

December 17, 2008

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

**Re: In the Matter of Robert M. Franklin, Trustee, Inmarsat plc, and Stratos
Global Corporation, IB Docket No. 08-143, DA 08-1659, ISP-PDR-20080618-
00013**

EX PARTE PRESENTATION

Dear Ms. Dortch:

Inmarsat plc (“Inmarsat”) and Stratos Global Corporation (“Stratos”) submit this *ex parte* letter to address arguments raised by Vizada, Inc. and VIZADA Services LLC (collectively, “Vizada”) in their *ex parte* letter of December 8, 2008 and their *ex parte* presentation of December 9, 2008.¹

Significantly, no end-user of Inmarsat capacity, and no competitive provider of satellite capacity, opposes this transaction. The only opposition comes from Vizada, a major distributor of Inmarsat capacity who currently is in negotiations with Inmarsat about renewing its distribution relationship.

This transaction is vertical in nature—it involves Inmarsat acquiring part of its own distribution chain, and thereby enabling Inmarsat to operate in the same manner as all other satellite operators. Moreover, because Stratos does not own and operate satellites, market concentration in the satellite industry is unaffected. Stated differently, Inmarsat’s current position as a supplier of satellite capacity simply is unchanged by this transaction. Thus, Vizada’s allegations of Inmarsat’s “market power” (and how Inmarsat could use any such power) are entirely irrelevant to the issues at hand, regardless of whether the market for satellite services is defined broadly or narrowly.

Moreover, Vizada’s fear that Inmarsat will treat Vizada differently in the future than other Inmarsat distributors is not legally cognizable and is belied by the facts. Inmarsat has offered Vizada the same contractual terms that Inmarsat has offered to other distributors. Significantly, in arm’s-length negotiations, several other sophisticated distributors have already agreed to enter into distribution agreements that will be effective in April 2009. These

¹ See Letter of VIZADA, Inc. and VIZADA Services LLC, IB Docket No. 08-143 (filed Dec. 8, 2008) (“Vizada Ex Parte Letter”).

agreements include covenants to provide non-discriminatory treatment and to protect sensitive information about each distributor's customers. Vizada could have the same agreement, but it is holding out to try to retain an anachronistic volume discount that disproportionately favors Vizada over all other independent distributors. Vizada hopes to keep its preferential place in the distribution structure and pocket most of this volume discount, rather than agreeing to terms that incentivize all distributors to generate greater value for end-users. Because the "harms" that Vizada identifies (changes in the Inmarsat distribution chain) would occur regardless of this transaction, it is clear that Vizada seeks to delay this transaction simply in an effort to extract leverage in its ongoing commercial negotiations.

No conceivable harm to competition or consumers could result from this transaction. As the Commission previously found (and Vizada does not contest), the acquisition of Stratos will not prevent any other satellite operator from getting its services to market.² Moreover, Vizada simply fails to demonstrate how Inmarsat's acquisition of one of its own distributors would adversely affect consumers. And, as the Commission already has acknowledged, without an adverse effect on consumers, the Commission's merger review does not concern itself with the impact of a transaction on an individual company, such as Vizada.

As detailed below, consistent with Commission precedent, the applicants have met their burden of showing that the public interest benefits of this transaction outweigh any public interest harms. Moreover, the legal construct the Commission applied in approving Stratos' acquisition by a trust, as the first step of a potential two-step transaction, remains fully applicable.

The following Sections I and II of this letter demonstrate that Vizada's recent *ex parte* presentations, which focus on defining certain sectors of the relevant market, entirely miss the legal mark. Under the relevant framework that the Commission employs in its merger analyses, this transaction should be approved because it brings public interest benefits with no offsetting public interest harms.³ Annex A to this letter responds, for the record, to certain additional points that Vizada raises that the Commission need not resolve in order to approve this transaction.

² *Stratos Global Corporation, Transferor; Robert M. Franklin, Transferee; Consolidation Application for Consent to Transfer of Control*, Memorandum and Order and Declaratory Ruling, 22 FCC Rcd 21328, 21355–56 ¶ 63 (2007) (“*Step 1 Order*”).

³ Vizada's Ex Parte Letter largely recycles old points that it raised in earlier filings with respect to market definition. Inmarsat and Stratos have responded to Vizada's arguments on market definition in their Oppositions and in their *ex parte* letter of October 9, 2008. See Opposition of Inmarsat, IB Docket No. 08-143 (filed Aug. 25, 2008) at 12–16 (“Inmarsat Opp.”); Opposition to Petition to Deny of Stratos Global Corporation, IB Docket 08-143 (filed Aug. 25, 2008) at 8–12 (“Stratos Opp.”); Letter of Inmarsat plc and Stratos Global Corporation, IB Docket No. 08-143 (filed Oct. 9, 2008) at 3–10 (“Inmarsat-Stratos Ex Parte Letter”).

For these reasons, which are detailed further below, the Commission should promptly approve this transaction without any of the unwarranted and unnecessary conditions that Vizada proposes.

I. Inmarsat and Stratos Have Demonstrated That This Transaction Will Produce Considerable Benefits with No Offsetting Harm to Consumers

Throughout this proceeding, Vizada has attempted to recast the basic analytical framework the Commission uses in evaluating a transaction such as this one. The appropriate legal standard is well settled. The Commission weighs “the potential public interest harms against the public interest benefits.”⁴ If the evidence shows that, on balance, the transaction is in the public interest, then it will be approved. Where, as here, there are no public interest harms, the Commission requires only a minimal showing of pro-consumer benefits in order to approve the transaction.⁵ In analyzing public interest harms, the Commission focuses on potential harm to competition (that is, to consumers), rather than harm to individual companies, such as Vizada.⁶

The applicants have met their burden to show that this transaction is in the public interest. As detailed in the application and Inmarsat’s and Stratos’ other filings, Inmarsat seeks to acquire Stratos so that it may better serve the needs of end-users by streamlining its distribution structure and operating in the same manner as other satellite operators.⁷ Moreover, the acquisition of Stratos will enable Inmarsat to reduce transaction costs and reduce or eliminate double marginalization. Doing so allows for savings that can be used to develop new and innovative service offerings, as well as the opportunity to provide lower prices—all to the benefit of consumers. Moreover, by having direct sales and marketing access to end-users, Inmarsat can more effectively deploy and assign satellite capacity, and also improve its service offerings. By acquiring Stratos, Inmarsat will be able to bring these benefits to end-users much more quickly than if Inmarsat were required to build its own distribution network.⁸ This is particularly important

⁴ See 47 U.S.C. § 310(d); *Step 1 Order*, 22 FCC Rcd at 21338–39 ¶ 27 (2007).

