provided by Applicants is "deficient" for us to determine the Trustee's qualification under Section 308 to be a transferee of Commission authorizations.<sup>91</sup> We therefore conclude that Iridium has failed to raise any question as to the Trustee's qualifications to implement his duties under the Trust.

### C. Real Party In Interest

32. Upon review, we reject Petitioners' arguments that we should deny the Application because the Applicants have failed to identify Inmarsat as the "real party in interest" in the transaction.<sup>92</sup> The argument is most clearly stated in VIZADA's Petition to Deny, where VIZADA argues that the Loan Facility, Call Option and other documents in this transaction "demonstrate that Inmarsat will control Stratos through a web of entanglements with the company and CIP that make it the only party with power over the Stratos finances and an economic interest in the company's success."<sup>93</sup> VIZADA also argues that these documents virtually guarantee Inmarsat's ultimate *de jure* ownership of Stratos Global. As such, VIZADA argues that Inmarsat should be listed as the transferee on the Application.<sup>94</sup> In addition, Iridium argues that the transfer of Stratos Global to the Trust will create a "loophole" to the Commission's review of transfers of control that is contrary to the public interest.<sup>95</sup> More specifically, Iridium argues that allowing Inmarsat to transfer Stratos Global to the Trust is equivalent to transferring it to Inmarsat, since Inmarsat will thereby take on the entire economic risk of Stratos Global, thus making the future transfer a foregone conclusion. Iridium believes that this would set a precedent that future applicants could exploit.<sup>96</sup> Because Applicants did not list Inmarsat as the transferee under the Application, VIZADA and Telenor contend that the Commission should deny the Application or, alternatively, set it for hearing to resolve disputed issues of fact.<sup>97</sup>

33. The "real party in interest" issue arises under Section 310(d) of the Act, which requires that "[n]o . . . station license, or any rights thereunder, shall be transferred, assigned or disposed of in any manner, voluntarily or involuntarily, directly or indirectly, . . . to any person except upon application to

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<sup>89</sup> *Tender Offer Policy Statement*, 59 Rad. Reg. 2d at 1562-3, ¶ 35, n.124; *QVC Network, Inc.*, Memorandum Opinion and Order, 8 FCC Rcd 8485, 8486, ¶ 4 (1993); *CNCA Acquisition Corp.*, Memorandum Opinion and Order, 3 FCC Rcd 6088, 6094, ¶ 40 (1988); *Macfadden Acquisition Corp.*, 104 F.C.C. 2d 545, 565-6, ¶¶ 36-40 (1986).

<sup>90</sup> See Narrative at 4; Appendix B, Curriculum Vitae of Robert M. Franklin, Trustee.

<sup>91</sup> Iridium argued that the material submitted, including the Trustee's Curriculum Vitae, lacks meaningful detail and, thus, is deficient under the Communications Act and the *Tender Offer Policy Statement* for such a determination. Iridium Petition at 10-11.

<sup>92</sup> VIZADA Petition at 3-23; Iridium Reply at 5-7; Telenor Reply at 3-9.

<sup>93</sup> VIZADA Petition at 3.

<sup>94</sup> *Id.*

<sup>95</sup> Iridium Petition at 17.

<sup>96</sup> *Id.*

<sup>97</sup> VIZADA Petition at 3-23; Telenor Reply at 3-13.

the Commission . . . .”<sup>98</sup> The term “real party in interest” refers to a third party who is not listed as an applicant in a transfer of control application but “has an ownership interest or will be in a position to actually or potentially control the operation of the [radio] station.”<sup>99</sup> In a case where there is such an unidentified real party in interest, there is an unauthorized transfer of control, because the third party obtained the interest without having first received authorization from the Commission. Thus, in order to make their case that Inmarsat is the real party in interest in this step of the transaction (the transfer of control of Stratos Global to the Trust), Petitioners must show that Inmarsat has acquired an ownership in, or will be in a position to control, Stratos Global without having obtained prior Commission approval. After reviewing the arguments of the Petitioners, we are not persuaded that Petitioners have made the requisite showing.

34. At the outset, we note that the Application states that 100 percent of the stock of Stratos Global will be transferred to the Trust and that the Trustee will have *de jure* and *de facto* control over Stratos Global.<sup>100</sup> Because Inmarsat Finance will not own any of the stock of Stratos Global during the term of the Trust, it is clear that Inmarsat will not have any formal ownership interest in Stratos Global during that period. We must now consider whether Inmarsat will be in a position to actually or potentially control the operation of Stratos Global.<sup>101</sup> After reviewing the arguments of VIZADA and Telenor, we conclude that they have not shown that Inmarsat will be able to control Stratos Global during the term of the Trust.

35. The Commission has taken an expansive view of what constitutes “control,” stating that the term, as used in section 310, “embrace[s] every form of control, actual or legal, direct or indirect, negative or affirmative.”<sup>102</sup> The Commission has stated that “a realistic definition of the word ‘control’ includes any act which vests in a new entity or individual the right to determine the manner or means of operating the licensee and determining the policy that the licensee will pursue.”<sup>103</sup> The Commission has also stated that “legal,” *i.e.*, *de jure*, control is “typically determined by whether a shareholder owns more than 50 percent of the voting shares of a corporation.”<sup>104</sup> Again, because 100 percent of the stock of Stratos Global will be held by the Trust, we conclude that this first step in the transaction will not give Inmarsat legal or *de jure* control of Stratos Global.

36. We are also unpersuaded that the transaction will give Inmarsat *de facto* control over Stratos Global during the Trust period. The Commission has said that “in our examination into the matter of control of a corporate licensee we do not confine ourselves to a narrow, legalistic approach but rather

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<sup>98</sup> 47 U.S.C. § 310(d).

<sup>99</sup> See, e.g., *Astroline Communications v. FCC*, 857 F.2d 1556, 1564 (1988) (citing *KOWL, Inc.*, 49 F.C.C. 2d 962 (Rev. Bd, 1974)). See also *Creek County Broadcasting Company*, Memorandum Opinion and Order, 31 F.C.C. 2d 462 (1971); *Sumiton Broadcasting Co., Inc.*, 15 F.C.C. 2d 400, 405 (1968).

