

licensees.<sup>163</sup> Therefore, with respect to indirect foreign investment from WTO Members, the Commission adopted a rebuttable presumption that such investment generally raises no competitive concerns.<sup>164</sup> In evaluating an applicant's request for approval of foreign ownership interests under section 310(b)(4), the Commission uses a "principal place of business" test to determine the nationality or "home market" of foreign investors.<sup>165</sup>

59. In light of Commission policies adopted in the *Foreign Participation Order*, we begin our evaluation of the indirect foreign ownership of Stratos Offshore and Stratos Communications under section 310(b)(4) by calculating the foreign equity and voting interests that will be held in their U.S. parent, Stratos Holdings, upon consummation of the proposed transaction. We then determine whether these foreign interests properly are ascribed to individuals or entities that are citizens of, or have their principal places of business in, WTO Member countries.

60. In calculating alien equity interests in a parent company, the Commission uses a multiplier to dilute the percentage of each investor's equity interest in the parent company when those interests are held through intervening companies. The multiplier is applied to each link in the vertical ownership chain, regardless of whether any particular link in the chain represents a controlling interest in the company positioned in the next lower tier.<sup>166</sup> By contrast, in calculating alien voting interests in a parent company, the multiplier is not applied to any link in the vertical ownership chain that constitutes a controlling interest in the company positioned in the next lower tier.<sup>167</sup> When evaluating foreign voting interests in the U.S. parent company of a common carrier licensee, it is possible that multiple investors will be treated as holding the same voting interest in a U.S. parent company where the investment is held through multiple intervening holding companies. Our purpose in identifying the citizenship of the specific individuals or entities that hold these interests is not to increase the aggregate level of foreign investment, but rather to determine whether any particular interest that a foreign investor proposes to acquire raises potential risks to competition or other public interest concerns, such as national security or law enforcement concerns.<sup>168</sup>

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<sup>163</sup> *Foreign Participation Order*, 12 FCC Rcd at 23896, ¶ 9, 23913, ¶ 50, 23940, ¶¶ 111-112. In evaluating an applicant's request for approval of foreign ownership interests under section 310(b)(4), the Commission uses a "principal place of business" test to determine the nationality or "home market" of foreign investors. *See id.*, at 23941, ¶ 116 (citing *Market Entry and Regulation of Foreign-Affiliated Entities*, Report and Order, 11 FCC Rcd 3873, 3951, ¶ 207 (1995) (*Foreign Carrier Entry Order*)).

<sup>164</sup> *Foreign Participation Order*, 12 FCC Rcd at 23913, ¶ 50 and 23940, ¶¶ 111-112. The Commission stated, in the *Foreign Participation Order*, that it will deny an application if it finds that more than 25 percent of the ownership of an entity that controls a common carrier radio licensee is attributable to parties whose principal place(s) of business are in non-WTO Member countries that do not offer effective competitive opportunities to U.S. investors in the particular service sector in which the applicant seeks to compete in the U.S. market, unless other public interest considerations outweigh that finding. *See id.* at 23946, ¶ 131.

<sup>165</sup> To determine a foreign entity's home market for purposes of the public interest determination under section 310(b)(4), the Commission will identify and balance the following factors: (1) the country of a foreign entity's incorporation, organization or charter, (2) the nationality of all investment principals, officers, and directors, (3) the country in which the world headquarters is located, (4) the country in which the majority of the tangible property, including production, transmission, billing, information, and control facilities, is located, and (5) the country from which the foreign entity derives the greatest sales and revenues from its operations. *Foreign Participation Order*, 12 FCC Rcd at 23941, ¶ 116 (citing *Foreign Carrier Entry Order*, 11 FCC Rcd at 3951, ¶ 207).

<sup>166</sup> *See BBC License Subsidiary*, 10 FCC Rcd at 10973-74, ¶¶ 24-25.

<sup>167</sup> *See id.* at 10973, ¶ 23; *see also Wilner & Scheiner I*, 103 FCC 2d at 522, ¶ 19.

<sup>168</sup> *See Foreign Participation Order*, 12 FCC Rcd at 23940-41, ¶¶ 111-15.

## 2. Attribution of Foreign Ownership Interests

61. As explained in Section II.B., under the terms of the proposed transaction, CIP Canada, a Canadian corporation, will hold after consummation of the proposed transaction 100 percent of the shares of Stratos Global. Stratos Global will continue to wholly own Stratos Offshore and Stratos Communications through Stratos Global's direct and indirect wholly-owned subsidiaries, Stratos Wireless and Stratos Holdings, respectively. Stratos Global and Stratos Wireless are both organized under the laws of Canada, while Stratos Holdings is organized in the United States.

62. CIP Canada is wholly owned by CIP UK, which will become a wholly-owned subsidiary of Inmarsat Finance, itself wholly owned by Inmarsat. CIP UK, Inmarsat Finance and Inmarsat are companies formed under the laws of England and Wales. Applicants further state that each of the entities in the organizational structure between Stratos Offshore and Stratos Communications and up to and including Inmarsat will hold 100 percent of the equity and voting interests of the entity below it.

63. Consistent with the Commission's foreign ownership policies and precedent discussed above, we examine below the foreign equity and voting interests that will be held, directly or indirectly, in Stratos Holdings based on the information and representations submitted by the Applicants. First, we calculate that, upon closing of the proposed transaction, Stratos Wireless and its direct parent, Stratos Global, will continue to hold, directly and indirectly, 100 percent of the equity and voting interests in Stratos Holdings. Based on the information in the record, we find that Stratos Wireless and Stratos Global have their principal places of business in the United States or Canada, a WTO Member country.<sup>169</sup>

64. We next calculate the indirect foreign equity and voting interests that will be held in Stratos Holdings by CIP Canada and its direct parent, CIP UK. We attribute individually to CIP Canada and to CIP UK, a 100 percent indirect equity and voting interest in Stratos Holdings. Based on the information in the record and the totality of the circumstances,<sup>170</sup> we find that CIP Canada and CIP UK principally conduct business in WTO Member countries, specifically, the United Kingdom, Canada, and/or the United States.<sup>171</sup>

65. We analyze next the indirect foreign equity and voting interests that will be held in Stratos Holdings by and through Inmarsat Finance. We attribute individually to Inmarsat Finance and to its direct parent, Inmarsat, a 100 percent indirect equity and voting interest in Stratos Holdings. We find,

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<sup>169</sup> Stratos Wireless's officers and directors are Canadian citizens; its world headquarters is in Canada, where the majority of its tangible property is located; and it derives the greatest amount of its sales and revenues from its operations in Canada. Petition for Declaratory Ruling at 5. Stratos Global's current officers and directors are U.S. or Canadian citizens; its world headquarters is in the United States; and as a holding company, it has no material tangible property of its own, nor does it have sales or revenues of its own. *Id.*

<sup>170</sup> See *Foreign Carrier Entry Order*, 11 FCC Rcd at 3951-2, ¶ 207 ("If all five of [the] factors indicate that the same country should be considered to be the entity's home market, it will be presumed to be so, subject only to rebuttal on clear and convincing evidence to the contrary. If these five factors yield inconsistent results, however, [the Commission] will balance them, as well as any other information that is particularly relevant to the case, to determine the appropriate home market under the totality of the circumstances.").

<sup>171</sup> According to the Applicants, it is anticipated that at closing CIP Canada's officers and directors will be citizens of the United States, Canada, the Netherlands, France or the United Kingdom; its world headquarters is in Canada; and as a holding company, it does not have sales or revenues of its own, nor will it have material tangible property of its own. Petition for Declaratory Ruling at 5-6. Applicants also state that it is anticipated that, at closing, CIP UK's officers and directors will be citizens of the United States, Canada, the Netherlands, France or the United Kingdom; its world headquarters is in the United Kingdom; and as a holding company, it has no material tangible property of its own, nor does it have sales or revenues of its own. Petition for Declaratory Ruling at 6.

based on the information in the record, that Inmarsat Finance and Inmarsat each has its principal place of business in the United Kingdom, a WTO Member country.<sup>172</sup>

66. We also find, based on information Applicants submitted for the record, that citizens of, or entities that principally conduct business in, the United States and other WTO Member countries hold at least 75 percent of the equity and voting interests in Inmarsat. In accordance with the UK Companies Act, to which Inmarsat is subject, and at Inmarsat's request in the ordinary course of business, JPMorganCazenove Limited (Cazenove) surveys Inmarsat shareholders that own 100,000 or more shares.<sup>173</sup> Cazenove investigates shareholdings in Inmarsat to identify, where possible, the underlying beneficial ownership of Inmarsat shares.<sup>174</sup> Applicants state that, in accordance with the UK Companies Act, "this investigation typically involves writing to the named shareholder requesting that it provide the relevant information relating to the underlying ownership."<sup>175</sup> Cazenove also takes steps to determine the country of "domicile" for Inmarsat's shareholders and any third parties that manage those shareholdings. According to Applicants, in determining the "domicile" of an entity, Cazenove "conducts research to look beyond the street address associated with the shares. Among other things, Cazenove looks to available information such as: investment purpose, country of organization, location of headquarters, and country from which the funds being managed were contributed."<sup>176</sup> We find that the information Inmarsat has relied on to establish a "domicile" for the beneficial owners of its shares provides a reasonable basis for identifying a principal place of business for these shareholders for purposes of our section 310(b)(4) analysis in this case.