⁵ *Id.* at 21356 ¶ 65.

⁶ *Id.* at 21355 ¶ 62 (“[W]e view such alleged harms from the point of view of possible effects on industry competition and consumer welfare and *not* simply the possible effects on individual competitors.”).

⁷ There is no basis whatsoever for Vizada’s assertion that Inmarsat is “dictating the factual and legal positions taken by the Trustee (and Stratos).” Vizada Ex Parte Letter at 1 n.1. As Vizada recognizes in that same footnote, the Trustee did not participate in the October *ex parte* presentations, just as Vizada’s controlling shareholder did not participate in its *ex parte* presentations. Stratos’ positions are determined by its independent management, subject to the ultimate control of the Trustee.

⁸ Today, Inmarsat is barred from dealing directly with end-users and is unable to access the customer information of its distribution partners (“DPs”). The distribution layer below the DPs

because rival satellite operators (*e.g.*, Iridium, MSV, SES, Intelsat) have already sold directly to end-users for many years. Moreover, the efficiencies produced by this acquisition will allow Inmarsat to compete more efficiently with its competitors. As the Commission already has found in its *Step 1 Order*, this merger will allow Inmarsat “to offer both wholesale and retail satellite services to consumers, and realize the recognized economic efficiencies that vertical integration can offer.”⁹

The record in this proceeding demonstrates that consumers (including the federal government, which is one of Inmarsat’s largest end-users) stand only to benefit from this transaction, in the form of lower prices and better service.

The Commission laid all the necessary groundwork for concluding that this merger is procompetitive when it approved the transfer of Stratos stock to a trust.¹⁰ The Commission observed that a transaction such as this is not “inherently anticompetitive,” and is in fact a perfectly reasonable response to increasing competition in the marketplace.¹¹ The Commission found that the transaction would not “augment the market power of either Stratos Global or Inmarsat,” taking into account “the current structure of the international mobile satellite industry and the availability of alternative vendors for both mobile satellite space segment and the retail distribution of mobile satellite services.”¹² The Commission also found that “possible behavioral incentives resulting from this transaction ... will not induce anticompetitive effects disadvantaging either the end-user customers of Stratos Global or the competitors of Inmarsat that presently rely upon Stratos for the retail distribution of mobile satellite services.”¹³

(service partners and end-users) is largely opaque to Inmarsat. Thus, creating its own distribution business “from scratch” would be a lengthy and expensive process. The proposed integration with Stratos provides very real benefits, particularly for Stratos’ leading customer base—government users. *Cf. Vizada Ex Parte Letter* at 16.

⁹ *Step 1 Order*, 22 FCC Rcd at 21355 ¶ 62.

¹⁰ *Id.* at 21354–56 ¶¶ 61–64.

¹¹ *Id.* at 21355 ¶ 62; *see also id.* at 21355 n.195 (“In general, efficient vertical integration tends to lower various transaction costs relative to reliance on arms-length market contracting to acquire certain inputs of production, such as the retail distribution services provided by Stratos Global as an independent distributor of satellite services.”).

¹² *Id.* at 21356 ¶ 64. Vizada does not contest that the marketplace for distributors is vibrant and competitive. Thus, as the Commission held in the *Step 1 Order*, there can be no competitive concern here that the integrated firm would be able to foreclose upstream competitors. *See id.* at 21355 ¶ 63 & n.196. In other words, this merger will not enable Inmarsat-Stratos to raise costs for Iridium and other suppliers of capacity for international mobile satellite services. *See id.*

¹³ *Id.* at 21356 ¶ 64.

Vizada mischaracterizes the Commission's previous findings as "dictum" and argues that the competitive issues were not "ripe" when the Commission considered them before.¹⁴ Those arguments fall short. The Commission considered and squarely rejected the supposed "harms" that Vizada complains of here, and competitive conditions in the marketplace have not materially changed since then—the marketplace is even more competitive than a year ago. Vizada offers no reason why the Commission should revisit those findings.

Vizada claims that the Commission must now conduct a full-blown, market-by-market analysis in order to assess the competitive effects of this vertical merger.¹⁵ Vizada also argues that Inmarsat and Stratos must provide additional data to support that analysis, and also must prove that this transaction "will accelerate the decline of market power by dominant firms in the relevant communications markets."¹⁶ Vizada is incorrect on all counts.

First, the Commission consistently has held that a detailed market-by-market analysis is unnecessary where the evidence clearly demonstrates that the transaction does not raise competitive concerns. In the context of evaluating horizontal mergers, for instance, the Commission has stated that "transactions that do not significantly increase concentration or do not result in a concentrated market ordinarily require no further competitive analysis" beyond a preliminary examination of the market.¹⁷ Vizada does not suggest that this transaction would result in any increase in market concentration. Analysis of competition in a vertical merger review is similarly abbreviated in circumstances such as those presented here. It is well established that vertical integration raises competitive concerns only in limited circumstances, such as where the combined firm has the incentive and ability to foreclose competition or raise its rivals' costs.¹⁸ Vizada does not contend that Inmarsat's vertical integration would lead to

¹⁴ Reply of Vizada Inc. and Vizada Services LLC to Oppositions of Inmarsat PLC and Stratos Global Corporation, IB Docket No. 08-143 (filed Sept. 10, 2008) at 14 ("Vizada Reply"); Vizada Ex Parte Letter at 4 n.6. The Commission assessed the competitive consequences of the vertical integration of Stratos and Inmarsat in response to Vizada's argument that Inmarsat's option to acquire Stratos and its financing of Step 1 would give rise to anticompetitive conduct. The Commission assessed such "possibly changed economic incentives" specifically in response to Vizada's complaint. *See Step 1 Order*, 22 FCC Rcd at 21354 ¶ 60. Whether Inmarsat and Stratos thought such a determination was necessary at the time is irrelevant.

