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January 13, 2009

BY ELECTRONIC MAIL

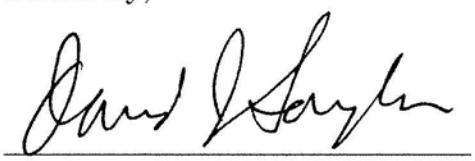
Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Notice of Ex Parte Presentation
IB Docket No. 08-143

Dear Ms. Dortch:

On January 12, 2009, Barbara Spencer and Larry Paul of Vizada, Inc. ("Vizada"); and David Saylor of Hogan & Hartson LLP, counsel for Vizada, met with Renée Crittendon, legal advisor to Commissioner Adelstein. Dr. Tim Farrar of Telecom, Media and Finance Associates, Inc. participated by telephone. Vizada discussed its prior positions stated in the record of this proceeding and provided the enclosed document.

Sincerely,



David J. Saylor
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Enclosure

cc: Renée R. Crittendon, Esq.

INMARSAT MARKET POWER AND ITS RELEVANCE TO THE PROPOSED ACQUISITION OF STRATOS

Vizada, Inc. and VIZADA Services, LLC

January 12, 2009

IB Docket No. 08-143

WHAT'S AT STAKE

- Inmarsat continues to have dominant market power in key maritime, aeronautical and land mobile wholesale markets -- each crucial to customers who rely on individual services, and collectively representing over 57% of Inmarsat's current revenues.

- Inmarsat is proposing to acquire Stratos, the largest independent distributor of wholesale Inmarsat services, who otherwise would be its primary horizontal competitor when Inmarsat expands its participation in downstream markets next April.

- The transaction would increase both the ability and incentive of Inmarsat to exercise its market power to reduce intra-brand competition in the distribution of Inmarsat-based services.

WHAT INMARSAT SAYS -- And Doesn't Say

- Inmarsat provides no market data -- or even any serious attempt to justify relevant markets in the MSS industry.

- Inmarsat asks the Commission to ignore fundamental service limitations that prevent other MSS operators from offering effective competition in key markets -- service limitations that Inmarsat emphasizes when it speaks outside the Commission.

WHAT INMARSAT SAYS -- And Doesn't Say

- Inmarsat incorrectly asserts that the Commission already has found the MSS market fully competitive in every respect when it approved the Trustee's acquisition of Stratos.

  - At the time Inmarsat made clear that the competitive impacts of its acquisition of Stratos only would be relevant if and when it exercised its option, and based on the "competitive environment" as it existed in "April 2009."

  - Vizada relied on that representation and reserved a full discussion of competition issues until any such further filing.

  - Even leaving aside Inmarsat's glibness, the Commission has a statutory duty to examine the market here closely.

INMARSAT DOMINATES KEY RELEVANT MSS MARKETS

- Vizada has presented detailed market analysis from a leading expert in the MSS industry.

  - Dr. Farrar explains how and why Inmarsat continues to dominate four key MSS product markets, each important on its own, and collectively constituting 57% of Inmarsat's revenues.

  - Dr. Farrar's analysis is conservative. For example, he assumes competition from MSS operators that Inmarsat claims elsewhere are likely to fail. He acknowledges competition to Inmarsat in markets where it exists.

- Inmarsat provides no data of its own.

  - Instead it unfairly attempts to undermine Dr. Farrar's credibility by misrepresenting his positions or taking his statements out of context.

1. Low Speed Maritime Data Services

- Inmarsat dominates low speed maritime because it has a monopoly over satellite services for the Global Maritime Distress and Safety System, which must be deployed on all ships of more than 300 gross tons.

- Competitors have little practical ability to compete for the 64,000 end users who use Inmarsat C for GMDSS and low speed data.

Low Speed Maritime Data Services

- Inmarsat misleadingly asserts that Iridium is "poised" to offer GMDSS on its next generation system.

  - Inmarsat does not mention that elsewhere it predicts that this system will never be launched.
  - Inmarsat does not acknowledge that the Iridium system is not even planned to be fully operational until 2016.

- Inmarsat claims that some end users may install competing terminals in addition to Inmarsat C.

  - Competition to be a redundant back up is not the same as competition to be a primary service.
  - Vizada has shown that deployment of redundant equipment is not economical anyway.