<sup>100</sup> The Application states that “[t]he Trust will hold title to and exercise all voting rights in the Stratos Global stock.” Narrative at 6. See also *Stratos Global Opposition* at 4-5.

<sup>101</sup> See *Astroline Communications Company*, 857 F.2d at 1564 (“The Commission’s real party-in-interest inquiry typically focuses on whether a third person ‘has an ownership interest, or will be in a position to actually or potentially control the operation of the station.’” (citing *KOWL, Inc.*, 61 Rad. Reg. at 134)).

<sup>102</sup> *Albert J. Feyl*, Memorandum Opinion and Order, 15 F.C.C. 823, 825, ¶ 5 (1951), quoting *Rochester Telephone Corp. v. U.S.*, 23 F.Supp. 634 (1938), *aff’d* 307 U.S. 125 (1939).

<sup>103</sup> *WHDH, Inc.*, 17 F.C.C. 2d 856, 863 (1969).

<sup>104</sup> *Fox Television Stations, Inc.*, Memorandum Opinion and Order, FCC 95-188, 10 FCC Rcd 8452, 8513, ¶ 151 (1995) (*Fox I*) (citing *Metromedia, Inc.*, Memorandum Opinion and Order, 98 F.C.C. 2d 300, 306 (1984)).

look beyond stock ownership, in some cases, to determine where actual working [*i.e.*, *de facto*] control resides.”<sup>105</sup> *De facto* control therefore refers to an ability to control an entity that arises from circumstances other than stock ownership. The *de facto* control issue “transcends formulas, for it involves an issue of fact which must be resolved by the special circumstances presented,” and must be determined on a case-by-case basis.<sup>106</sup> The Commission has stated that, in analyzing *de facto* control in a particular case, it will consider the representations of the applicant, its actual conduct, and relevant corporate governance and contractual provisions.<sup>107</sup> To show that Inmarsat has *de facto* control over Stratos Global, Petitioners must show that the circumstances of this transaction demonstrate that Inmarsat has actual control of that company, even though it will own none of the company’s stock. As we describe more fully below, we believe that Petitioners have not demonstrated that Inmarsat has such actual control of Stratos Global.

37. In *Intermountain Microwave*, the Commission set out six factors it would use to determine whether a third party has *de facto* control over a common carrier licensee.<sup>108</sup> These factors are: (1) does the licensee have unfettered use of all the facilities and equipment? (2) who controls daily operations? (3) who determines and carries out the policy decisions, including preparing and filing applications with the Commission? (4) who is in charge of employment, supervision, and dismissal of personnel? (5) who is in charge of the payment of financing obligations, including expenses arising out of operations and (6) who receives monies and profits derived from the operation of the facilities? Applying these factors to the Application before us, we believe that they indicate that the Trust and the Trustee will have *de facto* as well as *de jure* control of Stratos Global during the Trust period. We note that the Trust and the Trustee meet all six factors of the *Intermountain Microwave* test. Under the terms of the transaction documents, it is the management of Stratos Global, operating under the oversight of the Board of Directors and the Trustee, that will have the use of the Stratos Licensees’ facilities, control daily operations, adopt and carry out policy decisions, decide personnel issues, pay financial obligations, and receive monies from the operation of the company. We also note that neither CIP nor Inmarsat have the ability to order or change decisions of Stratos Global management. Accordingly, we conclude that, under the *Intermountain Microwave* factors, Inmarsat Finance will not have the ability to control Stratos Global during the Trust period.

### 1. Permissibility of the Trust Mechanism

38. From the foregoing, it is clear that our analysis depends upon the validity and adequacy of the Trust in this proceeding to insulate Stratos Global and the Trustee from CIP and Inmarsat. We note that Petitioners have made two challenges to the Trust. First, Iridium argues that the use of the trust mechanism is not consistent with Commission precedent. Second, VIZADA argues that the Trust is not adequate to insulate Stratos Global from CIP and Inmarsat. After reviewing the Trust Agreement and the arguments of the Petitioners and the Applicants, we conclude that the Trust here is both valid and adequate.

39. After reviewing Iridium’s arguments, we find that the Applicants’ proposal to place the stock of Stratos Global into the Trust until 2009 is neither novel nor unsupported by Commission precedent. We do not agree with Iridium’s argument that the Commission has limited the use of trusts

<sup>105</sup> *Albert J. Feyl*, 15 F.C.C. at 826, ¶ 6.

<sup>106</sup> *Fox I*, 10 FCC Rcd at 8514, ¶ 154.

<sup>107</sup> See, e.g., *News International plc*, Memorandum Opinion and Order, 97 F.C.C. 2d 349, 356, ¶ 17 (1984); *Baker Creek Communications, L.P.*, Memorandum Opinion and Order, 13 FCC Rcd 18709, 18713-714, ¶ 7 (PSPWD/WTB 1998).

<sup>108</sup> *Intermountain Microwave*, Public Notice, 12 F.C.C. 2d 559 (1963).

solely to applications involving a hostile takeover, bankruptcy, or post-merger divestiture.<sup>109</sup> Rather, we agree with Stratos Global and Inmarsat Finance that the Commission allows parties to use any form of business organization, including a trust, that best suits their business needs.<sup>110</sup> For example, the Commission's *Attribution Policy Statement* recognizes that applicants establish trusts for a variety of purposes, including "personal and economic reasons unrelated to any Commission rule" and states that "[s]uch trusts should be facilitated to the extent possible."<sup>111</sup> The *Attribution Policy Statement* recognizes that applicants create trusts to effect compliance with Commission rules, for example, to hold broadcast licenses that would violate the Commission's media ownership rules if held outright.<sup>112</sup> The Commission also noted that applicants often use trusts to execute multi-phase transactions.<sup>113</sup> In *Twentieth Holdings*, the Commission stated that a voting trust, "like any other legal entity, may hold broadcast licenses."<sup>114</sup> In the wireless context, the Commission has granted applications for licenses to offer cellular telephone services to a company controlled by a trust.<sup>115</sup> We thus conclude that it is settled law that a trust can hold a broadcast or common carrier radio license. We continue to believe that a properly drawn trust can provide needed insulation of valuable or problematic investments and that the Commission should allow parties to use trusts for valid private reasons, so long as those trusts are not publicly detrimental. For this reason, we conclude that it is permissible under the Communications Act for Applicants to use a trust to hold the stock of Stratos Global.