¹⁵ Vizada Ex Parte Letter at 5.

¹⁶ *Id.* at 14.

¹⁷ *See, e.g., Applications of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC*, WT Docket No. 08-95, Memorandum Opinion and Order and Declaratory Ruling, ¶ 41 (rel. Nov. 10, 2008) ("*Verizon-Alltel Merger Order*"); *Applications of Nextel Communications, Inc. and Sprint Corporation*, Memorandum Opinion and Order, 20 FCC Rcd 13967, 13981 ¶ 31 (2005).

¹⁸ *See, e.g., News Corp. and the DIRECTV Group, Inc., Transferors, and Liberty Media Corp., Transferee*, Memorandum Opinion and Order, 23 FCC Rcd 3265, 3294 ¶ 65 (2008) ("*DirecTV-*

foreclosure or increased costs for Inmarsat's horizontal satellite operator competitors, and the evidence shows otherwise. Thus, there is simply nothing for the Commission to pursue, and no reason for the Commission to conduct an extensive evaluation of each market segment.

As noted above, the Commission determined last December 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 Furthermore, the Commission took into account “the differentiated nature of mobile satellite services in terms of coverage, service attributes, availability and pricing,” as well as “the current structure of the international mobile satellite industry” and “the availability of alternative vendors for both mobile satellite space segment and the retail distribution of mobile satellite services.”²⁰ Based on this understanding of the market, and without performing a more granular competitive analysis, the Commission concluded that a combined Inmarsat and Stratos will not have the incentive to engage in anticompetitive behavior.²¹

The Commission's broad market definition and its analysis of competitive effects are consistent with the approach it has taken in other proceedings involving mobile satellite service company transactions. For instance, in *Motient-TMI-MSV*, which involved a joint venture to provide a combined Canadian-American regional service, the Commission observed that several operators offered or planned to offer mobile satellite services in North America, including (besides the parties to that transaction) Inmarsat, Iridium, Globalstar, and Orbcomm.²² The Commission also observed that a number of 2 GHz MSS systems had been authorized to provide a range of services, including mobile voice and data.²³ Based on the number of existing competitors and “other firms that have substantial capacity available for MSS,” the Commission concluded that the market was competitive and that the horizontal combination of two mobile satellite services operators raised “no significant competitive concerns.”²⁴

Vizada offers no economic testimony to substantiate its claim that the market must be defined more narrowly, but offers only anecdotal information from a consultant. However, the conclusions that Vizada tries to draw flatly contradict the conclusions that same consultant has

Liberty Order”); *Applications for Consent to the Assignment and/or Transfer of Control of Licenses from Adelpia Communications Corp. to Time Warner Cable, Inc. and Comcast Corp.*, Memorandum Opinion and Order, 21 FCC Rcd 8203, 8237–38 ¶¶ 70–71 (2006).

¹⁹ *Step 1 Order*, 22 FCC Rcd at 21355 ¶ 63.

²⁰ *Id.* at 21355–56 ¶¶ 63–64.

²¹ *Id.* at 21355 ¶ 63.

²² *Motient Servs. Inc. and TMI Commc'ns and Co., LP (Assignors) and Mobile Satellite Ventures Subsidiary LLP (Assignee)*, Order and Authorization, 16 FCC Rcd 20469, 20477–78 ¶ 24 (2001) (“*Motient-TMI-MSV*”).

²³ *Id.*

²⁴ *Id.*

made to subscribers of its consulting services about the competitive pressures that Inmarsat faces from other MSS operators and VSAT providers, how that pressure is driving down Inmarsat prices, and how Inmarsat is losing market share.²⁵ In fact, due to these same marketplace realities, Vizada itself has represented to regulators outside the context of this proceeding that a broad market definition is appropriate.²⁶ A more detailed analysis is simply unnecessary here, particularly given that Vizada has not shown that this transaction will facilitate anticompetitive behavior that would harm consumers.²⁷

Second, merger approval certainly may be warranted when it “accelerate[s] the decline of market power by dominant firms,” but Vizada is flatly incorrect this it is a relevant factor in every proposed transaction—let alone the dispositive factor.²⁸ Consistent with the policies reflected in the 1996 Act, the Commission has recognized that vigorous competition is the “preferred means for protecting consumers,” and thus the Commission has expressed reluctance to approve *horizontal* mergers that “maintain[], rather than decreas[e], the need for continued regulation.”²⁹ This factor is simply not relevant in proposed *vertical* transactions, such as this one, which have no effect on market concentration and invoke altogether different competitive considerations. All of the decisions that Vizada cites for this proposition involved a potential horizontal transaction and therefore have no bearing here.³⁰ Moreover, this proposed transaction does not involve an entity that is regulated as a dominant carrier, as Inmarsat explained earlier.³¹ Furthermore, Vizada’s argument proves too much—it cannot be the law that a dominant carrier may not enter into any vertical arrangement simply because the transaction does not “accelerate the decline of [its] market power,” even if the transaction otherwise would have benefits for consumers and competition.

The appropriate legal standard is, and always has been, whether the transfer or assignment promotes the public interest.³² This transaction clearly satisfies that test, and there is no valid reason why the Commission should deny this application or delay or condition its consent.

²⁵ See Annex A.

²⁶ See Inmarsat Opp. at 9.

²⁷ See *id.* at 12–16; Stratos Opp. at 8–12; Inmarsat-Stratos Ex Parte Letter at 3–10.

²⁸ Vizada Ex Parte Letter at 14; Vizada Reply at 9.

²⁹ *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, 12 FCC Rcd 19985, 20035 ¶ 95 (1997).

³⁰ See Petition to Deny of Vizada, Inc. and Vizada Services LLC, IB Docket 08-143 (filed Aug. 13, 2008) at 16 n.16 (“Vizada Pet’n to Deny”); Vizada Reply at 10 n.5; Vizada Ex Parte Letter 14 n.42.

³¹ Inmarsat Opp. at 18–19.

³² 47 U.S.C. §§ 214(a), 310(d).

