

October 9, 2008

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

Re: *Ex Parte* Presentation

In the Matter of Robert M. Franklin, Transferor, Inmarsat plc, Transferee,  
Applications for Consent to Transfer Control of Stratos Global Corporation and Its  
Subsidiaries from an Irrevocable Trust to Inmarsat plc  
IB Docket No. 08-143, DA 08-1659; FCC File Nos. ITC-T/C-20080618-00276, ITC-  
T/C-20080618-00275, SES-T/C-20080618-00818, SES-T/C-20080618-00821, SES-  
T/C-20080618-00820, SES-T/C-20080618-00819, 0003453455, ISP-PDR-  
20080618-00013

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Dear Ms. Dortch:

Inmarsat plc and Stratos Global Corporation submit this *ex parte* letter principally to address new information and arguments contained in the September 10, 2008 Reply of Vizada, Inc. and Vizada Services LLC in this proceeding.

## **I. Introduction**

In approving the first step of this two-step transaction (the trust's acquisition of control of Stratos) ("Step 1"), the Commission evaluated both (i) the competitive effects of the transfer of the Stratos stock to the trust, as well as (ii) the competitive effects on the incentives of Stratos and Inmarsat while the trust exists, given the possibility that control of Stratos ultimately could pass to Inmarsat. The Commission concluded that the transfer of Stratos stock to the trust "does not create incentives for anti-competitive behavior."<sup>1</sup>

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<sup>1</sup> *Stratos Global Corporation, Transferor; Robert M. Franklin, Transferee; Consolidated Application for Consent to Transfer of Control*, 22 FCC Rcd 21328, 21354-55, ¶¶ 60, 63 (2007) ("*Step 1 Order*"). The Commission assessed the competitive consequences of the vertical integration of Stratos and Inmarsat in response to Vizada's arguments that Inmarsat's option to acquire control of Stratos, and Inmarsat's financing of Step 1, would create incentives for Stratos to carry out Inmarsat's desires, even if Inmarsat did not formally control Stratos. The Commission decided to assess such "possibly changed economic incentives" in order to address Vizada's complaints of anticompetitive effects. *See id.* at 21354, ¶ 60. Whether Inmarsat, Stratos, and Vizada thought such a determination was necessary at the time is irrelevant. *Cf.* Vizada Reply at 13-14.

In making these determinations, the Commission considered the impact of competitive satellite operators, as well as the availability of alternative firms for the retail distribution of satellite services.<sup>2</sup> Significantly, the Commission did not exclude from its consideration either (i) the capacity and services of Fixed Satellite Service (FSS) operators, such as Intelsat, SES Americom and Telesat that currently provide mobile services to VSAT terminals in competition with Inmarsat, or (ii) the capacity and services of regional operators, such as Thuraya, MSV, ICO, TerreStar, Telecomunicaciones de Mexico, Informcosmos, Optus MobileSat, INSAT 3C, and N-Star, that also compete with Inmarsat.

Vizada provides no valid reason to revisit the Commission's nine-month-old assessment of competitive considerations with respect to Inmarsat and Stratos. Vizada argues that the impending expiration of Inmarsat's distribution arrangements is a new fact or circumstance that warrants revisiting the Commission's competitive determination.<sup>3</sup> However, that justification does not survive scrutiny, because the upcoming expiration of Inmarsat's distribution arrangements was fixed five years ago and known to the parties and the Commission when the Commission approved Step 1.<sup>4</sup> It is the expiration of those agreements that will provide Inmarsat the first opportunity to vertically integrate, either by developing its own distribution capabilities, or by acquiring Stratos. Indeed, the expiration of the distribution agreements drove the two-step structure of the transaction and was the basis for Inmarsat obtaining an option to vertically integrate by acquiring control of Stratos.<sup>5</sup> Thus, Vizada's belated attempt to revisit the Commission's competitive assessment is essentially an untimely petition for reconsideration.

In its Petition to Deny, Vizada sought to focus the Commission on satellite services that meet the following seven-part criteria: (i) geographically ubiquitous global coverage, (ii) high data throughput (*e.g.*, 128 kbps plus), (iii) weather-insensitive, (iv) certified for providing safety at sea and in flight, (v) reliably delivered, (vi) provided by a firm with a long and dependable performance record, and (vii) provided by a firm with a stable financial condition.<sup>6</sup> In their Oppositions, Inmarsat and Stratos explained why revisiting the prior competition analysis is unwarranted, and how Vizada's contorted attempt to define the relevant services narrowly did not cover even a single Inmarsat aeronautical service.<sup>7</sup> Implicitly acknowledging that a key premise of its Petition to Deny was flawed, Vizada's Reply abandons its prior argument and creates new

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<sup>2</sup> See *Step 1 Order* at 21355, ¶ 63.

<sup>3</sup> Vizada Reply at 14.

<sup>4</sup> Nor do the other circumstances that Vizada cites warrant revisiting this determination. It is not relevant to this transaction that Harbinger may have an interest in acquiring control of Inmarsat (particularly when no such transaction currently exists, and no such transaction may even arise), or that "economic uncertainties fac[e] developing businesses in all markets." See *id.*

<sup>5</sup> Because the Commission assessed the competitive impact of Inmarsat's possible vertical integration with Stratos (a mere six months before this proceeding commenced), the applicants met their burden of defining the relevant legal framework when they cited the Commission's analysis and findings in the *Step 1 Order*. Cf. Vizada Reply at 26-27.