40. We also disagree with Iridium's assertion that Commission precedent permits only "temporary" trusts of very short duration<sup>116</sup> or that the roughly two-year period for the "permanent" Trust

<sup>109</sup> Iridium Petition at 7.

<sup>110</sup> Stratos Global Opposition at 7, Inmarsat Finance Opposition at 7 (both citing *Twentieth Holdings Corp.*, Decision, FCC 89-129, 4 FCC Rcd 4052, ¶ 5 (1989)). Additionally, Stratos Global cites *Clifford Stanton Heinz Trust*, 11 FCC Rcd 5354, ¶¶ 6-10, 26 (1996); *KEOT, Inc.*, DA 01-0103, ¶ 15 (rel. Jan. 17, 2001); *LEO One USA Corp.*, Order and Authorization, DA 98-238, 13 FCC Rcd 2801, 2808-9, ¶¶ 15-7 (1998); *Lester T. Pritchard*, Certified Letter, FCC 91-131, 6 FCC Rcd 2210, 2210-21 (1991). See also *Corporate Ownership Reporting and Disclosure by Broadcast Licensees; Amendment of Sections 73.35, 73.240 and 73.636 of the Commission's Rules Relating to Multiple Ownership Standard, FM, and Television Broadcast Stations; Amendment of Section 73.35, 73.240, 73.636 and 76.501 of the Commission Rules relating to Multiple Ownership of AM, FM, and Television Stations and CATV Systems; Reexamination of the Commission's Rules and Policies Regarding the Attribution of Ownership Interests in Broadcast, Cable Television, Newspaper Entities*, Report and Order, Docket No. 20521FCC 84-115, 97 F.C.C. 2d 997, 1023, ¶ 53 (1984) (*Attribution Policy Statement*), in which the Commission said that [i]n many cases, trusts are established for personal and economic reasons unrelated to any Commission rule . . . and should be facilitated to the extent possible." Stratos Global also notes that many Commission rules recognize that a trust may hold Commission licenses. Stratos Global Opposition at 7 (citing 47 C.F.R. §§ 1.2105(a)(ii)(A) (competitive bidding rules); 22.99 (experimental license); 25.103 (satellite communications); 90.7 (private land mobile radio service)).

<sup>111</sup> *Attribution Policy Statement*, 97 F.C.C. 2d at 1023, ¶ 53.

<sup>112</sup> *Id.*

<sup>113</sup> *Id.*

<sup>114</sup> *Twentieth Holdings*, 4 FCC Rcd at 4052, ¶ 4. In that case *Twentieth Holdings* put one of its television station licensees into a trust to avoid a violation of the Commission's media cross ownership rules. *Id.* at ¶ 4.

<sup>115</sup> *Clifford Stanton Heinz Trust*, 11 FCC Rcd at 5355-56, ¶¶ 6-10.

<sup>116</sup> Iridium Petition at 6-13 (citing *Tender Offer Policy*, 59 *Rad. Reg. 2d* at 1557-62, ¶¶ 27-33). Iridium states that the Commission clarified that the procedures apply only to (1) hostile takeovers by tender offer, which require prompt action, and (2) friendly tender offers where "a competing offer already exists, so that the second offeror must be promptly empowered to present its offer to the shareholders." Iridium Petition at 7 (citing *Rogers* (continued....))

in this transaction violates any Commission precedent.<sup>117</sup> We agree, rather, with Applicants that the Commission has approved trusts with longer terms.<sup>118</sup> In the cases of tender offers, divestitures and bankruptcies discussed by Iridium, the nature of the transactions generally dictates trust terms of short duration. In a tender offer, the purpose of a trust is to allow the parties to transfer a licensee without the need for a long-form Commission review so that shareholders can exercise a time-limited offer to purchase their shares. In the case of divestiture trusts, it is desirable for a Commission licensee expeditiously to divest ownership interests that the Commission has found to have negative competitive implications or otherwise adversely to impact the public interest. For that reason, it is not surprising that the trusts the Commission was considering in those contexts generally provided for short terms. We note, however, that even in the context of divestitures, the Commission has approved trusts with longer terms. For example, in *AT&T/Comcast*, the Commission approved a divestiture trust that would last for at least five years.<sup>119</sup> That case involved the merger of AT&T Corp. (AT&T) and Comcast Corporation (Comcast) who were, respectively, the largest and third largest U.S. cable television companies.<sup>120</sup> The trust was created to allow the merged company to dispose of AT&T's prior 27.64 percent interest in Time Warner Entertainment. L.P. (TWE), who was the second largest U.S. cable operator. In approving the trust, the Commission imposed the same basic requirements for a valid trust that it had enumerated in the *Tender Offers Policy Statement*,<sup>121</sup> except that it allowed AT&T greater than usual influence over the trust assets, because it found that the divestiture of TWE would be unusually complex.<sup>122</sup> To ensure that AT&T did not abuse this greater freedom, the Commission imposed safeguards on it.<sup>123</sup> The Commission found that the combination of the trust and the safeguards adequately insulated AT&T from the operation of TWE until AT&T could effectuate a divestiture.<sup>124</sup> The Commission noted that the five-year term of the *AT&T/Comcast* trust was longer than usual for divestiture trusts, but stated that such a term was not unprecedented.<sup>125</sup> The Commission found that, under the circumstances of the case before it, the

(Continued from previous page)

*Communications Inc., for Consent to Interim Transfer of Control of Maclean Hunter Ltd.*, Memorandum Opinion and Order, 9 FCC Rcd 7350, 7356, ¶ 14 (Cable Services Bureau, 1994) (*Rogers Communications*), which, in turn, cites *Voting Trustees for JB Acquisition Corp.; Application for Consent to Interim Transfer of Control of John Blair and Company*, Memorandum Opinion and Order, 60 Rad. Reg. 2d 1095, ¶ 3 (1986) (*John Blair Company*)). Iridium further asserts that the Commission has allowed a trust in the case of a friendly tender offer only in order to keep the trustee neutral where there is a competing offer (citing *Applications of Viacom Inc. for Commission Consent to Interim Transfer of Control of Paramount Communications, Inc.*, Memorandum Opinion and Order, 8 FCC Rcd 8439 (1993)). Iridium further asserts that the Commission has made clear that voting trusts are not normally necessary in the case of a friendly tender offer (citing *Rogers Communications, supra.*, 9 FCC Rcd at 7355-6, ¶ 13, which, in turn, cited *John Blair Company*, 60 Rad. Reg. 2d at 1095, ¶ 3).