II. Vizada Provides No Plausible Explanation How This Transaction Could Harm Consumers

As discussed above, Vizada offers no plausible explanation (or economic analysis) to support its claim that the Commission should fundamentally alter the competition analysis it has previously used, which includes the impact on all providers of capacity for mobile satellite services and other competitive providers of communications services in the relevant market.³³ Under that approach, Inmarsat clearly lacks market power, and this transaction raises no significant competitive concerns.³⁴ But the proposed merger would not harm consumers even assuming for the sake of argument that Inmarsat had some degree of market power in a more narrowly defined market segment, as Vizada suggests.

Vizada apparently believes that the Commission's public interest analysis begins and ends with the existence of market power by an applicant.³⁵ That is plainly incorrect in the context of a vertical integration, such as this one, that does not augment market concentration. In fact, in approving Step 1, the Commission emphasized that the transaction "will not augment the market power of either Stratos Global or Inmarsat" and thus concluded that "possible behavioral incentives resulting from this transaction ... will not induce anticompetitive effects disadvantaging either the end-user customers of Stratos Global or the competitors of Inmarsat that presently rely upon Stratos Global for the retail distribution of mobile satellite services."³⁶

The supposed "harms" that Vizada identifies (the potential for Inmarsat to provide Vizada less favorable access to satellite capacity, network capabilities, or service enhancements)³⁷ are entirely unrelated to this transaction and are not properly characterized as competitive injuries. As the Commission already has found, "we view such alleged harms from the point of view of possible effects on industry competition and consumer welfare and *not* simply the possible effects on individual *competitors*."³⁸

³³ See, e.g., *Step 1 Order* at 21356 n.197 (noting "that markets for commercial communications satellite services are subject to effective competition and that customers realize significant net benefits in terms of service choice, innovation, and improvements in service quality") (citing *Annual Report and Analysis of Competitive Market Conditions with Respect to Domestic and International Satellite Communications Services*, Order, 22 FCC Rcd 5954 (2007)).

³⁴ Vizada concedes that this transaction would not raise any significant competitive issues in the absence of market power. Vizada Ex Parte Letter at 16.

³⁵ See, e.g., *id.* at 14.

³⁶ *Step 1 Order*, 22 FCC Rcd at 21356 ¶ 64.

³⁷ Vizada Ex Parte Letter at 17. Vizada characterizes itself as a "rival" of Inmarsat, *see id.*, but Vizada is plainly not a "rival" because Vizada does not supply a competing service in the upstream market for satellite capacity.

³⁸ *Step 1 Order* at 21355 ¶ 62.

A. Vizada's Concerns Are Not Transaction-Specific

The Commission has repeatedly stated that it will assess only those harms that “arise from” a proposed transaction.³⁹ All of the supposed harms that Vizada identifies do not arise from this transaction, but rather arise from the expiration of the DP-favorable distribution contracts that will occur in April 2009. After that date, Inmarsat will be able to distribute its services through any third party it chooses, and also will be able to sell directly to end-users. This proposed transaction does not alter the fact that Inmarsat's distribution structure will change.

Similarly, Vizada's concerns about Inmarsat's alleged “dominance” in certain sectors would exist even without this transaction. Indeed, Vizada confesses as much: “Even in the absence of the Stratos transaction, the April 2009 expiration of current marketing restraints on Inmarsat creates competitive issues.”⁴⁰

At bottom, Vizada opposes Inmarsat's acquisition not because the transaction will cause competitive harm, but rather because Vizada wants protection *from* competition. The streamlining of Inmarsat's distribution structure and the corresponding elimination of unnecessary costs through the acquisition of Stratos are not competitive harms at all, but rather are transaction-related efficiencies that will ultimately benefit consumers in the form of lower prices and better quality. In fact, the particular concerns that Vizada identifies are no different than the issues that every other market participant must address in a competitive market (including Vizada when it contracts with its own service providers), and they are being handled appropriately in the course of contract negotiations. Inmarsat has already entered into new distribution agreements with several other distributors that include non-discrimination and confidentiality provisions, and Inmarsat has offered Vizada the same terms.

It should not be lost on the Commission that Vizada currently distributes approximately 38 percent of Inmarsat's global traffic. Vizada seeks to frustrate or stall this transaction merely to gain an advantage in the renegotiation of its distribution contract with Inmarsat. Vizada's concerns are not transaction-specific and therefore should not be addressed in the context of this proceeding. They are certainly not a legitimate reason to delay or condition approval.

³⁹ See, e.g., *Verizon-Alltel Merger Order* at ¶¶ 29, 114, 117 (noting that Commission considers transaction-specific public interest harms and benefits); *DirecTV-Liberty Order*, 23 FCC Rcd at 3279 ¶ 26 (reiterating that the Commission “will impose conditions only to remedy harms that arise from the transaction (*i.e.*, transaction-specific harms)"); *Applications of WWC Holding Co., Inc. and RCC Minnesota, Inc.; For Consent to Assignment of Licenses*, Memorandum Opinion and Order, 22 FCC Rcd 6589, 6598 ¶ 17 (2007) (noting the Commission's practice of “assessing any potential harms associated with a proposed transaction”).

⁴⁰ Vizada Ex Parte Letter at 16; see also *id.* at 17 (“Inmarsat is correct that some of these problems will be present in any event beginning in April 2009.”).

B. The “Harms” That Vizada Alleges Do Not Affect Consumers

Even if Vizada were right that its role as a distributor (or the terms under which it currently distributes Inmarsat services) might change, that would not harm consumers. Vizada incorrectly argues that Inmarsat’s existing distribution structure must be maintained for the sake of preserving “intra-brand competition,” but the Commission’s policy is to protect consumers (or end-users), and intra-brand competition should be assessed only with that goal in mind. There is no basis for assuming (as Vizada does) that any changes to Inmarsat’s current distribution model are harmful to consumers, when in fact there are obvious efficiencies to be gained by this vertical integration and it does not create anticompetitive incentives, as the Commission has already found.⁴¹ The Commission rejected Vizada’s arguments about competitive harm when Vizada raised them in Step 1, and it should reach the same conclusion here.⁴²

Inmarsat should be allowed to evolve its distribution structure in response to market forces so as to generate the greatest consumer benefit. Vizada clings to the misguided notion that forcing Inmarsat to enter the downstream market by building its own distribution arm “from scratch” is somehow better for consumers. There is no reason to assume, however, that forcing Inmarsat to enter the downstream market in that manner will enhance competition or result in more efficient distribution of services. To the contrary, because the *de novo* entry option is available to Inmarsat, its decision to acquire Stratos suggests that vertical integration between Inmarsat and Stratos is the more efficient arrangement—it eliminates inefficient duplication of resources and combines the capabilities of Stratos and Inmarsat in a way that will generate more value to end-users.