<sup>6</sup> Vizada Petition to Deny at 3.

<sup>7</sup> See Stratos Opposition at 9-10; Inmarsat Opposition at 9 & n.16.

arguments that the “key” services impacted by this transaction are: (1) maritime data services (both low speed and broadband), (2) aeronautical broadband services, and (3) broadband services to remote land-based locations.<sup>8</sup> Specifically, Vizada claims that Inmarsat has “market power” in each of these areas.

To support its new arguments on reply, Vizada includes comments from the principal of Telecom, Media and Finance Associates, Inc. (“TMF”), Tim Farrar, who is not an economist. Rather, TMF is a company that provides, for a subscription fee, commentary on developments in the field of satellite services.

For the reasons set forth below, Vizada’s Reply provides no reason to revisit the Commission’s competitive effects assessment of last December:

- As detailed in Section II, neither Vizada nor TMF provides a rigorous economic analysis to support the claim that numerous distinct product markets exist within the broader category of mobile satellite communications. Moreover, TMF’s and Vizada’s assertions about “market power” are contradicted by a series of analyses that TMF has provided to its paid subscribers.
- As detailed in Section III, even if Inmarsat had the “market power” asserted by Vizada, Inmarsat still would be able to vertically integrate regardless of the proposed transaction (by building its own distribution arm “from scratch”). Furthermore, Vizada has not shown that preventing Inmarsat from acquiring Stratos would outweigh the public interest benefits of the proposed transaction.

## **II. TMF Does Not Provide a Market Analysis**

Significantly, TMF includes a disclaimer at the outset that it is *not* providing an economic analysis of product market definition or of market power.<sup>9</sup> Rather, TMF uses the term “market” not as an economist or the Commission would, but rather “in its loose business parlance sense.”<sup>10</sup> Moreover, TMF admits that certain services provided by MSS operators may appropriately be included within markets that encompass those provided by FSS operators or terrestrial alternatives.<sup>11</sup> As a result, TMF’s comments are not directly applicable to competition-based definitions of product markets or of market power. Thus, Vizada’s unfounded speculation in its Reply about Inmarsat’s “market power”<sup>12</sup> is not substantiated by TMF’s comments, and actually is undermined by TMF’s other assessments of the industry, as detailed below.

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<sup>8</sup> Vizada Reply at 12.

<sup>9</sup> See TMF Comments at 1 (included as Attachment A to the Vizada Reply).

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

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

<sup>12</sup> See, e.g., Vizada Reply at 2 (“Inmarsat currently has complete power to dictate wholesale prices.”).

The Commission has properly recognized that differentiation exists among providers of mobile satellite communications.<sup>13</sup> In fact, product distinctions often result from competitive markets, as suppliers seek to differentiate their products to win customers. Such distinctions do not necessarily create distinct relevant product markets,<sup>14</sup> and TMF admits as much at the beginning of its comments. TMF also concedes that, in each of the purported product “markets” TMF identifies, there are segments in which Inmarsat faces significant competition. However, TMF does not present the type of empirical data needed to support the market definitions that Vizada proposes. Nor does TMF provide any substantiation for the “guesstimates” of revenues and that are sprinkled throughout its comments.<sup>15</sup>

These shortcomings should be reasons enough for the Commission to disregard the TMF Comments (and the arguments in Vizada’s Reply about “market power” that are based on those comments) as inadequate to warrant revisiting the Commission’s competitive effects assessment of last December. But there is another reason. As detailed below, TMF’s assertion that “Inmarsat does not face competition from other mobile or fixed satellite services (or terrestrial services) for a significant proportion of its users and wholesale services revenues”<sup>16</sup> is belied by a number of recent TMF analyses provided to paid subscribers but not referenced in the TMF submission to the Commission, which indicate not only that Inmarsat faces such competition, but also that such competition (i) has intensified since Inmarsat announced plans to revise its distribution arrangements, (ii) has resulted in lower prices for Inmarsat services, and (iii) has spurred the development of new and innovative Inmarsat services. Thus, TMF’s “guesstimate” of the amount of Inmarsat revenues not subject to competition is based on flawed premises (or misstatements) about the state of competition. Below, we address the major contradictions and errors in TMF’s comments.

#### **A. Maritime Services**

TMF’s comments regarding maritime services omit a critical conclusion that TMF reached in one of its regular subscriber reports, in which it assessed the impact on Inmarsat maritime services of both (i) recent price drops for Inmarsat land mobile services, and (ii) the expected pricing of aeronautical service offerings from the Aeromobile Telenor/ARINC venture, and the OnAir SITA/Airbus venture. In *Staying afloat? BGAN pricing and Inmarsat’s future*, TMF recognized that Inmarsat’s prices for land mobile BGAN voice and data service were significantly lower than those of “traditional” Inmarsat services (which currently must be provided through the gateways of legacy providers like Vizada).<sup>17</sup> TMF next recognized that the new, competitive aeronautical offerings of third parties were planning to offer “BGAN-like pricing.”<sup>18</sup> Considering

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<sup>13</sup> *Step 1 Order* at 21356, ¶ 63 (noting the “differentiated nature of mobile satellite services in terms of coverage, service attributes, availability, and pricing”).