67. Cazenove most recently conducted a survey of Inmarsat shareholders in May 2008.<sup>177</sup> Based on the results of this survey, Applicants have categorized and calculated Inmarsat's equity and voting interests as follows:<sup>178</sup> (1) certain individuals in Inmarsat senior management who are citizens of the

<sup>172</sup> Inmarsat Finance's officers and directors are citizens of the United States or the United Kingdom; its world headquarters is in the United Kingdom; the majority of its tangible property is located in the United Kingdom; and aside from income from its loan to CIP UK, Inmarsat Finance has no sales or revenues of its own. Petition for Declaratory Ruling at 6. Inmarsat is a public limited company listed on the London Stock Exchange. Inmarsat's officers and directors are citizens of Australia, the United States or the United Kingdom; its world headquarters is in the United Kingdom; the majority of its tangible property is located in the United Kingdom; and it derives the greatest amount of its sales and revenues from Canada. Petition for Declaratory Ruling at 6-7.

<sup>173</sup> Petition for Declaratory Ruling at 7. Shareholdings of 100,000 or less each represent only approximately 0.02% of the issued and outstanding shares of Inmarsat, which is considered *de minimis* for Cazenove's review purposes. Cazenove also does not analyze holdings of private individuals. Certain members of Inmarsat's senior management, however, own in the aggregate approximately 1.08% of Inmarsat shares and are citizens of the United States and other WTO Member countries. *Id.* at 7-8. These "known" shareholdings are included in our foreign ownership analysis. See *infra* ¶¶ 66-7.

<sup>174</sup> See Petition for Declaratory Ruling at 8. According to the Applicants, in many instances, Inmarsat shares are managed by a different entity than the beneficial owners, with the investment manager typically exercising the voting power. *Id.* Applicants explain that, in certain cases in which the beneficial owner is known, either it is not certain whether that beneficial owner relies on a manager, or Inmarsat does not have complete information about the manager that might exercise voting power. In the aggregate, those circumstances exist for approximately 1% of Inmarsat shares. *Id.* at 9 n.12.

<sup>175</sup> Petition for Declaratory Ruling at 8.

<sup>176</sup> Petition for Declaratory Ruling at 8.

<sup>177</sup> Petition for Declaratory Ruling at 7.

<sup>178</sup> All percentages listed are approximate. Petition for Declaratory Ruling at 9.

United States or other WTO Member countries (1.08% equity and voting);<sup>179</sup> (2) banks, insurance companies, pension plans, and foundations/endowments organized in the United States and controlled by U.S. entities or individuals (0.78% equity and 0.29% voting);<sup>180</sup> (3) foreign banks, insurance companies, pension plans, foundation/endowments organized in WTO Member countries or controlled by foreign individuals or entities that have their principal place of business in a WTO Member country (13.89% equity and 13.49% voting);<sup>181</sup> (4) private equity funds and management investment companies (including holdings by analogous entities such as hedge funds and unit trusts) that are organized in the United States and have their principal place of business in the United States (13.60% equity and 33.19% voting);<sup>182</sup> (5) foreign private equity funds and management investment companies (including holdings by analogous entities such as hedge funds and unit trusts) that are organized in WTO Member countries and have their

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<sup>179</sup> These individuals are citizens of Australia, the United Kingdom or the United States. Petition for Declaratory Ruling at 10.

<sup>180</sup> Shares of Inmarsat that fall under this category, where it is unknown whether the beneficial owner relies on a manager that exercises voting power, comprise approximately 0.5% of the outstanding equity interest in Inmarsat. The Applicants do not include these shareholdings in calculating known voting power. Petition for Declaratory Ruling at 10, n.15.

<sup>181</sup> Shares of Inmarsat that fall under this category, where it is unknown whether the beneficial owner relies on a manager that exercises voting power, comprise approximately 0.4% of the outstanding equity interest in Inmarsat. The Applicants do not include these shareholdings in calculating known voting power. Petition for Declaratory Ruling at 10, n.16. Entities that fall under this category have their principal places of business in the following countries, all of which are WTO Members: Channel Islands, Finland, France, Germany, Ireland, Italy, Luxembourg, Norway, Scotland, Switzerland, or the United Kingdom. Shares of Inmarsat that fall under this category, where the beneficial owners' shares are managed by an entity with its principal place of business in a different country, comprise approximately 0.6% of the outstanding equity interests in Inmarsat. In each such case, the manager has its principal place of business in one of the WTO Member countries listed in this footnote. *Id.* at 11, n.17. See *Global Crossing, Ltd. (Debtor-in-Possession), Transferor, and GC Acquisition Limited, Transferee*, IB Docket No. 02-286, Order and Authorization, DA 03-3121, 18 FCC Rcd 20301, 20322, ¶ 25 n.99 (IB/WTB/WCB 2003) (citing *Cable & Wireless USA, Inc., Application for Authority to Operate as a Facilities-Based Carrier in Accordance with the Provisions of Section 63.18(e)(4) of the Rules Between the United States and Bermuda*, Order, Authorization and Certificate, DA 00-311, 15 FCC Rcd 3050, 3052, ¶ 7 (IB 2000) (relying on an opinion provided by the U.S. Department of State that the 1994 Marrakesh Agreement Establishing the World Trade Organization applies to all British territories)).

<sup>182</sup> Of the 33.19% voting interests included in this category, Applicants ascribe 19.59% to Harbert Fund Advisors, Inc. ("Harbert"), an Alabama corporation. Harbert serves as an investment advisor to an entity that serves as an investment manager to Harbinger Capital Partners Master Fund I, Ltd. ("Harbinger Master Fund"), a fund organized in the Cayman Islands that holds 19.59% of Inmarsat's shares. See Petition for Declaratory Ruling at 11, n.18 and Narrative at Appendix B. Based on the record in this proceeding, we find that the voting rights associated with Harbinger Master Fund's 19.59% equitable ownership interest in Inmarsat are properly treated in the first instance as foreign (and, therefore, should be included instead in category 5, above) for purposes of our foreign ownership calculations under section 310(b)(4) of the Act because Harbinger Master Fund is a foreign-organized company. (We note that Applicants treat Harbinger Master Fund's 19.59% equity interest in Inmarsat as foreign and, therefore, properly include the interest in category 5 above.) At the same time, we also find on the basis of publicly available information that Harbinger Master Fund principally conducts business in WTO Member countries. See File No. ISP-PDR-20070314-00004, Letter from Tom W. Davidson, Counsel for SkyTerra Communications, Inc. and Bruce Jacobs, Counsel for Mobile Satellite Ventures Subsidiary LLC, to Marlene H. Dortch, Secretary, FCC, dated Oct. 5, 2007 at 1-4 and Attachment 1. This document may be viewed on the FCC web-site through the International Bureau Filing System (IBFS) by searching for ISP-PDR-20070314-00004 and accessing the "Attachment Menu" from the Document Viewing Area.

principal place of business in WTO Member countries (53.81% equity and 33.94% voting);<sup>183</sup> (6) other foreign investors not covered above (7.1% equity and voting – including 1.32% non-WTO).<sup>184</sup>

68. Thus, Applicants have accounted for approximately 90 percent of Inmarsat's equity and approximately 89 percent of its voting interests. Of these amounts, Applicants ascribe approximately 89 percent of Inmarsat's equity and approximately 88 percent of its voting interests to the United States and other WTO Member countries, and approximately 1.32 percent of its equity and voting interests to non-WTO Member countries.<sup>185</sup> We find the information submitted by Applicants sufficient to conclude that at least 75 percent of Inmarsat's equity and voting interests are held by individuals that are citizens of, or entities that have their principal places of business in, the United States or other WTO Member countries.