Whether Inmarsat chooses other distributors over Vizada or otherwise allegedly “favors” certain distributors is not ultimately a competitive concern in this context. A vertical integration raises competitive concerns only if the combined firm has the ability and incentive to foreclose competition in a properly defined upstream or downstream horizontal market.⁴³ Those concerns are simply not present here, as the Commission has already found.⁴⁴ Vizada does not explain how any change of its role in the distribution chain could negatively impact the services that are available to consumers.⁴⁵ In fact, Inmarsat benefits from vigorous downstream competition because competition compels its distributors to be more efficient and innovative. This in turn

⁴¹ *Step 1 Order*, 22 FCC Rcd 21355 ¶¶ 62–63.

⁴² *Id.* at 21355–56 ¶¶ 62–64.

⁴³ *See supra* n.18.

⁴⁴ *Step 1 Order*, 22 FCC Rcd at 21356 ¶ 64.

⁴⁵ Vizada has never explained what benefit it provides to consumers. On that score, the only suggestion that Vizada has made in this proceeding about its “value add” is that it provides an ancillary software program to resellers to facilitate billing and activation, *see Vizada Pet’n to Deny* at 29 n.35, but these features do not affect the end-user’s service and, in any event, are not unique to Vizada.

makes Inmarsat's services more valuable to end-users, which benefits those end-users (as well as Inmarsat). Those distributors that deliver value to end-users will continue to do so, even after this transaction closes. Similarly, where Inmarsat (or Stratos) is better able to serve the needs of customers, that route also will be available.

Although Inmarsat is not obligated to use any particular distributor, it will maintain contractual arrangements with a variety of distributors, ensuring that there remains vigorous competition at every level of the distribution structure. Furthermore, as the Commission recognized in its *Step 1 Order*, the existing distribution agreements "constrain Inmarsat's ability to favor Stratos,"⁴⁶ and the same will remain true under the new distribution agreements. There are many other distributors and retailers of capacity for international mobile satellite services, and Vizada does not dispute that will remain the case after this transaction closes. Inmarsat has every incentive, and intends, to continue using its extensive retail distribution network (with hundreds of retailers in more than 65 countries) in order to reach end-users throughout the world. Competition among these retailers ensures that end-users will continue to have alternatives to access Inmarsat's services and the services of its competitors. Furthermore, if there were a risk that end-users would be impacted by the concerns Vizada raises about changes in its own distribution arrangement, then sophisticated existing users (such as the federal government or the broadcast networks) who obtain service through Vizada, and retailers who currently wholesale capacity from Vizada, would be opposing this transaction along side Vizada. Significantly, they have no complaint.

While Vizada is free to pursue its own commercial strategy, the preservation of "intra-brand competition" for its own sake simply does not provide a legitimate basis to prevent Inmarsat from implementing its own commercial strategy for distributing its own services, particularly when Inmarsat is doing so in a manner that can be expected to lead to substantial efficiencies and, ultimately, to reduced consumer prices and improved services. It is ironic that Vizada claims to seek preservation of "intra-brand competition" when (i) Vizada has maintained a "sweetheart" distribution deal, including a volume discount plan that disproportionately favors its business over the business of most other Inmarsat distribution partners, and (ii) Vizada was created by "rolling up" several Inmarsat distributors to take advantage of a volume discount plan without increasing the level of its sales.

Absent any transaction-specific harms, the specific "safeguards" that Vizada proposes are unnecessary and inappropriate.⁴⁷ Moreover, and as discussed above, confidentiality and non-discrimination protections are already in place contractually, and Vizada has failed to show that these protections are inadequate. Vizada's suggestion that there be structural separation would be inefficient (which is why the Commission has moved away from this approach generally). Furthermore, it would be wholly unprecedented for the Commission to impose such a requirement on an entity that is not regulated as a dominant carrier.

⁴⁶ *Step 1 Order*, 22 FCC Rcd 21355 ¶ 62.

⁴⁷ See Vizada Ex Parte Letter at 14–18.

CONCLUSION

Vizada's recent submissions are simply an attempt to muddy the waters and they add little relevant substance. The record clearly demonstrates that this proposed vertical integration would produce considerable consumer benefits, with no offsetting public interest harms. Vizada comes up empty in its search for potential competitive harms—the harms it identifies are not transaction-specific and do not actually impact consumers in any event. Absent any competitive concerns, there is simply no reason for the Commission to engage in, or for the applicants to provide data in support of, a detailed, market-by-market analysis here, as Vizada suggests. And the contention that applicants must prove that the transaction will “accelerate the decline of market power” is plainly incorrect. The appropriate legal standard is, and always has been, whether the transfer or assignment promotes the public interest. This transaction clearly satisfies that test, and there is no valid reason why the Commission should deny this application or delay or condition its consent.

For the foregoing reasons, Inmarsat and Stratos respectfully request that the Commission approve this proposed vertical merger without delay so that Inmarsat and Stratos can begin preparing to consummate this transaction, which must commence months before the anticipated April 2009 closing date.

Respectfully submitted,

/s/

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Annex A

A. Vizada Has Not Demonstrated That Inmarsat Has Market Power

In their October 9, 2008 *ex parte*, Inmarsat and Stratos addressed the relevance of the comments of TMF that were included in the Vizada Reply. In doing so, Inmarsat and Stratos noted TMF's significant disclaimers:

- (i) TMF was not providing an economic analysis of product market definition or of market power,¹
- (ii) TMF does not use the term "market" as an economist or the Commission would, but rather "in its loose business parlance sense,"² and
- (iii) TMF admits that certain services provided by MSS operators are appropriately included within markets that encompass services provided by FSS operators or terrestrial alternatives.³

Inmarsat and Stratos explained that TMF's comments thus are not directly applicable to competition-based definitions of product markets or of market power, and that Vizada's speculation about Inmarsat's "market power"⁴ is not substantiated by TMF's comments, and actually is undermined by TMF's other assessments of the industry.

