

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Robert M. Franklin, Transferor)	IB Docket No. 08-143
)	DA 08-1659
Inmarsat plc, Transferee)	
)	FCC File Nos.
Applications for Consent to Transfer)	ITC-T/C-20080618-00275
of Stratos Global Corporation and its)	ITC-T/C-20080618-00276
FCC-Authorized Subsidiaries from)	SES-T/C-20080618-00818
an Irrevocable Trust to Inmarsat plc)	through -00821
and Petition for Declaratory Ruling)	0003453455 and
)	ISP-PDR-20080618-00013

OPPOSITION TO PETITION TO DENY

Richard E. Harris
Senior Vice President & Chief Legal Officer
Bruce A. Henoch
Vice President Legal & Regulatory Affairs
Stratos Global Corporation
6550 Rock Spring Drive, Suite 650
Bethesda, MD 20817
(301) 214-8800

Alfred M. Mamlet
Marc A. Paul
Steptoe & Johnson LLP
1330 Connecticut Avenue, NW
Washington, D.C. 20036
(202) 429-3000

Counsel to Stratos Global Corporation

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OPPOSITION TO PETITION TO DENY

Stratos Global Corporation ("Stratos Global") and its wholly-owned FCC authorized subsidiaries (collectively, "Stratos Subsidiaries," and together with Stratos Global, "Stratos") hereby file this Opposition to the Petition to Deny of Vizada, Inc. and Vizada Services LLC ("Vizada Petition") opposing the above-referenced applications ("Stratos Applications"), which seek approval of a transfer of control of Stratos Global and the Stratos Subsidiaries from an irrevocable trust ("Trust"), for which Robert M. Franklin is the trustee ("Trustee"), to Inmarsat plc (together with its subsidiaries, "Inmarsat").¹

¹ See *Robert M. Franklin, Trustee, and Inmarsat plc Seek FCC Consent to the Transfer of Control of Stratos Global Corporation and Its Subsidiaries from an Irrevocable Trust to Inmarsat plc*, IB Docket No. 08-143, DA 08-1659 (rel. July 14, 2008) and Erratum, issued July 17, 2008.

I. INTRODUCTION AND SUMMARY

In the first step of a two-step transaction, the Commission approved the transfer of control of Stratos to an irrevocable trust, with CIP Canada as the beneficiary and Mr. Franklin as the Trustee.² An Inmarsat subsidiary, Inmarsat Finance III Limited, provided the financing for the transaction, and received an option to acquire control of Stratos (subject to government approvals) on or after April 15, 2009, the date that Inmarsat is no longer contractually precluded from owning one of its distributors.

It is now time for the second step. Subject to necessary approvals, Inmarsat will exercise its option to acquire Stratos on or shortly after April 15, 2009.

The only opposition to this transaction comes from Vizada, a competitor of Stratos and a leading distributor of services on the Inmarsat, Iridium and Thuraya systems as well as a leading distributor of VSAT services to maritime users. Not a single customer of Stratos (or Vizada) claims that the transaction would harm the public interest.

Instead, only Vizada interposes arguments to further its private interests. Initially, Vizada contends that the Stratos Applications are “premature,” and should not be considered until Vizada and Inmarsat have concluded their negotiations of new distribution agreements (also effective April 15, 2009). The Commission has a well established and prudent policy of not providing a forum for private contractual issues. The Stratos Applications are not the occasion to vary from this line of precedents.

² *Stratos Global Corporation, Transferor; Robert M. Franklin, Transferee; Consolidated Application for Consent to Transfer of Control*, 22 FCC Rcd 21328 (2007) (“*Stratos-Trust Order*”).

Vizada claims that Commission intervention in its contractual negotiations is necessary because Inmarsat threatened to impose on Stratos such a bleak distribution agreement that Stratos “had little choice but to sell out.” To the contrary, the Stratos shareholders told CIP Canada that the initial bid price was inadequate, and forced CIP Canada to increase the price before it was accepted.

Vizada’s substantive claims all depend on establishing that Inmarsat has market power. Of course, the Commission has already determined that “Inmarsat is not a monopolist.” Vizada itself, provides substantial inter-brand competition to Inmarsat services by selling Iridium, Thuraya and VSAT services.

