

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Third Annual Report to Congress on Status)	IB Docket No. 09-16
of Competition in the Provision of Satellite)	
Services)	
)	

REPLY OF SKYTERRA SUBSIDIARY LLC

SkyTerra Subsidiary LLC (“SkyTerra”) hereby submits the following reply comments in response to the comments of SkyBitz, Inc. (“SkyBitz”) in the above-captioned proceeding.¹

SkyBitz suggests that the Commission should make findings based on an analysis of an extremely narrow regulatory classification and service segment – mobile satellite services (“MSS”) used for “low data rate” services. SkyBitz’s approach, however, is not useful to the Commission’s examination of satellite markets and services in this proceeding because it ignores applicable precedent and is not supported by the facts.

As the MSS/ATC Coalition states in its comments, the Commission has never taken the position that it can only examine satellite competition within a specific regulatory classification or service segment.² Indeed, the Commission made clear in the *First Satellite Report* that it did not intend to limit its analysis to satellite technology, much less specific satellite bands and

¹ See “*IB Invites Comment for Third Annual Report to Congress on Status of Competition in the Satellite Services Market*,” Public Notice, DA 09-1045, IB Docket No. 09-16 (May 14, 2009) (“Public Notice”); SkyBitz, Inc. Comments for Third Annual Report to Congress on Status of Competition in the Satellite Services Market, IB Docket No. 09-16 (June 15, 2009) (“SkyBitz Comments”).

² See Comments of the MSS/ATC Coalition, IB Docket No. 09-16, at 8–11 (June 15, 2009) (“MSS/ATC Coalition Comments”).

services.³ Rather, it appropriately held that different technologies can provide substantially the same capability to customers and could constrain satellite providers' pricing and output.⁴ This approach is entirely consistent with how competition law in general would examine the market,⁵ and was affirmed by the Commission when it applied exactly this approach in the *Inmarsat-Stratos* transaction earlier this year.⁶ All applicable Commission precedent runs directly counter to SkyBitz's comments, and SkyBitz fails to provide any argument that would justify the complete reversal of course it suggests.

SkyBitz not only fails to make any kind of case for its legal approach, but fails to provide any facts that would compel the Commission to reexamine its precedent. SkyBitz asserts that "there are no viable alternatives to the L-band that are capable of meeting the performance and technical metrics described" in its filing.⁷ SkyBitz did not, however, provide the Commission with any performance or technical metrics to prove this claim, and instead hinged its entire argument on alleged characteristics of the L-band.⁸ Whatever the particular advantages of L-band and MSS over other spectrum bands or services, SkyBitz misses the point. SkyBitz's fine technical distinctions tell the Commission nothing about whether consumers treat different technologies or services as reasonably substitutable. Consumers do. As the MSS/ATC Coalition

³ *Annual Report and Analysis of Competitive Market Conditions with Respect to Domestic and International Satellite Communications Services*, First Report, 22 FCC Rcd 5954, 5956 ¶ 35 (2007) ("*First Satellite Report*").

⁴ *Id.*

⁵ *DOJ/FTC Horizontal Merger Guidelines*, 57 Fed. Reg. 41552 (Sept. 10, 1992), revised, 4 Trade Reg. Rep. (CCH) ¶ 13104 § 1.1 (Apr. 8, 1997) (providing analysis for product market definition).

⁶ *Robert M. Franklin, Transferor, and Inmarsat, plc, Transferee, Consolidated Application for Consent to Transfer of Control of Stratos Global Corporation and Its Subsidiaries from an Irrevocable Trust to Inmarsat, plc*, IB Docket No. 08-143, Memorandum Opinion and Order and Declaratory Ruling, DA 09-117, ¶ 38 (rel. Jan. 16, 2009) ("*Inmarsat-Stratos 2009 Order*").

⁷ *SkyBitz Comments* at 8.

