March 25, 2009

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

NOTICE OF EX PARTE PRESENTATION

Dear Ms. Dortch:

Inmarsat plc ("Inmarsat") and Stratos Global Corporation ("Stratos") submit this *ex parte* letter to (i) summarize discussions on March 24 and 25 with the Commission staff listed on page 12 and (ii) address arguments raised by Vizada, Inc. and VIZADA Services LLC (collectively, "Vizada") in their Reply and recent *ex parte* filings.[1] In those March 24 and 25 meetings, Inmarsat was represented by Rupert Pearce and Diane Cornell, and outside counsel, John Janka and Barry Blonien; and Stratos was represented by Richard Harris, and outside counsel, Alfred Mamlet.

As has been the case throughout this proceeding, Vizada's filings are long on rhetoric but short on substance. Vizada persists in asserting that this transaction "would produce significant new concentration in various markets in the MSS industry," and also that Inmarsat "dominates" the market for mobile satellite services."[2] But the facts and the law show otherwise.

As an initial matter, no matter how the market is defined, this transaction simply does not result in increased concentration at any level: Stratos does not own or operate satellites, and Inmarsat does not provide retail sales of satellite services. Moreover, (i) robust competition exists and will continue to exist in the retail distribution of satellite services, (ii) Inmarsat will continue to use a variety of retail distributors, and (iii) there are no significant barriers to the emergence of new retail satellite service providers.

Vizada provides no new information that would warrant either revisiting the Bureau's determination that this transaction will have pro-consumer effects, or issuing a stay that would delay the anticipated closing of this transaction in mid-April. Vizada has not articulated any harm to competition (*i.e.*, to consumers) that would result from Inmarsat's acquiring one part of its own distribution network, particularly when a large number of independent retail providers of

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[1] *See* Vizada, Inc. and VIZADA Services LLC, Vizada's Reply to Opposition of Inmarsat and Stratos Global to Application for Review, IB Docket No. 08-143 (filed Mar. 17, 2009) ("Vizada Reply"); Vizada, Letter to Marlene H. Dortch (filed Mar. 12, 2009) ("Vizada Mar. 12 *Ex Parte* Letter"); Vizada, Letter to Marlene H. Dortch (filed Mar. 20, 2009) ("Vizada Mar. 20 *Ex Parte* Letter").

[2] Vizada Reply at 1; Vizada Mar. 20 *Ex Parte* Letter at 1.

Inmarsat services will continue to exist. Vizada simply attempts to delay this transaction to provide it with increased leverage in commercial negotiations over the continuation of Vizada's current distribution arrangement with Inmarsat, where Vizada seeks to obtain better commercial terms than anyone else—advantages that would tilt the playing field in Vizada's favor, and actually harm the intra-brand competition that Vizada purports to advance.

Moreover, as detailed below, Inmarsat faces intense and growing competition from other satellite services providers (especially VSAT providers) who today offer mobile broadband services with "all you can eat" service packages at price points that are competitive with Inmarsat's usage-based pricing. This transaction will permit Inmarsat to integrate vertically, in order to compete more effectively with other satellite operators who have long held the same type of mature distribution arm that Inmarsat seeks to acquire. In contrast, delaying the closing of this transaction would harm the public interest by hobbling Inmarsat with the continuation of its current, anachronistic distribution structure. Building a distribution arm from scratch would be an expensive, long-term project that Inmarsat simply would not commence while Stratos remains owned and controlled by a trust.

Allowing Inmarsat to vertically integrate on or about April 15, 2009 would immediately provide significant public interest benefits, including:

- accelerating the development of innovative products and services that would be made available to consumers, including the U.S. Government;
- allowing Inmarsat to ensure that wholesale price decreases are passed along to end users, rather than being retained by distributors like Vizada;
- reducing barriers to entry for new Inmarsat retailers, by allowing the vertically integrated company to open up to *everyone* in the retail distribution chain the land earth station (LES) infrastructure that historically has served to perpetuate the "gatekeeper" role of companies such as Vizada; and
- generating considerable transaction-specific efficiencies, including both reductions to infrastructure cost and increased operational efficiencies, which will benefit resellers as well as end users.

In short, the closing of this transaction will allow end users of Inmarsat services to immediately benefit in the form of lower prices, more responsive service, and increased availability and quality of satellite services.

Below, we briefly explain why Vizada's new information does not evidence market power and provide a detailed summary of the vibrant competition that Inmarsat faces. Next, we discuss Vizada's failure to address the key arguments made in Inmarsat's and Stratos's Opposition. Last, we discuss why Vizada's proposed relief is not warranted.