2. Maritime Broadband Services

- Inmarsat dominates the maritime broadband market based on its unique global coverage and network.

- Inmarsat claims that Iridium's "OpenPort" product will be effective competition. However, at best that product will take 2-3 years to establish, and contest only 18% of Inmarsat's revenues given Iridium capacity limits.

- Inmarsat claims maritime VSAT provides effective competition. However, VSAT service is economically practical for only 10% of the ships equipped with Inmarsat B or Fleet as of today.

3. Aeronautical Broadband Services

- Inmarsat's share of aeronautical MSS revenues was 82% in 2007. Of that, 40% represents broadband services that are not competitive.

- Inmarsat points to beginning competition in North American routes, but ignores the foundations of Inmarsat's dominance on international routes.

  - Only Inmarsat offers global broadband coverage. Contrary to Inmarsat's suggestion, Iridium does not offer this service.

  - Inmarsat does not address economic barriers to retrofitting existing Inmarsat-equipped aircraft for North America-only service even if that limitation otherwise is acceptable to the customer.

4. Land-Based Broadband Services

- Of Inmarsat's total wholesale revenues from land-based service, 71% is from broadband services where Inmarsat faces no effective competition.

- Inmarsat claims land mobile broadband is a "nascent" service, but it has been operating GAN service since 1999.

- Inmarsat points to regional competition from Thuraya, but ignores the fact that the largest users of GAN and BGAN services are media and military customers where global reach is critical.

PUBLIC INTEREST CONSIDERATIONS

- Vizada and other MSS distributors have no alternative to Inmarsat wholesale services in the key product markets where Inmarsat has market power.

- End users depend on intrabrand competition from distributors of Inmarsat services.

- Inmarsat has the ability to reduce competition in these MSS markets in multiple ways.

PUBLIC INTEREST CONSIDERATIONS

- Inmarsat's incentives to reduce competition go up if it acquires Stratos, the company that otherwise would have been its primary horizontal competitor as it is able to expand its marketing after April 2009.

  - Inmarsat can reap the benefits of discrimination even faster by having a large distributor immediately in place.

- Inmarsat's ability to reduce competition also goes up if it acquires Stratos.

  - Inmarsat has no need to deal fairly with other distributors, and eliminates a key party who would protest anti-competitive conduct.

COMPETITIVE SAFEGUARDS NEEDED

- Even assuming Inmarsat could meet its burden of proof under the Communications Act, this transaction could not be approved without remedial conditions to address the likely harm to competition:

1. Arm's length structural separation of Stratos from Inmarsat.

2. Non-discrimination requirements with regard to: space segment access, wholesale pricing and discounts, service quality, access to technology, systems, data and product information; commercial, technical and regulatory support, as well as other related matters.

3. Comprehensive confidentiality firewalls to prevent misuse of customer information (or inappropriate contacts with customers) of competitors.

NEXT STEPS

- Inmarsat has not met its burden of proof to demonstrate that approval of this transaction "will accelerate the decline of market power by dominant firms in the relevant communications markets."

- This leaves the Commission with only two options:

  1. Deny the Application for failure to make an adequate showing.

  2. Designate the Application for hearing on the competitive issues discussed above.

- If the Commission is not yet ready to decide between these options, it at least must conduct a preliminary investigation based on review of relevant documents and market information.

NEXT STEPS

- To begin with, the Commission should require Inmarsat to provide copies of:

  1. All documents discussing its proposed acquisition of Stratos;

  2. All other documents produced by or for Inmarsat since June 2006 (a year before it announced its proposed transaction to acquire Stratos) discussing MSS competition, market shares, and competitive entry and expansion of other operators and distributors; and

  3. When completed, all new distribution agreements governing relationships between Inmarsat and either Stratos or any other distributor of wholesale Inmarsat services beginning in April 2009.

SUMMARY

- The Commission should reject Inmarsat's attempt to avoid rigorous scrutiny of its continuing market power in the MSS industry.

- The Communications Act and the public interest require the Commission to investigate and resolve this matter based on facts, and not Inmarsat's self-serving rhetoric -- especially when that rhetoric is inconsistent with market data in the record and Inmarsat's own statements in other places.