69. In summary, consistent with the Commission's foreign ownership case precedent, we calculate that the following foreign-organized entities will hold, directly or indirectly, 100 percent of the equity and voting interests in Stratos Holdings upon consummation of the proposed transaction: Stratos Wireless, Stratos Global, CIP Canada, CIP UK, Inmarsat Finance and its parent Inmarsat. We find that these entities have their principal places of business in Canada, the United Kingdom, or the United States, all of which are WTO Member countries, and that at least 75 percent of Inmarsat's equity and voting interests are properly ascribed to the United States and other WTO Member countries. Accordingly, we find that Stratos Offshore and Stratos Communications are entitled to a rebuttable presumption that their indirect foreign ownership resulting from the transaction will not pose a risk to competition in the U.S. market. We find no evidence in the record that rebuts this presumption, and, as discussed in Section III.D. above,<sup>186</sup> we find no basis to conclude that the proposed transaction will harm competition. We also

<sup>183</sup> As discussed *supra* note 182, we find that the voting rights associated with Harbinger Master Fund's 19.59% equity interest in Inmarsat are properly treated in the first instance as foreign and therefore should be added to the 33.94% foreign voting interests included in this category (for a total 53.53% foreign voting interest). Shares of Inmarsat that fall under this category, where it is unknown whether the beneficial owner relies on a manager that exercises voting power, comprise approximately 0.28% of the outstanding equity interest in Inmarsat. The Applicants do not include these shareholdings in calculating known voting power. Petition for Declaratory Ruling at 12, n.19. Entities that fall under this category have their principal places of business in the following countries, all of which are WTO Members: Australia, France, Germany, Ireland, Isle of Man, Italy, Luxembourg, Norway, Scotland, Switzerland, or the United Kingdom. *Id.* at 12; *see also supra* note 180. Shares of Inmarsat that fall under this category, where the beneficial owners' shares are managed by an entity with its principal place of business in a different country, comprise approximately 20.58% of the outstanding equity interests in Inmarsat. In each such case, the manager has its principal place of business in the United States or one of the other WTO Member countries listed in this footnote. Petition for Declaratory Ruling at 12, n.20.

<sup>184</sup> These "other" foreign investors are either representatives of governments or privatized telecommunications companies. *Id.* at 12. Of the approximately 7.1% equity and voting interests held in Inmarsat by these other foreign investors, 5.78% are owned and voted by entities that have a principal place of business in the following WTO Member countries: Bangladesh, China, Gabon, Italy, Japan and Vietnam. The remaining 1.32% equity and voting interests represent non-WTO investment from Liberia (0.14%), Libyan Arab Mamahiriya (0.03%), and Russian Federation (1.15%). These non-WTO investors are legacy shareholders that have not traded any of their original shareholdings in Inmarsat as of the date the Application was filed. *Id.* at 12-13.

<sup>185</sup> Applicants have not ascertained the citizenship or principal place of business of shareholders that hold the balance of Inmarsat's equity (10%) and voting (11%) interests. For purposes of our foreign ownership calculations and the declaratory ruling issued in this Order, we treat these unidentified interests as investment from non-WTO Member countries. *See Foreign Ownership Guidelines for FCC Common Carrier and Aeronautical Radio Licenses*, Public Notice, 19 FCC Rcd 22612, 22624 (Int. Bur., 2004), *erratum*, 21 FCC Rcd 6484 (Int. Bur. 2006), *petition for recon. pending*.

<sup>186</sup> *See supra* Section III.D.

determine in Section III.J. below that the 2001 Executive Branch Agreement and the 2007 Amendment 1 to that Agreement address any national security, law enforcement, or public safety concerns.<sup>187</sup>

### 3. Declaratory Ruling

70. Accordingly, this declaratory ruling permits the indirect foreign ownership of Stratos Offshore and Stratos Communications by Stratos Wireless, Stratos Global, CIP Canada, CIP UK, Inmarsat Finance, and Inmarsat (individually, up to and including 100 percent of the equity and voting interests) and Inmarsat's shareholders (collectively, up to and including 100 percent of the equity and voting interests). Stratos Offshore and Stratos Communications may accept up to and including an additional, aggregate 25 percent indirect equity and/or voting interests from other foreign investors without seeking prior Commission approval under section 310(b)(4) subject to the following conditions. First, Stratos Offshore and Stratos Communications shall obtain prior Commission approval before their indirect equity and/or voting interests from non-WTO Member countries exceeds 25 percent.<sup>188</sup> Second, Stratos Global and Stratos Communications shall obtain prior approval before any foreign individual or entity, with the exception of those named above, acquires an indirect equity and/or voting interest in excess of 25 percent.

71. We emphasize that, as Commission licensees, Stratos Offshore and Stratos Communications have an affirmative duty to monitor their foreign equity and voting interests, calculate these interests consistent with the attribution principles enunciated by the Commission, and otherwise ensure continuing compliance with the provisions of section 310(b) of the Act.<sup>189</sup>

#### G. International Dominant Carrier Regulation

72. Applicants state that the Stratos Licensees, which are authorized to provide U.S.-international telecommunications services, will remain affiliated with six foreign carriers after the proposed transaction: (1) Stratos Wireless, a Canada-based provider of mobile satellite services; (2) Stratos Global, Ltd., a Great Britain-based provider of mobile satellite services and very small aperture terminal (VSAT) services; (3) Stratos Aeronautical Limited, a Great Britain-based provider of mobile satellite services; (4) Xantic B.V. (Xantic), based in the Netherlands and authorized to provide mobile satellite services and fixed satellite services in the Netherlands, Australia and Brazil; (5) Plenexis Holding GmbH (Plenexis), based in Germany and authorized to provide VSAT services in Germany, Hungary, Russia, Sweden, Turkey and the United Kingdom; and (6) Navarino Telecom SA and NTS Maritime, Ltd. (collectively, Navarino), a provider of common carrier telecommunications services in Greece.<sup>190</sup> Applicants state that

<sup>187</sup> See *infra* Section III.J.

<sup>188</sup> For purposes of this declaratory ruling, Stratos Offshore and Stratos Communications shall treat unascertained equity or voting interests in Inmarsat as investment from non-WTO Member countries. See *supra* note 186

<sup>189</sup> *Verizon Communications, Inc., Transferor and America Móvil, S.A., de C.V., Transferee, Application for Authority to Transfer Control of Telecomunicaciones de Puerto Rico, Inc. (TELPRI)*, WT Docket No. 06-113, Memorandum Opinion and Order and Declaratory Ruling, FCC 07-43, 22 FCC Rcd 6195, 6225 ¶ 68 (2007); *Stratos Global Corporation, Transferor, Robert M. Franklin, Transferee, Consolidated Application for Consent to Transfer Control*, WC Docket No. 07-73, Memorandum Opinion and Order and Declaratory Ruling, FCC 07-213, 22 FCC Rcd 21328, 21371, ¶ 102 (2007), *petition for recon. pending; Mobile Satellite Ventures Subsidiary LLC and SkyTerra Communications, Inc., Petition for Declaratory Ruling Under Section 310(b) of the Communications Act 1934, as Amended, File No. ISP-PDR-20070314-00004, Harbinger Capital Partners Master Fund I, Ltd. and Harbinger Capital Partners Special Situations Fund, L.P., Petition for Expedited Action for Declaratory Ruling Under Section 310(b) of the Communications Act of 1934, as Amended*, Order and Declaratory Ruling, FCC 08-77, 23 FCC Rcd 4436, 4443, ¶ 16 (2008).

<sup>190</sup> International 214 Transfer Applications, ITC-T/C-20080618-00275 and -00276, Attachment 1, at 2-3.

the proposed transaction will not result in the Stratos Licensees acquiring any additional foreign carrier affiliations.<sup>191</sup>

73. According to the Application, the Stratos Licensees are authorized to provide service between the United States and foreign countries in which their foreign carrier-affiliates are authorized to provide *telecommunications services*. Applicants note that all of these countries are Members of the WTO and assert that none of the Stratos Licensees' affiliates has a 50 percent or greater share of the markets for international transport or local access in any country in which they operate.<sup>192</sup>

74. Applicants assert that, notwithstanding the above affiliations, the Stratos Licensees qualify for a presumption of non-dominance under section 63.10(a)(3) because all of the foreign carrier affiliates lack a 50 percent share of the local access and international transport markets in the relevant geographic markets.<sup>193</sup>

75. We note that, in the *2007 Stratos Order*, we found that the Stratos Licensees — at that time consisting of Stratos Communications, Stratos Mobile and Stratos Offshore — should be classified under section 63.10 of the Commission's rules as non-dominant.<sup>194</sup> Applicants assert that nothing in this step of the transaction would change that status.<sup>195</sup> Vizada did not challenge that assertion. From the record before us, we find that this step of the transaction will create no new foreign carrier affiliations and that none of the foreign carriers with which the Stratos Licensees will remain affiliated has a 50 percent or greater share of the international transport or local access markets in the countries in which they operate. We therefore conclude that we should again classify the Stratos Licensees as non-dominant for regulatory purposes under section 63.10 of the rules.

