

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

In the Matter of)	
)	
Robert M. Franklin, Transferor	)	IB Docket No. 08-143
)	
Inmarsat, plc, Transferee	)	FCC File Nos.:
	)	ITC-T/C-20080618-00276
Consolidated Application for Consent to Transfer	)	ITC-T/C-20080618-00275
of Control of Stratos Global Corporation and Its	)	SES-T/C-20080618-00818
Subsidiaries from an Irrevocable Trust to Inmarsat,	)	SES-T/C-20080618-00819
plc	)	SES-T/C-20080618-00820
	)	SES-T/C-20080618-00821
	)	0003453455 and
	)	ISP-PDR-20080618-00013

**MEMORANDUM OPINION AND ORDER
AND DECLARATORY RULING**

Adopted: January 16, 2009

Released: January 16, 2009

By the Chief, International Bureau:

TABLE OF CONTENTS

Heading	Paragraph #
I. INTRODUCTION.....	1
II. BACKGROUND.....	2
A. The Applicants.....	3
B. The Transaction.....	10
C. Comments on the Transfer of Control Application.....	11
III. PUBLIC INTEREST ANALYSIS	15
A. Framework of Analysis.....	15
B. Timing of Application.....	20
C. Qualifications of the Applicants.....	23
D. Effect on Competition.....	25
E. Potential Public Interest Benefits.....	52
F. Section 310 Foreign Ownership Review.....	55
G. International Dominant Carrier Regulation	72
H. Pending and Future Applications of Stratos Global.....	76
I. Transfer of Accounting Authority Certification	77
J. National Security, Law Enforcement and Public Safety Concerns.....	79
K. Deadline for Closing the Transaction	81
IV. CONCLUSION	82
V. ORDERING CLAUSES.....	83
APPENDIX A: Authorizations and Licenses Included in the Transfer of Control Application	
APPENDIX B: Copy of Executive Branch Agreement	

I. INTRODUCTION

1. In this Memorandum Opinion and Order and Declaratory Ruling, the International Bureau, on delegated authority, considers a series of applications (collectively, “Application”)¹ filed by Robert M. Franklin, Trustee (Trustee), and Inmarsat plc (Inmarsat) for authority to transfer control of Stratos Global Corporation (Stratos Global) and the domestic and international section 214 authorizations,² Title III licenses,³ and other Commission authorizations held by three of its subsidiaries (Stratos Holdings, Inc., Stratos Offshore Services Company, and Stratos Communications Inc.) (collectively, “Stratos Licensees”)⁴ from a trust of which Mr. Franklin is the Trustee to Inmarsat. Applicants have also filed a petition for declaratory ruling, pursuant to section 310(b)(4) of the Communications Act, as amended,⁵ to allow up to 100 percent indirect foreign ownership of Stratos Offshore Services Company (Stratos Offshore) and Stratos Communications Inc. (Stratos Communications), which hold Title III common carrier licenses. Finally, Applicants seek Commission consent to new indirect ownership of Stratos Mobile Networks, Inc. (Stratos Mobile), which is certified as an Accounting Authority under the Commission’s rules. Based on the record established in this proceeding, we find that the grant of the Application and the petition for declaratory ruling will serve the public interest, convenience and necessity, subject to the conditions specified below. We also grant the Petition to Adopt Conditions to Authorizations and Licenses filed by the United States Department of Justice, the Federal Bureau of Investigation and the United States Department of Homeland Security. We also deny the petition filed by VIZADA Services LLC (Vizada) in response to this transfer of control application.

¹ The instant Application consists of 10 individual applications as follows: two FCC International Section 214 applications seeking consent to the transfer of Stratos Global’s international section 214 authorizations, ITC-T/C-20080618-00276 (authorizations held by Stratos Holdings, Inc.) and ITC-T/C-20080618-00275 (authorizations held by Stratos Offshore Services Company); two FCC Domestic Section 214 applications seeking consent to the transfer of Stratos Global’s domestic section 214 authorizations (for Stratos Communications Inc. and Stratos Offshore Services Company); four FCC Form 312’s seeking consent to the transfer of Stratos Global’s satellite earth-station, VSAT, and space-station authorizations, SES-T/C-20080618-00819, SES-T/C-20080618-00820, and SES-T/C-20080618-00821 (authorizations held by Stratos Offshore Services Company), and SES-T/C-20080218-00818 (authorizations held by Stratos Communications Inc.); one FCC Form 603 seeking consent to the transfer of Stratos Global’s terrestrial radio licenses, File No. 0003453455 (authorizations held by Stratos Offshore Services Company); and one FCC Form 44 seeking consent to the new indirect ownership of Stratos Mobile Networks, Inc., as an Accounting Authority (collectively referred to as “Application”). The Application was accompanied by a narrative description of the parties and the transaction (Narrative). Appendix D of the Narrative is a petition for declaratory ruling, ISP-PDR-20080618-00013 (Petition for Declaratory Ruling). Appendix A to this Memorandum Opinion and Order and Declaratory Ruling lists the transfer of control applications, and associated authorizations and licenses, filed in this proceeding.

² Section 214 of the Communications Act of 1934, as amended, 47 U.S.C. § 214 (hereafter cited as the “Act”).

³ Section 309 of the Act, 47 U.S.C. § 309.

⁴ Applicants state that, pursuant to section 63.21(h) of the Commission’s rules, 47 CFR 63.21(h) (2008), Stratos Communications Inc. and two additional Stratos Global subsidiaries, Stratos Mobile Networks, Inc. (Stratos Mobile), and Stratos Government Services, Inc. (Stratos Government), provide service pursuant to the international section 214 authorizations held by Stratos Holdings, Inc. (Stratos Holdings). Narrative, Appendix D at 1. *See also* ITC-T/C-20080618-00276 and ITC-T/C-20080618-00275, Attachment 1 at 3, n.1. Unless otherwise indicated, when we refer to “Stratos Licensees” in this Order, the term includes Stratos Mobile and Stratos Government.

⁵ 47 USC § 310(b)(4).

II. BACKGROUND

2. This Application represents the second step of a two-step process by which Inmarsat proposes to acquire Stratos Global. In the first step, the Commission approved an application by Stratos Global, a Canadian corporation, to transfer its stock to a Canadian trust (Trust).⁶ CIP UK Holdings Limited (CIP UK), a subsidiary of Communications Investment Partners Limited (CIP), entered into a “Facilities Agreement” (Loan Facility) with Inmarsat Finance III Limited (Inmarsat Finance), a special-purpose subsidiary of Inmarsat. Under the Loan Facility, CIP UK borrowed sufficient funds from Inmarsat Finance for its subsidiary, CIP Canada Investments, Inc. (CIP Canada), to purchase the stock of Stratos Global. CIP Canada then transferred the stock to the Trust, which held the stock for the benefit of CIP Canada. CIP UK also granted Inmarsat Finance a “Call Option” (Option), which gave Inmarsat the right to acquire the Stratos Global stock on or after April 14, 2009.⁷ It is Inmarsat Finance’s decision to exercise that Option that has given rise to the transaction now before us.

A. The Applicants

1. The Transferor (The Trustee)

3. The Trustee of the Trust that now holds the shares of Stratos Global is Robert M. Franklin, a Canadian citizen and businessman. The Trustee has held the shares for the benefit of CIP Canada and has controlled Stratos Global during the pendency of the Trust through exercise of the voting rights associated with the stock.⁸

2. Stratos Global and Related Parties

4. Stratos Global, a Canadian corporation, through its subsidiaries the Stratos Licensees, is a retail distributor of satellite services for a variety of international satellite systems and provides mobile satellite services (MSS), fixed satellite service (FSS) and terrestrial communications through satellite services it buys from various satellite operators.⁹ In providing MSS, Stratos Global resells the services of Globalstar, Inmarsat, Iridium and Mobile Satellite Ventures (SkyTerra).¹⁰ Stratos Global holds licenses from the Commission for Inmarsat mobile earth terminals, but does not own or operate any MSS gateway earth stations in the United States. Stratos Global provides FSS service by means of very small aperture terminals (VSATs) and VSAT hubs that it owns in the United States and satellite service it resells from a number of satellite operators, including Intelsat and SES.¹¹ Stratos Global is one of the largest distributors of Inmarsat satellite services.¹²

⁶ *Stratos Global Corporation, Transferor; Robert M. Franklin, Transferee; Consolidated Application for Consent to Transfer of Control*, Memorandum Opinion and Order and Declaratory Ruling, WT Docket No. 07-73, FCC 07-213, 22 FCC Rcd 21338, 21374, ¶ 113 (2007) (*2007 Stratos Order*).

⁷ *Id.* at 21333-4, ¶ 16.

⁸ Narrative at 4.

⁹ Stratos Offshore, Stratos Communications, Stratos Mobile, and Stratos Government are wholly-owned direct subsidiaries of Stratos Holdings, a Delaware corporation that is wholly owned by Stratos Wireless, Inc. (Stratos Wireless), a Canadian corporation. Stratos Wireless is, in turn, wholly owned by Stratos Global. Narrative at 2-3.

¹⁰ On December 8, 2008, Mobile Satellite Ventures announced that it had changed its name to SkyTerra. Available at <http://www.skyterra.com/media/press-releases-view.cfm?id=196&yr=2008>.

¹¹ *2007 Stratos Order*, 22 FCC Rcd at 22330, ¶ 2.

¹² Vizada Services LLC, Petition to Deny of Vizada Services LLC, filed Aug. 13, 2008 (Vizada Petition) at 2.

5. Additionally, Stratos Global operates a terrestrial microwave network in the U.S. Gulf of Mexico, through which it offers competitive local exchange, competitive access, and interexchange telecommunications services in Louisiana and Texas, primarily to the oil and gas industry.¹³ Finally, Stratos Global's subsidiary, Stratos Mobile, is certified under Title III as an Accounting Authority in the maritime mobile telecommunications service.¹⁴

3. CIP

6. CIP is a limited partnership organized under the laws of the British Virgin Islands as an investment company with a focus on satellite service providers.¹⁵ CIP consists of five partners, each of whom holds 20 percent of the equity in CIP.¹⁶ CIP created two wholly-owned subsidiaries to carry out the transaction: CIP UK, a private limited company that was chartered under the laws of England and Wales, and CIP Canada, a corporation chartered under the laws of Canada.¹⁷ CIP Canada is wholly owned by CIP UK, which is, in turn, wholly owned by CIP.¹⁸

4. The Transferee (Inmarsat)

7. Inmarsat is a provider of mobile satellite services through a commercial mobile communications satellite system that it built and operates.¹⁹ Inmarsat was created in 1979 by the INMARSAT Convention as an intergovernmental organization (IGO), called the International Maritime Satellite Organization (INMARSAT), to develop a global maritime satellite system to meet commercial maritime and safety communications needs of the United States and other countries.²⁰ The INMARSAT IGO was owned by national representatives, usually providers of telecommunications services, of the Member countries who had signed the INMARSAT Convention ("Signatories"). Historically, INMARSAT's role was limited to that of a wholesaler, providing MSS space segment to those Signatories, who operated land earth stations (LESS) and distributed INMARSAT satellite services to end users.