⁸ *Id.* at 7.

explained, different technologies currently compete with MSS and provide substitutable services.⁹ The various technical differences among services cited by SkyBitz are also irrelevant. MSS providers compete within bands, among bands, with different services, and with terrestrial technologies. Indeed, SkyBitz has well-publicized plans to support its services using Globalstar – an MSS provider in the “Big LEO” L- (uplink) and S-bands (downlink) – showing that SkyBitz itself considers services using different bands reasonably substitutable.¹⁰

Notably, SkyBitz made no allegations of anticompetitive pricing, refusal to deal, or any other kind of misconduct. Instead, SkyBitz states it “faces the potential” of several very general negative effects, and fails to explain how L-band MSS providers could make any of these results occur in the present market environment.¹¹ In particular, SkyBitz fails to substantiate its claim that L-band service providers like SkyTerra might somehow “jeopardize the success of critical law enforcement and homeland security applications and endanger the security and safe operation of assets held by private sector clients and MSS providers.”¹² This is nothing more than fearmongering. SkyTerra has a hard-earned reputation for providing reliable and valued services to the law enforcement and homeland security community.¹³ SkyBitz’s resort to such a vague and outlandish claim proves that it cannot show any actual abuse.

⁹ *MSS/ATC Coalition Comments* at 10-12.

¹⁰ See Press Release, *SkyBitz Launches Global Solution to Meet Customer Demands for Managing a Wide Range of Assets*, June 11, 2008, available at http://www.skybitz.com/newsroom/press_release.jsp?id=841 (last visited July 13, 2009).

¹¹ *SkyBitz Comments* at 15.

¹² *Id.*

¹³ See, e.g., *IAFC and SkyTerra Publish Information Paper on Communications Interoperability*, Mar. 3, 2009, available at <http://www.iafc.org/displayindustryarticle.cfm?articlenbr=38778> (last visited July 13, 2009) (collaboration with International Association of Fire Chiefs on improving interoperable communications); *Shelby County Tennessee Enhances Communications Interoperability Via SkyTerra*, May 26, 2009, available at

As a final matter, SkyBitz’s argument regarding the ancillary terrestrial component (“ATC”) of MSS should be dismissed out of hand. SkyBitz appears to say that the simple existence of ATC will somehow create a “market barrier” because new interfaces may be necessary.¹⁴ Taking SkyBitz’s argument on its face, as explained above SkyBitz ignores substitutable alternatives, and so fails to prove any sort of barrier to entry, much less an anticompetitive barrier to entry warranting prophylactic regulation. Moreover, as a policy matter, SkyBitz’s argument runs directly contrary to the Commission’s entire approach to new services. SkyBitz has not identified a single case where the Commission has ever prevented the rollout of new services because of possible disruption to legacy services, assuming such disruption would even occur. Remarkably, SkyBitz fails completely to distinguish or even acknowledge the *Inmarsat-Stratos* case, which flatly rejected the notion that investment in equipment somehow confers market power on the service provider.¹⁵

<http://www.skyterra.com/media/press-releases-view.cfm?id=210&yr=2009> (last visited July 13, 2009)(providing one example of SkyTerra’s work with first responders).

¹⁴ *SkyBitz Comments* at 16.

¹⁵ *Inmarsat-Stratos 2009 Order* at ¶ 39 (noting that “businesses often switch suppliers” and that “[s]uch ordinary commercial behavior typically involves the retirement or sale of supplier-specific equipment, new training, etc.”).

Conclusion

SkyBitz did not provide any facts useful towards developing an accurate picture of the competitive landscape for satellite services, nor any legal analysis consistent with Commission precedent or warranting the radical departure from that precedent SkyBitz suggests. The Commission should disregard these comments, and instead find that the market for satellite services generally, and MSS in particular, is subject to effective competition.

Respectfully submitted,

Gary Epstein
Executive Vice President, Law & Regulation
SKYTERRA SUBSIDIARY LLC
10802 Parkridge Boulevard
Reston, VA 20191
(703) 390-2001

/s/ Jeffrey J. Carlisle
Jeffrey J. Carlisle
Vice President, Regulatory Affairs
SKYTERRA SUBSIDIARY LLC
10802 Parkridge Boulevard
Reston, VA 20191
(703) 390-2001

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