<sup>117</sup> See ¶ 43, *supra*.

<sup>118</sup> Stratos Global Opposition at 7, Inmarsat Finance Opposition at 9.

<sup>119</sup> *Applications for Consent to the Transfer of Control from Comcast Corporation and AT&T Corp., Transferors, to AT&T Comcast Corporation, Transferee*, Memorandum Opinion and Order, MB Docket No. 02-70, FCC 02-310, 17 FCC Rcd 23246, 23273, ¶ 72 (2002) (*AT&T/Comcast*).

<sup>120</sup> *Id.* at 23248-9.

<sup>121</sup> See ¶ 45, *infra*.

<sup>122</sup> 17 FCC Rcd at 23276-8, ¶¶ 80-83.

<sup>123</sup> *Id.* at 23270-1, ¶¶ 68-9.

<sup>124</sup> *Id.* at 23277-8, ¶ 81.

<sup>125</sup> *Id.* at 23276, ¶ 80 (citing *Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from Tele-Communications, Inc., Transferor to AT&T Corp., Transferee*, CS Docket No. 98-178, FCC 99-24, 14 FCC Rcd 3160, 3207-13, ¶¶ 97-112 (1999)).

proposed five-year term was reasonable.<sup>126</sup>

41. In other contexts, the Commission has approved trusts with terms even longer than five years. For example, in *Lockheed Martin/Warburg*,<sup>127</sup> and *Twentieth Holdings*,<sup>128</sup> the Commission approved trusts with indefinite terms. In *Lockheed Martin/Warburg*, the issue was the transfer of control of a subsidiary of Lockheed Martin Corporation (Lockheed Martin) that acted as the North American Numbering Plan Administrator to NeuStar, Inc. (NeuStar). To ensure that NeuStar, an affiliate of Warburg, Pincus & Co. (Warburg), a provider of telecommunications, maintained the neutrality required of an NANP administrator, the parties created a trust with an indefinite term to prevent Warburg from influencing NeuStar.<sup>129</sup> Similarly, in *Twentieth Holdings*, the Commission approved the indefinite transfer of a television station license to a trust to avoid violation of the Commission's media ownership rules. Indeed, even the Commission's *Attribution Policy Statement* recognizes that "a trust may be used to indefinitely avoid divestiture of a valuable investment."<sup>130</sup> In the matter before us, we are not concerned with a tender offer, divestiture, or bankruptcy and conclude that the reasons in those types of cases for trusts of shorter duration do not apply to the Trust before us. We are concerned here with the transfer of stock to a trust for the private business reasons of the Applicants. The roughly two-year term proposed by the Applicants here is not indefinite, and is significantly shorter than the five-year term in *AT&T/Comcast*. As a result, we conclude that the term for the Trust in this transaction is consistent with Commission precedent.

42. We recognize that the Commission has been concerned with the potential for abuse of trusts.<sup>131</sup> The Commission indeed expressed that concern in the *Attribution Policy Statement* itself.<sup>132</sup> The Commission, however, stated that, notwithstanding such potential, it recognizes "the effective insulation that [trusts] can provide" and stated that it will "continue to accept trusts as legitimate insulation devices, judging their acceptability for our purposes on a case-by-case basis."<sup>133</sup> In the first step of the transaction, Applicants have stated that the purpose of the Trust is not related to any Commission rule, but to insure compliance with the restrictions in the Inmarsat Global distribution contracts.<sup>134</sup> We express no opinion as to whether the Trust will keep Inmarsat in compliance with those contracts. We conclude, however, that Petitioners have not shown any reason why authorizing Applicants to use the Trust for their private business needs would vitiate a finding that the transfer of control of Stratos Global will serve the public interest.

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<sup>126</sup> *Id.* at 21277-8, ¶ 81.

<sup>127</sup> *Request of Lockheed Martin Corp. and Warburg, Pincus & Co. for review of the Lockheed Martin Communications Industry Services Business*, Order, CC Dkt. No. 92-237, 14 FCC Rcd 19792 (1999) (*Lockheed Martin/Warburg*). Similarly, in *Twentieth Holdings*, the Commission held that the trust in that case, "if properly insulated, could continue indefinitely."

<sup>128</sup> *Twentieth Holdings*, 4 FCC Rcd at 4054, ¶ 16.

<sup>129</sup> *Lockheed Martin/Warburg*, 14 FCC Rcd at 19800-03, ¶¶ 9-14.

<sup>130</sup> *Id.*

<sup>131</sup> *Id.* at 13 (citing *Jacor Communications, Inc.*, Memorandum Opinion and Order, 14 FCC Rcd 6867, 6895-6, ¶ 35 (Mass Media Bur., 1999), which cites *Attribution Policy Statement*, 97 F.C.C. 2d at 1023-4).

<sup>132</sup> *Attribution Policy Statement*, 97 F.C.C. 2d at 1023-4, ¶ 54 (citing n.50). "The Commission has recognized the effective insulation such arrangements can provide, while maintaining a concern about their potential abuse, depending on the particular provisions of each trust."

<sup>133</sup> *Id.* at 1024, ¶ 54.

<sup>134</sup> Narrative at 2. See also *Inmarsat Finance Opposition* at 7-8.