#### H. Pending and Future Applications of Stratos Global

76. The Application notes that Stratos Global has a number of applications pending before the Commission, some of which may be granted while the Application is being considered.<sup>196</sup> Applicants ask, therefore, that a grant of this Application include authority to transfer control of authorizations issued to, and filings made by Stratos Global or its subsidiaries subsequent to the filing of the Application but prior to consummation of the proposed transaction on or shortly after April 15, 2009 (the "Interim Period"). We find that grant of the Applicants' request is consistent with Commission precedent.<sup>197</sup> Accordingly, our grant of this Application shall include authority to transfer control of (1) any license or authorization issued to Stratos Global or its subsidiaries during the Interim Period; (2) construction permits held by such companies that mature into licenses after closing; and (3) applications filed by such companies after the date of this Application and that are pending at the time of the consummation of the proposed transaction.<sup>198</sup> Pursuant to Section 1.65 of the rules, Applicants should amend any current

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<sup>191</sup> *Id.* at 3.

<sup>192</sup> *Id.* at 4.

<sup>193</sup> 47 C.F.R. § 63.10(a)(3) (2008).

<sup>194</sup> *2007 Stratos Order*, 22 FCC Rcd at 21371, ¶ 106.

<sup>195</sup> Narrative at 11.

<sup>196</sup> Narrative at 12.

<sup>197</sup> See *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11572, ¶ 133; *General Motors Corporation and Hughes Electronics Corporation, Transferors, and The News Corporation Limited, Transferee*, 19 FCC Rcd 6309, 6311-12, ¶ 6 (IB/WTB/OET 2004).

<sup>198</sup> See Narrative at 16.

pending applications, as well as applications that were acted on between the filing date of this Application and the consummation date, to reflect the transaction as approved by this Order and Declaratory Ruling.<sup>199</sup>

### I. Transfer of Accounting Authority Certification

77. Along with the Transfer of Control Application, Stratos Mobile Networks, Inc. filed a Form 44 Application for Certification as an Accounting Authority<sup>200</sup> under section 3.51 of the Commission's rules.<sup>201</sup> Section 3.51 requires that, "[w]hen an accounting authority is transferred, merged or sold, the new entity must apply for certification in its own right . . . ."<sup>202</sup> In its Form 44, Stratos Mobile notes that it is currently certified as an Accounting Authority<sup>203</sup> and states that "[b]y this application, Stratos Mobile does not seek to assign or otherwise encumber its Accounting Authority, but rather it simply seeks to update the ownership and control information for its Accounting Authority."<sup>204</sup> Stratos Mobile further states that the reason for the filing is that "control of Stratos Mobile's ultimate parent corporation, Stratos Global Corporation, is changing from the Trustee Robert M. Franklin to Inmarsat plc" but that this change "will have no impact on the [Applicant's] day-to-day Accounting Authority functions . . . ."<sup>205</sup> Finally, Stratos Mobile states that "it will not be ceasing its operations as an Accounting Authority as a result of the transaction and it hereby continues to accept and process all accounts . . . currently being administered under AAIC Code US09."<sup>206</sup>

78. We see no evidence that a grant of the requested transfer would harm the public interest. Vizada did not address the transfer of Stratos Mobile's existing Accounting Authority. Stratos Mobile included in its Form 44 filing financial information that shows that it will continue to have the legal and financial qualifications to serve as an Accounting Authority. We therefore grant the request to update Stratos Mobile's ownership and control information.

### J. National Security, Law Enforcement and Public Safety Concerns

79. When analyzing a transfer of control or assignment application in which foreign investment is involved, the Commission also considers any national security, law enforcement, foreign policy, or trade policy concerns raised by the Executive Branch.<sup>207</sup> In 2007, when the Commission authorized the transfer of control of Stratos Global to the Trust, it conditioned the transfer upon Applicants' abiding by a Network Security Agreement dated August 7, 2001, between various Stratos Global subsidiaries and the

<sup>199</sup> 47 C.F.R. § 1.65 (2008).

<sup>200</sup> Stratos Mobile Networks, Inc., Application for Certification as an Accounting Authority (Form 44), Attachment A, at 1. (filed June 18, 2008) (Form 44) at 1.

<sup>201</sup> 47 C.F.R. § 3.51 (2008).

<sup>202</sup> *Id.* at § 3.51(a).

<sup>203</sup> Stratos Mobile holds Accounting Authority Identification Code (AAIC) US09. Narrative at 11.

<sup>204</sup> Letter from Marc A. Paul, Steptoe & Johnson LLP, Counsel for Stratos Mobile Networks, Inc., to Accounting Authority Certification Officer, FCC, dated June 13, 2008.

<sup>205</sup> Form 44, Attachment A at 1.

<sup>206</sup> *Id.*

<sup>207</sup> *Foreign Participation Order*, 12 FCC Rcd at 23918, ¶ 58; *Amendment of the Commission's Regulatory Policies to Allow Non-U.S. Licensed Space Stations to Provide Domestic and International Satellite Service in the United States*, IB Docket No. 96-111, FCC 97-399, 12 FCC Rcd 24094, 24170, ¶ 178 (1997).

Agencies, as amended by Amendment No. 1, to that Agreement, dated August 14, 2007.<sup>208</sup> The Agencies state that Agreement, so amended, adequately addressed their national security and public safety concerns.<sup>209</sup>

80. In the present matter, the DOJ/DHS Petition to Adopt Conditions states that the Agencies have no objection to a grant of the transfer of control of Stratos Global from the Trust to Inmarsat, provided that the Commission conditions its consent to the transfer of control on the agreement of Inmarsat and its direct and indirect subsidiaries to abide by the commitments and undertakings set forth in the new Network Security Agreement, dated September 23, 2008, between Inmarsat and Stratos Global and the Executive Branch Agencies.<sup>210</sup> The DOJ/DHS Petition notes that the Commission has already considered and granted an earlier Petition to Adopt Conditions with respect to Stratos Global, filed on August 9, 2001, by DOJ and FBI, which sought to condition authorizations and licenses of Stratos Global upon compliance with an agreement Stratos Global had entered into with DOJ, FBI and DHS to address those agencies' national security, law enforcement and public safety concerns (2001 Agreement).<sup>211</sup> The Petition further notes that the Commission approved the above-referenced Amendment No. 1 to that Agreement on December 7, 2007. After discussions with the Applicants, DOJ, FBI and DHS state that they have obtained agreement from Inmarsat and its subsidiaries to the above-referenced Network Security Agreement to supplement the August 7, 2001 Agreement and the September 23, 2007, Amendment No. 1. DOJ, FBI and DHS state that the commitments in the 2001 Agreement, coupled with the additional commitments in the 2007 Amendment 1, and the 2008 Network Security Agreement, will continue to help ensure that the Agencies and other entities with responsibility for enforcing the law, protecting the national security and preserving public safety can proceed appropriately to satisfy those responsibilities.<sup>212</sup> The Agencies, therefore, have asked the Commission to condition the grant of authority to transfer control of Stratos Global upon Inmarsat's compliance with the September 23, 2008, Network Security Agreement, and Stratos Global's continued compliance with the 2001 Agreement and the 2007 Amendment No.1.<sup>213</sup>

#### K. Deadline for Closing the Transaction

81. Under Section 1.948(d) of the Commission's rules, transfers and assignments that require prior Commission approval must be consummated within 180 days of notice of public approval.<sup>214</sup> Under Section 25.119(f) of the Commission's rules, however, transfers of control involving earth station applications must be completed within 60 days from the date of authorization.<sup>215</sup> As we noted above, Inmarsat states that it does not intend to close this transaction until after April 15, 2009, which falls outside of the 60 day period established by Section 25.119(f) for purposes of consummating the earth station license transfer.<sup>216</sup> Inmarsat has requested the Commission consolidate the timeframe for closing with respect to all of the Stratos Licensees' various authorization types, and provide the applicants up to

<sup>208</sup> DOJ/DHS Petition to Adopt Conditions at 4.