Vizada tries to avoid the Commission’s prior determinations by gerrymandering a new relevant market, which it defines as “geographically ubiquitous global coverage, high data throughput (e.g., 128 kbps plus), and a service that is weather-insensitive, certified for providing safety at sea and in flight, and reliably delivered by a firm with a long and dependable performance record and a stable financial condition.” Vizada’s proposed market is so tightly drawn that there is no Inmarsat aeronautical service and only one Inmarsat maritime service that fits Vizada’s market definition. Moreover, Inmarsat’s high speed aeronautical and maritime services face a wealth of interbrand competition.

Vizada claims that critical end-users, like the U.S. Navy, are “locked-in” by high switching costs to Inmarsat’s services, referencing the Navy’s installation of Inmarsat-B terminals on each of its 300 vessels. Vizada failed to disclose to the Commission that the Navy has already begun migrating its ships requiring high bandwidth from Inmarsat-B to VSAT. The U.S. Navy believes that it is not locked-in by

high switching costs to Inmarsat, and that VSAT competes with Inmarsat's high bandwidth offerings.

Finally, Vizada asserts that, if the Stratos Applications are granted, then the Commission should impose structural separation between Inmarsat and Stratos. However, Vizada ignores the Commission's test for structural separation on international routes, and the Commission's move away from structural separation even for domestic service by the BOCs. Most importantly, structural separation would deprive the public of the very substantial efficiencies that the vertical integration of Inmarsat/Stratos would achieve.

II. THE PENDING TRANSFER APPLICATIONS ARE TIMELY

Vizada argues that the Stratos transfer applications are "premature on [their] face" and should be dismissed.³ In the alternative, Vizada contends that the Commission should defer action on the applications until Inmarsat has negotiated a new distribution agreement with Vizada.⁴ Vizada's arguments should be rejected for at least three reasons.

First, the Stratos transfer applications are timely. The expected closing date of April 15, 2009 (*i.e.*, the date when Inmarsat can exercise its option) is only nine months from the date (July 14, 2008) when the Stratos transfer applications were placed on public notice. Nine months is consistent with (1) the Commission's six month

³ Vizada Petition at 7.

⁴ *Id.*

target for processing complex mergers,⁵ and (2) the 2-6 months allowed to consummate a transaction under the Commission's Rules.⁶

Second, prompt Commission action on these applications will ensure a smooth transition in the ownership and control of Stratos on or shortly after April 15, 2009. If the Commission approves this application, then Inmarsat can acquire Stratos. However, if the Commission denies the pending application, then CIP Canada may elect to acquire the shares of Stratos Global (subject to Commission approval). Finally, if neither of those events has occurred, the Trustee will arrange for an investment bank to sell the Stratos Global shares through an auction process.⁷ Obtaining certainty as to who will control Stratos on and after April 15, 2009 is important to Stratos and its on-going business operations.

Third, deferring action on these applications while a new distribution agreement is negotiated between Vizada and Inmarsat might further Vizada's private commercial interests.⁸ However, a deferral would not serve the public interest because it would delay the consumer benefits from a vertically integrated Inmarsat/Stratos.

Vizada attempts to justify deferral for its benefit by analogizing to the deference the Commission routinely provides to the Executive Branch in reviewing

⁵ See <http://www.fcc.gov/transaction/timeline.html>.

⁶ See 47 C.F.R. § 25.119(f) (requiring consummation within 60 days of an authorization to assign or transfer control of an earth station authorization); 47 C.F.R. § 1.948(d) (requiring consummation within 180 days of an authorization to assign or transfer control of a terrestrial wireless license).

⁷ *Stratos-Trust Order*, 22 FCC Rcd. at 21334.

⁸ Vizada's request for a deferral is not consistent with its later contention that the Commission should ignore the requirements of agreements between Inmarsat and distributors. Vizada Petition at 44 ("It would not be sufficient for the Commission to rely upon whatever language may be in the distribution agreements proposed by Inmarsat.")

applications for issues related to national security.⁹ This analogy cannot withstand scrutiny. The Commission determined long ago that it would give careful consideration to the views of the Executive Branch on national security issues raised by FCC applications.¹⁰ Providing the Executive Branch reasonable time to formulate its position on national security issues may be in the public interest. However, delaying consideration of the transfer of control applications to give Vizada leverage in its private commercial negotiation with Inmarsat would promote only Vizada's private interests. "The Commission generally does not interfere with private contractual disputes 'that should be solved by negotiation between the parties or in the courts.'"¹¹ Even "VIZADA recognizes that the Commission is not the place to address contractual matters arising between Inmarsat and its distributors."¹²

⁹ Vizada Petition at 14 n.11.