8. The INMARSAT IGO privatized in 1999, becoming a U.K. private company (Inmarsat), headquartered in London, with its former owners, the Signatories, as shareholders.²¹ In 2005, Inmarsat became a public company, listed on the London Stock Exchange.²² Applicants state that Inmarsat's shares are widely held and that all entities that own or control 10 percent or more of the equity or voting interest in the company have their place of formation and principal place of business in the United States,

¹³ Narrative at 2.

¹⁴ *Id.*

¹⁵ *2007 Stratos Order*, 22 FCC Rcd at 21330, ¶ 4.

¹⁶ *Id.*

¹⁷ *Id.* at ¶ 5.

¹⁸ *Id.*

¹⁹ Narrative at 3-4.

²⁰ See *Comsat Corporation d/b/a Comsat Mobile Communications*, Memorandum Opinion, Order and Authorization, FCC 01-272, 16 FCC Rcd 21661, 21669, ¶ 3 (2001).

²¹ *Inmarsat plc, Opposition of Inmarsat plc*, filed Aug. 25, 2008 (*Inmarsat Opposition*) at 4-5.

²² *2007 Stratos Order*, 22 FCC Rcd at 21331, ¶ 8.

the Cayman Islands, Ireland or the United Kingdom.²³ Applicants further state that approximately 89 percent of Inmarsat shares are beneficially owned, and approximately 88 percent of the voting power in Inmarsat is controlled, by U.S. entities or companies formed under the laws of countries that are Members of the World Trade Organization (WTO).²⁴ Inmarsat is currently a significant provider of MSS space segment, although other major satellite operators have entered the industry to provide competition to Inmarsat.²⁵

9. As part of the Inmarsat privatization, Inmarsat Global LTD (Inmarsat Global), the Inmarsat subsidiary that provides MSS services, is contractually barred from owning or controlling a distributor of Inmarsat services until April 14, 2009.²⁶ Applicants state that these restrictions, which are contained in Inmarsat Global's current distribution contracts, expire on that date.²⁷

B. The Transaction

10. By the Application now before us, Inmarsat seeks to exercise its right under the Option to acquire the shares of CIP UK, and intends to consummate the transaction on, or shortly after, April 15, 2009.²⁸ At that time, the Trust will terminate, and the Trustee will transfer the Stratos Global shares (and associated voting power) to CIP Canada. Through CIP UK, Inmarsat will then indirectly own and control CIP Canada and, thus, Stratos Global.²⁹

C. Comments on the Transfer of Control Application

11. The Commission placed the Application on Public Notice on July 14, 2008.³⁰ On August 11, 2008, the United States Department of Justice (DOJ), on behalf of the Federal Bureau of Investigation (FBI), and with the concurrence of the U.S. Department of Homeland Security (DHS), requested the Commission to defer action on the Application until such time as the DOJ, FBI and DHS have completed their review of any national security, law enforcement or public safety implications of that Application.³¹

²³ Narrative at 6. *See also* Letter from Diane Cornell, Vice President, Government Affairs, Inmarsat Inc., to Marlene H. Dortch, Secretary, FCC, dated Nov. 7, 2008.

²⁴ Narrative at 10.

²⁵ According to one industry source, Inmarsat's revenues account for about 56 percent of the total revenue of the major MSS satellite operators. Vizada Inc. and Vizada Services LLC, Reply of Vizada Inc. and Vizada Services LLC to Oppositions of Inmarsat plc and Stratos Global Corporation, filed Sept. 10, 2008 (Vizada Reply), Attachment A (Tim Farrar, *The Mobile Satellite Services Business: Competitive Structure, Size, Segments, and the Unique Role of Inmarsat in Certain Segments*) (Farrar Study) at 16.

²⁶ *Id.* at 6. *See also* 2007 Stratos Order, 22 FCC Rcd at 21331, ¶ 8 n.9.

²⁷ Inmarsat Opposition at 5.

²⁸ Narrative at 4-5.

²⁹ *Id.* at 5.

³⁰ *See Robert M. Franklin, Trustee, and Inmarsat plc Seek FCC Consent to the Transfer of Control of Stratos Global Corporation and its Subsidiaries from an Irrevocable Trust to Inmarsat plc*, Public Notice, IB Docket No. 08-143, 22 FCC Rcd 10005 (2008). On July 17, 2008, the Commission issued an Erratum adding one Section 214 authorization that had been omitted from the Public Notice. *Robert M. Franklin, Trustee, and Inmarsat plc Seek FCC Consent to the Transfer of Control of Stratos Global Corporation and its Subsidiaries from an Irrevocable Trust to Inmarsat plc*, Erratum, IB Docket No. 08-143, 2008 WL 2783591 (F.C.C.) (rel. July 17, 2008).

³¹ Letter from Joanne P. Ongman, Attorney, National Security Division, U.S. Department of Justice, to Marlene H. Dortch, Secretary, Federal Communications Commission, dated Aug. 11, 2008 (DOJ Petition to Adopt Conditions).

On August 13, 2008, Vizada filed a petition seeking denial of the Application or attachment of conditions to prevent Inmarsat from using the acquisition of Stratos to engage in alleged anticompetitive conduct.³²

12. On August 25, 2008, Inmarsat and Stratos Global filed oppositions to the Vizada petition to deny.³³ On September 10, 2008, Vizada replied to the Oppositions.³⁴ On October 9, 2008, the Applicants filed a joint *ex parte* letter responding to material in Vizada's Reply.³⁵ On October 28, 2008, Applicants met *ex parte* with Commission staff to discuss arguments in their October 8 *Ex Parte* letter.³⁶ On December 3, 2008, Inmarsat met *ex parte* to discuss possible changes to the corporate structure related to the licenses. On December 8, 2008, Vizada filed an *ex parte* letter responding to Applicants' October 9 *ex parte* letter and *ex parte presentation* to Commission staff on October 28.³⁷ On December 9, 2008, counsel for Vizada met *ex parte* with members of Commission staff.³⁸ On December 19, 2008, Inmarsat and Stratos Global filed an *ex parte* letter replying to the Vizada December 8 *ex parte* letter.³⁹ On January 9, 2009, DOJ (including the FBI) and DHS (collectively, the "Agencies") filed a joint Petition to Adopt Conditions on Transfer of Control.⁴⁰

13. Vizada, in its Petition to Deny, Reply and *ex parte* letter, raises three challenges to the Application. First, Vizada argues that the Commission should either dismiss the Application as premature, since Inmarsat cannot consummate the transaction until April 2009, or postpone consideration

³² Vizada Petition.

³³ Inmarsat Opposition; Stratos Global Corporation, *et al.*, Opposition to Petition to Deny, filed Aug. 25, 2008 (Stratos Global Opposition).

³⁴ Vizada Inc. and Vizada Services LLC, Reply of Vizada Inc. and Vizada Services LLC to Oppositions of Inmarsat plc and Stratos Global Corporation, filed Sept. 10, 2008 (Vizada Reply). On August 25, 2008, Vizada filed a Motion for Extension of Time to Reply to the Inmarsat and Stratos Global Oppositions, citing unavailability of key personnel as the reason for the request. On August 27, 2008, Inmarsat and Stratos Global filed a Joint Opposition to Motion for Extension of Time. Also on August 27, 2008, Vizada filed a Reply to Opposition to Motion for Extension of Time of Vizada, Inc., and Vizada Services LLC. On August 28, 2008, the International Bureau issued an Order granting in part Vizada's Motion. *Robert M. Franklin, Trustee, and Inmarsat plc Seek FCC Consent to the Transfer of Control of Stratos Global Corporation and its Subsidiaries from an Irrevocable Trust to Inmarsat plc*, Order, IB Docket No. 08-143, 23 FCC Rcd 13010 (2008).

³⁵ Joint Letter from John P. Janka, Latham & Watkins LLP (Latham & Watkins), Counsel for Inmarsat, and Alfred M. Mamlet, Steptoe & Johnson LLP (Steptoe & Johnson), Counsel for Stratos Global, to Marlene H. Dortch, Secretary, Federal Communications Commission, dated Oct. 9, 2008 (Inmarsat/Stratos Global October 9 *Ex Parte* Letter).

³⁶ See Joint Letter from John P. Janka, Latham & Watkins, and Alfred M. Mamlet, Steptoe and Johnson, Counsel for Inmarsat, and Alfred M. Mamlet, Steptoe & Johnson, Counsel for Stratos Global, to Marlene H. Dortch, Secretary, FCC, dated Oct. 29, 2008.

³⁷ Letter from Peter A. Rohrbach, David J. Saylor, and Kimberly S. Reindl, Hogan & Hartson, Counsel for Vizada, to Marlene H. Dortch, Secretary, FCC, dated Dec. 8, 2008 (Vizada December 8 *Ex Parte* Letter).

³⁸ See Letter from Peter A. Rohrbach, Hogan & Hartson, Counsel for Vizada, to Marlene H. Dortch, Secretary, FCC, dated Dec. 10, 2008.

³⁹ Joint Letter from John P. Janka, Latham & Watkins, Counsel for Inmarsat, and Alfred M. Mamlet, Steptoe & Johnson, counsel for Stratos Global, to Marlene H. Dortch, Secretary, FCC, dated Dec. 17, 2008 (Inmarsat/Stratos Global December 17 *Ex Parte* Letter).

⁴⁰ U.S. Department of Justice, Federal Bureau of Investigation, and Department of Homeland Security, Petition to Adopt Conditions on Transfer of Control, filed Jan. 09, 2009.

of the Application until Inmarsat has negotiated new distribution contracts.⁴¹ Second, Vizada argues that the Commission should deny the Application because the vertical integration of Inmarsat and Stratos Global will impair competition in the distribution of Inmarsat satellite services.⁴² Finally, Vizada argues that the Commission, should it decide to grant the Application, should attach auditable and enforceable conditions on such approval, such as arm's length structural separation, non-discrimination guarantees and confidentiality requirements, because of the risk of anticompetitive conduct.⁴³

14. Inmarsat and Stratos Global reject all three of Vizada's arguments. Inmarsat and Stratos Global argue that the Application is ripe for Commission action, despite the April 2009 consummation date and the ongoing contract negotiations,⁴⁴ and should be granted without conditions.⁴⁵ Inmarsat and Stratos Global also deny that Inmarsat has market power and that the proposed merger would harm competition in the distribution of Inmarsat satellite services.⁴⁶

III. PUBLIC INTEREST ANALYSIS

A. Framework of Analysis

15. Pursuant to sections 214(a) and 310(d) of the Act,⁴⁷ the Commission must determine whether the proposed transfer of control to Inmarsat of the Stratos Global licenses and authorizations will serve the public interest, convenience and necessity.⁴⁸ In making this determination, we first assess whether the

⁴¹ Vizada Petition at 7-12; Vizada Reply at 18-21.