43. Moreover, we find speculative Iridium's argument that allowing the Trust to hold Stratos Global for up to two years will harm the public interest.<sup>135</sup> Iridium argues that, because the Trustee will necessarily have to act in a conservative manner and is unable to communicate with CIP or Inmarsat, it may not be able to adjust its business plan to accommodate changes in the satellite market, thereby causing Stratos Global to miss or delay important business opportunities. Because Iridium depends on Stratos Global, Iridium believes such a result could potentially harm Iridium's competitive position and, thereby, harm the public interest.<sup>136</sup> We see no reason to assume that Stratos Global could not respond to changes in the satellite industry. We note that the current Stratos Global management will remain in place during the Trust and will have an incentive to keep the company competitive.<sup>137</sup> If, however, Iridium finds that Stratos Global will not meet its future needs, we note that Applicants have asserted that there are other distributors of satellite services that Iridium could use.<sup>138</sup> Iridium has not shown that it would be difficult for it to switch providers in such an event. For this reason, we cannot conclude that allowing the Trust to hold Stratos Global for two years is likely to harm the public interest.

44. Finally, we are not persuaded by Iridium's argument that allowing the Trust to hold the subject licenses and authorizations will allow Inmarsat to escape Commission scrutiny. Iridium argues that the Trust in this proceeding will allow Inmarsat to acquire Stratos Global without an opportunity for Commission review.<sup>139</sup> As noted above, the Commission will have an opportunity in the second step of this transaction to review the transfer of the licenses from the Trust to Inmarsat Finance, to CIP or to a third party. In that review, the Commission will examine the facts then before it and determine whether the transfer of control will serve the public interest. For this reason, we do not agree with Iridium's argument that allowing the use of a Trust in this proceeding will create a "loophole" in our transfer of control review process.<sup>140</sup> For the above reasons, we conclude that the transfer of the Stratos licenses to the Trust in the first step of this transaction is permissible under the Communications Act.

## 2. Adequacy of the Trust in This Proceeding

45. 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. In the *Tender Offers Policy Statement*, the Commission noted that, because authorizing the use of a trust would allow an offeror to purchase enough stock to convey *de jure* or *de facto* control of a licensee, section 310(d) requires that we impose sufficient controls to prevent the offeror from exercising control before the Commission can approve the transfer of control.<sup>141</sup> The Commission stated that such controls would include restrictions on the offeror directly and provisions to ensure the strict separation between the trustee and the offeror.<sup>142</sup> The Commission also included a list of the provisions that it had

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<sup>135</sup> Iridium Reply at 15-16.

<sup>136</sup> Iridium Petition at 15-16.

<sup>137</sup> Stratos Global Opposition at 26.

<sup>138</sup> Inmarsat Finance Opposition at 19-20.

<sup>139</sup> Iridium Petition at 17.

<sup>140</sup> *Id.*

<sup>141</sup> *Tender Offers and Proxy Contests*, Policy Statement, 59 Rad. Reg. 2d 1536, 1578, ¶ 60 (P & F) (1986). (*Tender Offers Policy Statement*).

<sup>142</sup> *Id.* The Commission said that, under its *Tender Offers Policy*, direct restraints would be necessary to ensure 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 licensee."

developed in its *Attribution Policy Statement* that it deemed necessary for a valid trust.<sup>143</sup> Those standards include a requirement (1) that the trust be irrevocable;<sup>144</sup> (2) that the trustee be “an independent person with no familial or business relationship with the beneficiary or the grantor;<sup>145</sup> (3) that the trustee impose the same insulation criteria to any corporate director the trustee may appoint;<sup>146</sup> (4) that the trust forbid “communications with the trustee regarding the management and operation of the [company to be acquired];”<sup>147</sup> (5) that a trust may permit written communications from the trustee to the offeror;<sup>148</sup> and (6) that all permissible communications with the trustee be in writing.<sup>149</sup>

46. The Application states that “[t]he Trust Agreement [in this transaction] was developed, consistent with Commission policy [*i.e.*, the *Tender Offers Policy Statement*], to ensure that the Trustee will have *de jure* and *de facto* control of Stratos [Global].”<sup>150</sup> Applicants note that the Trust in this transaction contains all of the elements specified in the *Tender Offers Policy Statement*.<sup>151</sup> 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. The Trust Agreement provides that the Trust is irrevocable,<sup>152</sup> that the Trustee must have no familial or business connection with CIP or Inmarsat Finance,<sup>153</sup> that the Trustee impose that requirement on any directors he appoints,<sup>154</sup> that the Trust forbid communications from CIP and Inmarsat Finance to the Trustee,<sup>155</sup> that the Trustee may communicate in writing to the beneficiary,<sup>156</sup> and that all permissible communications must be in writing.<sup>157</sup> We note further that the Trust contains an additional guarantee of Trustee independence by providing that the Trustee can only be removed for criminal misconduct,

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<sup>143</sup> *Tender Offers Policy Statement*, 59 Rad. Reg. 2d at 1579, ¶ 63 (citing *Attribution Policy Statement*, 97 F.C.C. 2d at 1024).

<sup>144</sup> *Tender Offers Policy Statement*, 59 Rad. Reg. 2d at 1563, ¶ 35, n.123.

<sup>145</sup> *Tender Offers Policy Statement*, 59 Rad. Reg. 2d at 1579, ¶ 63 (citing *Attribution Policy Statement*, 97 F.C.C. 2d at 1024, ¶ 56).

<sup>146</sup> *Tender Offers Policy Statement*, 59 Rad. Reg. 2d at 1579, ¶ 63 (citing *One Two Corporation and Eugene McCarthy*, F.C.C. 85-375, 58 Rad. Reg. 2d 924 (1985) (*McCarthy*), where the Commission had imposed the requirement).

<sup>147</sup> *Tender Offers Policy Statement*, 59 Rad. Reg. 2d at 1579, ¶ 63 (citing *Attribution Rulemaking*, 97 F.C.C. 2d at 1024, at ¶ 56).

<sup>148</sup> *Id.*, the Commission noted that, in *McCarthy*, it had permitted written communications from the trustee regarding the management and operation of the company, because the mere receipt of such reports would not give the offeror the means to influence corporate management. *McCarthy*, 58 Rad. Reg. 2d at 935, ¶ 42.

<sup>149</sup> *Tender Offers Policy Statement*, 59 Rad. Reg. 2d at 1580-81, ¶ 65.