¹⁰ See *In the Matter of Rules and Policies on Foreign Participation in the U.S. Telecommunications Market; Market Entry and Regulation of Foreign-Affiliated Entities*, 12 FCC Rcd. 23891, 23919 (1997) ("We conclude we should continue to find national security, law enforcement, foreign policy and trade policy concerns relevant to our decision to grant or deny Section 214 and 310(b)(4) applications from applicants from WTO Member. As we found in the *Foreign Carrier Entry Order*, our public interest analysis would benefit from input by the Executive Branch addressing these issues").

¹¹ *In re: WVAB(AM), Virginia Beach, Virginia, Facility ID No. 57611*, File BAL-20071119AIW et al., Applications for Assignment of Licenses, Petition to Deny, 23 FCC Rcd. 4781, 4781 n.4 (2008) (quoting *Metromedia, Inc., Memorandum Opinion and Order*, 3 FCC Rcd. 595 (1988)). See also *John F. Runner, Receiver (KBIF)*, Memorandum Opinion and Order, 36 RR 2d 773,778 (1976); *Decatur Telecasting, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd. 8622 (1992) ("The Commission has long held that it is not the proper forum for the resolution of private contractual disputes and that any redress should be sought in a local court of competent jurisdiction.").

¹² See Vizada Petition to Deny the Transfer of Control to the Trustee (WC Docket No. 07-73) at ii (June 29, 2007).

III. STRATOS GLOBAL SHAREHOLDERS APPROVED THE SALE OF THE COMPANY BECAUSE THEY RECEIVED A SUBSTANTIAL PREMIUM

Stratos Global shareholders decided to sell the company because they received a substantial premium, not because they “had little choice but to sell out.”¹³

Stratos Global was a public company, traded on the Toronto Stock Exchange. Stratos Global shares were widely held, primarily by Canadian and U.S. individuals and institutions.

Contrary to Vizada’s suggestion, the bid was not an “offer that could not be refused.” Indeed, Stratos shareholders made it clear that the initial price was inadequate, convincing CIP Canada to increase the bid an additional 9.4% (from C\$6.40 to C\$7.00) on the eve of the shareholder vote.¹⁴ The final C\$7.00 share price was a premium of 37% over the 90-day average share price prior to an article in a major Canadian newspaper reporting that an offer for Stratos had been made.¹⁵ It was the 37% premium, not “Inmarsat’s threats to shareholders,”¹⁶ that convinced all of Stratos directors and 85% of Stratos shareholders to sell the company.¹⁷

¹³ Vizada Petition at 10.

¹⁴ Stratos Global Press Release (June 11, 2007), available at http://www.stratosglobal.com/aboutStratos/page-aboutStratos_newsroom_newsItem.cfm?newsID=314.

¹⁵ Stratos Global Press Release (March 19, 2007), available at http://www.stratosglobal.com/aboutStratos/page-aboutStratos_newsroom_newsItem.cfm?newsID=300 (noting that C\$6.40 price was 25% premium above 90-day average, which would have been C\$5.12).

¹⁶ Vizada Petition at 10.

¹⁷ Stratos Global Press Release (June 12, 2007), available at http://www.stratosglobal.com/aboutStratos/page-aboutStratos_newsroom_newsItem.cfm?newsID=315.

IV. THE MARKET FOR MOBILE SATELLITE SERVICES IS COMPETITIVE

The Commission has repeatedly determined that the market for mobile satellite services is robustly competitive. For example, in *Stratos-Trust*, the Commission analyzed the “competitive effects” of the proposed transaction.¹⁸ The Commission carefully considered the arguments of Vizada and Iridium before concluding that, “[g]iven the availability of alternative mobile satellite capacity, Inmarsat is not a monopolist in the supply of mobile satellite capacity for international mobile satellite services.”¹⁹ Similarly, the Commission noted, when approving the combination of the Telenor and France Telecom satellite businesses to create Vizada, that Inmarsat “faces vibrant competition from a wide range of other satellite services. . . .”²⁰ Most recently, the Commission reported to Congress that “[o]n the whole, we believe that U.S. policy goals regarding the promotion of a fully competitive global market for satellite communications services are being met in accordance with the Orbit Act.”²¹

Two years ago, Vizada itself said it operated in a market “characterized by robust competition” and is “highly competitive with numerous competing entities,” including “MSV, Inmarsat, Globalstar, and Iridium, and. . .ICO and TMI.”²² Since that

¹⁸ *Stratos-Trust*, 22 FCC Rcd. at 21354-56.