⁴² Vizada Petition at 15-41; Vizada Reply at 26-51.

⁴³ Vizada Petition at 41-44.

⁴⁴ Inmarsat Opposition at 30, Stratos Global Opposition at 5-6. *See also* Inmarsat/Stratos Global October 9 *Ex Parte* Letter at 3-10.

⁴⁵ Inmarsat Opposition at 27- 29; Stratos Global Opposition at 12-15.

⁴⁶ Inmarsat Opposition at 12-17; Stratos Global Opposition at 8-12; Inmarsat/Stratos Global October 9 *Ex Parte* Letter at 3-10.

⁴⁷ 47 U.S.C. §§ 214(a), 310(d).

⁴⁸ Section 310(d), 47 U.S.C. § 310(d), requires that the Commission consider the applications as if the proposed transferee were applying for the licenses directly under section 308 of the Act, 47 U.S.C. § 308. *See, e.g., Applications of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC For Consent to Transfer Control of Licenses, Authorizations, and Spectrum Manager and De Facto Transfer Leasing Arrangements and Petition for Declaratory Ruling that the Transaction is Consistent with Section 310(b)(4) of the Communications Act*, WT Docket No. 08-95, Memorandum Opinion and Order and Declaratory Ruling, FCC 08-258 at ¶ 26 (rel. Nov. 10, 2008) (*Verizon Wireless-Atlantis Order*); *Applications for Consent to the Transfer of Control of Licenses XM Satellite Radio Holdings Inc., Transferor, to Sirius Satellite Radio Inc., Transferee*, MB Docket No. 07-57, Memorandum Opinion and Order and Report and Order, FCC 08-178, 23 FCC Rcd 12348, 12363-64, ¶ 30 (2008) (*XM-Sirius Order*); *Applications of Cellco Partnership d/b/a Verizon Wireless and Rural Cellular Corporation For Consent to Transfer Control of Licenses, Authorizations, and Spectrum Manager Leases*, WT Docket No. 07-208, Memorandum Opinion and Order and Declaratory Ruling, FCC 08-181, 23 FCC Rcd 12463, 12476-77, ¶ 26 (2008) (*Verizon Wireless-RCC Order*); *Applications of AT&T Inc. and Dobson Communications Corporation For Consent to Transfer Control of Licenses and Authorizations*, WT Docket No. 07-153, Memorandum Opinion and Order, FCC 07-196, 22 FCC Rcd 20295, 20301, ¶ 10 (2007) (*AT&T-Dobson Order*); *AT&T Inc. and BellSouth Corporation Application for Transfer of Control*, WC Docket No. 06-74, Memorandum Opinion and Order, FCC 06-189, 22 FCC Rcd 5662, 5672, ¶ 17 (2007) (*AT&T-BellSouth Order*); *Applications of Midwest Wireless Holdings, L.L.C. and ALLTEL Communications, Inc.*, WT Docket No. 05-339, Memorandum Opinion and Order, FCC 06-146, 21 FCC Rcd 11526, 11535, ¶ 16 (2006) (*ALLTEL-Midwest Wireless Order*); *Applications of Nextel Communications, Inc. and Sprint Corporation*, WT Docket No. 05-63, Memorandum Opinion and Order, FCC 05- (continued....)

proposed transaction complies with the specific provisions of the Act, other applicable statutes, and the Commission's rules.⁴⁹ If the proposed transaction would not violate a statute or rule, the Commission considers whether it could result in public-interest harms by substantially frustrating or impairing the objective or implementation of the Act or related statutes.⁵⁰

16. In analyzing a proposed transfer of control, the Commission generally employs a balancing test, weighing any potential public interest harms against the potential public interest benefits.⁵¹ Indeed, that is the standard the Commission applied in the *2007 Stratos Order*, in approving the transfer of Stratos Global to the Trust.⁵² Under the traditional balancing test, the applicants bear the burden to prove by a preponderance of the evidence that the proposed transaction, on balance, serves the public interest.⁵³ If we are unable to find that the proposed transaction serves the public interest for any reason, or if the record presents a substantial and material question of fact, we designate the Transfer of Control Application for hearing under section 309(e) of the Act.⁵⁴

(Continued from previous page)

148, 20 FCC Rcd 13967, 13976, ¶ 20 (2005) (*Sprint-Nextel Order*); *Applications of Western Wireless Corporation and ALLTEL Corporation*, WT Docket No. 05-50, Memorandum Opinion and Order, FCC 05-138, 20 FCC Rcd 13053, 13062, ¶ 17 (2005) (*ALLTEL-Western Wireless Order*); *Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation*, WT Docket No. 04-70, Memorandum Opinion and Order, FCC 04-255, 19 FCC Rcd 21522, 21542, ¶ 40 (2004) (*Cingular-AT&T Wireless Order*).

⁴⁹ See, e.g., *Verizon Wireless-Atlantis Order* at ¶ 26; *XM-Sirius Order* 23 FCC Rcd at 12363-64, ¶ 30; *Verizon Wireless-RCC Order*, 23 FCC Rcd at 12476-77, ¶ 26; *AT&T-Dobson Order*, 22 FCC Rcd at 20301, ¶ 10; *ALLTEL-Atlantis Order*, 22 FCC Rcd at 19519-20, ¶ 7; *AT&T-BellSouth Order*, 22 FCC Rcd at 5672, ¶ 19; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11535, ¶ 16; *Sprint-Nextel Order*, 20 FCC Rcd at 13976, ¶ 20; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13062, ¶ 17; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21542-43, ¶ 40.

⁴⁹ See, e.g., *Verizon Wireless-Atlantis Order* at ¶ 26; *XM-Sirius Order*, 23 FCC Rcd at 12363-64, ¶ 30; *Verizon Wireless-RCC Order*, 23 FCC Rcd at 12476-77, ¶ 26; *AT&T-Dobson Order*, 22 FCC Rcd at 20301, ¶ 10; *AT&T-BellSouth Order*, 22 FCC Rcd at 5672, ¶ 19; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11535, ¶ 16; *Sprint-Nextel Order*, 20 FCC Rcd at 13976, ¶ 20.

⁵⁰ See, e.g., *Verizon Wireless-Atlantis Order* at ¶ 26; *XM-Sirius Order*, 23 FCC Rcd at 12363-64, ¶ 30; *Verizon Wireless-RCC Order*, 23 FCC Rcd at 12476-77, ¶ 26; *AT&T-Dobson Order*, 22 FCC Rcd at 20301, ¶ 10; *AT&T-BellSouth Order*, 22 FCC Rcd at 5672, ¶ 19; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11535, ¶ 16; *Sprint-Nextel Order*, 20 FCC Rcd at 13976, ¶ 20.

⁵¹ See, e.g., *Verizon Wireless-Atlantis Order* at ¶ 26; *XM-Sirius Order*, 23 FCC Rcd at 12363-64, ¶ 30; *Verizon Wireless-RCC Order*, 23 FCC Rcd at 12476-77, ¶ 26; *AT&T-Dobson Order*, 22 FCC Rcd at 20302, ¶ 10; *AT&T-BellSouth Order*, 22 FCC Rcd at 5672, ¶ 19; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11535, ¶ 16; *Sprint-Nextel Order*, 20 FCC Rcd at 13976, ¶ 20; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13062-63, ¶ 17; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21543, ¶ 40.

⁵² *2007 Stratos Order*, 22 FCC Rcd at 21338-9, ¶ 27.

⁵³ See, e.g., *Verizon Wireless-Atlantis Order* at ¶ 26; *XM-Sirius Order*, 23 FCC Rcd at 12363-64, ¶ 30; *Verizon Wireless-RCC Order*, 23 FCC Rcd at 12476-77, ¶ 26; *AT&T-Dobson Order*, 22 FCC Rcd at 20302, ¶ 10; *AT&T-BellSouth Order*, 22 FCC Rcd at 5672, ¶ 19; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11535, ¶ 16; *Sprint-Nextel Order*, 20 FCC Rcd at 13976-77, ¶ 20; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13063, ¶ 17; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21543, ¶ 40.

⁵⁴ 47 U.S.C. § 309(e). *Verizon Wireless-Atlantis Order* at ¶ 26; See *XM-Sirius Order*, 23 FCC Rcd at 12363-64, ¶ 30; *Verizon Wireless-RCC Order*, 23 FCC Rcd at 12476-77, ¶ 26; *AT&T-Dobson Order*, 22 FCC Rcd at 20302, ¶ 10; *AT&T-BellSouth Order*, 22 FCC Rcd at 5672-73, ¶ 19; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11535, ¶ 16; *Sprint-Nextel Order*, 20 FCC Rcd at 13977, ¶ 20; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13063, ¶ 17; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21543-44 ¶ 40; see also *Application of EchoStar Communications Corporation (A Nevada Corporation), General Motors Corporation, and Hughes Electronics* (continued....)

17. The Commission's public interest evaluation necessarily encompasses the "broad aims of the Communications Act," which include, among other things, a deeply rooted preference for preserving and enhancing competition in relevant markets, accelerating private-sector deployment of advanced services, ensuring a diversity of license holdings, and generally managing the spectrum in the public interest.⁵⁵ The Commission's public interest analysis may also entail assessing whether the proposed transaction will affect the quality of communications services or will result in the provision of new or additional services to consumers.⁵⁶ In conducting this analysis, the Commission may consider technological and market changes, and the nature, complexity, and speed of change of, as well as trends within, the communications industry.⁵⁷

18. Our analysis starts with an examination of whether the Applicants are qualified to hold and transfer licenses pursuant to sections 214(a) and 310(d) of the Act.⁵⁸ Next, we consider the arguments raised by commenters regarding the potential harms and benefits of the proposed transaction, as well as its effects on competition. Next, we consider whether this transaction implicates the Commission's international dominant carrier regulation. Then we consider foreign-ownership issues. Finally, we consider issues related to national security, law enforcement, foreign policy, and trade policy.