I. INMARSAT FACES VIBRANT COMPETITION FROM A VARIETY OF SOURCES

Vizada attempts once again to shift the focus of its argument and attaches to its Reply over 90 pages of extraneous material that Vizada claims is evidence of market power. This information includes statements made to investors that Vizada cites out of context and financial information that is irrelevant to a competition analysis. None of this new information contradicts anything in Inmarsat's filings, nor does it support Vizada's claim that Inmarsat has market power.

Vizada's repeated claim that Inmarsat maintains "persistent market power" in certain segments (such as maritime and aeronautical data services) is belied by the facts. If it were true that Inmarsat retained a dominant market position, then one would expect Inmarsat to maintain—if not improve—its position in the market vis-à-vis its competitors. As Inmarsat's competitors and industry analysts are quick to point out, however, Inmarsat has steadily been losing market share since the beginning of this decade.

MSS Operators

In recent presentations to its investors, Iridium, a competitive MSS operator, highlighted the significant decrease in Inmarsat's share of mobile satellite system operator revenues (compared to Iridium, Thuraya, Globalstar, MSV, and Orbcomm, but not including VSAT competitors). Compared with this limited group of MSS operators, Inmarsat's share decreased by 38% between 2001 and 2007, while Iridium's share grew from 9% in 2001 to 23% in 2007.[3] The very *Comsys Maritime VSAT Report* on which Vizada heavily relies similarly predicts that new offerings from Iridium, such as OpenPort, which is priced significantly lower than Inmarsat's Fleet 77 service, also will "blunt" the competitive effect of Inmarsat's new FleetBroadband offering, and will allow Iridium to capture even more revenues.[4] As Inmarsat and Stratos previously noted,[5] a 2008 report by TMF Associates (the same consulting company that submitted comments for Vizada) predicted that Iridium would "price itself at a discount to FleetBroadband pricing for occasional users,"[6] and stated that Inmarsat has an "increased risk of losing market share to Iridium's new OpenPort maritime broadband solution."[7]

Vizada attempts to dismiss the competitive threat that Iridium and Globalstar pose to Inmarsat because of the expected life of Iridium's current satellite network and the need of both companies to finance their next-generation satellites.[8] Those assertions are squarely rebutted by Vizada's consultant, Tim Farrar, and also by the *Comsys Report*, which explains that (i) the current Iridium constellation is expected to be in service until at least 2014, when Iridium NEXT will be launched, (ii) Iridium already has raised or is expected to have access to $2 billion of the $2.7 billion required for that next-generation system, and (iii) construction of Iridium NEXT is

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[3] *See* Iridium Presentation, *Iridium Enters the Public Markets via Combination with GHL Acquisition Corp.* at 21 (Sept. 2008), available at http://iridium.mediaroom.com/file.php/303/Iridium+Investor+Presentation+Final.pdf.

[4] *Comsys Maritime VSAT Report* 14–15 (1st ed. 2008) ("*Comsys Report*").

[5] *See* Inmarsat and Stratos, Letter to Marlene H. Dortch, Annex A at 3 (filed Dec. 17, 2008) ("Inmarsat and Stratos Dec. 17 *Ex Parte* Letter").

[6] TMF Associates, *MSS Industry Perspectives* 20 (Mar. 31, 2008) ("*MSS Industry Perspectives*").

[7] *Id.* at 30; *see also* Inmarsat and Stratos, Letter to Marlene H. Dortch at 6 (filed Oct. 9, 2008) ("Inmarsat and Stratos Oct. 9 *Ex Parte* Letter") (identifying additional facts supporting growing competition from Iridium).

[8] *See* Vizada Mar. 12 *Ex Parte* Letter, Attachment A at 5.

expected to begin this year.[9] Tim Farrar, President of TMF Associates, agrees that Iridium remains a vibrant competitor, recently concluding that GHL's acquisition of Iridium "proves that they can survive."[10] In response to news that Globalstar just received $574 million in financing to acquire and launch its next-generation satellite fleet that will support high-speed data services, the Wall Street Journal reports: "The announcement is likely to shake up the mobile satellite-services segment because 'everyone assumed Globalstar was the weakest player and wouldn't be able to build its system,' says Tim Farrar, a Northern California industry consultant. 'Now, there is more competition for the rest of them.'"[11]

As the Bureau correctly found, several other MSS operators besides Iridium and Globalstar currently provide services in competition with Inmarsat, including MSV and MSV Canada (now SkyTerra), Orbcomm, ACeS, Telecomunicaciones de Mexico, Informcosmos, Thuraya, Optus MobileSat, INSAT 3C, and N-Star.[12] Skyterra is scheduled to launch new satellites within the next two years that will provide unrivaled capacity for users and support voice and high-speed data services to Blackberry-like devices.[13] TerreStar is scheduled to launch a 2 GHz MSS system in May that will support voice and high-speed data services to similar devices.[14] ICO recently launched its 2 GHz MSS system, which similarly employs a state-of-the-art spacecraft that is capable of supporting a wide range of high-data-rate services.[15] As one industry analyst observed, these MSS operators have already "begun to eat into Inmarsat's market share," and there is every reason to believe that trend will continue when all of this new capacity becomes available to consumers.[16]

VSAT Providers

The intensity of competition has come not only from MSS satellite operators, but also from "a new generation of competitors that are providing C- and Ku-band VSAT offerings."[17] For example, as Comsys reports, "the number of VSAT operators who have installations at sea or now target the maritime market has grown dramatically from around ten a few years ago to

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[9] *Comsys Report* at 15.

