

April 6, 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**

***EX PARTE PRESENTATION***

Dear Ms. Dortch:

Inmarsat plc (“Inmarsat”) and Stratos Global Corporation (“Stratos”) submit this *ex parte* letter in response to the letter that Vizada, Inc. and VIZADA Services LLC (collectively, “Vizada”) filed with the Commission on March 31, 2009.

Consistent with its trend throughout this proceeding, Vizada fails to respond to Inmarsat’s and Stratos’ arguments, misstates or ignores record evidence, and completely disregards cited precedent. Vizada does not demonstrate that the Bureau erred in its decision, or that Vizada will likely succeed on the merits of its Application for Review.

- The businesses of Inmarsat and Stratos do not overlap and this transaction will not result in increased concentration at either the wholesale or the retail distribution level, regardless of how one defines the market. Vizada has never challenged that fact.
- Vizada fails to articulate how this purely vertical transaction would harm competition (*i.e.*, consumers) *under any market definition*, particularly when Inmarsat and Stratos have repeatedly shown (and Vizada has failed to rebut) the following points, each of which supports the Bureau’s decision and undercuts Vizada’s assertions:
  - Healthy and vibrant competition in the resale of satellite services exists now, and will continue to exist after this transaction, with respect to both Inmarsat’s services and the services of its MSS and FSS satellite operator competitors.
  - There are no significant barriers to the emergence of new satellite services resellers.
  - This transaction will not impact the ability of other satellite operators to reach consumers.

- No user of Inmarsat services, no Stratos or Vizada customer, no reseller (except Vizada), and no satellite operator has expressed any concerns with this transaction.
- Every regulator that has reviewed the transaction has determined that it does not raise competitive concerns and should be allowed to proceed (including the Department of Justice, which did not issue a second request).
- More specifically, there is no support for Vizada’s claim that this transaction would somehow harm intra-brand competition:
  - Vizada does not use Inmarsat service as an “input” for some other product, but merely resells Inmarsat service as a “turnkey” communications solution, without making any major enhancements (as the Bureau correctly found).
  - Inmarsat will continue to use a variety of resellers, many of whom already have entered into new distribution agreements on the very same arm’s-length terms offered to Vizada.
    - Inmarsat has signed long-term agreements with entities who currently account for the resale of approximately 90% of its revenues (not counting Vizada).
  - It would be illogical for Inmarsat to lessen “intra-brand” competition by sabotaging the distribution of its own product.
  - To the contrary, it is Vizada’s attempt to retain anticompetitive advantages under its legacy distribution arrangement (which would lessen the incentive for other resellers to develop their own customers) that could dampen such competition.
- It is flatly untrue that the Commission has not inquired about the competitiveness of the mobile satellite services industry in over a decade.
  - Inmarsat’s and Stratos’ March 4 Opposition to Vizada cited numerous decisions (including the full Commission’s approval of Step 1) where the Commission used the same broad market definition the Bureau adopted here and similarly concluded that the market is competitive.
  - Vizada has never attempted to explain how its proposed narrow market definition can be reconciled with this Commission precedent.
- In their March 25 *ex parte* letter, Inmarsat and Stratos (again) detailed evidence demonstrating that Inmarsat faces substantial competition from both MSS providers and VSAT providers in the very same service segments on which Vizada has focused its attention — maritime, land mobile, and aeronautical.

- Vizada ignores this evidence, as well as other record evidence Inmarsat and Stratos submitted in earlier filings (*e.g.*, in their October 9 and December 17 *ex parte* letters).
  - Vizada repeats its dismissive comments about VSAT (“large,” “expensive,” and “dedicated . . . for one customer group”), despite record evidence submitted by Inmarsat and Stratos demonstrating that VSAT is a substitute for Inmarsat service in all significant respects — price, service, and size.
  - Vizada itself is selling VSAT services as a substitute for MSS to the same customer base it has traditionally sold MSS. Vizada’s website promotional materials compares its WaveCall VSAT service with Inmarsat-B and Fleet services. (See Vizada WaveCall product documentation available at <http://www.vizada.com/Products/At-sea/WaveCall-by-Vizada/Our-solutions.>)
  - Independent analysts recognize the competitive pressures brought to bear on Inmarsat by the substitutability of the VSAT and MSS offerings of other providers.
  - End users are choosing VSAT technology as a substitute for or supplement to MSS technology.
- In their March 25 *ex parte* letter, Inmarsat and Stratos addressed why the 90 pages that Vizada attached to its Reply do not support Vizada’s claim that Inmarsat has “market power.” Vizada’s repeated reference to that same material fares no better the second time around.
    - The JP Morgan report Vizada cites compared Inmarsat only to a handful of other MSS satellite operators and *completely excluded VSAT providers from the equation*. As Inmarsat and Stratos showed in their March 25 *ex parte* letter, because maritime VSAT revenues now actually exceed Inmarsat’s maritime revenues, JP Morgan’s analysis simply does not support Vizada’s claim that Inmarsat has market power.
    - Vizada ignores the economic literature and case law that Inmarsat and Stratos cited in explaining why accounting principles (*e.g.*, EBITDA margins) bear no relationship to economic market power. Nor does Vizada respond to the demonstration that satellite operators who lack market power have similar EBITDA margins, as would be expected in such a capital-intensive industry.
  - Inmarsat and Stratos detailed in their March 25 submission why a timely, mid-April closing is important to facilitate competition, provide benefits to consumers, and avoid harm to the public interest. Among other things, consummating this transaction on time will:

- accelerate the development of innovative products and services that will be made available to consumers, including the U.S. Government;
  - allow Inmarsat to ensure that wholesale price decreases are passed along to end users, rather than being retained by distributors like Vizada;
  - reduce barriers to entry for new Inmarsat retailers, by allowing Inmarsat to open up to *all distributors* the land earth station (LES) infrastructure that historically has served to perpetuate the “gatekeeper” role of companies such as Vizada; and
  - generate considerable transaction-specific efficiencies that will benefit resellers as well as end users in the form of lower prices, more responsive service, and increased availability and quality of satellite services.
- Considering the full Commission’s competitive analysis in Step 1 of this transaction, and the Bureau’s careful evaluation of the record evidence in approving Step 2, a sudden and unjustified stay of this transaction would send a negative message to the markets and would be entirely inconsistent with existing precedent.
    - The Commission rejected these same Vizada arguments before at Step 1.
      - For instance, in its June 26, 2007 Petition to Deny at p.26, Vizada made the same arguments — that Inmarsat will have the incentive to “favor” Stratos over other resellers with respect to satellite capacity, network capabilities or service enhancements.
      - The Commission’s Step 1 order at ¶¶ 60–64 found that the anti-discrimination provisions in Inmarsat’s distribution agreements would constrain any such favoritism, and that any such favoritism would not adversely affect industry competition or consumer welfare in any event.
    - Despite Vizada’s contention, the significant effect that a stay would have on the markets is precisely why the standards for a stay are rigorously applied — decisions to preclude legitimate business activities should not be taken lightly, and should not be imposed unless each of the stay factors is satisfied, which is not the case here.
    - In fact, Vizada has not cited a single instance where the Commission has stayed the effectiveness of an order consenting to a transaction.
  - Vizada’s suggestion that the public would suffer “irreversible” harm from a timely April closing is preposterous. Vizada has not shown *any* harm to competition — let alone irreparable harm — that would result from the closing of this transaction.

- Vizada is the only opponent in this proceeding – not a single consumer nor any other competitor has expressed concern about the competitive effects of this vertical transaction.
- The situation Vizada complains about would result from an entirely separate set of facts — the expiration of Vizada’s existing contractual distribution arrangement.
  - Any change in the nature of Vizada’s ability to resell Inmarsat services, as the full Commission recognized in its Step 1 order, would not be a cognizable, competitive harm in any event.
- Given the vertical nature of this transaction, Inmarsat does not have plans to integrate the operations of two companies in the near term.
  - In the unlikely event that the Commission ultimately ruled in Vizada’s favor, the parties would be able to address the requirements of any such determination.
- Vizada has never explained why the contractual provisions in Inmarsat’s distribution agreements that address confidentiality and non-discrimination — agreements to which other distributors have already agreed — are not adequate.
  - Vizada ignores the Commission precedent that Inmarsat and Stratos cited on this score, demonstrating that the Commission consistently has found such contractual provisions sufficient and effective.
  - Despite what Vizada asserts about “incentives and opportunities,” contractual remedies are routinely employed in the telecom industry precisely to address commercial opportunities and behavioral incentives that might exist in the absence of such agreed constraints.

Inmarsat and Stratos have explained, with record support, why this transaction is pro-competitive and in the public interest, and the Bureau agreed. The Commission should permit the parties to consummate this transaction without delay, particularly as the Commission retains full and effective authority to review the Bureau’s decision regardless of when this transaction closes.

Respectfully submitted,

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