<sup>14</sup> For example, DSL and cable modem are distinct services, using different means of transmission, but they still compete vigorously with each other.

<sup>15</sup> See, e.g., TMF Comments at 2, 3, 10, 12, 15-18.

<sup>16</sup> TMF Comments at 2.

<sup>17</sup> TMF Associates, *Staying afloat? BGAN pricing and Inmarsat’s future*, at 1 (Feb. 2006).

<sup>18</sup> *Id.* at 1-2.

these two factors, TMF concluded: “Inmarsat will have a very difficult time enforcing significant price differentials for maritime services, if global aeronautical coverage [from third parties] is available at much lower cost.”<sup>19</sup>

While acknowledging that the increased competition Inmarsat faces from satellite operators is reducing prices paid by end users, this TMF report also recognized that the revenues of Inmarsat distributors (like its client, Vizada) would drop as a result of lower prices to end users, and that such distributors would “see even more pain, because the price reductions would be amplified by the increased share of end user revenues captured by Inmarsat” once it is no longer constrained by the current distribution restrictions.<sup>20</sup> Thus, TMF has implicitly recognized what the Commission stated last December: changes in Inmarsat’s distribution structure may affect individual *competitors* (i.e., Vizada), but that would not adversely affect industry *competition or consumer welfare*.<sup>21</sup>

### **1. VSAT competition**

TMF also has recognized the competitive impact that VSAT offerings have on Inmarsat’s maritime business. In its March 31, 2008 report entitled “*MSS industry perspectives*,” TMF determined that maritime users often choose VSAT offerings over Inmarsat because differentiation in pricing structures (i.e., the single monthly flat rate for VSAT, versus the “per Mbyte” charges for Inmarsat service) makes VSAT more attractive for many maritime users.<sup>22</sup> Moreover, TMF recognized that such attractive pricing packages for maritime VSAT offerings put Inmarsat at a competitive disadvantage because “with the huge increase in usage that comes alongside flat-rate pricing (from a few hundred Mbytes per month on Inmarsat to several Gbytes on VSAT), Inmarsat would find it very difficult if not impossible to offer such an option.”<sup>23</sup> In assessing the competitive threat of maritime VSAT, TMF thus estimated that C band VSAT offerings could capture “up to ~ [approximately] 500 vessels (mostly from Inmarsat) in the next five years,” that Ku band VSAT offerings through 1m to 1.2m antennas could capture “up to 800 additional vessels per year (perhaps half of these from Inmarsat) over the next five years,” and Ku band offerings through smaller antennas (e.g., 60 cm terminals) could capture another “up to 600 vessels per year (less than one third coming from Inmarsat’s current broadband base)” and “roughly 2500 vessels” by 2013.<sup>24</sup> TMF concluded in that report that “roughly equal shares of revenue growth in [the] maritime sector over the next five years will go to Inmarsat and VSAT.”<sup>25</sup>

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<sup>19</sup> *Id.* at 2.

<sup>20</sup> *Id.* at 3. In this respect, TMF’s assessment of the changes in Inmarsat’s volume discount structure is consistent with Inmarsat’s Opposition. See Inmarsat Opposition at 21. Contrary to Vizada’s leap of logic regarding the effect on consumers, Vizada Reply at 54, Inmarsat’s revised discount structure is designed to *reduce* prices to consumers. See Inmarsat Opposition at 21.

<sup>21</sup> See *Step 1 Order* at 21355, ¶ 62.

<sup>22</sup> TMF Associates, *MSS industry perspectives*, at 16 (March 31, 2008) (“*MSS industry perspectives*”).

<sup>23</sup> *Id.*

<sup>24</sup> *Id.* at 18.

<sup>25</sup> *Id.* at 19.

## **2. Iridium competition**

While TMF's public comments dismiss Iridium as a competitive threat, and question Iridium's ability to survive, TMF predicted to its subscribers just six months ago that Iridium would "price itself at a discount to Fleet Broadband pricing for occasional users,"<sup>26</sup> and that Inmarsat had an "increased risk of losing market share to Iridium's new OpenPort maritime broadband solution."<sup>27</sup> TMF thus "conclude[d] that unless Inmarsat moves radically to take advantage of its lower cost of capacity on the I4 network (and suffers revenue losses in the near term as a result), it seems probable that Iridium will be able to build up a relatively strong position in the maritime broadband sector by attacking the more cost and usage conscious of Inmarsat's customer base (as it has done very successfully for voice communications over the last eight years)."<sup>28</sup> Indeed, just a few weeks ago TMF concluded that Iridium, and its second generation "Iridium NEXT" network, are alive and well.<sup>29</sup>

## **3. Low-data-rate services competition**

With respect to "low data rate" maritime services, robust competition exists from entities such as Iridium (whom TMF predicts will survive), Globalstar (who is focusing on low rate data service), and Orbcomm (who is singularly focused on low data rate offerings with a network dedicated to those services, and who touts its global coverage<sup>30</sup>). In fact, TMF, when analyzing Orbcomm's IPO prospects, concluded that by the end of 2010, Orbcomm could be expected to add approximately one million low-data-rate terminals to its base, with about two-thirds in North America, and one-third in other parts of the world.<sup>31</sup>

TMF is thus left to focus its arguments about low speed data services<sup>32</sup> on the impact of GMDSS, which TMF acknowledges Inmarsat provides at no charge and Iridium is poised to offer for free over its next-generation system. The crux of TMF's argument is that the ability of Inmarsat C maritime terminals to operate in two modes—supporting GMDSS as well as commercial

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<sup>26</sup> *Id.* at 20.