[10] *$591 Million GHL Buy of Iridium Said to Prove It Can Survive*, Communications Daily at 5 (Sept. 24, 2008).

[11] Andy Pasztor, *Globalstar Secures Financing From France's Export Credit Agency*, Wall St. J. (Mar. 25, 2009).

[12] *See Robert M. Franklin, Transferor, and Inmarsat plc, Transferee: Consolidated Application for Consent to Transfer of Control*, DA 09-117, at ¶ 36 (rel. Jan. 16, 2009) ("*Step 2 Order*").

[13] *See* Stacey Higginbotham, *Satellite Player Skyterra Ready to Try Again*, GigaOM (Dec. 25, 2008), available at http://gigaom.com/2008/12/25/satellite-player-skyterra-ready-to-try-again.

[14] *See* Arianespace, Mission Update (Mar. 5, 2009), available at http://www.arianespace.com/news-mission-update/2009/577.asp.

[15] *See* ICO, News Release, *ICO Approved for Ancillary Terrestrial Component Use by FCC* (Jan. 15, 2009), available at http://investor.ico.com/releasedetail.cfm?ReleaseID=359524.

[16] Greg Berlocher, *Maritime Market: Signs Point to Strong Growth for Satellite Providers*, Via Satellite at 21 (Nov. 2008).

[17] *Id.*

over 80 today."[18] A number of industry analysts have observed that VSAT services are a "practical alternative" to Inmarsat services, and VSAT providers are specifically targeting "Inmarsat's bread-and-butter" maritime and business aviation customers, with an eye on Inmarsat's other industry customers as well.[19] Indeed, VSAT services are particularly attractive because of their unlimited, flat-rate pricing structure, which Inmarsat simply cannot offer, given its limited spectrum in the L-band. As Vizada's expert, TMF Associates, observed, "with the huge increase in usage that comes alongside flat-rate pricing . . . , Inmarsat would find it difficult if not impossible to offer such an option."[20]

Vizada tries to downplay the significance of VSAT services, arguing that VSAT is "limited to a distinct market (high bandwidth & higher cost)," and claiming that "VSAT will not compete for 95% of the users that are currently on MSS service."[21] That argument does not withstand scrutiny. VSAT services are very much price- and service-competitive with Inmarsat's services and employ terminals similar in size, with fixed-rate service plans at price points well within range of the "average monthly spend" that Vizada cites for Inmarsat customers.[22] KVH, for instance, markets a range of VSAT services with varying levels of bandwidth (starting at 64 kbps) and at fixed-rate service plans starting as low as $995 per month.[23] KVH's mini-VSAT service uses a terminal with a form factor similar to the Inmarsat FleetBroadband terminal. It is marketed as meeting the global needs of commercial merchant fleets and is targeted at tankers, cruise ships, ferries and large yachts.[24] In fact, just a few days ago, KVH announced the conversion of another maritime fleet operator to VSAT technology, citing the cost efficiency of the product, the ease of installation, and emphasizing that the equipment will operate alongside Inmarsat and other communications equipment.[25] Vizada similarly markets a range of VSAT services at fixed-rate service plans with retail prices as low as

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[18] *Comsys Report* at 8.

[19] *See, e.g.*, 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).

[20] *MSS Industry Perspectives* at 16.

[21] Vizada Mar. 12 *Ex Parte* Letter, Attachment A at 6.

[22] *See id.*

[23] *See* KVH, *KVH mini-VSAT Broadband Airtime Rate Sheet* (Jan. 2009), available at: http://www.mobilsat.com/marine-satellite-internet-andTV/Marine-internet/KVH/DS_TPV7_AirtimeRates-Jan-09.pdf.

[24] Thrane & Thrane, Press Release, *Thrane & Thrane in VSAT Partnership with KVH Industries* (Jan. 26, 2009), available at http://www.thrane.com/www,-d-,thrane,-d-,com/About/Press/SE%20Releases/SE%20Release/2008-2009/~/media/PDFs/Stock%20Exchange/2008_2009/nr1420090126uk%20pdf.ashx.