<sup>209</sup> *Id.*

<sup>210</sup> *Id.* at 1-2.

<sup>211</sup> *Comsat Corporation d/b/a Comsat Mobile Communications*, 16 FCC Rcd 21661, 21714, ¶ 122.

<sup>212</sup> DOJ/DHS Petition at 4.

<sup>213</sup> *Id.* at 4-5.

<sup>214</sup> 47 C.F.R. § 1.948(d) (2008).

<sup>215</sup> 47 C.F.R. § 25.119(f) (2008).

<sup>216</sup> *See supra* ¶ 10.

180 days from the date of consent to consummate the transaction.<sup>217</sup> We will grant Inmarsat's request and extend the deadline for filing notice of consummation pursuant to Section 25.119(f). We will therefore require the Applicants to consummate this transaction within 180 days of notice of public approval.

#### IV. CONCLUSION

82. Upon review of the *Transfer of Control Application* and the record in this proceeding, we conclude that approval of this transaction is in the public interest. We find that the Application is not premature and that we need not wait for the parties to negotiate new contracts to act on the transfer of control. We further find that Vizada has not shown that Inmarsat has significant market power in the international mobile satellite services market or that its acquisition of Stratos Global would give it significant market power. Accordingly, we find no reason to impose competition conditions, such as structural separation, on Inmarsat. Based on our analysis under section 310(b)(4) of the Act, we conclude that it would not serve the public interest to prohibit the indirect foreign ownership of Stratos Global and its subsidiaries, subject to Applicants' compliance with their commitments to DOJ, FBI and DHS set forth in Appendix B.<sup>218</sup>

#### V. ORDERING CLAUSES

83. Accordingly, having reviewed the *Transfer of Control Application*, the petitions, and the record in this matter, and pursuant to authority delegated to the International Bureau in sections 0.261(a)(3) of the Commission's rules, 47 C.F.R. § 0.261(a)(3), and pursuant to sections 4(i) and (j), 214, 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), (j), 214, 309, 310(d), IT IS ORDERED that the *Transfer of Control Application* for consent to transfer control of the licenses and authorizations from Robert M. Franklin to Inmarsat plc is GRANTED, to the extent specified and as conditioned in this Memorandum Opinion and Order and Declaratory Ruling.

84. IT IS FURTHER ORDERED, pursuant to sections 4(i) and (j), and 310(b) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), (j), 310(b), and section 1.2 of the Commission's rules, 47 C.F.R. § 1.2, that the *Petition for Declaratory Ruling* requested by the Applicants is GRANTED to the extent set forth herein.

85. IT IS FURTHER ORDERED that this authorization and any licenses related to the *Application for Transfer of Control* are subject to compliance with the provisions of the Agreement attached hereto between Inmarsat on the one hand and the U.S. Department of Justice (DOJ) and the Department of Homeland Security on the other, dated September 23, 2008, which Agreement is intended to enhance the protection of U.S. national security, law enforcement, and public safety. Nothing in this agreement is intended to limit any obligation imposed by U.S. Federal law or regulation.

86. IT IS FURTHER ORDERED that the ownership and control information associated with the Accounting Authority certification of Stratos Mobile Networks, Inc., is updated to reflect the grant of the *Transfer of Control Application* and the consequent transfer of Stratos Mobile Networks, Inc., from the Trust to Inmarsat plc.

87. IT IS FURTHER ORDERED that the above grant shall include authority for Inmarsat plc to acquire control of (1) any license or authorization issued to Stratos Global or its subsidiaries during the Commission's consideration of the *Transfer of Control Application* or the period required for consummation of the transaction following approval and issuance of this Order; (2) construction permits held by such companies that mature into licenses after closing; and (3) applications filed by such

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<sup>217</sup> Application at 12, n.26.

<sup>218</sup> See *supra* ¶¶ 79-80.

companies after the date of the Transfer of Control Application and that are pending at the time of consummation of the proposed transfer of control.

88. IT IS FURTHER ORDERED that, pursuant to sections 4(i) and (j), 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), (j), 309, 310(d), the Petition to Deny filed *VIZADA SERVICES LLC ARE DENIED* for the reasons stated herein.

89. IT IS FURTHER ORDERED that this Memorandum Opinion and Order and Declaratory Ruling SHALL BE EFFECTIVE upon release. Petitions for reconsideration under section 1.106 of the Commission's rules, 47 C.F.R. § 1.106, may be filed within thirty days of the date of public notice of this order.

90. IT IS FURTHER ORDERED that that the deadline for consummation of the transaction, pursuant to 47 C.F.R. 25.119 (f) of the Commission's rules, IS EXTENDED, and that, within 180 days of public notice of approval of the transaction, the applicants shall notify the Commission by letter of the date of consummation and the file number of the applications involved in the transaction.

FEDERAL COMMUNICATIONS COMMISSION

Helen Domenici  
Chief, International Bureau

## APPENDIX A

## Authorizations and Licenses Included in the Transfer of Control Application

## I. INTERNATIONAL AUTHORIZATIONS

The following applications for consent to the transfer of control of international section 214 authorizations to Inmarsat plc have been assigned the file number listed below:

<u>File No.</u>	<u>Authorization Holder</u>	<u>Authorization Number</u>
ITC-T/C-20080618-00276	Stratos Holdings, Inc.	

## A. International Facilities-Based and Resale Services Authorizations:

ITC-214-20000426-00773  
 (Associated with ITC-MOD-  
 2004-0624-00241)  
 ITC-214-19980828-00591  
 ITC-214-19980326-00205  
 ITC-214-19980121-00028  
 ITC-214-20010220-00657  
 ITC-MOD-20040624-00241  
 ITC-214-20050826-00351

## B. Mobile Network Authorizations:

ITC-214-19981214-00859  
 ITC-214-19970924-00580  
 ITC-214-19970804-00455  
 ITC-214-19970627-00356  
 ITC-214-19961003-00481  
 ITC-214-19980130-00053  
 ITC-214-19910301-00010\*  
 (Formerly ITC-90-088)  
 ITC-214-19901030-00011\*  
 (Formerly ITC-91-012)  
 ITC-214-19910615-00009\*  
 (Formerly ITC-91-157)  
 ITC-214-19911206-00008\*  
 (Formerly ITC-92-058)  
 ITC-214-19911206-00007\*  
 (Formerly ITC-92-059)  
 ITC-214-19921026-00124\*  
 (Formerly ITC-93-013)  
 ITC-214-19921026-00123\*  
 (Formerly ITC-93-014)

ITC-214-19910201-00255\*  
 (Formerly ITC-93-141)  
 ITC-214-19931001-00254\*  
 (Formerly ITC-93-142)  
 ITC-214-19930511-00253\*  
 (Formerly ITC-93-188)  
 ITC-214-19950526-00034\*  
 (Formerly ITC-95-359)  
 ITC-214-19951001-00033\*  
 (Formerly ITC-95-565)  
 ITC-214-19951001-00032\*  
 (Formerly ITC-95-569)  
 ITC-214-19960101-00012\*  
 (Formerly ITC-96-041)

\* The above File Numbers for the section 214 authorizations marked with an \* are new numbers assigned under the IBFS system. The former number for each such authorization is shown below the new number.

**C. Offshore Services Authorizations:**

ITC-T/C-20080618-00275	Stratos Offshore Services Company	ITC-214-19991220-00815
		ITC-214-19980914-00636

**II. DOMESTIC AUTHORIZATION**

Applicants filed two applications for consent to transfer control of the domestic section 214 authority of Stratos Communications and Stratos Offshore from Robert Franklin, Trustee to Inmarsat. The first is for Stratos Communications, Inc., an indirect subsidiary of Stratos Global, which provides nationwide mobile satellite services where the originating and terminating points may both be in the United States. The second is for Stratos Offshore Services Company, a Stratos Communications, Inc. affiliate, which provides wireline services in the United States, primarily in the Gulf of Mexico region.