<sup>27</sup> *Id.* at 30.

<sup>28</sup> *Id.* at 23.

<sup>29</sup> See *\$591 Million GHL Buy of Iridium Said to Prove It Can Survive*, Communications Daily, at 5 (Sep. 24, 2008) ("With financial markets enduring their biggest upheaval in decades, GHL Acquisition Corp.'s takeover of Iridium is seen as a validation of Iridium's business strategy, said industry sources. 'This deal proves they can survive,' Tim Farrar, president of Telecom Media and Finance Associates, said.").

<sup>30</sup> See <http://www.orbcomm.com>; see also <http://www.orbcomm.com/solutions/satelliteM2M.htm> ("ORBCOMM operates twenty-nine satellites in six orbital planes that provide worldwide coverage.").

<sup>31</sup> TMF Associates, *Tracking the future? Orbcomm's proposed IPO*, at 4-5 (undated).

<sup>32</sup> TMF acknowledges that maritime voice is subject to significant competition. TMF Comments at 7.

text messaging—provides Inmarsat with market power with respect to low-rate maritime data services. TMF’s argument specifically rests on the assertion in the following parenthetical: “(And, for owners of such vessels [who chose Inmarsat for GMDSS service], it would not have been an economically prudent choice to acquire an Inmarsat terminal for GMDSS and also acquire an Iridium low data rate terminal for other communications purposes.)”<sup>33</sup> This offhand comment not only is unsubstantiated, but also is undercut by TMF’s recent conclusion in the aeronautical context that end users sometimes install redundant equipment from competing service providers precisely because they “prefer to have access to diverse communications systems.”<sup>34</sup>

If end users are willing to install two or more types of satellite terminals to secure access to different service providers in the aeronautical context (where the installation of heavy radiocommunication equipment is expensive, costly to carry and technically challenging), they certainly would be willing to do so in the maritime context. In fact, Inmarsat’s experience is that many maritime users (even those who have Inmarsat terminals) also have terminals of competing satellite service providers (MSS and FSS) on their vessels to support their voice and data needs. Moreover, considering that many large, ocean-going vessels are required to have GMDSS communications, TMF’s observations about the growth of maritime VSAT and Iridium services implicitly recognize that vessel owners will readily purchase at least two types of satellite terminals to meet their needs. Clearly, Vizada itself, and other providers of maritime VSAT and Iridium services, have demonstrated that they can sell competitive maritime data services to vessels that are required to have GMDSS capabilities.

#### **4. Geographic coverage**

TMF’s argument about the limited geographic coverage available for VSAT service is squarely rebutted by recent reports from Orbit Technology Group, a provider of advanced antenna systems for marine, air, and land mobile applications. Orbit just announced the successful completion of a rigorous VSAT field test onboard a ship that *traveled from a northwestern European port, through the Mediterranean Sea, the Suez Canal, the Indian Ocean and up to Japan – and then back*. Orbit reported that its “OrSat” technology “demonstrated flawless connectivity throughout the voyage, with seamless roaming between satellites on the route. Throughout the entire trip, personnel onboard enjoyed uninterrupted, full satellite communication connectivity via [the] Internet, engendering enthusiastic responses from the crew – all without having to change or replace any parts in the system throughout the voyage, and without any other human intervention. The OrSat is now ready for use as a Global-Ku Satcom system.”<sup>35</sup>

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<sup>33</sup> *Id.*

<sup>34</sup> *MSS industry perspectives* at 9-10.

<sup>35</sup> *Orbit’s OrSat Antenna Successfully Completes Extensive Global-Ku Coverage Tests, Hellenic Shipping News Worldwide* (Sept. 25, 2008) (emphasis supplied), at [http://www.hellenicshippingnews.com/index.php?option=com\\_content&task=view&id=19580&Itemid=79](http://www.hellenicshippingnews.com/index.php?option=com_content&task=view&id=19580&Itemid=79); see also Viasat, Inc. Press Release, *Ku-band Mobile Broadband Network Coverage Expands to North Pacific* (Oct. 7, 2008), at <http://www.viasat.com/news/ku-band-mobile-broadband-network-coverage-expands-north-pacific> (announcing VSAT coverage of the North Pacific Ocean region for both aeronautical and maritime broadband service).