19. Vizada challenges the Commission's balancing test standard, arguing that the appropriate standard is "whether the [proposed] merger will accelerate the decline of market power by dominant firms in the relevant communications markets."⁵⁹ Vizada's argument is predicated upon its assertion that Inmarsat is dominant in some mobile satellite services markets. Although the Commission has applied the standard it proposes in mergers involving dominant entities, that is not the situation in this proceeding, because, as we indicate in our analysis of the competitive effects of this proposed transaction, we find that Vizada has not shown that Inmarsat is a monopolist or that it has significant market power in the

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Corporation (Transferors) and EchoStar Communications Corporation (A Delaware Corporation) (Transferee), CS Docket No. 01-348, Hearing Designation Order, 17 FCC Rcd 20559, 20620, ¶ 153 (2002). Section 309(e)'s requirement applies only to those applications to which Title III of the Act applies, *i.e.*, radio station licenses. The Commission is not required to designate for hearing applications for the transfer or assignment of Title II authorizations when it is unable to find that the public interest would be served by granting the applications, *see ITT World Communications, Inc. v. FCC*, 595 F.2d 897, 901 (2d Cir. 1979), but of course may do so if we find that a hearing would be in the public interest.

⁵⁵ See, e.g., *Verizon Wireless-Atlantis Order* at ¶ 27; *XM-Sirius Order*, 23 FCC Rcd at 12364-65, ¶ 31; *Verizon Wireless-RCC Order*, 23 FCC Rcd at 12479, ¶ 28; *AT&T-Dobson Order*, 22 FCC Rcd at 20303, ¶ 12; *AT&T-BellSouth Order*, 22 FCC Rcd at 5673, ¶ 20; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11537, ¶ 18; *Sprint-Nextel Order*, 20 FCC Rcd at 13977, ¶ 21; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13064, ¶ 19; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21544, ¶ 41

⁵⁶ See, e.g., *Verizon Wireless-Atlantis Order* at ¶ 27; *XM-Sirius Order*, 23 FCC Rcd at 12364-65, ¶ 31; *Verizon Wireless-RCC Order*, 23 FCC Rcd at 12479, ¶ 28; *AT&T-Dobson Order*, 22 FCC Rcd at 20303-04, ¶ 12; *AT&T-BellSouth Order*, 22 FCC Rcd at 5673, ¶ 20; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11537, ¶ 18; *Sprint-Nextel Order*, 20 FCC Rcd at 13977, ¶ 21; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13064-65, ¶ 19; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21544, ¶ 41.

⁵⁷ See, e.g., *Verizon Wireless-Atlantis Order* at ¶ 27; *XM-Sirius Order*, 23 FCC Rcd at 12364-65, ¶ 31; *Verizon Wireless-RCC Order*, 23 FCC Rcd at 12479, ¶ 28; *AT&T-Dobson Order*, 22 FCC Rcd at 20304, ¶ 12; *AT&T-BellSouth Order*, 22 FCC Rcd at 5673, ¶ 20; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11537, ¶ 18; *Sprint-Nextel Order*, 20 FCC Rcd at 13977, ¶ 21; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13065, ¶ 19; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21544, ¶ 41.

⁵⁸ 47 U.S.C. §§ 214(a), 310(d).

⁵⁹ Vizada Petition at 16, citing *EchoStar Communications Corp., General Motors Corp. and Hughes Electronics Corp.*, Hearing Designation Order, 17 FCC Rcd 20559, 20575, ¶ 27 (2002).

international mobile satellite services market.⁶⁰ Furthermore, the Commission has previously classified Stratos Global and the Stratos Licensees as non-dominant for regulatory purposes.⁶¹ We, thus, reject Vizada's arguments and shall apply the standard balancing test in this proceeding.

B. Timing of Application

20. As a threshold issue, we reject Vizada's argument that this Application is premature. Vizada argues that filing the Application ten months before the earliest date on which Applicants could consummate the transaction renders the Application defective. The Commission placed the Application on public notice approximately nine months before the Applicants' target date for consummating the transaction, and while we agree with Vizada that we do not favor premature applications, we do not find the nine-month review period in this Application to be excessive. We note that this period is not much longer than the Commission's six-month target for processing complex merger applications.⁶² We are, thus, faced with a review period that is only three months longer than the Commission's target, and while we agree with Vizada that the communications industry is subject to change, we find no reason to believe that the industry will change so rapidly in those three months as to render the proposed transaction not in the public interest.

21. We also reject Vizada's argument that we should delay consideration of this Application until Inmarsat and its distributors have negotiated new distribution agreements.⁶³ The existing distribution contracts will expire automatically on April 14, 2009, irrespective of the proposed transaction.⁶⁴ Whether or not we approve Inmarsat's acquisition of Stratos Global, Vizada and the other distributors will have to negotiate new contracts. We also note that the Commission has a long-standing policy of not interfering with private contractual disputes.⁶⁵

22. Finally, we reject Vizada's request that we postpone consideration of this proposed transaction until after consideration of a possible offer by Harbinger Capital Partners Fund (Harbinger) to acquire Inmarsat.⁶⁶ We find that a possible future transaction involving Harbinger has no bearing on the merits of Inmarsat's proposal to acquire Stratos Global. We therefore find no reason to delay consideration of the instant transaction.

C. Qualifications of the Applicants

23. Next, we must determine whether the Applicants meet the requisite qualifications to hold and transfer licenses under section 310(d) of the Act and the Commission's rules. In general, when evaluating assignments under section 310(d), the Commission does not re-evaluate the qualifications of the transferor, unless issues related to basic qualifications have been designated for hearing by the Commission or have been sufficiently raised in petitions to warrant the designation of a hearing.⁶⁷ This is

⁶⁰ See Section III.D.3., *infra*.

⁶¹ 2007 Stratos Order, 22 FCC Rcd at 21371, ¶ 106.

⁶² See <http://www.fcc.gov/transaction/timeline.html>; Inmarsat Opposition at 30, Stratos Global Opposition at 4-5, citing the Commission's timeline for acting on merger applications.

⁶³ Vizada Petition at 7.

⁶⁴ Inmarsat Opposition at 6.

⁶⁵ See, e.g., *Decatur Telecasting, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 8622 (1992).

⁶⁶ Vizada Petition at 13; Inmarsat Opposition at 30-31.

⁶⁷ See, e.g., *Verizon Wireless-RCC Order*, 23 FCC Rcd at 12477-78, ¶ 27; *AT&T-Dobson Order*, 22 FCC Rcd at 20302, ¶ 11; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11536, ¶ 17; *Sprint-Nextel Order*, 20 FCC Rcd at 13979, ¶ 24; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13063-64, ¶ 18; *Cingular-AT&T Wireless Order*, 19 (continued....)

not the case here. In the *2007 Stratos Order*, the Commission found that the Trust and the Trustee possess sufficient financial, legal and technical qualifications to be a Commission licensee.⁶⁸ As a result, we need not here re-evaluate the basic qualifications of Trust or the Trustee.

24. Similarly, we see no reason to find that Inmarsat is unqualified to acquire the Stratos Licensees. Although section 310(d) requires us to consider the qualifications of the proposed transferee as if the transferee were applying for the license directly under section 308 of the Act,⁶⁹ Vizada has not challenged Inmarsat's financial, legal, technical or other basic qualifications to be a licensee under the Communications Act. Inmarsat is already a Commission licensee, and we see nothing in the record before us that suggests that Inmarsat would not be legally, technically or financially qualified to be itself a distributor of its satellite services.

D. Effect on Competition

1. Introduction and Analytical Framework

25. We next consider the potential public interest harms, including potential harms to competition, arising from this transfer of control. Consistent with Commission precedent, we consider the competitive effects of the transaction on existing and future competition⁷⁰ in the provision of mobile satellite services, with reference also to fixed satellite and domestic terrestrial communications services.

26. In this section, we discuss whether Inmarsat's acquisition of Stratos Global has the potential to adversely affect competition in the provision and distribution of mobile satellite services, ultimately harming consumers of such services through excessive prices, lower quality, or restrictions in availability. As we explain in detail below, we do not anticipate that the merger will adversely affect competition or harm consumers. We expect that by rationalizing the distribution of Inmarsat services, the merger is likely to make Inmarsat a more efficient competitor and may result in greater competition, with the end results being lower prices, improved quality, and more widespread availability of mobile satellite services.

27. Stratos Global distributes and resells the satellite services of several MSS and FSS operators, but does not itself own or control any satellites or satellite systems. The retail market in which Stratos

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FCC Rcd at 21546, ¶ 44. *See also* Stephen F. Sewell, Assignment and Transfers of Control of FCC Authorizations under Section 310(d) of the Communications Act of 1934, 43 FED. COMM. L.J. 277, 339-40 (1991). The policy of not approving assignments or transfers when issues regarding the licensee's basic qualifications remain unresolved is designed to prevent licensees from evading responsibility for misdeeds committed during the license period. *See id.* The hearing designation is required under Section 309(e) of the Communications Act, 47 U.S.C. § 309(e), only if the record presents a "substantial and material question of fact" whether grant of the application would serve the public interest, convenience, and necessity.

⁶⁸ *2007 Stratos Order*, 22 FCC Rcd at 21340-1, ¶ 31.

⁶⁹ Section 308 requires that applicants for Commission licenses set forth such facts as the Commission may require as to citizenship, character, and financial, technical, and other qualifications. 47 U.S.C. § 308. *See also ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11536-7, ¶ 17; *Sprint Nextel-Nextel Partners Order*, 21 FCC Rcd at 7362, ¶ 10; *SBC-ATT Order*, 20 FCC Rcd at 18379, ¶ 171; *Verizon-MCI Order*, 20 FCC Rcd at 18526, ¶ 183; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13063-4, ¶ 18; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21546, ¶ 44.

⁷⁰ *See ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11538, ¶ 19; *SBC-ATT Order*, 20 FCC Rcd at 18302, ¶ 18; *Verizon-MCI Order*, 20 FCC Rcd at 18444, ¶ 18; *Sprint-Nextel Order*, 20 FCC Rcd at 13978, ¶ 22; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13065, ¶ 20; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21545, ¶ 44; *Verizon/MCI Merger Order*, 20 FCC Rcd at 18444-45, ¶ 18; *SBC/AT&T Merger Order*, 20 FCC Rcd at 18302, ¶ 18.

Global operates is competitive and includes numerous distributors and resellers.⁷¹ Inmarsat, however, is required at present to distribute its services through “legacy distributors,” *i.e.*, former Inmarsat signatories and their descendents, including Stratos Global and Vizada.⁷² Under current contracts with Inmarsat, legacy distributors have the right to purchase Inmarsat’s services at substantial discounts relative to other distributors and resellers. In general, distributors and resellers, including the legacy distributors, resell Inmarsat’s services unbundled with other MSS products and without major enhancements.