As detailed in the main body of this letter, the proposed acquisition of Stratos does not involve a horizontal combination of satellite operators, and therefore cannot increase market concentration no matter how broadly or narrowly the market for satellite capacity is defined. Thus, Commission need not engage in the type of market definition exercise that Vizada suggests. Nor need the Commission attempt to reconcile the differing views of Inmarsat and Stratos (on the one hand) and Vizada (on the other hand) with respect to the accuracy of the assertions in the TMF comments about certain market sectors. For this reason, Inmarsat and Stratos will not belabor the matter with a detailed rebuttal to Vizada's recent *ex parte* filings with respect to TMF, and simply will note that they do not agree with Vizada.

Moreover, merely identifying narrow satellite services sectors does not mean that those sectors are markets unto themselves. While admitting that Inmarsat faces vibrant competition in many sectors, Vizada does not even attempt to analyze the effect that competition in those sectors has on Inmarsat's ability to raise the price for its services. Nor could Vizada do so successfully. In fact, the following conclusions from TMF's prior analyses are flatly inconsistent

¹ See TMF Comments at 1 (included as Attachment A to the Vizada Reply).

² *Id.*

³ *Id.*

⁴ See, e.g., Vizada Reply at 2.

with Vizada's unfounded speculation that Inmarsat's ability to raise prices is not constrained by effective competition. Significantly, TMF's conclusions are fully consistent with a key conclusion in last month's issue of *Via Satellite*, which focused on maritime communications: "Iridium, Thuraya, and Globalstar have launched services aimed at maritime users and have begun to eat into Inmarsat's market share. The development of [VSAT technology] allowed even more competition, and now Inmarsat is facing a new generation of competitors that are providing C- and Ku-band VSAT offerings."⁵

Key TMF Conclusions:

VSAT services provide effective competition

- Maritime users often choose VSAT offerings over Inmarsat because VSAT pricing structures make VSAT more attractive for many maritime users.⁶
- Ship owners and operators consider VSAT even when it may be more expensive than Inmarsat, because VSAT's single monthly flat-rate provides pricing certainty, and Inmarsat would find it very difficult if not impossible to offer such an option because of the huge increase in usage that comes alongside flat-rate pricing.⁷
- "[R]oughly equal shares of revenue growth in [the] maritime sector over the next five years will go to Inmarsat and VSAT."⁸
- "[T]he Internet access market [for aircraft] 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."⁹
- Business jets represent "a key competitive opportunity for Inmarsat and VSAT-based broadband services."¹⁰

⁵ Greg Berlocher, *Maritime Market, Signs Point to Strong Growth for Satellite Providers*, VIA SATELLITE, Nov. 2008, at 21.

⁶ TMF ASSOCIATES, *MSS INDUSTRY PERSPECTIVES 16* (March 31, 2008) ("MSS Industry Perspectives").

⁷ *Id.*

⁸ *Id.* at 19.

⁹ TMF ASSOCIATES, *THE OUTLOOK FOR AERONAUTICAL COMMUNICATIONS SERVICES 5* (2008).

¹⁰ *MSS Industry Perspectives* at 9.

Iridium provides effective competition

- Iridium will “price itself at a discount to Fleet Broadband pricing for occasional users.”¹¹
- Inmarsat has an “increased risk of losing market share to Iridium’s new OpenPort maritime broadband solution.”¹²
- It is 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).”¹³
- Iridium is likely to retain a strong position with light aircraft, helicopters and light business jets.¹⁴

Competition results in downward pressures on all Inmarsat services

- Inmarsat’s prices for land mobile BGAN voice and data service are significantly lower than those of “traditional” Inmarsat services.¹⁵
- New, competitive aeronautical offerings of third parties are planning to offer “BGAN-like pricing.”¹⁶
- “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.”¹⁷
- Competition from FSS VSAT services which “cost far less to use” has resulted in customers switching over from GAN land mobile service.¹⁸

¹¹ *Id.* at 20.

¹² *Id.* at 30.

¹³ *Id.* at 23.

¹⁴ *Id.* at 9.

¹⁵ TMF ASSOCIATES, *STAYING AFLOAT? BGAN PRICING AND INMARSAT’S FUTURE 1* (2006).

¹⁶ *Id.* at 1-2.

¹⁷ *Id.* at 2.

¹⁸ TMF ASSOCIATES, *PROFILE OF INMARSAT 9* (2007) (noting that the benchmark for per Mbyte cost for VSAT services is as much as 200 times less than for GAN data services).

The installed base of Inmarsat equipment does not forestall competition

- End users with existing earth terminals also install equipment from competing service providers because they “prefer to have access to diverse communications systems.”¹⁹

B. Global Coverage for VSAT Services Is a Reality

A recent article from Aviation Week confirms the competitive threat that global VSAT services pose to Inmarsat. Consistent with Vizada’s representations to other regulators, these competitors for maritime, aeronautical and land mobile business view mini-VSAT as a “practical alternative” to Inmarsat services.²⁰ Aviation Week explains that VSAT is an alternative to Inmarsat services, due to VSAT’s “higher speeds and lower rates” and “small and less costly” terminals that offer several advantages over Inmarsat. The article notes that these competitors are currently focused on “Inmarsat’s bread-and-butter” maritime and business aviation services, and that they soon plan “to expand to bigger ships and to airline and government aircraft applications as well as land services.”

Vizada’s invocation of statements Inmarsat recently made about the extent of VSAT coverage today—in 2008—misses the point.²¹ As the following maps show, VSAT providers are assembling FSS coverage to enable the provision of new global competitive alternatives. The maps below depict the coverage of oceanic regions and land masses that are expected to be served within the next year by KVH’s and ViaSat’s FSS-based mini-VSAT services to ships, planes and vehicles. That time horizon is fully consistent with the one the Commission takes into account in considering the competitive effect of forthcoming services.