¹⁹ *Id.*, at 21355.

²⁰ *Telenor*, 22 FCC Rcd 9325, 9328 (2007) (*citing* Inmarsat filing).

²¹ *FCC Ninth Report to Congress as Required by the Orbit Act* (June 13, 2008), at 21.

²² *Telenor ASA and Inceptum 1 AS*, Consolidated Application for Consent to Transfer of Control and Petition for Declaratory Ruling, IB Docket No. 06-225 at 12-13 (filed Nov. 29, 2006).

time, competition has increased further as ICO has launched its new 2 GHz system and Terrestar prepares to initiate service next year.

Faced with the Commission's prior determinations that "Inmarsat is not a monopolist" and with its own broad array of services that provide inter-brand competition to Inmarsat, Vizada struggles mightily to gerrymander a new relevant market, which it defines as "geographically ubiquitous global coverage, high data throughput (e.g., 128 kbps plus), and a service that is weather-insensitive, certified for providing safety at sea and in flight, and reliably delivered by a firm with a long and dependable performance record and a stable financial condition."²³

Vizada's proposed market is so tightly drawn that no Inmarsat aeronautical service fits Vizada's market definition. There is no Inmarsat aeronautical service that is both certified for safety and provides 128 kbps service. None. Indeed, the highest bandwidth of any Inmarsat aeronautical safety service is 10.5 kbps, offered by Inmarsat-H and Inmarsat H+.²⁴

Inmarsat's newer, higher bandwidth aeronautical services, such as Swift-64 and SwiftBroadband (up to 432 kbps), are not safety certified.²⁵ There is plenty of competition for Inmarsat's new, higher bandwidth aeronautical services from Ku

²³ Vizada Petition at 3.

²⁴ See <http://www.inmarsat.com/Services/Aeronautical/?language=EN&textonly=False>; Stratos website at http://www.stratosglobal.com/products/page-products_inmarsat_classicAeronautical.cfm. In addition, Iridium has secured ICAO approval for AMS(R)S. See Iridium Press Release (Jan. 3, 2008) (available at <http://iridium.mediaroom.com/index.php?s=43&item=852>).

²⁵ *Id.*

offerings planned or already provided by ARINC,²⁶ Row 44,²⁷ Panasonic,²⁸ and from terrestrial radio services in the U.S. offered by AirCell.²⁹

On the maritime side, only Inmarsat's Fleet 77 falls in Vizada's gerrymandered "market" definition, by combining Global Maritime Distress and Safety System ("GMDSS") services provided over a low-speed voice channel with a separate channel providing IP bandwidth up to 128 kbps.³⁰ Although it would be theoretically possible to combine, or "bond", two 64 kbps Inmarsat-B channels to get bandwidth of 128 kbps, it would not be economical for a new user to do so. In addition to Fleet-77 and Inmarsat-B, Inmarsat, Stratos and Vizada sell numerous other maritime services such as Inmarsat-C, Inmarsat-M, mini-M, Fleet-33, Fleet-55 and FleetBroadband.³¹ Inmarsat's newest and highest bandwidth maritime service, FleetBroadband (up to 432 kbps), is not GMDSS compliant.

Vizada, Inmarsat and Stratos sell the entire portfolio of maritime services because customers trade off numerous features in selecting the appropriate service from among Inmarsat and non-Inmarsat offerings. These features include terminal size,

²⁶ See ARINC website at <http://www.arinc.com/news/2006/10-17-06.html>.

²⁷ See Row 44 website at http://www.row44.com/uploads/SFChronicle_4_14_2008.pdf.

²⁸ See Panasonic website at http://www.panasonic.aero/pdf/GCS_Brochure_Final.pdf.

²⁹ See AirCell website at http://www.aircell.com/index.php?option=com_content&task=view&id=30&Itemid=317&L3=btechnology.

³⁰ Contrary to Vizada's suggestion, Vizada Petition at 3, there is no high speed service certified for GMDSS.