28. Vizada raises two arguments about the effect of this transaction on competition. First, Vizada argues that Inmarsat continues to enjoy dominant market power, and that many MSS customers remain effectively “locked-in” to Inmarsat-based services, either because Inmarsat offers unique services or because customers have already invested heavily in Inmarsat-based equipment.⁷³ Second, Vizada argues that distribution agreements with MSS distributors have prevented Inmarsat from exercising market power, and that, post-acquisition, Inmarsat may harm Vizada and other distributors by extending its market power downstream.⁷⁴ The Applicants respond that Inmarsat does not have market power over mobile satellite services and that Inmarsat is simply seeking to replace outdated and inefficient distribution arrangements by acquiring Stratos Global, which is an independent distributor of mobile satellite services.⁷⁵ As we explain below, we reject each of Vizada’s arguments, and find that it is unlikely that Inmarsat’s acquisition of Stratos Global will have a harmful effect on competition.

29. We note here that Inmarsat’s acquisition of Stratos Global would not be a horizontal merger. As we explained above, Stratos Global distributes and retails the satellite services of several MSS and FSS operators, but does not itself own or control any satellites or satellite systems. Inmarsat owns a mobile satellite system, but unlike Stratos Global, does not generally distribute or retail satellite services. Thus the merger will not by itself result in greater concentration of control over mobile or fixed satellite systems, their distribution or retail sales.

⁷¹ *2007 Stratos Order*, 22 FCC RCd at 21362, ¶ 64 n.197; Vizada Petition to Deny at 3 (“Currently, Vizada, Stratos [Global], and other distributors obtain capacity from Inmarsat through distribution agreements that foster a competitive market in Inmarsat services.”). *See also* Inmarsat/Stratos Global October 9 *Ex Parte* Letter at 11, Figure 1.

⁷² Inmarsat Opposition at 4-5; Narrative at 6, n.11. *See also* Inmarsat/Stratos Global October 9 *Ex Parte* Letter at 11, Figure 1.

⁷³ Vizada argues that this investment can take the form of “the requisite terminals and other equipment, training personnel, and developing extensive and long-standing experience operating such equipment.” Vizada Petition at 23.

⁷⁴ The Commission has stated that it will consider only those harms that arise from the transaction in question. *See, e.g., News Corp. and the Direct TV Group, Inc. Transferors, and Liberty Media Corp., Transferee, for Authority to Transfer Control*, MB Docket No. 07-18, Memorandum Opinion and Order, FCC 08-66, 23 FCC Rcd 3265, 3269, ¶ 26 (2008). *See also Verizon Communications Inc., Transferor, and América Móvil S.A. de C.V., Transferee*, WT Docket No. 06-113, Memorandum Opinion and Order and Declaratory Ruling, FCC 07-43, 22 FCC Rcd 6195, 6205, ¶ 22 (2007); *Applications of WWC Holding Co., Inc., and RCC Minnesota, Inc., for Consent to Assignment of Licenses*, File No. 0002849067, Memorandum Opinion and Order, 22 FCC Rcd 6589, 6598, ¶ 17 (2007). Inmarsat asks that the Commission reject Vizada’s competitive concerns because they are not specific to this transaction, noting that they relate instead to the expiration of current distribution arrangements with Vizada and other legacy distributors. Inmarsat Opposition at 19-23. Even if Vizada’s allegations are not merger-specific, as Inmarsat alleges, the Commission has continuing oversight authority with respect to the distribution arrangements of satellite operators, including any exclusive arrangements with independent firms. The Commission therefore may consider allegations of anticompetitive activity arising from such arrangements and, if necessary, require their termination.

⁷⁵ Narrative at 7-8. *See also* Inmarsat Opposition at 3-7; Inmarsat/Stratos Global October 9 *Ex Parte* Letter at 16.

30. The issue before us is whether Inmarsat's acquisition of Stratos Global is likely to result in higher prices, lower quality, or restricted availability for Inmarsat's own products.⁷⁶ Vizada makes such a claim, asserting that Inmarsat has market power over mobile satellite services and that the merger will augment its market power.⁷⁷ Vizada argues that the competitive harms outweigh any enhanced efficiencies resulting from the merger on the basis that Inmarsat has sufficient market power in the upstream market to profitably foreclose the relevant product or service from its downstream rivals. The record does not support Vizada's claim that Inmarsat has market power over mobile satellite services. In addition, nothing in the record explains how a vertical merger between Inmarsat, a firm lacking market power, and an independent distributor that itself has no market power in the downstream distribution market would augment such market power.⁷⁸

31. Consistent with Commission precedent and the *DOJ/FTC Merger Guidelines*,⁷⁹ we base our market definition on considerations of demand substitutability among services. The various services provided by MSS operators share a fundamental demand characteristic: they provide mobile telecommunications connectivity to consumers in geographically diverse or remote areas.⁸⁰ As we explain in more detail below, each individual mobile satellite service varies somewhat in its consumer demand characteristics, making the services imperfect substitutes for each other.⁸¹ U.S. consumers purchase mobile satellite services for both domestic and international connectivity, but Inmarsat's services and their close substitutes are primarily international in scope. The Applicants claim that international mobile satellite services comprise a single market.⁸² Vizada argues, however, that there are numerous relevant product markets, including (1) maritime low-speed data; (2) maritime voice; (3)

⁷⁶ We note that no petitioner has raised the concern that Inmarsat's purchase of Stratos Global will reduce the ability of other satellite operators to distribute or sell their services (e.g., as a result of the reduction in the number of independent distributors and retail sales outlets). We rely on the Commission's analysis in the *2007 Stratos Order* that the merger will not reduce the ability of satellite operators to distribute or sell their services. Because Stratos Global is only one of many distributors and retail sales outlets of satellite services, satellite operators will continue to have a wide choice of other, independent distributors and retail sales outlets should they find distribution or retail sales arrangements with Stratos to be unsatisfactory. See *2007 Stratos Order*, 22 FCC Rcd at 21355, ¶ 61. See also *Inmarsat/Stratos Global October 9 Ex Parte Letter* at 10-12.

⁷⁷ Vizada Petition at 20-41.

⁷⁸ See *News Corporation and The DirecTV Group, Inc., Transferors, and Liberty Media Corporation, Transferee*, MB Docket No. 07-18, 23 FCC Rcd 3265 (2008). In *Liberty Media*, we discussed the potential for a vertically integrated firm, as the result of a transaction, to foreclose downstream competitors from important inputs (e.g., programming) is the subject of substantial economic literature. Theoretically, where a firm that has market power in an input market acquires a firm in the downstream output market, the acquisition may increase the incentive and ability of the integrated firm to raise rivals' costs either by raising the price at which it sells the input to downstream competitors or by withholding supply of the input from competitors. See Michael H. Riordan and Steven Salop, *Evaluating Vertical Mergers: A Post-Chicago Approach*, 63 ANTITRUST L. J. 513, 527-38 (1995) ("Riordan and Salop"); see also Thomas G. Krattenmaker & Steven C. Salop, *Anticompetitive Exclusion: Raising Rivals' Costs to Achieve Power Over Price*, 96 YALE L. J. 209, 234-38 (1986).

⁷⁹ See *U.S. Department of Justice and Federal Trade Commission Horizontal Merger Guidelines*, 1992, rev. 1997 (*DOJ/FTC Merger Guidelines*).

⁸⁰ Substitutes to services provided by MSS operators are available in some circumstances from FSS operators and terrestrial radio systems, as explained below.

⁸¹ See *2007 Stratos Order*, 22 FCC Rcd at 21361-62, ¶ 63. Mobile satellite services are consumed in different environments (on the land, sea and in the air), at various data speeds, using various kinds of handsets or terminal equipment, with varying coverage areas, etc.

⁸² *Inmarsat Opposition* at 8-9; *Stratos Opposition* at 8-12.

maritime high-speed data; (4) aeronautical low-speed data; (5) aeronautical voice; (6) aeronautical high-speed data; (7) land low-speed data; (8) land voice; (9) land high-speed data; as well as even more specific markets involving low-speed data safety services and service segments in which customers are uniquely “locked-in.”⁸³

32. Based on the record before us, we conclude that given the shared fundamental demand characteristics of the services, as well as their imperfect demand substitutability, international mobile satellite services provided to consumers are a single market with differentiated products, and we define the retail provision of international mobile satellite services to be a relevant market for purposes of our analysis.⁸⁴ Our analysis also focuses on the wholesale provision of international mobile satellite services, which we define as an additional relevant market. We emphasize that we have adopted these market definitions based on information currently available, and will consider revising them in future proceedings should more economic evidence on demand substitutability or other factors be available at that time.

33. The Applicants claim that international mobile satellite services comprise a single market and that this market definition is consistent with that used by the Commission in previous proceedings.⁸⁵ Vizada cites a study by Tim Farrar of Telecom, Media and Finance Associates, which categorizes mobile satellite services into the above nine categories, as support for its view that there are at least nine relevant product markets.⁸⁶ Vizada states that certain of Inmarsat’s and Stratos’ business materials also categorize mobile satellite services into these or similar categories.⁸⁷ The *Farrar Study* acknowledges, however, that the nine categories it identifies may not qualify as market definitions for antitrust purposes and may more appropriately be considered market segments.⁸⁸ We agree. Vizada has not provided economic evidence that these nine categories are distinct product markets and not merely segments of a broader mobile satellite services market. For example, Vizada has not provided evidence that voice services (64 kbps) and high-speed data services (128 kbps and above) are not adequate substitutes from a consumer perspective. Nor has Vizada explained why the particular locale of consumption of mobile telecommunications services (*e.g.*, on land, sea, or in the air) should be decisive in delineating product markets. We believe that Vizada’s market definitions may be too narrow, absent further explanation or evidence.

⁸³ Vizada Petition to Deny at 27-28. *See also* Vizada Reply at 10-11, 12, 26-51. *See below* for a discussion of Vizada’s theory of customer “lock-in.”

⁸⁴ We note, however, that some satellite operators provide services limited in coverage to the United States or individual foreign regions, and that such services may be substitutes for Inmarsat’s services for some customers, especially when integrated to provide broad international coverage by system integrators or the customers themselves.

⁸⁵ Inmarsat Opposition at 8-9; Stratos Global Opposition at 8-12. *See also* Inmarsat/Stratos Global October 9 *Ex Parte* at 2-4. *See also* *Vodafone Americas Asia, Inc. (Transferor), Globalstar Corporation (Transferee); Consent to Transfer Control of Licenses and Section 214 Authorizations and Petition for Declaratory Ruling Allowing Indirect Foreign Ownership*, Order and Authorization, 17 FCC Rcd 12849, 12867, ¶¶ 54, 55 (2002); *see also* *Motient Services Inc. and TMI Communications and Company, LP (Assignors) and Mobile Satellite Ventures Subsidiary LLC (Assignee)*, Order and Authorization, 16 FCC Rcd 20469, 20477-78, ¶ 24 (2001); *see also* *Use of Returned Spectrum in the 2 GHz Mobile Satellite Service Frequency Bands*, IB Docket Nos. 05-220 and 05-221, Order, FCC 05-204, 220 FCC Rcd 19696 (2005).