¹⁹ MSS Industry Perspectives at 9-10. TMF’s observation is consistent with Inmarsat’s own experience that ships choose Iridium, Orbcomm, and MSV services for low data rate transmission when those products may better serve their application needs, even when ships also use Inm-C solely as a safety service. *See* Inmarsat-Stratos Ex Parte Letter at 7.

²⁰ Michael A. Tverna, *Connexion 2, ViaSat-KVH Alliance Aims to Challenge Inmarsat’s Role Among Maritime, Aeronautical Broadband Users*, AVIATION WEEK & SPACE TECHNOLOGY, Oct. 27, 2008. *Cf.* Vizada Ex Parte Letter at 9, 11 n.32.

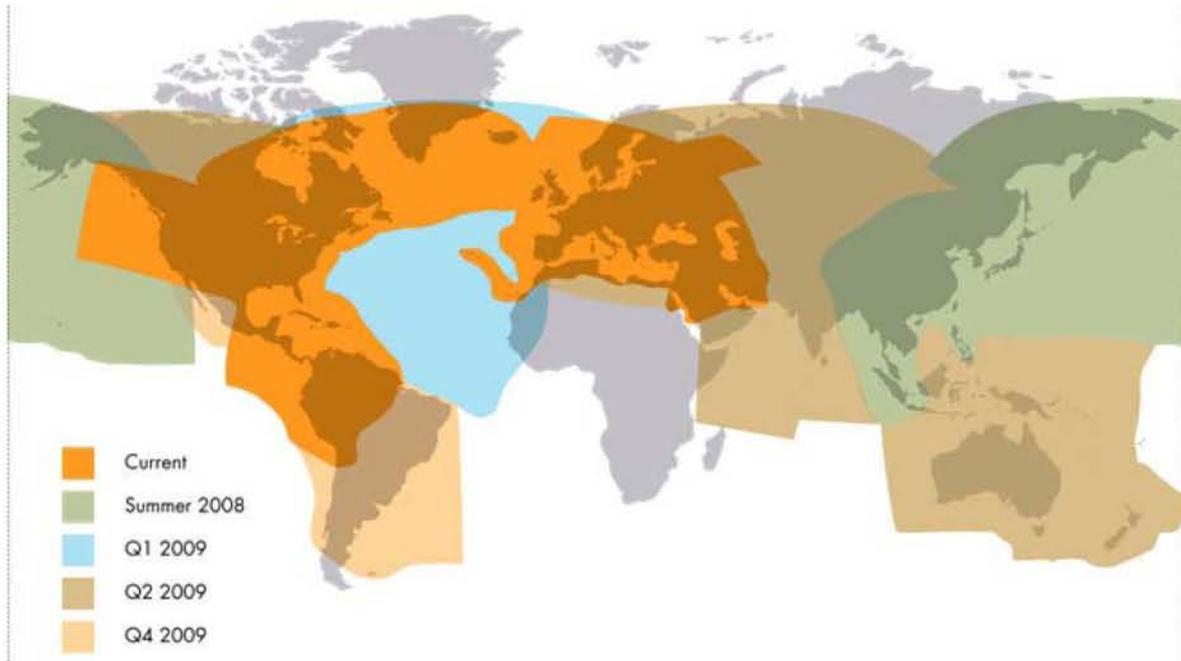
²¹ *See* Vizada Ex Parte Letter at 10, n.45.

**Map of Projected Coverage for KVH VSAT Broadband Services
(Land Mobile and Maritime)**



Source: http://www.kvh.com/footprint/footprint_tp.asp (last visited Dec. 17, 2008)

**Map of Projected Coverage for ViaSat VSAT Mobile Broadband Service
(Aeronautical and Maritime)**



Source: <http://www.viasat.com/broadband-satellite-networks/arlight-mobile-satellite-communications-system> (last visited Dec. 16, 2008)

C. Iridium

Regardless of Inmarsat's views about the future prospects of Iridium's second generation system,²² the fact remains that Iridium competes heavily with Inmarsat, and has developed the new OpenPort maritime service as direct competition to Inmarsat's services.²³ Vizada itself offers OpenPort service at a range of data rates from low speed (9.6 kbps) to high speed (128 kbps).²⁴ The Inmarsat and Stratos October 9 *ex parte* highlights the inconsistencies between (i) TMF's comments about the pricing pressures Iridium brings to bear on Inmarsat services (cited above), and (ii) TMF's glib dismissal of the relevance of Iridium in the marketplace.

In an apparent effort to distract the Commission from TMF's own contradictions, Vizada now manufacturers a "capacity crisis" on the Iridium system that makes Iridium appear less competitively relevant.²⁵ However, even Vizada's own paid consultant did not state, as Vizada now does, that Iridium has "serious capacity limitations."²⁶ Rather, TMF simply compared the expected capacity of the Inmarsat network once the "Alphasat" satellite is launched and operational (in 2012 at the earliest),²⁷ with the expected capacity of Iridium at that time, four years from now.²⁸ Significantly, Vizada offers no support for the proposition that Iridium is capacity constrained today.

Given that Vizada's focus on land mobile services relates to remote areas, its argument about the need for an OpenPort terminal to have a clear view of the sky, and thus the inability of Iridium to provide land mobile service, is curious.²⁹ Remote areas are precisely where one would expect to have a clear view of the sky.

D. Distribution Matters

Vizada contends that Inmarsat and Stratos "mischaracterize[] the distribution structure present in the MSS industry," and that the figure included in their *ex parte* letter of October 9, 2008 does "not accurately portray market reality" because it reflects only the "I3" services.³⁰

²² Vizada Ex Parte Letter at 7 n.11.

²³ See Iridium OpenPort, <http://www.iridiumopenport.com/> (Last visited Dec. 16, 2008).

²⁴ Vizada Distributes Iridium OpenPort, http://www.vizada.com/1657_1 (Last visited Dec. 16, 2008).

²⁵ See Vizada Ex Parte Letter at 9.

²⁶ *Id.*

²⁷ See Inmarsat Communications Satellites, <http://www.bnsc.gov.uk/7229.aspx> (Last visited Dec. 16, 2008).