**III. SECTION 310(D) APPLICATIONS**

**A. Part 25-Satellite Earth Station, VSAT, and Space Station Authorization Applications**

The following applications for consent to the assignment and transfer of control of satellite earth station, VSAT, and space station authorizations from Robert Franklin (Trustee) to Inmarsat plc have been assigned the file numbers listed below:

<u>File No.</u>	<u>Licensee</u>	<u>Call Sign(s)</u>
<b>Mobile Earth Terminal Authorizations:</b>		
SES-T/C-20080618-00818	Stratos Communications, Inc.	E010050 E010049

E010048  
E010047  
E000180  
E050249

**B. Fixed Satellite Service (FSS) Authorizations:**

SES-T/C-20080618-00821	Stratos Offshore Services Company	E010263 E070189
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**C. Very Small Aperture Satellite (VSAT) Authorizations:**

SES-T/C-20080618-00820	Stratos Offshore Services Company	E950149
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**Earth Station on Board Vessels (ESV) Authorizations:**

SES-T/C-20080618-00819	Stratos Offshore Services Company	E980235 E070114
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**IV. PART 90-WIRELESS LICENSES**

The following application for consent to the transfer of wireless service licenses from Robert M. Franklin (Trustee) to Inmarsat plc has been assigned the file number listed below:

<u>File No.</u>	<u>Licensee</u>	<u>Lead Call Sign</u>
0003453455	Stratos Offshore Services Company	KD41151

**V. APPLICATION FOR ASSIGNMENT OF ACCOUNTING AUTHORITY STATUS**

<u>Form Number</u>	<u>Licensee</u>	<u>Lead Call Sign</u>
FCC 44	Stratos Mobile Networks, Inc.	US09

**APPENDIX B**

**EXHIBIT A**

**Network Security Agreement, dated September 23, 2008**

**AGREEMENT**

*This AGREEMENT ("Agreement") is made as of the Effective Date by and between Inmarsat Global Limited, a company organized under the laws of England and Wales and headquartered in London, England, and all of its Affiliates and subsidiaries including Inmarsat Hawaii Inc. (collectively, "Inmarsat"), on the one hand, and the U.S. Department of Justice ("DOJ") and the U.S. Department of Homeland Security ("DHS"), on the other hand (DOJ and DHS are referred to collectively as "the Government Parties," and all of the Parties to this Agreement are referred to collectively as the "Parties").*

**RECITALS**

WHEREAS, U.S. communications systems are essential to the ability of the U.S. government to fulfill its responsibilities to the public to preserve the national security of the United States, to enforce the laws, and to maintain the safety of the public;

WHEREAS, the U.S. government has an obligation to the public to ensure that U.S. communications and related information are secure in order to preserve the national security of the United States, protect the privacy of U.S. persons and to enforce the laws of the United States;

WHEREAS, it is critical to the well being of the nation and its citizens to maintain the viability, integrity, and security of the communication systems of the United States (*see, e.g.*, Executive Order 13231, Critical Infrastructure Protection in the Information Age, Presidential Decision Directive 63, Critical Infrastructure Protection, and Presidential Homeland Security Directive / HSPD-7, Critical Infrastructure Identification, Prioritization, and Protection);

WHEREAS, protection of Classified and Sensitive Information is also critical to U.S. national security;

WHEREAS, Inmarsat is a wholly-owned subsidiary of Inmarsat plc, a public company listed on the London Stock Exchange;

WHEREAS, Inmarsat maintains a global network consisting of geostationary communications satellites and earth stations, through which it will provide Broadband Global Area Network ("BGAN") Service to independent distributors who will in turn distribute such service to individual customers, and through which Inmarsat may also in the future distribute such services to its own customers;

WHEREAS, Inmarsat's BGAN Service enables users to send and receive data, voice, or other communications to and from mobile terminals from anywhere within the United States, and elsewhere;

WHEREAS, Domestic Communications sent and received via BGAN Service are, as of the date of this agreement, routed by Inmarsat's network from mobile terminals within the United States to Inmarsat satellites, and through Inmarsat earth stations currently located outside of the

United States, but are expected in the future to be routed through Inmarsat earth stations located in the United States;

WHEREAS, it is critical to the law enforcement, national security, and public safety interests of the United States government that such Domestic Communications, and any related Call Associated Data, Transactional Data, or Subscriber Information are made available pursuant to Lawful U.S. Process, including but not limited to the context of a real-time lawfully authorized Electronic Surveillance, within the United States in a timely, secure, and reliable manner;

WHEREAS, the cooperation and assistance of Inmarsat is necessary to ensure the above-mentioned critical interests, and to facilitate lawful access within the United States to certain information;

WHEREAS, Inmarsat holds an experimental authorization originally granted by the Federal Communications Commission ("FCC" or "Commission") on February 23, 2006, and which has subsequently been renewed, pursuant to which Inmarsat may conduct tests and demonstrations of BGAN Service; and

WHEREAS, Inmarsat's BGAN Service is also being provided in the U.S. by independent distributors, who originally received special temporary authorizations from the Commission in 2006 and 2007 (which have subsequently been renewed as necessary), and have pending applications for permanent authority;

NOW THEREFORE, the Parties are entering into this Agreement to address certain U.S. national security, law enforcement, and public safety concerns with respect to the provision or facilitation of BGAN Service in the United States.

#### ARTICLE 1: DEFINITION OF TERMS

As used in this Agreement:

1.1 "Affiliate" means any entity that Inmarsat owns or Controls.

1.1.A. "BGAN Service" means Broadband Global Area Network Service (or any successor service) that provides voice and broadband data service, accessed by MESs communicating with Inmarsat-4 satellites, which are communicating with Inmarsat land earth stations linked to terrestrial networks.

1.2 "Call-Associated Data" or "CAD" means any information relating to a communication or relating to the sender or recipient of that communication and includes, without limitation, subscriber identification, called party number, calling party number, start time, end time, call duration, feature invocation and deactivation, feature interaction, registration information, user location, diverted to number, conference party numbers, post cut-through dual-tone multifrequency (dialed digit extraction), in-band and out-of-band signaling, party add, drop and hold, and any other call-identifying information, as defined in 47 U.S.C. § 1001(2).

1.3 "Classified Information" shall have the meaning indicated in Executive Order 12958, as

amended by Executive Order 13292, or any successor executive order, or the Atomic Energy Act of 1954, or any statute that succeeds or amends the Atomic Energy Act of 1954.

1.4 “Control” and “Controls” mean the power, direct or indirect, whether or not exercised, and whether or not exercised or exercisable through the ownership of a majority or a dominant minority of the total outstanding voting securities of an entity, or by proxy voting, contractual arrangements, or other means, to determine, direct, or decide matters affecting an entity or facility; in particular, but without limitation, to determine, direct, take, reach or cause decisions regarding:

- (a) the sale, lease, mortgage, pledge, or other transfer of any or all of the principal assets of the entity, whether or not in the ordinary course of business;
- (b) the dissolution of the entity;
- (c) the closing and/or relocation of the production or research and development facilities of the entity;
- (d) the termination or non-fulfillment of contracts of the entity;
- (e) the amendment of the articles of incorporation or constituent agreement of the entity with respect to the matters described in Section 1.4(a) through (d); or
- (f) Inmarsat’s obligations under this Agreement.

1.4.A. “Customer Proprietary Network Information” or “CPNI” is defined in 47 U.S.C. § 222(h)(1).

1.5 “De facto” and “de jure” control have the meanings provided in 47 C.F.R. § 1.2110.

1.6 “DHS” means the U.S. Department of Homeland Security.

1.7 “DOJ” means the U.S. Department of Justice.

1.8 “Domestic Communications” means (a) Wire Communications or Electronic Communications (whether stored or not) originating at one U.S. location and terminating at another U.S. location, and (b) the U.S. portion of a Wire Communication or Electronic Communication (whether stored or not) that originates from or terminates at a U.S.-Licensed MES.

1.9 “Domestic Communications Infrastructure” means (a) transmission, switching, bridging and routing equipment (including software and upgrades) used by or on behalf of Inmarsat to provide, process, direct, control, supervise or manage Domestic Communications; (b) facilities and equipment used by or on behalf of Inmarsat that are physically located in the United States; and (c) facilities used by or on behalf of Inmarsat to control the equipment described in (a) and (b) above. Domestic Communications Infrastructure does not include equipment or facilities used by service providers other than Inmarsat or its Affiliates that are:

- (1) interconnecting communications providers; or

- (2) providers of services or content that are
- (A) *accessible using the communications services of Inmarsat or its Affiliates, and*
  - (B) *available in substantially similar form and on commercially reasonable terms through communications services of companies other than Inmarsat or its Affiliates.*

The phrase "on behalf of" as used in this Section does not include entities with which Inmarsat or any of its Affiliates has contracted for peering, interconnection, roaming, long distance, resale, or distribution of BGAN Service.