<sup>150</sup> Narrative at 6 (citing the *Tender Offers Policy Statement*, 59 Rad. Reg. 2d 1536, 1579-81, ¶¶ 62-65 (1986)).

<sup>151</sup> Narrative at 6-7.

<sup>152</sup> Trust Agreement at 3, Section 1.

<sup>153</sup> *Id.* at 14, Section 7.j.

<sup>154</sup> *Id.* at 6, Section 4.a.ii.

<sup>155</sup> *Id.* at Section 4.b and pp. 16-17, Section 10.c.

<sup>156</sup> *Id.* at 16, Sections 10.a and b.

<sup>157</sup> *Id.* at 17, Section 10.d.

malfeasance or upon a finding by an appropriate court that the Trustee is incompetent.<sup>158</sup>

47. 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.”<sup>159</sup> Applicants argue that the provision refers only to Mr. Jim Parm, the CEO of Stratos Global, who is the only employee of the company who is also a Director.<sup>160</sup> Applicants state that the provision is intended only to preserve the routine communications between Stratos Global that are necessary to permit Stratos Global to deliver Inmarsat satellite services to end users; the provision does not authorize Inmarsat to discuss management and operation of Stratos Global. VIZADA argues that this provision could undermine the insulation value of the Trust because “[n]owhere do the Applicants suggest that the ‘ordinary course of business’ would not include communications with their lender—Inmarsat Finance—about every aspect of the Stratos business, because, after all, how the business is doing impacts the loan facility.”<sup>161</sup> VIZADA also argues that “Applicants [do not] contend that Inmarsat and Stratos management would be hampered in any way under the trust Agreement from communicating on distribution deals.”<sup>162</sup>

48. We note that Stratos Global has been distributing the satellite services of Inmarsat for many years and that Stratos Global and Inmarsat have worked together to ensure that Stratos Global could successfully deliver Inmarsat services to end users. 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. We note that, in a letter to the Commission staff, the Applicants elaborated upon what they deem to be permissible communications “in the ordinary course of business.” They state that those communications relate to network operations (technical coordination of the space and terrestrial segments), sales and marketing (joint marketing of services), finance (billing, accounting and financial reporting), legal (negotiating and implementing contracts governing the two companies’ relationships), and regulatory (cooperative efforts to obtain licensing for services in the United States and other countries).<sup>163</sup> We also shall incorporate into this Order that list of permissible communications.<sup>164</sup> We shall require Inmarsat and Stratos Global to keep

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<sup>158</sup> *Id.* at 13, Section 7.h.

<sup>159</sup> Trust at 6, Section 4(b).

<sup>160</sup> September 18 Letter at third unnumbered page.

<sup>161</sup> VIZADA Petition at 13.

<sup>162</sup> *Id.*

<sup>163</sup> September 18 Letter at third and fourth unnumbered pages. Inmarsat Finance further states that it discusses “most of these same issues” with its other major suppliers. *Id.*

<sup>164</sup> The discussion of “communications in the ordinary course” is set out in Appendix C.

records of their communications and, upon a reasonable request, to make them available to the Commission. Accordingly, and subject to the condition discussed in this paragraph, we conclude that the Trust in this transaction is valid and that, if properly carried out by the Trustee, should ensure that Inmarsat cannot control the operation of Stratos Global during the pendency of the Trust.

49. In conclusion, we find that the Trust Agreement in this proceeding contains all the provisions that the Commission has required for valid trusts. Of course, we realize that the written provisions of the Trust are not sufficient in themselves to ensure that the Trust will effectively insulate Stratos Global from CIP and Inmarsat Finance during the trust period. As the Commission has noted, the trust must be properly administered by the trustee to ensure separation of the trustee and the creator of the trust. Above, we rejected arguments that the Applicants have not provided sufficient detail to establish the qualifications of the Trustee to administer the Trust.<sup>165</sup> We note that the Trustee, Mr. Franklin, dismissed the allegation that CIP Canada or Inmarsat Finance would influence his administration of the Trust as “an unsupported assumption that I will not fulfill my contractual obligations.”<sup>166</sup> Mr. Franklin has stated that he is “clearly obligated to operate [the Trust] independently of CIP Canada and Inmarsat, and [that] they are clearly obligated to refrain from any interference in the management of Stratos [Global] during the trust period.”<sup>167</sup> Mr. Franklin also states that he has “an interest in maintaining my successful reputation and the necessary managerial experience to comply with my contractual obligations . . . .”<sup>168</sup> Petitioners have provided no evidence that Mr. Franklin will not administer the Trust independently of CIP Canada and Inmarsat. As a result, in view of the Trustee’s pledge, we will not, as petitioners would have us do, assume that the Trustee will not fulfill his obligations. On the basis of the record before us, we find that the Trust in this transaction is designed to provide sufficient insulation and that it will be administered so as to ensure that Inmarsat will not have *de facto* control over Stratos Global during the Trust period.

### 3. Other Arguments

50. Notwithstanding the existence of the Trust, Petitioners argue that Inmarsat will control Stratos Global. VIZADA argues that “the many contractual ties binding Inmarsat with CIP, Stratos and the Trust” will give Inmarsat Finance *de facto* control over Stratos Global.<sup>169</sup> VIZADA argues that the Loan Facility and the Call Option collectively put the economic risk of Stratos Global on Inmarsat and, thereby, undermine the purported insulation value of the Trust.<sup>170</sup> As a result, Petitioners argue that neither the Stratos Global management nor the Trustee can do anything other than maintain the *status quo* and do Inmarsat’s bidding. We are not persuaded by these arguments.

51. **The Loan Facility.** We are not persuaded that the Loan Facility will undermine the insulation value of the Trust. VIZADA argues that the Inmarsat Finance loan provides 100 percent of the capital CIP and its subsidiary, CIP Canada, will need to acquire the stock of Stratos Global as well as the money for all of their expenses.<sup>171</sup> For this reason, VIZADA argues that the capital contribution of CIP appears to be so limited that it is not clear that the Trustee would have the incentive to run Stratos Global

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<sup>165</sup> See ¶ 31, *supra*.