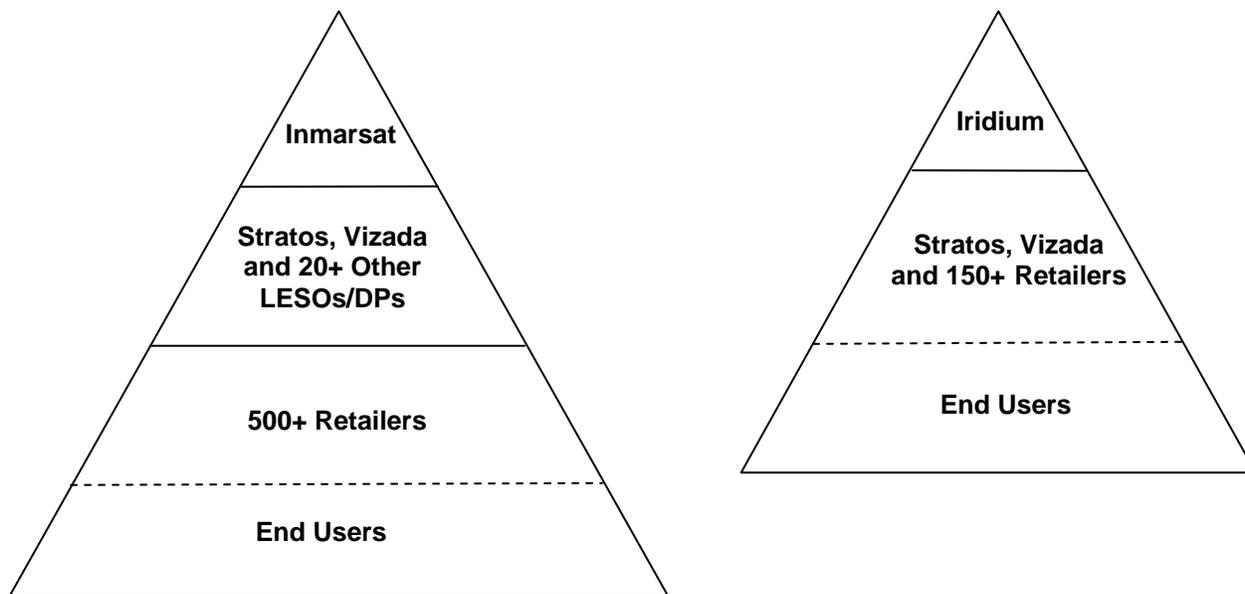
²⁸ TMF Comments at 8.

²⁹ Vizada Ex Parte Letter at 13.

³⁰ *Id.* at 15.

Inmarsat and Stratos used Figure 1, re-produced here for convenience, to compare the Inmarsat and Iridium distribution structures, and to illustrate that the purpose of this transaction is to allow Inmarsat to distribute its services more efficiently in order to compete better with Iridium and other suppliers of satellite capacity.

Figure 1: Comparison of Inmarsat and Iridium Distribution Structures



Vizada contends that Figure 1 does “not accurately portray market reality” because it reflects only the “I3” services.³¹ Vizada’s contention is misplaced for two fundamental reasons. First, the “market reality” is that the I3 services, which use the land earth stations of Vizada, Stratos and the other LESOs, constituted more than 90% of Inmarsat’s revenues in 2007. Second, the same distribution structure is used for the newer I4 services (BGAN, Fleet Broadband and Swift Broadband).

Contrary to Vizada’s contention,³² Inmarsat does not and can not “engage in direct sales of its ‘new’ services” to end-users or even sell indirectly to the 500+ retailers in the third tier. As Inmarsat and Stratos acknowledged in their October 9 letter, Inmarsat owns the terrestrial gateways for the I4 services (BGAN, Fleet Broadband, and Swift Broadband), but the distribution structure used for those services is otherwise the same as for the I3 services.³³ Of course, Iridium and other providers of satellite capacity can sell directly to end-users, and can

³¹ *Id.*

³² *Id.* at 16.

³³ *See* Inmarsat-Stratos Ex Parte Letter at 11 n.55.

appoint an unlimited number of the retailers as direct distributors, thereby eliminating the second tier of the distribution structure.

Indeed, it is quite telling that Iridium has appointed a large number of companies to its second tier of distributors who are currently constrained to being in the third tier of the Inmarsat distribution structure. These companies include: AND Group, AST Australia, AST Ltd., Cellhire, European Datacomm NV, General Dynamics, Geolink, GlobalCom Satellite, Globe Wireless, GME Telecoms, Honeywell Int. BRGA, Horizon Mobile Communications Co. Ltd., Infosat, L-3 Communications (GCS), Marlink, OteSat Maritel, Roadpost, Satcom Direct, Satcom Group (Ogara), Satellite Communication, Savanna International Telecommunications, Seawave, Telaurus Communications LLC, World-Link Communications and Zunibal.

Last, Vizada takes a statement of Inmarsat's CEO out of context when it claims that statement demonstrates Inmarsat's intent to "eliminate the ability of other LES operators to compete" after it acquires Stratos.³⁴ The language Vizada quotes was a response to an analyst asking whether Inmarsat would have an interest in buying Vizada. Inmarsat's CEO made clear that Inmarsat intended to retain an indirect distribution network, and noted that, by acquiring Stratos, Inmarsat would obtain an earth station infrastructure and there would not be much point to buying another company with duplicative facilities.³⁵

³⁴ Vizada Ex Parte Letter at 16 n.45.

³⁵ See FD (Fair Disclosure) Wire, November 10, 2008, Q3 2008 Inmarsat plc Earnings Conference Call – Final. In answer to the question regarding Vizada, Inmarsat CEO Andy Sukawaty stated:

“We are looking to maintain an indirect distribution model that has served us well for decades. It gets us into markets, both politically and in vertical market sense, that we could never get into on our own, and so we're very pleased with that. ... So it's not our intent nor, necessarily, our desire to look at rolling up Vizada in addition to Stratos. In addition to that, with Stratos, we get the land-earth station infrastructure to support our existing and [evolved] services and we don't really need two of those.” *Id.*