[25] *See Commercial Marine Operators Turning to KVH for Complete Satellite Communications Solution*, TMC News, (Mar. 23, 2009), available at http://www.tmcnet.com/usubmit/2009/03/23/4077262.htm; *see also* Inmarsat and Stratos Oct. 9 *Ex Parte* Letter (discussing use of redundant communications systems on marine and aeronautical vessels).

$1,600 per month (for 128kbps speeds).[26] MTN offers fixed-rate service plans starting at $2,850 per month (for 512kbps speeds).[27] ShipEquip offers similarly attractive flat-rate pricing.

Maritime Competition

These market trends are not limited to particular market segments, as Vizada contends.[28] In fact, Inmarsat has been experiencing downward competitive pricing pressure across all of its services. With respect to maritime services in particular, the *Comsys Report* recognizes that there has been “a major shift in the market that has been growing in momentum over the past three or four years.”[29] Inmarsat has steadily been losing market share to maritime VSAT providers, including to offerings by Vizada, the recognized leader in maritime VSAT.[30] Specifically, over the 2002–2007 time frame, (i) maritime VSAT revenues more than doubled from under $150 million to over $350 million, while (ii) Inmarsat’s maritime revenues grew only 20% from about $250 million to about $300 million.[31] TMF Associates predicts that “roughly equal shares of revenue growth in [the] maritime sector over the next five years will go to Inmarsat and VSAT.”[32] In fact, maritime VSAT revenues already exceed Inmarsat’s maritime revenues.[33]

According to Comsys, this fundamental shift will likely continue for the foreseeable future, because “fishing, leisure and military, have all begun to show real interest in the possibility of a broadband VSAT service to replace their use of expensive Inmarsat services and enhance the applications and capabilities they can bring to their business and, more importantly, their crew.”[34] Thus, Comsys concludes, “the critical question is whether and how Inmarsat is likely to respond to the growing competitive threat” in the maritime sector.[35]

Vizada’s attempt to take credit for the falling prices for Inmarsat’s maritime data services is plainly incorrect.[36] Vizada argues that intra-brand competition among Inmarsat’s distribution partners is the driving factor for the decline in prices, but prices have come down because VSAT providers have entered the competitive landscape and are offering unlimited, flat-rate services, which creates pricing pressure and also forces Inmarsat to identify new and innovative ways to

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[26] *See* Vizada WaveCall Rates, available at http://www.mobilsat.com/marine-satellite-internet-andTV/Marine-internet/SeaTel/index.htm; http://www.e3connect.tv/documents/Pricing_SP_WaveCall_Update_5_10_05.pdf.

[27] http://www.e3connect.tv/documents/MTNE3ConnectDirectNetVSATPlan051108.pdf.

[28] *See* Vizada, Application for Expedited Review at 8 (filed Feb. 17, 2009).

[29] *Comsys Report* at 13, 23.

[30] *Id.* at 23.

[31] *Id.* at 14.

[32] *MSS Industry Perspectives* at 19.

[33] *Comsys Report* at 14.

[34] *Id.* at 13.

[35] *Id.* at 14.

[36] Vizada Mar. 12 *Ex Parte* Letter, Attachment A at 8.

provide value to consumers in order to both retain its existing customer base and attract new customers—efforts that will be facilitated by allowing Inmarsat to have access to the same mature type of distribution channel as all of its competitors.[37] History demonstrates, in fact, that Inmarsat's investment in technology has enabled wholesale price decreases for mobile broadband services. As a result of Inmarsat's $1.5 billion investment in the new Inmarsat-4 series spacecraft, and its development of the new BGAN suite of services, the standard wholesale per MB rate for broadband service is about 50% lower than it was for an equivalent amount of throughput on Inmarsat's legacy (E&E) GAN service. Taking into account the volume discounts that are available to *all distributors* under Inmarsat's new distribution arrangement, the wholesale price can be as much as 70% lower than before.

Moreover, to the extent that intra-brand competition is a relevant consideration, such competition is facilitated by Inmarsat's revisions to its distribution arrangements, which are designed to ensure that all Inmarsat distributors compete on equal footing, and that all such distributors are rewarded based on their actual sales performance. Intra-brand competition is not facilitated by perpetuating the current situation where legacy distributors such as Vizada have anti-competitive advantages that they extracted in the Inmarsat privatization, including disproportionate volume discounts that they obtained by consolidating other Inmarsat distributors—advantages that deter other Inmarsat competitors from making the investment that is needed to develop their own customer bases.