⁸⁶ Vizada Reply at 12. *See also* *Farrar Study* at 4-5.

⁸⁷ Vizada Reply at 31.

⁸⁸ *Farrar Study* at 1.

34. We will, however, address below Vizada's allegations regarding inadequate competition in the four specific market segments that Vizada contends are separate relevant product markets in which Inmarsat has market power (maritime low-speed data service; aeronautical high-speed data services; remote land-based high-speed data services; and maritime high-speed data services).⁸⁹

2. Market Power in the International Mobile Satellite Services Market

35. Vizada argues that, notwithstanding limited development of alternative MSS systems, Inmarsat still continues to enjoy dominant market power and that many MSS customers remain effectively "locked in" to Inmarsat-based services for important telecommunications requirements.⁹⁰ Vizada claims that Inmarsat's market power derives from (1) Inmarsat's unique service offerings⁹¹ and (2) MSS customers' pre-existing large investments in Inmarsat-specific terminals, equipment, training, standardization, and operational experience.⁹² Vizada also provides the *Farrar Study*, which purports to show that Inmarsat dominates certain market segments.⁹³ We agree with the Applicants, however, that Inmarsat has no significant market power over international mobile satellite services.⁹⁴

36. We note that several major MSS operators provide service in competition with Inmarsat (e.g., SkyTerra, Iridium, Globalstar) and several companies are developing major new MSS systems to provide service in the future (e.g., ICO and Terrestar). These systems have sufficient spectrum with which to compete with Inmarsat. Of the total of 145 megahertz of MSS spectrum authorized by the FCC, Inmarsat has access to only 68 megahertz of L-band spectrum, which it must share with SkyTerra.⁹⁵ There are also major MSS operators outside the United States that compete with Inmarsat in serving U.S. customers in other regions of the world.⁹⁶

37. Competition with Inmarsat is not limited to MSS operators. Technological progress has enabled FSS operators in the C- and Ku-bands to become major competitors of Inmarsat in the provision of mobile satellite services.⁹⁷ For example, with regard to the important category of maritime broadband

⁸⁹ Vizada Reply at 12. See also *Farrar Study* at 2.

⁹⁰ Vizada Petition, Summary at 1.

⁹¹ Vizada alleges that Inmarsat offers a "unique global system footprint and network: only Inmarsat can offer the combination of geographically ubiquitous coverage, with high data throughput, in a global service that is weather-insensitive, certified for providing safety at sea and in flight, and reliably delivered by a firm with a long and dependable performance record and a stable financial condition." Vizada Petition, Summary, at 1. See also *Id.* at 3, 17, n.17, and 21.

⁹² Vizada Petition, Summary at 1. See also Vizada Petition at 3-4, 17, n.17, and 23.

⁹³ *Farrar Study*.

⁹⁴ Inmarsat Opposition at 11, 18, n.50, 21; Stratos Global Opposition at 8-12.

⁹⁵ The 145 megahertz of MSS band spectrum authorized by the FCC consists of 68 megahertz of L-band spectrum, 44 megahertz of Big LEO spectrum, 4 megahertz of Little LEO spectrum and 40 megahertz of 2GHz spectrum. *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993: Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services*, WT Docket No. 07-71, Twelfth Report, FCC 08-28, 23 FCC Rcd 2241, 2345-2352 ¶¶ 259-289 (2008) (*12th Annual CMRS Report*).

⁹⁶ Non-U.S. satellite operators include Thuraya, Telecomunicaciones de Mexico, Informcosmos, Optus MobileSat, INSAT 3C, and N-Star. Inmarsat Opposition at 14. These MSS operators provide service to U.S. customers seeking regional coverage outside the United States.

⁹⁷ See Inmarsat Opposition at 12-13. Recent innovations reducing the size and increasing the pointing accuracy of satellite antennas in the C- and Ku-bands have allowed their use in mobile applications. See, e.g., *Procedures to Govern the Use of Satellite Earth Stations on Board Vessels in the 5925-6425 MHz/3700-4200 MHz Bands and* (continued....)

(i.e., high-speed data) services, many of the largest and most valuable Inmarsat users have replaced Inmarsat services with VSAT services using stabilized antennas.⁹⁸ Competition is also emerging from terrestrial wireless providers. For example, AirCell is using terrestrial stations to provide aeronautical broadband services in competition with Inmarsat and other MSS operators.⁹⁹

38. Despite the presence of other MSS and FSS operators, Vizada argues that Inmarsat offers unique services that effectively restrict the ability of customers to choose alternatives because there are no exact substitutes, and that this results in market power for Inmarsat.¹⁰⁰ As the Commission explained in the *2007 Stratos Order*, mobile satellite services are highly differentiated, and competition occurs through the clash of imperfect substitutes.¹⁰¹ The fact that there are no exact substitutes to Inmarsat's services does not confer significant market power on Inmarsat. Each mobile satellite service competes for customers on the basis of a distinct profile of advantages and disadvantages, including commercial availability, signal coverage, latency, portability, spectrum bandwidth, reliability, etc. For example, while Inmarsat's maritime services offer several advantages to customers, Inmarsat is limited by the amount of spectrum it has available, and is therefore relatively expensive for large volume users.¹⁰² Inmarsat's

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14.0-14.5 GHz/11.7-12.2 GHz Bands, IB Docket No. 02-10, Report and Order, FCC 04-286, 20 FCC Rcd 674 (2005), recon. pending (*Earth Stations on Vessels Order*) (establishing licensing and service rules for Earth Stations on Vessels (ESVs) operating in the C- and Ku-band frequencies, and noting that ESVs have been utilized for several years to provide telecommunications services, including Internet access, to cruises, merchant ships, ferries, barges, yachts and U.S. navy vessels); *Amendment of Parts 2 and 25 of the Commission's Rules to Allocate Spectrum and Adopt Service Rules and Procedures to Govern the Use of Vehicle-Mounted Earth Stations in Certain Frequency Bands Allocated to the Fixed-Satellite Service*, IB Docket No. 07-101, Notice of Proposed Rulemaking, FCC 07-86, 22 FCC Rcd 9649 (2007) (*VMES NPRM*) (seeking comment on the use of vehicle-mounted earth stations as an application of the fixed satellite service in the conventional and extended Ku-band frequencies).

⁹⁸ Greg Berlocher, "Maritime Market," *Via Satellite Magazine*, Nov. 2008, at 23. ("During the 1980's, Inmarsat was the sovereign of the seas, charging \$10 per minute for voice and telex connectivity... Energy companies were quick to adopt VSAT [very small aperture terminal] services using stabilized antennas... With a global reach, these companies expanded into commercial shipping and other maritime markets... The impact of broadband VSAT services on Inmarsat and the maritime industry has been profound... While the penetration into Inmarsat's market by VSAT operators was and remains small in terms of absolute numbers, VSAT has effectively cream-skimmed the customer base, taking the largest and most valuable users and dominating each of the segments it addresses...") (Quotation marks removed, brackets added.)

⁹⁹ See AirCell website at <http://www.aircell.com/>.

¹⁰⁰ Vizada Petition, Summary at 1. See also Vizada Petition at 3-4, 13, 16, 17, n.17, 20-21, 34.

¹⁰¹ This is in contrast to commodity markets, in which competing products are perfect or near-perfect substitutes. With differentiated products, firms compete by selling products with unique profiles of advantages (and disadvantages). Substitutes need not be perfect to prevent the emergence of significant market power. A hallmark of a differentiated product market is that market segments within the product market tend to become sufficiently narrow such that a single provider can earn no more than a competitive rate of return even if it dominates the entire market segment. In commodity markets, competitors seek profitability by competing over price and quality for a strictly defined commodity. In differentiated product markets, in contrast, competitors seek profitability by dividing and controlling ever-narrowing market segments. See Vizada December 8 *Ex Parte* Letter at 13-14 (noting that "modest revenue" is unlikely to "bring aggressive competition").

¹⁰² Greg Berlocher, "Maritime Market," *Via Satellite Magazine*, Nov. 2008. pp. 23-24. ("Inmarsat's major advantages in the maritime market include its coverage, spectrum, Global Maritime Distress Safety System role, distribution and service networks, range of products, price of user equipment, and not least, the company's established brand and name... On the downside, the company is limited in terms of the amount of spectrum L-band affords it and this, in turn, means that bandwidth is relatively expensive when compared to fixed satellite services capacity. Consequently, Inmarsat's services are mostly charged by volume – whether this is in minutes or megabits (continued....)")

ability to provide maritime broadband data services on a near-global scale does not confer significant market power on Inmarsat, because imperfect substitutes exist to constrain Inmarsat's power to restrict supply and raise price. In the case of maritime broadband services, there are several viable alternatives, including a combination of regional FSS broadband services that provide extensive international coverage.¹⁰³ Such systems may have less portable antennas than Inmarsat's and may require a system integrator, but may offer higher usage volumes at lower prices. Another option for customers seeking maritime broadband services is Iridium's recently inaugurated MSS offering OpenPort,TM which is global in coverage and very portable but has lower data speeds than some of Inmarsat's services.¹⁰⁴

39. We also disagree with Vizada's claim that Inmarsat derives significant market power from MSS customers' pre-existing large investments in Inmarsat-specific terminals, equipment, training, standardization, and operational experience.¹⁰⁵ As a general matter, businesses often switch suppliers. Such ordinary commercial behavior typically involves the retirement or sale of supplier-specific equipment, new training, etc. Vizada offers no explanation why investments in Inmarsat mobile satellite terminals, equipment, training, etc. are so costly or otherwise indispensable as to preclude switching to one of its competitors. Specifically, Vizada cites the U.S. Navy as a prime example of an Inmarsat customer "locked in" to Inmarsat services.¹⁰⁶ The U.S. Navy, however, based on public information, is considering replacement of its Inmarsat-based infrastructure with a new service.¹⁰⁷ Regardless of the

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per second – and heavy volume users can face very large monthly bills as a result. Prior to the current liberalized broadband world, this was a limitation, but not a critical one... However, the environment today is very different with high levels of connectivity and low prices available to the majority of the world's population.”) (Quotation marks and brackets removed.)