<sup>166</sup> Trustee Response at the fifth unnumbered page.

<sup>167</sup> *Id.* at third unnumbered page.

<sup>168</sup> *Id.* at the fifth unnumbered page.

<sup>169</sup> VIZADA Petition at 23.

<sup>170</sup> *Id.* at 12.

<sup>171</sup> VIZADA Petition at 9-16.

for the benefit of CIP.<sup>172</sup> VIZADA also argues that the terms of the loan are below market and suggest that they are designed to force CIP to sell Stratos Global to Inmarsat after the trust terminates.<sup>173</sup> Similarly, VIZADA argues that Inmarsat is subsidizing its loan to CIP. Finally, VIZADA argues that Loan Facility undermines the Trust because it “probably” gives Inmarsat, as creditor, the ability to review Stratos Global’s financial records and communicate with Stratos Global management.<sup>174</sup> From all these aspects of the Loan Facility, VIZADA argues that the loan will put all the financial risk of Stratos Global on Inmarsat,<sup>175</sup> render CIP irrelevant,<sup>176</sup> undermine the purported insulating effects of the Trust and, thus, give Inmarsat *de facto* control of Stratos Global.<sup>177</sup>

52. After reviewing VIZADA’s arguments, we do not believe that it has shown that the Loan Facility will give Inmarsat Finance *de facto* control of Stratos Global during the Trust period. At the outset, we note that all of VIZADA’s arguments about the Loan Facility address the relationship under that document between Inmarsat Finance and CIP. Thus, for example, VIZADA correctly notes that the Inmarsat loan will provide essentially all of the CIP entities’ the capital for the transaction. Applicants have admitted as much.<sup>178</sup> VIZADA may also be correct about the favorable terms, including the

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<sup>172</sup> VIZADA Petition at 16-17. Indeed, VIZADA argues that that the Narrative suggests that the principals’ equity stake in CIP will be limited to a small capital contribution and the \$750,000 from Inmarsat for the option. VIZADA Petition at 17.

<sup>173</sup> *Id.* at 9-10. VIZADA divides the Inmarsat Finance loan into two phases. VIZADA characterizes the phase one loan terms (prior to April 14, 2009) (which it asserts feature a “below-prime” 5.75% interest rate, capitalization of the interest, and lack of security for the loan) as a “sweetheart deal” that is below market and not “arm’s length.” VIZADA asserts that “[i]t is inconceivable that a *bona fide* arms-length lender would extend a loan to CIP under [those] terms.” *Id.* at 10. VIZADA describes the phase two loan terms (after April 14, 2009) (which it asserts feature an “above-market” 11.5% rate, requirement to make interest payments and introduction of a “unspecified” security package) as “onerous” and designed to make Inmarsat’s acquisition of Stratos Global inevitable.

<sup>174</sup> VIZADA Petition at 10. In its Reply, which was based on its review of the unredacted version of the Loan Facility, VIZADA argues that such review confirmed its hunch that Inmarsat will be able to receive financial information about Stratos Global’s performance. VIZADA Reply at 8.

<sup>175</sup> VIZADA Petition at 16. VIZADA argues that Loan Facility gives Inmarsat the dominant financial stake in the transaction and that the Commission looks at a putative controlling party’s financial stake to determine if it is the unauthorized real party in interest. *Id.* (citing *Trinity Broadcasting of Florida, Inc.*, 14 FCC Rcd 13570, 13583, ¶¶ 29-30). VIZADA also argues that the Commission has recognized that significant contributors of debt can have influence over a Commission licensee so as to require approval of their participation (citing *Review of the Commission’s Regulations Governing Attribution of Broadcast and Cable/MDS Interests*, Report and Order, 14 FCC Rcd 12559, 12580, ¶ 39 (1999), *reconsid. grtd in part and denied in part*, Memorandum Opinion and Order, 16 FCC Rcd 1097 (2001)).

<sup>176</sup> VIZADA Petition at 15. VIZADA asserts that the only logical conclusion one can draw from the transaction is that “CIP and the Trust will have no material interest in the operations of Stratos independent of Inmarsat.” *Id.* at 15.

<sup>177</sup> VIZADA Petition at 12.

<sup>178</sup> In response to a question from Commission staff, Applicants stated that, after exercise of Facility A under the Loan Facility, the anticipated total capitalization of CIP would be approximately US\$50,000; that the anticipated total capitalization of CIP UK would be approximately £1,000 (US\$2,000); that the anticipated total capitalization of CIP Canada would be approximately US\$275 million; and that the “net debt capitalization of the CIP Group (CIP, CIP UK and CIP Canada), on a pro-forma consolidated basis, is expected to be approximately US\$275 million with equity capitalization of approximately US\$50,000.” September 18 Letter at the second unnumbered page. By subsequent letter, Applicants clarified that the \$275 million loan was intended to cover the approximately \$260 million payment CIP Canada must make to the Stratos Global shareholders for their stock and to provide up to \$15 (continued....)

possibility that Inmarsat will be subsidizing CIP's borrowing and other aspects of the loan. Even if we were to accept all of VIZADA's arguments as true, however, they would demonstrate at most that Inmarsat will have control of CIP and its affiliates. Stratos Global is not a party to the Loan Facility and that document does not create any relationship between Stratos Global and CIP, let alone between Stratos Global and Inmarsat Finance. VIZADA's arguments, even if true, do not show that the Loan Facility gives Inmarsat *de facto* control of Stratos Global. As we discussed above, the Trust will insulate Stratos Global from CIP and its affiliates. Therefore, we agree with Inmarsat Finance's argument that "[i]t is axiomatic that if CIP Canada cannot influence or control the Trust, then *no entity*, including Inmarsat Finance, can control or influence the Trust by virtue of any relationship it may have with CIP."<sup>179</sup>