Land Mobile and Aeronautical Competition

The record also shows that Inmarsat faces intense and mounting competitive pressure in the land mobile and aeronautical sectors, as the Bureau correctly found.[38] In addition to VSAT providers and other MSS providers, Inmarsat also competes in this service category against terrestrial-based solutions, such as Aircell,[39] and is unlikely to capture much revenue from the expanding demand for Internet access services. For example, in a report entitled "*The Outlook for Aeronautical Communications Services*," TMF Associates recognized that VSAT provides a very real alternative to Inmarsat's broadband aeronautical offerings and concluded: "[W]e expect that the Internet access market will be split between terrestrial and VSAT-based solutions."[40] Elsewhere, TMF Associates predicted that over the next several years, medium and large business jets represent "a key competitive opportunity for Inmarsat and VSAT-based

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[37] Vizada mistakenly portrays the number of installed Inmarsat marine terminals compared to the number of VSAT terminals as a measure of market performance. *See* Vizada Mar. 12 *Ex Parte* Letter, Attachment A at 6. As Comsys correctly recognizes, however, the number of installed maritime terminals is not a proxy for market power, or even an accurate reflection of the number of ships that a satellite operator services. *Comsys Report* at 10. As Inmarsat has explained before, and as Comsys confirms, ships often carry multiple satellite terminals to serve different communications needs, and may even carry three or more Inmarsat terminals. *See* Letter of Inmarsat plc and Stratos Global Corp., IB Docket No. 08-143 (filed Oct. 9, 2008) at 6–7; *Comsys Report* at 10.

[38] *See Step 2 Order* at ¶ 40 & n.111.

[39] *See* Aircell website at http://www.aircell.com.

[40] TMF Associates, *The Outlook for Aeronautical Communications Services* at 5 (Apr. 2008).

broadband services, while Iridium is likely to retain a strong position . . . ."[41] Similarly, J.P. Morgan (whose report Vizada also cites) concludes that MSS operators such as Inmarsat "face threats from other technologies notably GSM on land and Fixed Satellite Service (FSS) airborne," and predicts that "the longer Inmarsat takes to penetrate markets (*e.g.*, in-flight passenger and handset), the greater the risk of other technologies winning market share."[42] J.P. Morgan also notes that "[t]he expansion of terrestrial fixed and mobile networks [is] considered a threat to MSS operators,"[43] and characterizes the "land market" as "hotly contested."[44]

Other Factors

As detailed in Annex A, the other information Vizada attaches to its reply brief does not evidence market power, or contradict anything in Inmarsat's filings:

- That Inmarsat breaks down its business into various sectors (*e.g.*, maritime, aeronautical, land mobile) in its financial reports merely reflects the evolution of various business lines from Inmarsat's inception as a provider of maritime services, as well as Inmarsat's focus on selling to new types of customers. It is not an attempt to define the "market."

- Vizada egregiously mischaracterizes statements from an Inmarsat earnings call, including to suggest that Inmarsat will "use the acquisition of Stratos to weaken independent distributors' ability to earn volume discounts."[45] In fact, the transcript fully supports what Inmarsat has said all along—that the new distribution arrangement will benefit users (in the form of lower prices) and make the volume discounts evenly available to all distributors, including those distributors who do not have the same "sweetheart" deal that Vizada's PTT predecessors extracted when they served as gatekeepers to the Inmarsat system.

- Economic literature and case law flatly contradict Vizada's claim that EBITDA figures demonstrate market power. Accounting principles bear no relationship whatsoever to economic concerns of market power. Furthermore, other satellite operators who unquestionably lack market power have similar EBITDA margins (*e.g.*, Eutelsat, Intelsat, SES), which is not surprising given how capital intensive and risky the industry is. That Vizada has lower margins than satellite operators is easily explained by the fact that Vizada has not invested billions of dollars in the design, construction, and launch of satellite networks, and in fact simply resells satellite services "without major enhancements," as the Bureau found.[46]

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[41] *MSS Industry Perspectives* at 9.

[42] J.P. Morgan, Report, *Inmarsat plc: Strong Cash Generation Offsets Lack of Maritime Visibility, Initiating Coverage with Neutral* at 4 (Jan. 20, 2009).

[43] *Id.* at 12.

[44] *Id.* at 10.

[45] Vizada Reply, Appendix A at 5.

[46] *Step 2 Order* at ¶ 27.

II. VIZADA FAILS TO IDENTIFY ANY ERROR IN THE BUREAU'S DECISION AND COMPLETELY IGNORES KEY ARGUMENTS RAISED IN OPPOSITION

Vizada's Reply ignores nearly all of the points that Inmarsat and Stratos raised in their Opposition. As Inmarsat and Stratos explained,[47] the Bureau correctly applied Commission precedent and determined that the market includes all mobile satellite services. Vizada makes no attempt in its Reply to explain how its proposed narrow market definition can be reconciled with Commission precedent (including the *Step 1 Order*),[48] in which the Commission has consistently defined the market to include all mobile satellite services, and has found that robust competition exists. DOJ has also reviewed this transaction and similarly determined that it raises no competitive concerns.