The conclusion that Inmarsat faces effective competition in the maritime sector is neither new or novel. In analyzing the competitive impact of the possible vertical integration of Stratos with Inmarsat (before being hired by Vizada), TMF recognized that Inmarsat distributors, “particularly” its now-client Vizada, would have “alternative solutions such as VSAT and Iridium” to sell, and noted that “Vizada is already pushing maritime VSAT solutions heavily . . . .”<sup>36</sup>

## **B. Aeronautical Services**

In an analysis to its subscribers of Inmarsat’s position in the asserted “aeronautical broadband market,” TMF painted a dour picture that is very different than the one TMF now paints for the Commission of Inmarsat’s alleged dominance in that sector.<sup>37</sup> In a report entitled “*The outlook for aeronautical communications services*,” TMF recognized that VSAT provides a very real alternative to Inmarsat’s broadband aeronautical offerings and concluded: “we expect that the Internet access market will be split between terrestrial and VSAT-based solutions. As a result, we estimate that Inmarsat is likely to generate perhaps \$40M of incremental revenues from passenger communications by 2013, while if Aircell and VSAT split the Internet access market fairly evenly, then each will generate roughly \$60M-\$70M per year (net of revenue shares to airlines) by that time.”<sup>38</sup>

To this end, TMF similarly recognized that the approximately 7,200 medium and large business jets to be delivered in the 2007-2016 timeframe (a 60% increase over the number in service today) represent “a key competitive opportunity for Inmarsat and VSAT-based broadband services, while Iridium is likely to retain a strong position in other parts of the market, such as light aircraft, helicopters and light business jets.”<sup>39</sup> TMF also noted that Aircell has already fitted a “significant number of larger business jets” with Iridium equipment, and those users may wish to retain the Iridium equipment despite the availability of Swift Broadband because, among other things, users may prefer to have access to diverse communications systems on their aircraft.<sup>40</sup>

The recent announcements in the maritime context, cited above, about the availability of seamless FSS global coverage reinforces the evidence that Inmarsat provided in its Opposition,<sup>41</sup> and also rebuts TMF’s suggestion that VSAT cannot compete with Inmarsat’s aeronautical offerings because of the alleged coverage limitations of FSS spacecraft over ocean regions other than the North Atlantic.<sup>42</sup>

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<sup>36</sup> *MSS industry perspectives*, at 31.

<sup>37</sup> TMF concedes that aeronautical voice and low speed data users have a choice of service providers. TMF Comments at 11.

<sup>38</sup> TMF Associates, *The outlook for aeronautical communications services* (April 2008) at 5.

<sup>39</sup> *MSS industry perspectives*, at 9.

<sup>40</sup> *Id.* at 9-10.

<sup>41</sup> Inmarsat Opposition at 13 & Exhibit 2 (referencing promotional brochure for VSAT service offering “global connectivity” and “worldwide coverage.”)

<sup>42</sup> TMF Comments at 11.



### C. Land Mobile Services

TMF admits that robust competition exists in the provision of low-data-rate and voice services to land mobile users. Vizada therefore focuses on the provision of “remote land-based broadband”<sup>43</sup> as the area where it asserts that Inmarsat has market power. Land mobile, of course, is the last type of mobile service that Inmarsat developed (after maritime and aeronautical services). Land mobile broadband, in particular, is a nascent service that Inmarsat commenced just a few years ago, with the launch of the first Inmarsat 4 satellite, and it is an application that faces competition from companies such as Hughes, General Dynamics, and ViaSat, among others, which are currently deploying land mobile terminals for the U.S. Government and commercial applications that provide broadband services to remote locations over FSS spacecraft.<sup>44</sup>

Regional competition is particularly relevant in the context of land mobile services, because a user is unlikely to roam from one region of the world to another while actively using the service. Thus, TMF’s attempt to dismiss Thuraya’s competitive impact (because Thuraya, though it serves the rest of the world, does not serve the Americas<sup>45</sup>) is not persuasive. For this same reason, the regional capabilities of MSV, ICO and TerreStar, each of whom is deploying a state-of-the-art satellite network with high-speed data capabilities over the Americas, are particularly relevant.

As to global competitors, TMF fails to explain why Iridium, who has a broadband service globally available today to serve ships in remote locations and whose next generation system touts improved capabilities,<sup>46</sup> cannot provide a competitive alternative in the *remote* terrestrial locations that Vizada suggests are an area of concern.<sup>47</sup> Moreover, despite TMF’s suggestions to the contrary, flyaway VSATs are viewed by end users as a competitive alternative to Inmarsat in remote terrestrial locations because they “offer reliable service and upload and download speeds that exceed those of the BGAN network” and the “monthly rates for unlimited data transfer can be in the price range of what may be spent on only one or two remotes using the

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<sup>43</sup> Vizada Petition at 12, 51.

<sup>44</sup> See generally *Amendment of Parts 2 and 25 of the Commission’s Rules to Allocate Spectrum and Adopt Service Rules and Procedures to Govern the Use of Vehicle-Mounted Earth Stations in Certain Frequency Bands Allocated to the Fixed-Satellite Service*, FCC 07-86 (rel. May 7, 2007).

<sup>45</sup> See <http://www.thuraya.com/content/thuraya-coverage.html>.

<sup>46</sup> See <http://iridium.com/about/next.php>.

<sup>47</sup> Cf. TMF Comments at 14. Because Vizada’s arguments are about access to land mobile broadband in *remote* areas, TMF’s discussion of the use of satellite terminals in hotels is irrelevant. See *id.* Moreover, Inmarsat service, like Iridium service, can be challenging to acquire in urban areas where blockage from buildings exists—that is the reason the Commission has authorized ATC. TMF’s suggestion that land mobile Iridium broadband services would not be technically feasible, and that Iridium broadband services likely would be restricted to fixed or semi-fixed applications, see *id.*, defies common sense. Iridium is deploying mobile broadband *today* to mobile (OpenPort) terminals.

