



Hogan & Hartson LLP  
Columbia Square  
555 Thirteenth Street, NW  
Washington, DC 20004  
+1.202.637.5600 **Tel**  
+1.202.637.5910 **Fax**

[www.hhlaw.com](http://www.hhlaw.com)

March 31, 2009

David J. Saylor  
Partner  
+1.202.637.8679  
djsaylor@hhlaw.com

**BY ELECTRONIC FILING**

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, DC. 20554

**Re: Transfer of Control of Stratos Global Corporation and its  
Subsidiaries to Inmarsat, plc, IB Docket No. 08-143, DA 08-1659**

FCC File Nos. ITC-T/C-20080618-00275, ITC-T/C-20080618-00276,  
ITC-T/C-20080618-00818, ITC-T/C-20080618-00819, ITC-T/C-  
20080618-00820, ITC-T/C-20080618-00821, ISP-PDR-20080618-00013,  
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*Ex Parte* Presentation

Dear Ms. Dortch:

Vizada, Inc. and VIZADA Services LLC (together, “Vizada”) submit this response to new arguments and factual assertions of Inmarsat plc (“Inmarsat”) and Stratos Global Corporation (“Stratos”), set forth in their *ex parte* letter of March 25, 2009.

If nothing else, Inmarsat’s March 25 submission underscores the need for an impartial factual investigation by the Commission, while the effectiveness of the International Bureau’s January 16, 2009 Order is stayed to prevent irreparable harm. Facts are stubborn things. They trump rhetoric every time.

Several things about Inmarsat's March 25, 2009 paper deserve special note:

- The *ex parte* paper fails to address (much less refute) JP Morgan's analysis that Inmarsat has a 70% share of the maritime business and an 80% share of the aeronautical business. Inmarsat's *ex parte* provides no alternative share estimates whatsoever for those major markets (or submarkets thereof), or any other markets.
- Nor does the *ex parte* submission successfully explain away Inmarsat's assertions to the investment community that these two sectors (as well as land mobile) have distinctly different "demand drivers" – which is the defining characteristic of economically separate relevant product markets. (The *ex parte* even concedes that relevant markets *must* be defined from the *demand* side.) Quite obviously, then, Inmarsat's continued insistence to this Commission that the only relevant market is all MSS services in the aggregate cannot be reconciled with Inmarsat's repeated contrary representations to the financial community.
- Inmarsat repeatedly emphasizes to investors and analysts (March 12 call) that it achieved a high EBITDA (68%) relative to revenues in 2008 and expects an even higher profit margin (70%) in 2010. But Inmarsat's *ex parte* paper avoids confronting the fact that such profits are largely attributable to Inmarsat's consistently high wholesale prices – prices Inmarsat could not maintain absent dominance of most MSS markets.
- It is telling that Inmarsat's *ex parte* offers no alternative measure of profitability to EBITDA-as-a-percent-of-revenues, suggesting by implication that other measures would *also* show high profits. Moreover, Inmarsat conveniently ignores the fact that other MSS operators – which lack market power – naturally have far weaker profit performances. (For example, Iridium's February 26, 2009 press release regarding 2008 results reported operational EBITDA of \$108.2M, which was only 33.7% of \$320.9M revenues. Globalstar has had to seek an extension from the SEC on reporting its full 2008 performance. But that MSS operator's November 10, 2008 press release reported an operating loss for the first 9 months of 2008, adjusted EBITDA of negative \$8.6M on \$67.7M total revenues.)
- Inmarsat's *ex parte* runs away from the fact that, in lieu of entering the distribution market *de novo* or even acquiring a smaller distributor, Inmarsat here seeks to end the independence of the largest distributor of its and several other operators' services – immediately and significantly enhancing the combined firm's incentives and ability to discriminate profitably against all other Inmarsat distributors who until now have

provided customers with the full benefits of intra-brand and inter-brand competition.