¹⁰³ According to the Applicants, FSS systems are being deployed on ships and airplanes to provide voice and broadband connectivity to both passengers and crew over satellite networks with global coverage. Inmarsat Opposition at 12-13; Stratos Opposition at 11; Inmarsat/Stratos Global December 17 *Ex Parte* Letter, Annex A at 2, 4-5. Inmarsat also claims that Vizada is one of many satellite services providers to offer, in direct competition with Inmarsat, earth station on vessel service in FSS bands at speeds of up to 8 Mbps and with global coverage. Inmarsat Opposition at 12-13. *See also* the Applicants' description of Orbit Technology Group's recent test of oceanic coverage for an integrated Ku-band satellite system. Inmarsat/Stratos Global October 9 *Ex Parte* Letter at 7-8. *See also* Greg Berlocher, "Maritime Market," *Via Satellite Magazine*, Nov. 2008. p. 24 (describing successful tests of seamless maritime broadband service provided by a combination of FSS operators). Note that only some customers need global coverage. Vizada disputes the importance of maritime broadband competition from FSS operators. *See* Vizada Reply at 37-42; Vizada December 8 *Ex Parte* Letter at 9-11. *See also Farrar Study* at 8-10.

¹⁰⁴ *See* Iridium's description of OpenPortTM at <http://www.iridiumopenport.com/>. *See* Inmarsat Opposition at 14. *See also Farrar Study* at 9-10; Inmarsat/Stratos Global October 9 *Ex Parte* Letter at 6.

¹⁰⁵ Vizada Petition at 22. ("Given Inmarsat's legal monopoly situation in the past, it is not surprising that many major government and commercial users invested enormous sums in purchasing Inmarsat-specific antennas, terminals, transceivers, other onboard or ground equipment, software, etc. that is compatible only with Inmarsat satellite services. These users also invested large sums and immense amounts of employee time in testing that equipment, training personnel, developing training and operational manuals and guides, working with Inmarsat and its distributors to develop customized communications and ancillary services, and so forth. Understandably, it would be highly improbable for these users to abandon their enormous investment in Inmarsat-based service and start anew with a different satellite services supplier.") (Paragraph indentation removed.)

¹⁰⁶ Vizada Petition at 23.

¹⁰⁷ Turner Brinton, "Industry Gears Up for Big U.S. Navy Commercial Bandwidth Procurement," *Space News*, Oct. 20, 2008, p.6. ("The Navy intends to award a single, end-to-end services contract that includes C-, Ku- and X-band satellite capacity, ground station services, terrestrial connectivity, and operations and maintenance... The program will replace the Navy's current commercial L-band service provided by Inmarsat," and that the Navy's procurement (continued....)

status of the procurement,¹⁰⁸ the U.S. Navy's actions demonstrate that customers have other options than Inmarsat's services and that such customers are not necessarily locked in by extensive investment in Inmarsat facilities and training.

40. Finally, Vizada cites the *Farrar Study* in claiming that Inmarsat has market power over four specific service categories: (1) maritime low-speed data services; (2) aeronautical high-speed data services; (3) remote land-based high-speed data services; and (4) maritime high-speed data services.¹⁰⁹ We disagree. There are no major legal, regulatory or technological barriers to entry in these service categories and, as we explained above, there is sufficient MSS spectrum available as well as FSS capacity for mobile satellite applications.¹¹⁰ Moreover, Inmarsat has major competitors for each of the above service categories,¹¹¹ and several MSS incumbents and new entrants are developing state-of-the-art broadband satellite systems that will compete with Inmarsat in the future.¹¹² Although the *Farrar Study*

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solution seeks to provide "a 10-fold increase in throughput capacity." (Paragraph indentation removed.) *See also* Stratos Global Opposition at 3-4, 11-12.

¹⁰⁸ Vizada Reply at 41 (arguing that "indications are that the Navy will continue to use Inmarsat").

¹⁰⁹ Vizada Reply at 12; Vizada December 8 *Ex Parte* Letter at 7-14.

¹¹⁰ We note that certain ships are required by international agreement to have global maritime distress safety system (GMDSS) capability, which Inmarsat alone is certified to provide at this time. Vizada Reply at 34-36. Inmarsat includes the capability in certain low-speed data terminals and provides GMDSS service as a public service at no charge. Vizada claims that because GMDSS service is bundled with other low-speed maritime data services, Inmarsat's GMDSS monopoly confers market power on Inmarsat. *Id.* at 34-36. *See also* Vizada December 8 *Ex Parte* Letter at 7. According to the *Farrar Study*, low-speed maritime data services account for about 4 percent of MSS satellite operators' annual revenue. *Farrar Study* at 16. Although Inmarsat's unique position as a provider of GMDSS service appears to give it a competitive advantage, we are not persuaded that it confers significant market power on Inmarsat in the provision of low-speed maritime data services. The issue is whether bundling GMDSS capability into low-speed data terminals allows Inmarsat to charge a monopoly premium for packages of low-speed maritime data services that include GMDSS. Even if these service packages have no adequate substitutes among those offered by other satellite operators due to unique importance of GMDSS, these service packages also compete against Inmarsat's own higher-speed maritime data services, which are themselves subject to extensive competition. Thus low-speed service packages bundled with GMDSS are pigeonholed into a particular pricing slot that would unlikely afford Inmarsat much upward pricing flexibility. We also note that Iridium currently provides aeronautical safety services and has the technical capability to provide GMDSS in the future should it be profitable to do so. *Farrar Study* at 11.

¹¹¹ Competitors to Inmarsat in the provision of maritime low-speed data service include Iridium, Globalstar, and Orbcomm. *See* Inmarsat/Stratos Global October 9 *Ex Parte* Letter at 6-7. *See also* *Farrar Study* at 6-7. Competitors to Inmarsat in the provision of aeronautical broadband services include Aircell and FSS service providers such as Row 44. Aircell won the FCC's 800 MHz air-to-ground spectrum licensing auction (Auction 65) in 2006 and has deployed an aeronautical broadband network across the United States. *See* Inmarsat Opposition at 13. *See also* *Farrar Study* at 11-12; Inmarsat/Stratos Global October 9 *Ex Parte* Letter at 8. Competitors to Inmarsat in the provision of remote broadband land mobile services include FSS service providers such as Hughes, General Dynamics, and ViaSat, as well as Thuraya (outside the United States). *See* *Farrar Study* at 12-15. *See also* Inmarsat/Stratos Global October 9 *Ex Parte* Letter at 9-10. Competitors to Inmarsat in the provision of maritime broadband services currently include C- and Ku-band FSS providers and Iridium (through its recently inaugurated OpenPort™ service). *See* Inmarsat Opposition at 13. *See also* Inmarsat/Stratos Global October 9 *Ex Parte* Letter at 4-6; *Farrar Study* at 8-10.

¹¹² Incumbents Iridium, SkyTerra, and Globalstar are moving forward with plans to launch next generation satellite networks, all promising advanced mobile broadband offerings. *See* Inmarsat Opposition at 14. *See also* *Farrar Study* at 14. SkyTerra is preparing to launch several satellites "that are expected to among the largest and most powerful commercial satellites ever built" and that will provide broadband coverage to aeronautical, land mobile, and maritime customers over much of the Western hemisphere. *See* Telecommunications Industry Association, *TIA* (continued....)

indicates that Inmarsat has large revenue shares in the four service categories listed above, the data in the study exclude FSS operators, which are major competitors to Inmarsat.¹¹³ The revenue shares also do not reflect the likely impact in the near future of recently introduced services such as Iridium's OpenPort™ and Aircell's aeronautical broadband offerings.

3. Vertical Integration

41. Vizada also claims that competition between the distributors of Inmarsat's services constrains Inmarsat's ability to exercise market power, and that post-acquisition Inmarsat will "leverage" its market power downstream, eliminating this "intra-brand" competition and forcing up prices.¹¹⁴ Vizada alleges that once Inmarsat's acquisition of Stratos Global is consummated and its agreements with other distributors (including Vizada) expire in April 2009, Inmarsat will be in a position to harm Vizada and the other distributors by unilaterally imposing major wholesale price increases and, by eliminating volume discounts, effectively force up prices to consumers.¹¹⁵ The Applicants, on the other hand, argue that the expiration of legacy distribution agreements in April 2009 will allow Inmarsat to replace the current volume discounts that disproportionately favor the legacy distributors such as Vizada with volume discounts available to all resellers of Inmarsat service, ultimately resulting in lower prices to consumers.¹¹⁶ The Applicants also argue that Inmarsat's acquisition of Stratos Global will allow Inmarsat to adopt a more efficient distribution structure, ultimately benefiting consumers.¹¹⁷ As we explain below, having rejected Vizada's claim that Inmarsat has significant market power, we also reject Vizada's claim that Inmarsat could leverage that market power downstream after Inmarsat's acquisition of Stratos Global.

42. As the Commission previously has recognized, vertical transactions may generate significant efficiencies.¹¹⁸ A firm may choose to integrate vertically into its distribution chain in order to improve efficiency, reduce distribution costs, including transaction costs, and possibly offer lower prices and a more competitive service to consumers.¹¹⁹ Additionally, in this case, Inmarsat's acquisition of Stratos

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2008 Telecommunications Market Review and Forecast, 2008, p. 215 (*2008 TIA Market Report*). Iridium reportedly will spend more than \$2 billion developing its next-generation satellite constellation, Iridium NEXT, to provide more bandwidth, enabling enhanced services to its customers. *2008 TIA Market Report*, pp. 218-19. In addition, new entrants ICO Global Communications ("ICO") and Terrestrial Networks ("Terrestrial") are developing mobile broadband systems utilizing 40 megahertz of spectrum authorized by the FCC in the 2 GHz band to cover North America. See *12th Annual CMRS Report* at ¶ 269. See also *2008 TIA Market Report*, p. 215-17. See also Inmarsat Opposition at 15; Stratos Opposition at 8-9; *Farrar Study* at 14. ICO launched its first satellite on April 14, 2008 and plans to provide video entertainment services as well as terrestrial navigation and emergency services. See ICO's website at http://www.ico.com/_about/. Terrestrial plans to launch a mobile broadband network for terrestrial use in late 2009. See Terrestrial's website at <http://www.terrestrial.com/company/index.html>.

¹¹³ See *Farrar Study* at 16 (Figure 5).

¹¹⁴ Vizada Petition, Summary at 1; Vizada Petition at 5-6, 9, 11, 16, 28-30; Vizada Reply, Summary at 2; Vizada Reply at 16-17, 20, 36, 39, 44, 51-54, 57; Vizada December 8 *Ex Parte* Letter at 4, 16.

¹¹⁵ Vizada Petition at 11, 30-41. See also Vizada Reply at 11, 51-55.

¹¹⁶ Inmarsat Opposition at 6-7; Inmarsat/Stratos Global October 9 *Ex Parte* Letter at 10-14.

¹¹⁷ Narrative at 6-9; Inmarsat Opposition at 6-7, 26-28; Inmarsat/Stratos Global October 9 *Ex Parte* Letter at 10-14.