BGAN technology.”<sup>48</sup> In fact, the latest flyaway VSAT terminals are very portable and quick to set up—some fold up into backpacks and can be operable in as little as ten minutes.<sup>49</sup>

Finally, the TMF Comments neglect to tell the Commission that TMF recently has provided grim assessments to its subscribers of Inmarsat’s opportunities in the so-called “land mobile market.” In its December 2007 profile of Inmarsat,<sup>50</sup> TMF noted that Inmarsat’s GAN revenues have declined, and after a brief uptick related to the surge in Iraq, “the downward trend in revenues is expected to resume.”<sup>51</sup> Similarly, TMF explained that Inmarsat’s M and mini-M business “has also met with considerable pricing pressure, and is in decline,”<sup>52</sup> and that “the Inmarsat C [land mobile] service has achieved relatively little traction and had declined in recent years, due to the threat from the much lower cost terminals offered by Orbcomm.”<sup>53</sup> With respect to the opportunity for BGAN land mobile services, TMF predicted: “[we] do not believe that it will lead to a step change in Inmarsat’s land-based revenues . . . we expect the overall impact of BGAN on Inmarsat’s land-based revenues to be modest.”<sup>54</sup> These assessments TMF provided to its paid subscribers cannot be reconciled with the claims Vizada now makes to the Commission.

### **III. This Vertical Combination Would Be Procompetitive**

Even if Inmarsat had market power in a properly defined market, there would not be any competitive harm from the Stratos acquisition because a vertical combination can harm competition only if the combined firm has the ability and incentive to foreclose competition or raise rivals’ costs in a properly defined upstream or downstream market. That is not the case here. As demonstrated below, the proposed Inmarsat-Stratos vertical combination is procompetitive and will produce significant efficiencies to the benefit of consumers.

It is helpful to start this analysis by comparing the distribution structure of Inmarsat services with the distribution structure of another satellite operator whose services both Vizada and Stratos distribute. By way of example, Figure 1, below, depicts Iridium’s distribution structure.

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<sup>48</sup> See <http://www.rwonline.com/pages/s.0047/t.8143.html>.

<sup>49</sup> See [http://www.sepatriot.com/PDF/10\\_BackPack.pdf](http://www.sepatriot.com/PDF/10_BackPack.pdf).

<sup>50</sup> TMF Associates, *Profile of Inmarsat* (Dec. 13, 2007).

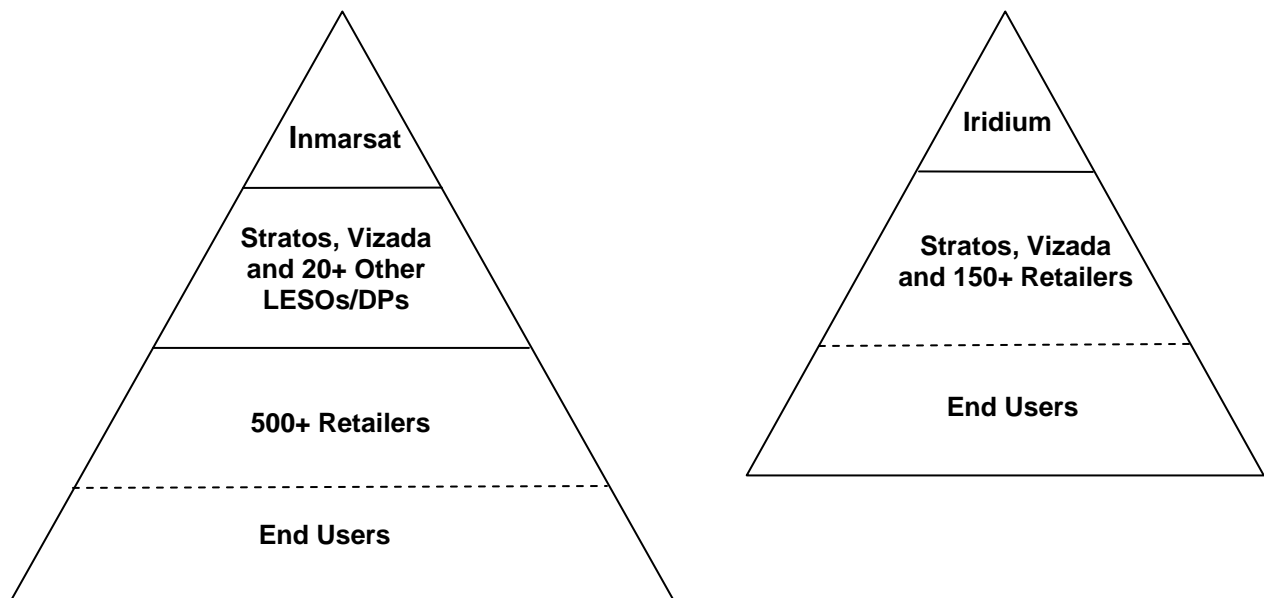
<sup>51</sup> *Id.* at 9.

<sup>52</sup> *Id.* at 10.

<sup>53</sup> *Id.*

<sup>54</sup> *Id.* at 11-12.