1.10 "Effective Date" means the date this Agreement has been duly signed by all of the Parties, unless otherwise specified herein.

1.11 "Electronic Communication" has the meaning given it in 18 U.S.C. § 2510(12).

1.12 "Electronic Surveillance" means (a) the interception of wire, oral, or electronic communications as defined in 18 U.S.C. §§ 2510(1), (2), (4) and (12), respectively, and electronic surveillance as defined in 50 U.S.C. § 1801(f); (b) access to stored wire or electronic communications, as referred to in 18 U.S.C. § 2701 *et seq.*; (c) acquisition of dialing, routing, addressing, or signaling information through pen register or trap and trace devices or other devices or features capable of acquiring such information pursuant to law as defined in 18 U.S.C. § 3121 *et seq.* and 50 U.S.C. § 1841 *et seq.*; (d) acquisition of location-related information concerning a service subscriber or facility; (e) preservation of any of the above information pursuant to 18 U.S.C. § 2703(f); and (f) access to, or acquisition, interception, or preservation of, wire, oral, or electronic communications or information as described in (a) through (e) above and comparable State laws.

1.13 [NOT USED].

1.14 "FCC" or "Commission" means the Federal Communications Commission.

1.15 "Foreign" where used in this Agreement, whether capitalized or lower case, means non-U.S.

1.16 "Governmental Authority" or "Governmental Authorities" mean any government, or any governmental, administrative, or regulatory entity, authority, commission, board, agency, instrumentality, bureau, or political subdivision and any court, tribunal, judicial, or arbitral body.

1.16.A. "Government Parties" means DOJ and DHS.

1.16.B. "Implementation Plan" is defined in Section 2.1 herein.

1.17 "Intercept" or "Intercepted" has the meaning defined in 18 U.S.C. § 2510(4).

1.18 "Lawful U.S. Process" means U.S. federal, state, or local Electronic Surveillance or other

court orders, processes, or authorizations issued under U.S. federal, state, or local law for physical search or seizure, production of tangible things, or access to or disclosure of Domestic Communications, Call Associated Data, Transactional Data, or Subscriber Information.

1.19 "MES" means a mobile earth station, a mobile earth terminal or "MET" (i.e., a hand-held, portable, or other mobile terminal capable of receiving and/or transmitting Wire Communications or Electronic Communications by satellite), and includes a mobile earth terminal capable of receiving and/or transmitting Inmarsat services.

1.20 "Non U.S.-Licensed MES" means an Inmarsat MES other than a U.S.-Licensed MES.

1.21 "Outsourcing Contract" means a contract between Inmarsat and an individual or entity to perform functions covered by this Agreement and related to Domestic Communications which are normally performed by employees of companies in the business of providing those communications services that Inmarsat provides. Outsourcing Contract also includes any contract to perform a specific activity that is required to be performed by Inmarsat under the express terms of this Agreement. The contractor designated by Inmarsat for operation of the U.S. POP required by this Agreement is referred to herein as the "Outsourcing Contractor."

1.22 "Party" or "Parties" have the meanings given them in the Preamble.

1.23 "Pro forma assignments" or "pro forma transfers of control" are transfers or assignments that do not involve a substantial change in ownership or control as provided by Section 63.24 of the FCC's Rules (47 C.F.R. § 63.24).

1.24 "Sensitive Information" means information that is not Classified Information regarding (a) the persons or facilities that are the subjects of Lawful U.S. Process, (b) the identity of the government agency or agencies serving such Lawful U.S. Process, (c) the location or identity of the line, circuit, transmission path, or other facilities or equipment used to conduct Electronic Surveillance pursuant to Lawful U.S. Process, (d) the means of carrying out Electronic Surveillance pursuant to Lawful U.S. Process, or (e) the type(s) of service, telephone number(s), records, communications, or facilities subjected to Lawful U.S. Process; as well as all other information that is not Classified Information but is designated in writing by an authorized official of a federal, state or local law enforcement agency or a U.S. intelligence agency as "Sensitive Information" of some type recognized by the agency involved. The designation "Sensitive" as used in this paragraph may refer to information marked or labeled "Official Use Only," "Limited Official Use Only," "Law Enforcement Sensitive," "Sensitive Security Information," "Sensitive but Unclassified," "Controlled Unclassified Information" or other similar designations, and all such information shall be deemed "Sensitive Information" for purposes of this Agreement.

1.25 "Subscriber Information" means information relating to subscribers or customers of Inmarsat of the type referred to and accessible subject to procedures specified in 18 U.S.C. § 2703(c) or (d) or 18 U.S.C. § 2709. Such information shall also be considered Subscriber Information when it is sought pursuant to the provisions of other Lawful U.S. Process.

1.26 "Transactional Data" means:

- (a) "call identifying information," as defined in 47 U.S.C. § 1001(2), including without limitation the telephone number or similar identifying designator associated with a Domestic Communication;
- (b) any information possessed by Inmarsat, or an entity acting on behalf of Inmarsat, relating specifically to the identity and physical address of a customer or subscriber, or account payer, or the end-user of such customer or subscriber, or account payer, or associated with such person relating to all telephone numbers, domain names, Internet Protocol ("IP") addresses, Uniform Resource Locators ("URLs"), other identifying designators, types of services, length of service, fees, usage including billing records and connection logs, and the physical location of equipment, if known and if different from the location information provided under (d) below;
- (c) the time, date, size, or volume of data transfers, duration, domain names, Media Access Control ("MAC") or IP addresses (including source and destination), URL's, port numbers, packet sizes, protocols or services, special purpose flags, or other header information or identifying designators or characteristics associated with any Domestic Communication, including electronic mail headers showing From: and To: addresses; and
- (d) as to any mode of transmission (including mobile transmissions), and to the extent permitted by U.S. laws, any information indicating as closely as possible the physical location to or from which a Domestic Communication is transmitted.

The term includes all records or other information of the type referred to and accessible subject to procedures specified in 18 U.S.C. § 2703(c) and (d) but does not include the content of any communication. The phrase "on behalf of" as used in this Section does not include entities with which Inmarsat has contracted for peering, interconnection, roaming, long distance, or resale of BGAN Service.

1.27 "United States," "US" or "U.S." means the United States of America, including all of its States, districts, territories, possessions, commonwealths, and the special maritime and territorial jurisdiction of the United States.

1.28 "U.S. LES" means a land earth station facility, located in any state of the United States, that is involved with the transmission of satellite communications and meets all other applicable requirements of this Agreement.

1.29 "U.S.-Licensed MBS" means an MBS licensed by the FCC to Inmarsat or Inmarsat's distributors and utilizing the Inmarsat network, including to provide Inmarsat services.

1.30 "U.S. POP" or "POP" means a point of presence located in the United States through which communications are routed for purpose of switching and at which Electronic Surveillance can be conducted, and meeting all other applicable requirements of this Agreement.

1.31 "Wire Communication" has the meaning given it in 18 U.S.C. § 2510(1).

1.32 "Inmarsat" means Inmarsat Global Limited, a company organized under the laws of England and Wales and headquartered in London, England, and all of its Affiliates and subsidiaries.

1.33 Other Definitional Provisions. Other capitalized terms used in this Agreement and not defined in this Article 1 shall have the meanings assigned them elsewhere in this Agreement. The definitions in this Agreement are applicable to the singular as well as the plural forms of such terms and to the masculine as well as to the feminine and neuter genders of such terms. Whenever the words "include," "includes," "including," or "such as" are used in this Agreement they shall be deemed to be followed by the words "without limitation."

## ARTICLE 2: INFORMATION STORAGE AND ACCESS

2.1 Implementation Plan. Certain of the rights and obligations of the Parties are set forth in further detail in an Implementation Plan dated \_\_\_\_\_, 2008 which is executed by all of the Parties and is hereby expressly incorporated in, and constitutes an integral part of, this Agreement. Wherever the term "Agreement" appears herein, it shall also be deemed to refer to and include the Implementation Plan.

2.2 Domestic Communications Infrastructure. Except to the extent and under conditions concurred in by the Government Parties in writing:

(a) Point of Presence. Inmarsat will ensure as specified in the Implementation Plan that transmitted Domestic Communications, and Call Associated Data, and Transactional Data related to Domestic Communications that are carried by or on behalf of Inmarsat are transmitted to or through a U.S. POP, at which Electronic Surveillance can be conducted pursuant to Lawful U.S. Process. Inmarsat will ensure that Inmarsat and/or its Outsourcing Contractor provides technical or other assistance to facilitate such Electronic Surveillance.