- Despite claiming a single all-encompassing MSS relevant market, Inmarsat's *ex parte* fails to show, for instance, that mobile maritime users turn to aeronautical offerings as alternatives, or that remote land-based users of MSS switch to maritime products in the face of a price increase. Nor does Inmarsat show that broadband users consider voice or lower speed data services adequate alternatives.
- Instead, Inmarsat's *ex parte* letter points to a grab bag of VSAT offerings that may possibly be competitive but only for certain Inmarsat customers in certain specific situations in certain geographies, and then leaps to the unsupported conclusion – totally refuted by Inmarsat's statements to investors and analysts – that VSAT alternatives constrain Inmarsat across the board. Put simply, the availability of large, expensive, dedicated VSAT broadband service for one customer group does not create competition in the market for thousands of significant customers who need a less expensive usage-based narrow-band service, the service Inmarsat dominates (as it consistently tells the investment community).
- Inmarsat's *ex parte* argues that concerns about confidentiality and discrimination can be acceptably resolved in private contract negotiations between Inmarsat and independent distributors – which might be true *if Inmarsat lacked market power and this merger did not create anticompetitive incentives and opportunities to capitalize on those incentives*. But given Inmarsat's dominant position in key MSS markets, private negotiation cannot substitute for Commission-enforced requirements designed to prevent harm to customers and the competitive dynamic from MSS-dominant Inmarsat acquiring the largest distributor of its services.
- Inmarsat's *ex parte* alleges that Vizada is trying to preserve a legacy market. This is false. Vizada knows change has arrived and Inmarsat can become its own distributor for traditional services on April 15. Vizada, however, does not confuse that development with the altogether different and anticompetitive proposition of Inmarsat acquiring its largest distributor, giving Inmarsat the incentive and ability to drive competition out of the heretofore competitive distribution markets through discrimination, misuse of critical or proprietary information, and other anticompetitive strategies.

It is perfectly clear why Inmarsat does not want a Commission inquiry – based on hard facts and relevant internal documents – regarding its highly profitable dominance of

the MSS industry. No such inquiry has been conducted since Inmarsat was privatized a decade ago. But this is the time for that inquiry to be done, before Inmarsat is allowed to use this critical Stratos transaction to entrench irreversibly its overwhelming position in multiple MSS markets and eliminate the benefits of competition.

The Inmarsat March 25 *ex parte* is equally barren of any concrete fact or plausible argument to show why the Commission should not preserve the *status quo* while it conducts promptly (and with Vizada's pledge of full cooperation) an investigation and analysis of critical MSS industry facts as would be found primarily in the parties' own documents and data.

- In its Application for Expedited Review Vizada raised serious questions going to the merits of the Bureau Order, which Inmarsat's *ex parte* failed to rebut.
- Vizada showed that immediately upon consummation the combination of Inmarsat and Stratos will cause immeasurable and irreparable harm to the competitive process, through information misuse, discrimination, and the like.
- While asserting self-servingly that an investigation would show Inmarsat lacks market power and the transaction could generate efficiencies that might some day allegedly lead to lower rather than higher retail prices, Inmarsat has not shown any immediate concrete injury to the public interest occasioned by a short stay and prompt fact investigation.
- Inmarsat asserts a stay of the Bureau Order while an investigation is conducted would "send" a "signal" to "the securities markets affecting trades for Inmarsat and Stratos financial instruments." Surely the Commission can never base its public interest rulings upon speculation as to how a short stay and fact investigation might possibly affect trades in regulated companies' securities.

In conclusion, the Commission should disregard the substance of Inmarsat's *ex parte* letter, grant the Application for Expedited Review, and impose the requisite stay so that a prompt investigation in the public interest may move forward with expedition and without any irreparable damage to the *status quo*.

Respectfully submitted,

VIZADA, Inc. and VIZADA Services LLC

By: \_\_\_\_\_/s/\_\_\_\_\_

Peter A. Rohrbach  
David J. Saylor  
Karis A. Hastings  
Kimberly S. Reindl

Its Attorneys

cc: Paul Murray  
Angela Giancarlo  
Renee Crittendon  
John Giusti  
Jerry Duvall  
Jim Ball  
David Strickland  
Mark Uretsky  
John Copes  
Karl Kensinger  
Jim Bird  
Neil Dellar  
Joel Rabinovitz  
Virginia Metallo  
Erin McGrath  
John P. Janka  
Barry J. Blonien  
Diane J. Cornell  
Alfred M. Mamlet  
Richard E. Harris