**Figure 1: Comparison of Inmarsat and Iridium Distribution Structures**



As shown in Figure 1, there is a three-tier distribution structure for Inmarsat services. In the first tier, Inmarsat operates the satellite and sells to land earth station operators (“LESOs”) and “distribution partners (“DPs”),”<sup>55</sup> including Stratos and Vizada. Until April 15, 2009, Inmarsat is contractually restricted to sell services only to distributors in the second tier. The LESOs in the second tier operate the terrestrial gateways, interconnecting with the PSTN (or Internet), for Inmarsat’s legacy “existing & evolved” services, and manage the retailers in the third tier.<sup>56</sup> Stratos alone uses more than 500 retailers in more than 65 countries to provide global reach. The barriers to entry to the third tier of distribution are quite low because these retailers are non-facilities-based resellers. The retailers need only a sales team and an accounting function to make the retail sales to end-users, establish their own pricing and handle billing and collection.

Inmarsat’s competitors use flatter distribution structures. For example, Iridium has a two-tier distribution structure as depicted in Figure 1. In the first tier, Iridium operates not only the satellite network, but also the terrestrial network to “land” the satellite services for all of its services provided to commercial end users. Iridium sells directly to some end-users, and also to more than 150 other retailers (including Stratos and Vizada) to obtain global reach.<sup>57</sup> The retailers in the Iridium second tier function just like the retailers in the Inmarsat third tier: they do not provide any part of the network for the Iridium service itself—their role is limited to sales to end-users and

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<sup>55</sup> Inmarsat owns the terrestrial gateways (Satellite Access Stations) for the BGAN, Fleet Broadband and Swift Broadband services provided over the Inmarsat 4 generation of spacecraft. A DP purchases those Inmarsat 4 generation services directly from Inmarsat but does not generally operate any portion of the terrestrial network, except that a few DPs maintain an Internet node.

<sup>56</sup> Stratos and Vizada sell a portion of the Inmarsat services directly to end-users, but most of their sales are to third level retailers.

<sup>57</sup> TMF, *Profile of Iridium*, at 7 (Aug. 11, 2008).

collections functions. Indeed, there are many retailers who (1) are in the third Inmarsat tier, purchasing services from Stratos and/or Vizada; and also (2) are in the Iridium second tier, purchasing services directly from Iridium.

Inmarsat seeks to integrate vertically and move toward a flatter distribution structure, which will eliminate double marginalization and reduce distribution costs. This will enable Inmarsat to compete more effectively with Iridium and other MSS and FSS providers. Significantly, Inmarsat will be free to do so after its current distribution agreements expire in April 2009, regardless of whether it acquires Stratos. However, by acquiring the established Stratos distribution network, Inmarsat would achieve the benefits of vertical integration more quickly than if Inmarsat built its own distribution arm “from scratch.” Even if Inmarsat had market power in any properly defined market, this vertical integration would enhance efficiency and benefit consumers. Fundamental economic and antitrust principles treat an improvement in the merging firms’ efficiency, as in this proposed transaction, as a public interest benefit of the merger.

It is well established that vertical integration will raise antitrust concerns only if the combined firm has the ability and incentive to foreclose competition or increase the costs of rivals in a properly defined upstream or downstream horizontal market.<sup>58</sup> Even if Inmarsat had some degree of market power in a properly defined market, the acquisition of Stratos would not harm consumers because Inmarsat would not be able to raise costs or foreclose competitors in either the upstream or downstream market.

In the upstream market, Inmarsat’s competitors are not reliant on Stratos because they can sell directly to end-users and to the hundreds of retailers of satellite services. Even if Inmarsat/Stratos were to stop selling Iridium services, for example, Iridium would have no difficulty distributing these services itself or through its 150 other retailers. As the Commission found in the *Step 1 Order*, even if Inmarsat controls Stratos, “we fail to see how this will reduce competition” because other mobile satellite operators could choose other distributors or distribute their services directly.<sup>59</sup>

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<sup>58</sup> See *Applications for Consent to the Assignment and/or Transfer of Control of Licenses from Adelphia Communications Corp. to Time Warner Cable, Inc. and Comcast Corp.*, 21 FCC Rcd. 8203, 8237 (2006) (“[V]ertical transactions may generate significant efficiencies. Nevertheless . . . vertical transactions also can have anticompetitive effects. In particular, a vertically integrated firm that competes both in an upstream input market and a downstream output market may have the incentive and ability to (1) foreclose rivals from inputs or customers or (2) raise the costs to rivals generally.”); *In the Matter of News Corp. and the DIRECTV Group, Inc., Transferors, and Liberty Media Corp., Transferee*, 23 FCC Rcd. 3265, 3294-95 (2008) (“[W]here a firm that has market power in an input market acquires a firm in the downstream output market, the acquisition may increase the incentive and ability of the integrated firm to raise rivals’ costs either by raising the price at which it sells the input to downstream competitors or by withholding supply of the input from competitors.”); *News Corp.-Hughes*, 19 FCC Rcd. 473, 508 (2004) (“[A] vertically integrated firm that competes both in an upstream input market and a downstream output market . . . may have the incentive and ability to: (1) discriminate against particular rivals in either the upstream or downstream markets (e.g., by foreclosing rivals from inputs or customers); or (2) raise the costs to rivals generally in either of the markets.”).

<sup>59</sup> *Step 1 Order* at 21354-55, ¶ 61; see also *id.* at 21355-56, ¶¶ 62-63.