(b) Communications of a Non U.S.-Licensed MES. Inmarsat shall configure its network such that pursuant to Lawful U.S. Process, Electronic Surveillance of a Non U.S.-Licensed MES can be conducted in accordance with the Implementation Plan.

2.3 Compliance with Lawful U.S. Process. Inmarsat employees or agents in the United States, including the Outsourcing Contractor, shall have unconstrained authority to comply, in an effective, efficient, and unimpeded fashion, with Lawful U.S. Process. Such employees or agents will further have such authority with regard to the following, as applicable:

(a) the orders of the President in the exercise of his/her authority under § 706 of the Communications Act of 1934, as amended, (47 U.S.C. § 606), and under § 302(e) of the Aviation Act of 1958 (49 U.S.C. § 40107(b)) and Executive Order 11161 (as amended by Executive Order 11382); and

- (b) National Security and Emergency Preparedness rules, regulations and orders issued pursuant to the Communications Act of 1934, as amended (47 U.S.C. § 151 *et seq.*).

2.4 Information Storage and Access. Inmarsat shall make the following data and communications, if stored by or on behalf of Inmarsat for any reason, available in the United States:

- (a) Domestic Communications;
- (b) any Wire Communications or Electronic Communications received by, intended to be received by, or stored in the account associated with a U.S.-Licensed MES, or transmitted through a U.S. LES, or routed through a U.S. POP to or from a customer or subscriber of Inmarsat;
- (c) Transactional Data and Call Associated Data relating to Domestic Communications;
- (d) Subscriber Information concerning the customers and subscribers of services using U.S.-Licensed MESs, or who are known to be domiciled or holding themselves out as being domiciled in the United States, as well as Subscriber Information related to any Domestic Communication transmitted through a U.S. LES or routed through a U.S. POP; and
- (e) Billing records relating to customers and subscribers of services using U.S. Licensed MESs, or customers and subscribers who are known to be domiciled or are holding themselves out as being domiciled in the United States, as well as billing records related to any Domestic Communication transmitted through a U.S. LES or routed through a U.S. POP, for so long as such records are kept, in the event that Inmarsat has or otherwise maintains any such billing records.

The phrase "on behalf of" as used in this Section does not include entities with which Inmarsat has contracted for peering, interconnection, roaming, long distance, resale, or distribution of BGAN Service.

2.5 Restriction on Storage Outside the U.S. Inmarsat shall ensure that the data and communications described in Section 2.4 of this Agreement are not stored outside of the United States unless:

- (a) such storage is based strictly on *bona fide* commercial reasons weighing against storage in the United States; and
- (b) the required notice has been given to the Government Parties pursuant to Section 5.9 of this Agreement.

2.6 Avoidance of Mandatory Destruction. Inmarsat shall ensure that the data and communications described in Section 2.4 of this Agreement are stored in a manner not subject to mandatory destruction under any foreign laws, if such data and communications are stored by or on behalf of Inmarsat for any reason.

2.7 Billing Records. To the extent that any billing records are generated or maintained by Inmarsat relating to customers and subscribers of services using U.S. Licensed MESSs, Inmarsat shall store all such billing records for at least eighteen (18) months and shall make such records available in the United States.

2.8 Storage Pursuant to 18 U.S.C. § 2703(f). Upon a request made pursuant to 18 U.S.C. § 2703(f) by a Governmental Authority within the United States to preserve any information in the possession, custody, or control of Inmarsat, including any information that is listed in Section 2.4 above, Inmarsat shall store such preserved records or other evidence in the United States.

2.9 Compliance with U.S. Law. Nothing in this Agreement shall excuse Inmarsat from its obligation to comply with U.S. legal requirements, including those requiring the retention, preservation, or production of information, records, or data, those not to unlawfully intercept telecommunications or unlawfully access stored telecommunications, Chapters 119 and 121 of Title 18, United States Code, and the requirements of the Communications Assistance for Law Enforcement Act, 47 U.S.C. § 1001, *et seq.*

2.10 Customer Proprietary Network Information. With respect to Domestic Communications, Inmarsat shall comply with all applicable FCC rules and regulations governing access to and storage of Customer Proprietary Network Information ("CPNI"), as defined in 47 U.S.C. § 222(h)(1).

2.11 Storage of Protected Information. The storage of Classified and Sensitive Information by Inmarsat or its Affiliates shall be at an appropriately secure location in the United States or other secure location within the offices of a U.S. military facility, a U.S. Embassy or Consulate or other U.S. Government Authority.

### ARTICLE 3: SECURITY

3.1 Measures to Prevent Improper Use or Access. Inmarsat shall take all practicable measures to prevent the use of or access to Inmarsat's equipment or facilities to conduct Electronic Surveillance of Domestic Communications, or to obtain or disclose Domestic Communications, Classified Information, or Sensitive Information, in violation of any U.S. federal, state, or local laws or the terms of this Agreement. These measures shall include creating and complying with any policies and procedures as required by 47 C.F.R. § 1.20003, as applicable, and other appropriate written technical, organizational, and personnel-related policies and procedures, implementation plans, and physical security measures.

3.2 Disclosure of, or Access to, Domestic Communications and Information by Foreign Individuals, Entities, or Governments. Inmarsat shall not, directly or indirectly, disclose, permit disclosure of, or provide access to Domestic Communications, or Call Associated Data, Transactional Data, or Subscriber Information related to Domestic Communications to any Foreign individual (other than Inmarsat employees with a need to know) or entity, or Foreign Governmental Authority, or to any person in response to the legal process or request by a Foreign individual or entity, or Foreign Governmental Authority, without first satisfying all applicable U.S. legal requirements, and obtaining the express written consent of the Government Parties or the authorization of a court of competent jurisdiction in the United States, provided that Inmarsat may

respond to legal process issued by Foreign Governmental Authority without obtaining such consent or court authorization after determining that such response would not be prohibited by applicable U.S. law, and making the notification to the Government Parties required herein. Any such requests or submission of legal process shall be reported to the Government Parties no later than five (5) business days after its is received by Inmarsat. Inmarsat shall take reasonable measures to ensure that it will promptly learn of all such requests or submission of legal process.

**3.3 Disclosure of, or Access to, Certain Other Information by Foreign Individuals, Entities, or Governments.** Inmarsat shall not, directly or indirectly, disclose or permit disclosure of, or provide access to:

- (a) Classified or Sensitive Information;
- (b) Subscriber Information, Transactional Data, Call Associated Data, or a copy of any Wire or Electronic Communications, intercepted or acquired pursuant to Lawful U.S. Process; or
- (c) the existence of Lawful U.S. Process that is not already a matter of public record;

to any Foreign individual (other than Inmarsat employees who are authorized and have a need to know) or entity, or Foreign Governmental Authority, or to any person in response to the legal process or request by a Foreign individual or entity, or Foreign Governmental Authority, without first satisfying all applicable U.S. legal requirements, and obtaining the express written consent of the Government Parties or the authorization of a court of competent jurisdiction in the United States. Any such requests or submission of legal process shall be reported to the Government Parties no later than five (5) business days after its is received by Inmarsat. Inmarsat shall take reasonable measures to ensure that it will promptly learn of all such requests or submission of legal process.

**3.4 Points of Contact.** Within five (5) business days after the Effective Date, Inmarsat shall designate points of contact within the United States with the authority and responsibility for accepting and overseeing the carrying out of Lawful U.S. Process. The points of contact shall be assigned to an office of Inmarsat or its Outsourcing Contractor in the U.S., shall be available twenty-four (24) hours per day, seven (7) days per week, and shall be responsible for accepting service for Inmarsat and for maintaining the security of Sensitive and Classified Information and any Lawful U.S. Process. Inmarsat shall immediately notify the Government Parties in writing of the points of contact, and thereafter shall promptly notify the Government Parties of any change in such designation. The points of contact shall be resident U.S. citizens who are reasonably believed by Inmarsat to be eligible for appropriate U.S. security clearances. Inmarsat and its Outsourcing Contractor as applicable shall cooperate with any request by a U.S. Governmental Authority that a background check and/or security clearance process be completed for a designated point of contact.

**3.5 Security of Lawful U.S. Process, Classified and Sensitive Information.** Inmarsat shall ensure that its Outsourcing Contractor protects the confidentiality and security of all Lawful U.S. Process, Classified and Sensitive Information in accordance with U.S. Federal and state law or regulation.