More fundamentally, Vizada fails to explain any plausible theory of competitive harm that could arise from this *vertical* transaction. Regardless of how the market is defined, this transaction will not increase concentration at either the wholesale or the retail level.[49] As Inmarsat and Stratos have explained, the circumstances in which a vertical transaction might give rise to competitive concerns are simply not present here, regardless of how broadly or narrowly one might define the market.[50]

It is both counterintuitive and illogical to suggest that a satellite services provider would do anything that would harm the distribution of its own product, and Vizada has provided no response to this key point. Vizada's contends that "competition and the public interest will suffer immediate irrevocable injury" if this transaction closes,[51] but to this day Vizada has never adequately explained how consumers will be negatively affected, or how the asserted harms impact anyone but Vizada. Vizada has never argued that this transaction would negatively impact the ability of other satellite operators to reach consumers, nor has Vizada contested the Bureau's determination that distributors such as Vizada simply resell Inmarsat's services "without major enhancements";[52] that is, Vizada does *not* use Inmarsat's services as an "input" for *some other* product or service.

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[47] *See* Inmarsat and Stratos Opposition to Vizada Application for Review at 5–11 (filed Mar. 17, 2009) ("Inmarsat and Stratos Opposition").

[48] *See also id.* (collecting other decisions in which the Commission defines the market broadly to include all mobile satellite services).

[49] Vizada repeats its unfounded claim that this transaction involves the elimination of "actual potential" horizontal competition and incorrectly asserts that Inmarsat and Stratos "offer[ed] no substantive response" to that argument. Vizada Reply at 3 n.2. In fact, Inmarsat and Stratos explained in detail why Vizada's attempt to characterize this transaction as raising horizontal concerns must fail. *See* Inmarsat and Stratos Opposition at 20–21. Specifically, the very characteristics that Vizada identified as relevant to show "actual potential" competition (concentrated market, high barriers to entry, and few likely entrants) are plainly not present here.

[50] *See id.* at 19–22.

[51] Vizada Reply at 4.

[52] *Step 2 Order* at ¶ 27.

Vizada also makes no attempt to explain how the alleged harms are specific to this transaction. Nor does Vizada show that its concerns about non-discrimination and confidentiality would not be adequately protected by the contractual provisions to which Inmarsat has already agreed in its distribution agreements with the vast majority of its other distributors, which are the very same terms Inmarsat has offered to Vizada. Indeed, contractual protections addressing non-discrimination and confidentiality are routine features of any communications provider's relationship with multiple distributors, and there is no reason why such provisions would not work effectively in this context as well. The Commission has found such contractual provisions sufficient, time and time again.[53]

Vizada holds on to the desperate hope that, by delaying this transaction, it can retain the preferential treatment it receives under its existing contractual arrangement, which benefits no one but Vizada, instead of accepting the same commercial terms to which many other Inmarsat distributors have agreed in arm's-length negotiations. As Inmarsat has explained, and as the Bureau has found, the pro-competitive changes in Inmarsat's distribution arrangements include making volume discounts uniformly available to all of its distributors, not just a few entities who inherited the preferential arrangements extracted by the PTTs who once owned Inmarsat and served as gatekeepers to the Inmarsat system. Moreover, those changes will occur independent of this merger (a point Vizada does not contest in its reply).

III. VIZADA'S PROPOSED RELIEF IS UNNECESSARY AND INAPPROPRIATE

Because there will be no harm to competition as a result of this merger, there is no reason to withhold from consumers the immediate benefits that this transaction will produce, particularly when the only reason that Vizada seeks delay is to hold out for better terms than the vast majority of other Inmarsat distributors already have accepted. Additional fact-finding is unwarranted, because, as detailed above, the record sufficiently demonstrates that the market is competitive and this transaction is pro-competitive. And Vizada's suggestion that the Commission should stay this transaction is entirely without merit.

As an initial matter, Vizada has not cited a single case where the Commission has stayed its approval of a transaction pending reconsideration or review. Moreover, as discussed above and in earlier filings, DOJ and the Commission have already rejected Vizada's assertions of harm and determined that the market is competitive at Step 1 of this transaction. Vizada cannot show that the Bureau's decision was a dramatic departure from Commission precedent or rules. In short, there is no reason under the circumstances to take such an unprecedented step, particularly given the signal such a change in course would send to the securities markets, where both Inmarsat and Stratos financial instruments trade.