³¹ In addition, the original Inmarsat analog service, Inmarsat-A, provides maritime service but will be shut down this year in favor of more spectrally efficient services. Inmarsat D+ and ISAT M2M services, not offered by Stratos or Vizada, provide tracking, monitoring and control services in maritime and land environments.

terminal price, service price, geographic coverage, bandwidth, reliability, and fulfillment of regulatory safety mandates. The Commission has previously determined that, while mobile satellite services are highly differentiated, the relevant market is mobile satellite services.³²

Vizada, Stratos and others sell a number of other services that provide strong inter-brand competition to Inmarsat's high bandwidth maritime services, including those in Vizada's proposed "gerrymandered market." Vizada and Stratos both offer Iridium's 128 kbps "Open Port" maritime service.³³ Vizada's WaveCall™ maritime VSAT service provides bandwidth up to 1 mbps, and Stratos provides similar high bandwidth maritime services, branded as OceanVSAT™.³⁴ Both Vizada and Stratos provide maps on their websites illustrating the "global maritime coverage" of their VSAT offerings.³⁵

Vizada's Petition also asserts that Inmarsat end-users are "locked-in" to Inmarsat because of their substantial investment in terminals, and claims that this lock-in effect is most pronounced for maritime customers.³⁶ Vizada's prime example is that:

Inmarsat-based service underlies the extensive and mission-critical customized voice and data services of the US Navy. The Navy provisioned its entire fleet of over 300 vessels with

³² *Stratos-Trust Order*, 22 FCC Rcd. at 21355.

³³ See Vizada website at http://www.vizada.com/1652_1 (available in September 2008); Stratos website at http://www.stratosglobal.com/products/page-products_iridium_openPort.cfm (same).

³⁴ See Vizada website at http://www.vizada.com/818_1; Stratos website at http://www.stratosglobal.com/products/page-products_vsate_oceanVsat.cfm.

³⁵ *Id.*

³⁶ See Vizada Petition at 23.

Inmarsat B HSD [high speed data] shipboard terminals at a very substantial expense.³⁷

Vizada neglected to tell the Commission that the U.S. Navy has already begun to migrate its ships with requirements for high bandwidth from Inmarsat B HSD to VSAT (C, Ku and X-bands) as part of its Commercial Broadband Satellite Program ("CBSP").³⁸ Clearly, the U.S. Navy believes that it is not "locked-in" to Inmarsat by high switching costs, and that VSAT competes with Inmarsat's high bandwidth maritime offerings.

Indeed, neither the U.S. Navy, nor any other end-user supplied by Vizada or Stratos, has expressed any concern to the Commission about Inmarsat vertically integrating with Stratos. This is not surprising because Stratos' customers have generally been indifferent to the proposed acquisition or supportive of a vertically integrated Inmarsat/Stratos. End-users and the public in general will benefit from a more efficient Inmarsat/Stratos that is vertically integrated like its competitors such as Iridium, Intelsat and SES.³⁹

V. THE COMMISSION SHOULD NOT IMPOSE STRUCTURAL SEPARATION BETWEEN INMARSAT AND STRATOS

Vizada's last-ditch request is that, if the Commission approves the transaction, then it should at least impose structural separation between Inmarsat and

³⁷ *Id.*

³⁸ See Communications Program Office, Commercial Broadband Satellite Program (CBSP), Presentation by Melinda Ratz (Program Executive Office, U.S. Navy) at ISCe Conference (June 12, 2008) (available at www.isce.com/presentations08).

³⁹ *Stratos-Trust*, 22 FCC Rcd. 21355 n. 196 (noting that Iridium is vertically integrated and sells directly to the U.S. government).

Stratos.⁴⁰ Vizada offers no basis or precedent for this anticompetitive and inefficient request.

Under the Commission's Rules, a carrier is classified as "dominant," subject to separation requirements, only on international routes where it has "an affiliation with a foreign carrier that is a monopoly provider of communications services in a relevant market in a destination country. . . ." ⁴¹ The parties represented in the pending Section 214 application that neither Stratos nor Inmarsat is affiliated with a monopoly provider in a foreign country.⁴² Vizada's inability to contradict that representation is effectively dispositive.