53. **The Call Option.** For the same reason, we are not persuaded by VIZADA's argument that the Call Option suggests that Inmarsat Finance has *de facto* control of Stratos Global because neither CIP nor the Trust will have a material interest in the operation of Stratos Global. VIZADA argues that the \$750,000 that Inmarsat paid for the option and the additional payment of \$750,000 to \$1,000,000 (depending on when Inmarsat exercises the option), will allow Inmarsat to acquire Stratos Global for a "marginal" cash outlay of approximately 0.7 percent of the fair market value of the stock.<sup>180</sup> VIZADA argues that a fixed-price option denies the optioning party "any chance to share in the upside gain" and deprives it of any incentive to compete aggressively or to take other potentially beneficial business risks.<sup>181</sup> VIZADA argues that the Commission disapproves of fixed-price options in the broadcast context, and that this disapproval is evidenced by the Mass Media Bureau's 1995 interim policy that it will not approve options held by programmers of broadcast stations if the option "involve[s] upfront payments of all, or substantially all, of the stations value."<sup>182</sup> VIZADA argues that the Call Option is a "fixed-price option" of the type that the Commission has expressed concern about, on the grounds that such options do not give the party granting the option the fair market value at the time the option is exercised. VIZADA notes that Inmarsat Finance will have, in effect, paid upfront over 99.6 percent of the value of the Stratos Global stock via its financing of CIP, with an "inconsequential" payment at the back-end.<sup>183</sup> Thus, VIZADA argues that there is "no reason for management or the Trustee to do anything more than maintain the *status quo* and do Inmarsat's bidding."<sup>184</sup>

54. After reviewing VIZADA's arguments, we find that it has not shown that the Call Option will give Inmarsat Finance *de facto* control of Stratos Global or that it is the real party in interest in this transaction. As with the case of VIZADA's arguments about the Loan Facility, its arguments about the Call Option are addressed to the wrong entity. It was CIP, not Stratos Global, that negotiated the terms of the Call Option with Inmarsat Finance. Were we to accept its arguments on this point as true, they would suggest only that Inmarsat Finance will control CIP, not Stratos Global. As a result, we fail to see why CIP's fixed-price option to Inmarsat removes the Trustee's incentive to operate Stratos Global

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million of "headroom" to cover CIP Canada's "transaction costs." Letter from John P. Janka, Counsel for Inmarsat Finance, to Marlene H. Dortch, Secretary, FCC, dated October 29, 2007 at first unnumbered page.

<sup>179</sup> Inmarsat Finance Opposition at 9.

<sup>180</sup> VIZADA Petition at 14-15. VIZADA calculates this percentage by dividing Inmarsat's \$1.75 million cost for the option by the \$250 million the Narrative cites as the current market value of the Stratos Global stock. See Narrative at 7.

<sup>181</sup> VIZADA Petition at 15.

<sup>182</sup> *Id.* (citing Public Notice, "Processing of Applications Proposing Local Marketing Agreements," Rep. No. 54161, 1995 LEXIS 3593 (MMB rel. June 1, 1995)).

<sup>183</sup> VIZADA Petition at 15.

<sup>184</sup> VIZADA Petition at 15-16.

competitively.<sup>185</sup> The terms of the Call Option do not affect the Trustee or the management of Stratos Global and should have no impact on their incentives to operate Stratos Global competitively. Most importantly, the terms of the Call Option do not give CIP any power to control Stratos Global and, as in the case of the Loan Facility, do not give Inmarsat Finance power to control Stratos Global by virtue of its relationship to CIP.

55. Having determined that neither VIZADA's arguments about the Loan Facility nor its arguments about the Call Option would show that they separately give Inmarsat *de facto* control of Stratos Global, we also reject VIZADA's argument that they collectively would do so. As stated above, neither argument addresses the relationship of Inmarsat to Stratos Global and, as a result, we conclude that VIZADA has not shown anything about the Loan Facility or the Call Option that would undermine our conclusions above that the trust will prevent Inmarsat Finance, or its parent, Inmarsat, from exercising *de facto* control of Stratos Global.

56. We are also not persuaded by VIZADA's argument that, because the Trustee and the management of Stratos Global will be aware that Inmarsat will acquire the stock of Stratos Global in 2009, they will ignore their responsibility to the company and will "do Inmarsat's bidding."<sup>186</sup> We recognize 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. We address the competitive effects of such knowledge in Section III.D, below. It is not certain, however, that Inmarsat will in fact exercise its option to acquire Stratos Global in 2009. As a result, because the Stratos Global stock could ultimately go to a purchaser other than Inmarsat, Stratos Global management cannot be certain during the Trust period that favoring Inmarsat would benefit them individually in the long run. Further, because the Trust forbids Inmarsat to 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. Unless we were to assume, as we do not, that management or the Trustee will violate their obligations under the Trust, the more likely event is that management will generally try to manage Stratos Global in a way that keeps it competitive and increases its value.

57. Having said that, however, we cannot ignore the possibility that awareness of Inmarsat's interest would influence the Trustee or management in their operation of Stratos Global. As the Commission noted in the *New International* case, however, "influence and control are not the same thing."<sup>187</sup> The Commission went on to elaborate that to establish control "[t]he influence must be to the degree that the minority shareholder is able to 'determine' the licensee's policies and operation, or 'dominate' corporate affairs."<sup>188</sup> As a result, to show that awareness of Inmarsat's possible future ownership of Stratos Global would give it *de facto* control, Petitioners must show that such influence is so strong that it would cause the Trustee or Stratos Global to violate their fiduciary obligations and to allow Inmarsat to dictate company policy or to dominate Stratos Global's daily operations. We do not think that Petitioners have demonstrated such strong influence. Given that the Trust forbids Inmarsat or CIP to discuss corporate policy or operations with the Trustee or the Stratos Global management, we do not

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<sup>185</sup> VIZADA's argument about the potential deleterious effects of a fixed-price option concerns the incentive of the company granting the option, in this transaction CIP, to operate competitively. Here, however, CIP is the beneficiary of the Trust and will not operate Stratos Global. The Trustee, who will operate Stratos Global, is neither a party to, nor affected by, the Option. As a result, the Option would not be likely to affect on the Trustee's operation of Stratos Global.

<sup>186</sup> VIZADA Petition at 15-16.

<sup>187</sup> *News International, plc*, Memorandum Opinion and Order, FCC 84-79, 97 F.C.C. 2d 349, 355-56, ¶ 16 (1984).

<sup>188</sup> *Id.*