Similarly, there would not be any foreclosure in the downstream retail tier. A vertically integrated Inmarsat/Stratos would still need the retailers in the third tier to provide global reach, just as Iridium uses more than 150 retailers, even though Inmarsat would have no contractual restriction on selling directly to end-users. Further, there would still be hundreds of additional companies that retail Inmarsat services purchased from Vizada and other LESOs. Inmarsat has every incentive to continue to use the existing retailers who provide an important worldwide independent retail capability in more than 65 countries, and who provide efficiencies by selling a range of other products and services, including non-telecommunications services. The retailers would continue to compete vigorously and additional retailers could readily enter the market, given the low barriers to entry.

While there would be no foreclosure at the retail tier of Inmarsat's distribution structure, Vizada complains that Inmarsat's vertical integration may lead to some foreclosure in the second tier. However, any potential harm to "middlemen" would not represent a harm to competition itself.<sup>60</sup> It would simply enhance the efficient provision of Inmarsat services by flattening the distribution structure.

The distribution of Inmarsat services has been inefficient since its inception. In the 1980s and 1990s, approximately 40 land earth stations were built when two or three would have been sufficient to serve the entire world. In addition, Inmarsat was restricted from owning and operating a land earth station, and from selling directly to the distributors in the bottom tier and to end-users. The LESOs took advantage of these restrictions on Inmarsat to establish the second tier position for distributing Inmarsat services.

The second tier has become more efficient as some LESOs—led by Stratos and Vizada—have consolidated. As Vizada points out, competition among the consolidating LESOs has effectively reduced the margin at the second tier somewhat.<sup>61</sup> However, there is still room for improving efficiency by reducing the remaining margin layered into end-user prices by the second-tier distributors such as Stratos and Vizada.

Consumers will benefit if that margin at the second tier is reduced by more efficiently operating the LESs and managing the retailers. The vertical integration of Inmarsat and Stratos will provide Inmarsat the ability to integrate more fully the operation of the LESs and to sell directly to retailers in the third tier, thus flattening the distribution structure so it matches the efficiencies that other satellite operators enjoy today. Existing second-tier distributors will have to become more efficient in order to compete with an integrated Inmarsat, or will effectively become third-tier retailers—buying from Inmarsat and selling directly to end-users. In either event, end-users and the public interest will benefit enormously from the flatter distribution of Inmarsat services achieved by this transaction.

Inmarsat has previously explained that it plans to increase the efficiency of its distribution structure, by (i) appointing more distributors, (ii) selling directly to some end-users, and (iii) extending its end-to-end network to encompass its traditional as well as its next-generation

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<sup>60</sup> See *Step 1 Order* at 21355, ¶ 62.

<sup>61</sup> Vizada Petition to Deny at 29-30.

services. Acquiring Stratos will allow Inmarsat to realize these objectives more efficiently. These increased efficiencies will enhance competition and provide consumers lower prices.<sup>62</sup> Vizada has provided no evidence that a continuation of the existing distribution structure (which none of Inmarsat’s competitors employs) would be efficient. Nor does Vizada show that continuing that outmoded structure would outweigh the efficiencies and public interest benefits of the proposed transaction.

#### **IV. Other Competition-Related Matters**

Two other points in Vizada’s Reply warrant a brief response.

First, Vizada’s *prior* representations about the state of competition in the industry and the substitutability of FSS-based products for MSS-based products are critical not just because they are consistent with what Inmarsat and Stratos executives think, and with what TMF said before its current engagement with Vizada—they also are precisely how Vizada characterized the market to governmental regulators when Vizada was not trying to derail this transaction. Moreover, those representations cannot be swept away by a footnote suggesting that competition reviews in Norway use a “supply-based” analysis, rather than the demand-based analysis the Commission uses.<sup>63</sup> Vizada indicated that it was expressing the *perspective of consumers*, when it represented that:

- “MSS services are thus today perfect substitutes to VSAT [*i.e.* FSS] services.”
- “[C]ustomers’ price awareness leads them to switching between MSS and VSAT solutions, depending on which system is the most economically advantageous.”
- “VSAT-based solutions are attractive both in terms of its [*sic*] original capability to carry high bandwidth and its [*sic*] increased mobility caused by the development in [*sic*] VSAT equipment becoming more and more mobile.”<sup>64</sup>

Second, Inmarsat filed for HSR clearance to acquire beneficial ownership of Stratos, and the HSR waiting period expired, thus clearing the way for Inmarsat to do so. As Inmarsat indicated in its Opposition, the Step 1 acquisition of Stratos shares by the trust was treated under HSR rules as an acquisition of beneficial ownership by Inmarsat. That transaction was consummated last December, and no HSR filing is needed for Step 2 since Inmarsat is already considered to be the beneficial owner of Stratos for HSR purposes.<sup>65</sup>

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<sup>62</sup> See Inmarsat Opposition at 3-4, 7, 9-10, 21, 26.

<sup>63</sup> See Vizada Reply at n.28.

<sup>64</sup> See Complete Notification – Inceptum AS’ Acquisition of Telenor Satellite Services AS, at 8-9 (filed Dec. 12, 2006) (submitted to Norwegian Competition Authority) (attached as Exhibit A to the Inmarsat Opposition).

<sup>65</sup> Cf. Vizada Reply at n.104. Most transactions that clear the HSR process do so through the expiration of time, and without the FTC or DoJ issuing “documentary proof” of HSR clearance through an early termination letter.