The Commission has all but abandoned structural separation as a regulatory tool for domestic services. Last year, the Commission appropriately eliminated the separation requirements for AT&T, Verizon and Qwest, finding that they:

impose a variety of significant costs, including administrative costs on both the BOCs and the Commission. . . . These restrictions not only impose additional costs, but also prevent the BOCs from taking advantage of the economies of scope and scale associated with integrated operation that their

⁴⁰ Vizada Petition at 43. Vizada's request for safeguards of its confidential information, Vizada Petition at 42, is not necessary. Stratos (and presumably Vizada) regularly shares proprietary information (but not pricing information) with satellite operators who are already vertically integrated. This is done subject to contractual requirements for confidentiality, without government intervention. The existing distribution agreements Stratos and Vizada have with Inmarsat already protect confidential information.

⁴¹ 47 C.F.R. §63.10(a)(2) and (c)(1). Previously, Stratos was regulated as dominant on the U.S.-Canada route because it was affiliated with a Canadian incumbent local exchange provider in one region of Canada. When Stratos' affiliation ended, the Commission declared Stratos non-dominant. See *International Authorizations Granted*, DA 04-2251 at 5 (rel. July 22, 2004) (granting non-dominant status to the Stratos Subsidiaries).

⁴² See File No. ITC-T/C-20080618-00276, Attachment 1, at 5.

competitors are able to realize. . . . As a general matter, these restrictions and their associated costs make the BOCs less effective competitors in the market.

These restrictions also may prevent the BOCs and their affiliates from quickly responding to technological and marketplace developments. For example, although competitors may purchase a single piece of new technology and quickly deploy it, because of prohibitions against jointly owning facilities and sharing directors, officers, and employees, a BOC might be required to purchase two pieces of equipment and might suffer delays in bringing the technology to market because it must coordinate deployment with its long distance affiliate's officers and employees. The joint ownership prohibition could also prevent a BOC from deploying the latest, most innovative technology, or cause delays in bringing services relying on that technology to market. Additionally, the requirement that a BOC and its section 272 separate affiliate "operate independently" hinders their ability to alter business priorities quickly in response to changing market demands. The required duplicative management of the two affiliated companies creates unnecessary inefficiencies in decision making and may therefore increase the costs and delay deployment of new services.⁴³

The Commission's analysis applies here. Requiring structural separation between Inmarsat and Stratos would impose substantial costs on the parties and the Commission, and would deprive consumers of the significant benefits that vertically integrating the companies would achieve. With respect to the pending application, structural separation is an inefficient solution in search of a problem.

⁴³ *In the Matters of Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements*, 22 FCC Rcd. 16440, 16479-80 (2007). While less stringent structural separation requirements still exist for independent incumbent LECs under 47 C.F.R. § 64.1903, the Commission has invited the incumbent independent ILECs to petition for forbearance. See *In the Matters of Petition of the Embarq Local Operating Companies for Forbearance Under 47 U.S.C. § 160(c) from Application of Computer Inquiry and Certain Title II Common-Carriage Requirements et al.*, 22 FCC Rcd. 19478, 19499 (2007).

CERTIFICATE OF SERVICE

I, Petra Vorwig, an attorney with the law firm of Steptoe & Johnson LLP, hereby certify that on this 25th day of August 2008, I served a true copy of the foregoing Opposition by first class mail, postage pre-paid (or as otherwise indicated) upon the following:

John F. Copes*
Policy Division, International Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Gail Cohen*
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Erin McGrath*
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Neil Dellar*
Office of General Counsel
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Regina Dorsey*
Office of Managing Director
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Joanne P. Ongman
National Security Division
U.S. Department of Justice
Washington, D.C. 20535

David Strickland*
Policy Division, International Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Peter A. Rohrbach**
David J. Saylor
Karis A. Hastings
Kimberly S. Reindl
Hogan & Hartson LLP
555 Thirteenth Street, NW
Washington, D.C. 20004-1109

Karl Kensinger*
Satellite Division, International Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Robert M. Franklin
c/o 6550 Rock Spring Drive
Suite 650
Bethesda, MD 20817

Jodie Donovan-May*
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

James D. Scarlett
Torys LLP
79 Wellington Street West
Box 270, TD Centre
Toronto, Ontario
CANADA M5K 1N2

Diane J. Cornell
Vice President, Government Affairs
Inmarsat Inc.
1101 Connecticut Avenue, NW
Suite 1200
Washington, D.C. 20036

John P. Janka
Jeffrey A. Marks
Latham & Watkins LLP, Suite 1000
555 Eleventh Street, NW
Washington, D.C. 20004

- * By electronic mail
- ** By electronic mail and first class mail, postage pre-paid

/s/
Petra Vorwig