It is simply not the case that a stay would impose no harm. Vizada waited almost two months before even suggesting a stay (and still has not formally requested one). If Vizada truly

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[53] *See Hughes Communications, Inc.*, 12 FCC Rcd 7534, 7543 ¶ 28 (1997) (ruling that contractual protections concerning proprietary information were sufficient); *see also Verizon Communications Inc. and MCI, Inc.: Applications for Approval of Transfer of Control*, 20 FCC Rcd 18433, 18510 ¶ 148 n.431 (2005) (holding that, if parties are concerned about affiliates sharing confidential information, "they should be able to negotiate an appropriate arrangement with a competitive provider"); *SBC Communications Inc. and AT&T Corp.: Applications for Approval of Transfer of Control*, 20 FCC Rcd 18290, 18370 ¶ 149 n.439 (2005) (same).

believed there was a need for such extraordinary relief, it should have immediately sought that relief. In the meantime, Inmarsat and Stratos have already devoted considerable resources in anticipation of closing in the mid-April timeframe.

More importantly, a stay would deprive consumers (including U.S. Government users) of the benefits, described above, that would immediately follow from this transaction. Inmarsat has been hobbled from competing on a level playing field by anachronistic distribution limitations that were put in place by the PTTs who owned Inmarsat and insisted on retaining a gatekeeping role as part of Inmarsat's privatization. Until this transaction moves forward, neither consumers nor other distributors will receive the immediate benefits that will follow when Inmarsat is finally able to distribute its services in the same manner as every one of its competitors. It would make no sense for Inmarsat to initiate building its own distribution arm pending a final Commission resolution, and so everything would remain in suspended animation—which is precisely what Vizada is hoping will happen in order to maximize Vizada's leverage in its pending negotiations with Inmarsat.

There is no basis whatsoever to support Vizada's claims of irreparable harm to itself, or more important, to the public. Under any circumstances, a robust network of retail distributors of Inmarsat services will exist. Moreover, Vizada has not identified a single instance where Inmarsat has ever engaged in the sort of conduct that Vizada alleges will occur after this transaction—not even while Stratos has been in trust. Similarly, Vizada has never even disputed the efficacy of the contractual provisions in Inmarsat's distribution agreements that protect confidentiality and ensure nondiscrimination. As the Commission previously recognized,[54] those types of provisions are already in place in Vizada's existing distribution arrangement; moreover, they have protected Vizada as it has pursued and won significant new customers. Many other distributors have already entered into new distribution arrangement with Inmarsat after arms-length negotiations, further confirming that these terms are reasonable and ensuring that vibrant competition will remain at the retail level after this merger. Furthermore, the Commission has asserted continuing oversight authority over satellite distribution arrangements, and could address any issues should they arise. Moreover, Vizada's proposed structural separation remedy would negate the very benefits of this vertical transaction—improved coordination in the provision of satellite services, and more responsiveness to customer needs.

In sum, there is no reason why this transaction should not be allowed to move forward. The Commission should affirm the Bureau's decision without conditions and deny Vizada's Application for Review.

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[54] *See Stratos Global Corporation, Transferor, and Robert M. Franklin, Transferee: Consolidated Application for Consent to Transfer of Control*, 22 FCC Rcd 21328, 21355 ¶ 62 (2007)

Respectfully submitted,

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Annex A

Reported EBITDA Figures Do Not Evidence "Market Power"

- Vizada's claim that Inmarsat's reported EBITDA "is evidence of unusual and sustained market power"[1] fails for several reasons.
  - First, it is widely recognized that the concept of *accounting profit* bears no meaningful relationship to market power: "[T]here is no way in which one can look at accounting rates of return and infer anything about relative economic profitability or, *a fortiori*, about the presence or absence of monopoly profits."[2]
  - Second, EBITDA is not an meaningful measure of profitability in the capital intensive satellite industry because it simply does not account for the cost of capital. That Vizada (a distributor of satellite services) has lower EBITDA margins than a satellite operator is understandable, given that Vizada did not invest billions of dollars in building and maintaining a fleet of satellites, and did not have to face the significant risks associated with constructing and launching satellites.
  - Third, Inmarsat's reported EBITDA is in line with reported financial results of other satellite operators, including FSS operators that are subject to intense competition, as the Commission has found in its most recent annual report on competition in the satellite industry:[3]

Company	Revenues	EBITDA	EBITDA as % of Revenues
Eutelsat	€463.5M[4]	€375.1M	80.9%
SES	€1.63B	€1.10B	67.5%
Intelsat, Ltd.	$2.36B	$1.86B[5]	78%
Inmarsat plc	$634.7M[6]	$431.6M	68%

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[1] Vizada Reply, Appendix A at 1.

[2] Franklin M. Fisher & John J. McGowan, *On the Misuse of Accounting Rates of Return to Infer Monopoly Profits*, 73 Am. Econ. Rev. 82, 90 (1983); *see also generally* Dennis W. Carlton & Jeffrey M. Perloff, *Modern Industrial Organization*, 247–48 (4th ed. 2005) (discussing critical differences between economic profit and accounting profit); Geoffrey A. Manne & E. Marcellus Williamson, *Hot Docs vs. Cold Economics: The Use and Misuse of Business Documents in Antitrust Enforcement and Adjudication*, 47 Ariz. L. Rev. 609, 628–33 (2005).

[3] *See Second Annual Report and Analysis of Competitive Market Conditions with Respect to Domestic and International Satellite Communications Services*, Second Report, IB Docket No. 07-252, FCC 08-247 at ¶ 99 (rel. Oct. 16, 2008).

[4] Eutelsat's reported revenue covers the period from July 1 to Dec. 31, 2008.

[5] Intelsat's reported adjusted EBITDA excludes certain unusual items and certain other expense items.

[6] Inmarsat's reported numbers reflect its "core" EBITDA, excluding Stratos Global Corp.

Business Descriptions Are Not Evidence of Economic Product Markets

- Vizada's references to Inmarsat's financial reports and statements to investors do not support the existence of the narrow sub-markets that Vizada proposes.

    - That Inmarsat describes various "market" segments in its financial reporting and earnings calls is irrelevant to a competitive effects analysis. Inmarsat's reports merely reflect the evolution of various business lines from Inmarsat's inception solely as a provider of maritime services, and its focus on reaching new types of customers. As Inmarsat explained in its earlier filings, and as Vizada's own consultant acknowledged, the term "market" is often used in the business world in a manner completely different than the meaning ascribed by the DOJ/FTC Guidelines (*i.e.*, products that are demand-side substitutes).[7]

    - Courts and commentators recognize that a company's casual remarks regarding "market" characteristics do not define an economic market for purposes of competition law.[8]

Vizada Relies on Statements Taken Out of Context

- In a failed effort to find support for its arguments, Vizada misconstrues the information provided in its sources. For instance:

    - Vizada cites a Financial Times article and contorts a quote from Inmarsat's CEO Andrew Sukawaty to suggest that Inmarsat conceded that consumers have no alternatives to Inmarsat's services.[9] As the article makes clear, however, Mr. Sukawaty was describing generally the importance of satellite services where there is no existing terrestrial-based telecommunications infrastructure, and was not discussing Inmarsat's competitors in the provision of mobile satellite services.

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[7] *See* Inmarsat and Stratos Oct. 9 *Ex Parte* Letter at 3–4.

[8] *See, e.g.*, *Rothery Storage & Van Co. v. Atlas Van Lines, Inc.*, 792 F.2d 210, 219 (D.C. Cir. 1986) (holding that comments by company agents discussing "distinct market areas" and "geographic and product markets" are not "evidence of anything," particularly not "evidence that the industry recognized some specific submarket as a 'separate economic entity'"); *Nobel Scientific Indus., Inc. v. Beckman Instruments, Inc.*, 670 F. Supp. 1313, 1318–19 (D. Md. 1986) (rejecting as irrelevant the companies' "casual use ... of the term 'market' in their ordinary business reports and strategy papers," because "the fact that a company may refer to a 'market' does not necessarily mean that its reference will be to a market for purposes of the Sherman Act"), *aff'd* 831 F.2d 537 (4th Cir. 1987); *see also* Manne & Williamson, *supra* n.2 at 633–645.

[9] *See* Vizada Reply, Appendix A at 3.

- Vizada mischaracterizes Mr. Sukawaty's response to a question regarding the growth of new terminals by competitors. Mr. Sukawaty explained that much of the reported terminal growth involves low-data-rate services, which Inmarsat does not report in terms of individual subscribers.[10] He *did not* state that the terminal growth numbers "did not reflect significant competition in revenue-producing maritime services," as Vizada falsely claims.[11] In fact, as explained in the main body of this submission, Inmarsat's competitors (such as Iridium and VSAT) have taken a greater share of revenue, and many analysts expect this trend will continue.

- Vizada mischaracterizes Inmarsat's earnings call and claims that Mr. Sukawaty's statements demonstrate that Inmarsat will "use the acquisition of Stratos to weaken independent distributors' ability to earn volume discounts."[12] In fact, the transcript supports the proposition that Inmarsat's customers and other distributors will directly benefit from the new distribution terms. Specifically, Inmarsat stated that it intends to pass along approximately one-third of the savings to its customers in the form of lower prices, and another one-third of the savings will be "distributed across all the distributors, not in this sort of unbalanced way, with a highly disproportionate amount going to a couple of the largest distributors."[13]

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[10] *Id.*, Appendix G at 16.

[11] *Id.*, Appendix A at 4.

[12] *Id.* at 5.

[13] *Id.*, Appendix G at 12; *see also* Opposition of Inmarsat to Vizada Petition to Deny at 21 (describing intended use of savings from eliminating legacy volume discount).