¹¹⁸ See *AT&T-BellSouth Order*, 22 FCC Rcd at 5767, ¶ 211; *General Motors Corporation and Hughes Electronics Corporations, Transferors, and the News Corporation, Transferee*, MB Docket No. 03-124, Memorandum Opinion and Order, FCC 03-330, 19 FCC Rcd 473, 507-08, ¶ 70 (2004) (*NewsCorp.- Hughes Order*).

¹¹⁹ *AT&T-BellSouth Order*, 22 FCC Rcd at 5767, ¶ 211; *NewsCorp-Hughes Order*, 19 FCC Rcd at 507-08, ¶ 70. As the Commission has observed in both the *First and Second Annual Report & Analysis of Competitive Market Conditions with Respect to Domestic & International Satellite Communications Services*, substantial fixed and sunk (continued....)

Global corrects the inefficient effect of the current distribution arrangement involving the purchase of Inmarsat services by legacy distributors. Inmarsat's current distribution contracts do not permit Inmarsat to sell directly to consumers, and require Inmarsat to use legacy distributors, such as Vizada and Stratos Global. These arrangements grant the legacy distributors exclusive access to Inmarsat services. Such exclusive access provides the distributors preferred discounts on Inmarsat services. Until these distribution agreements are terminated, Inmarsat, which is required to use the legacy distributors, has not been able to use or develop other, more competitive methods of offering service to consumers.¹²⁰ Under these circumstances, Inmarsat's acquisition of Stratos Global creates a new, pro-competitive alternative to the legacy distribution agreements.

43. Vizada cites previous Orders in which the Commission has considered the effects of previous vertical mergers and has placed conditions on vertical mergers where necessary to protect competition.¹²¹ The cases cited by Vizada each involve vertical integration resulting in a firm with market power in an upstream market able to engage in anticompetitive behavior in a downstream market, either by raising the cost of inputs or by withholding a critical input.¹²² Vizada alleges that Inmarsat similarly will use its market power to engage in anticompetitive behavior in the market for satellite distribution, and that the Commission should therefore impose conditions designed to protect competition.¹²³ However, these cases are inapplicable here: Inmarsat lacks significant market power in the upstream market and therefore cannot leverage any market power to increase prices in a downstream market.

44. We recognize that the expiration of Inmarsat's distribution agreements with its legacy distributors and its proposed acquisition of Stratos Global may change the relationship between Inmarsat and Vizada, and that this change may occur to Vizada's detriment. Vizada and other distributors currently receive volume discounts on Inmarsat products.¹²⁴ While Vizada and other legacy distributors are concerned about the potential loss for them of preferred status of distributors receiving lucrative

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costs are intrinsic to the satellite communications industry and explain the prevalence of certain business behaviors regarding the pricing of services and the allocation of investment risk between satellite operators and customers. See *Annual Report and Analysis of Competitive Market Conditions with Respect to Domestic and International Satellite Communications Services*, IB Docket No. 06-67, First Report, 22 FCC Rcd 5954 (2007) (*First Satellite Report*); *Second Annual Report and Analysis of Competitive Market Conditions with Respect to Domestic and International Satellite Communications Services*, IB Docket No. 07-257, Second Report, FCC 08-247 (rel. Oct. 16, 2008). Inmarsat's acquisition of Stratos Global may minimize or eliminate the need to negotiate numerous, complex contracts with independent distributors; simplify the links in the chain between the supplier and the customer; and, hence, reduce the transactions cost of delivering mobile satellite services from Inmarsat to its customers.

¹²⁰ For example, Inmarsat has stated that it intends to revise its discount structure to include a larger number of distributors. Inmarsat Opposition at 21 (*citing* Preliminary 2007 Inmarsat plc Earnings Presentation, March 6, 2008).

¹²¹ Vizada Petition to Deny at 18 (*citing XM/Sirius Order; News Corporation and The DirecTV Group, Inc., Transferors, and Liberty Media Corporation, Transferee*, MB Docket No. 07-18, 23 FCC Rcd 3265, 3285-332, ¶¶ 64-121 (*Liberty Media-DirecTV Order*); *Applications for Consent to the Assignment and/or Transfer of Control of Licenses from Adelphia Communications Corporation to Time Warner Cable, Inc. and Comcast Corporation*, MB Docket No. 05-192, Memorandum Opinion and Order, FCC 06-105, 21 FCC Rcd 8203, 8256-66, ¶¶ 115-91 (2006) (*Adelphia Order*); *see also* Vizada Petition to Deny at 20, 30-43 (*citing NewsCorp-Hughes Order*).

¹²² *See Liberty Media-DirecTV Order*, 23 FCC Rcd at 3294-5, ¶¶ 66-71; *Adelphia Order*, 21 FCC Rcd at 8256, ¶ 116, *NewsCorp-Hughes Order*, 19 FCC Rcd at 543, ¶ 147.

¹²³ Vizada Petition to Deny at 29-42.

¹²⁴ Inmarsat Opposition at 6-7; Vizada Petition to Deny at 36-37, n.50.

discounts on Inmarsat products as a result of the new distribution arrangements, however, our focus is on the effect of the transaction on competition and consumer welfare.¹²⁵ The loss of these discounts may harm some legacy distributors, including Vizada, but it does not follow that such a change in distribution arrangements would harm *consumers*.

45. We find Inmarsat's stated reasons to integrate vertically with Stratos Global are plausible and pro-competitive. As the Applicants state, Inmarsat today relies entirely on third parties to distribute its mobile satellite services.¹²⁶ According to Inmarsat, "[b]y acquiring control of Stratos [Global] and its mature distribution network, Inmarsat will be able to immediately incorporate into its business the same type of distribution channel that is available to every other satellite operator."¹²⁷ The Applicants claim that Inmarsat's acquisition of Stratos Global will decrease Inmarsat's distribution costs by increasing the efficiency of its distribution network.¹²⁸ As the Commission stated in the *2007 Stratos Order* and we affirm in this Order, Inmarsat's acquisition of Stratos Global could yield significant economic efficiencies by streamlining the distribution of Inmarsat's services.¹²⁹ Inmarsat argues that the acquisition will improve Inmarsat's distribution arrangements and lower its distribution costs, resulting in more competition in the MSS industry and, ultimately, benefits to MSS consumers.¹³⁰ The Applicants provide several examples of efficiencies that would result from the acquisition, including the elimination of redundant earth stations inherited from Inmarsat's legacy distribution arrangements, the ability of Inmarsat to sell directly to retailers and end-users, and the extension of uniform discounts by Inmarsat to all resellers in place of discount arrangements favoring legacy distributors.¹³¹

46. In its December 8 *Ex Parte* Letter, Vizada provides an extensive list of harms that it claims Inmarsat could cause Vizada and other rivals post-acquisition. According to Vizada, Inmarsat could (1) discriminate against rivals through its pricing of wholesale service inputs; (2) abuse information regarding rivals' customers that it receives in its capacity as a wholesaler; (3) withhold timely information from rivals regarding new product developments, etc.; (4) provide itself preferential access to space segment resources or reduce service quality to rivals; (5) provide more favorable terms and conditions for

¹²⁵ *2007 Stratos Order*, 22 FCC Rcd at 21355, ¶ 62.

¹²⁶ Narrative at 6; Inmarsat/Stratos Global October 9 *Ex Parte* Letter at 10-14.

¹²⁷ Narrative at 6-7.

¹²⁸ Inmarsat Opposition at 17; Inmarsat/Stratos Global October 9 *Ex Parte* Letter at 10-14.

¹²⁹ "[T]he vertical integration of Stratos Global with Inmarsat would alter the current wholesale business model, whereby Inmarsat depends on entities, such as Stratos Global, to offer its retail satellite services to end-users. In that case, Inmarsat would be able to offer both wholesale and retail satellite services to its customers, and realize the recognized economic efficiencies that vertical integration can offer. Such a change in business model and business organization is not intrinsically anticompetitive; in fact, it can be viewed as a response to, or consequence of, increasing competition in the markets for various satellite services, including mobile satellite services. Such a change in business organization could improve coordination between the deployment and assignment of satellite capacity and the sales and marketing of retail satellite services." *2007 Stratos Order*, 22 FCC Rcd at 21355, ¶ 62.

¹³⁰ According to the Applicants, "...any potential harm to 'middlemen' would not represent a harm to competition itself. It would simply enhance the efficient provision of Inmarsat services by flattening the distribution structure" so that it "matches the efficiencies that other satellite operators enjoy today." Inmarsat/Stratos Global October 9 *Ex Parte* Letter at 13.

¹³¹ According to the Applicants, "[T]he distribution of Inmarsat services has been inefficient since its inception. In the 1980's and 1990's, approximately 40 land earth stations were built when two or three would have been sufficient to serve the entire world." Inmarsat/Stratos Global October 9 *Ex Parte* Letter at 13. *See also Id.* at 10-14; Inmarsat Opposition at 6-7, 25. *See also* Inmarsat/Stratos December 17 *Ex Parte* Letter at 8, n.35.

commercial contracts to its wholly-owned distributor than to its rivals; and (6) deny rivals access to important technical, regulatory or product developments.¹³²

47. We are not persuaded, however, that we should deny the Application based on these potential harms. According to the Applicants, Inmarsat already has entered into distribution agreements with several distributors that include non-discrimination and confidentiality provisions, and Inmarsat has offered Vizada the same terms, which would prevent Inmarsat from discriminating against Vizada or other distributors.¹³³ Furthermore, Vizada is free to establish distribution arrangements with any of Inmarsat's competitors should it find such arrangements superior to those offered by Inmarsat.

48. Vizada claims that as part of intra-brand competition with Stratos Global, both Vizada and Stratos Global offer customers rival account management software,¹³⁴ and that customers may lose the option to use the Vizada software post-merger. While Vizada's software may be useful to customers, a potential change in the availability or variety of account management tools is a normal outcome of competitive changes in distribution arrangements and should not pose a significant problem to MSS customers.

4. Conclusion to Analysis of Effect on Competition

49. As indicated above, Vizada has failed either to demonstrate that Inmarsat has significant market power in the provision of international mobile satellite services or to show how Inmarsat's acquisition of Stratos Global would increase its market power to the detriment of consumers.¹³⁵ Accordingly, we conclude that Vizada has not shown that this transaction is likely to harm competition or consumers. Rather, we have found that Inmarsat's services compete with other mobile satellite services on a level playing field. As a result, we find that there is no need to single out Inmarsat's services as requiring a special type of distribution arrangement to promote "intra-band" competition. Based on the above considerations, we find it unlikely that Inmarsat's acquisition of Stratos Global will adversely affect competition or harm consumers. On the contrary, we expect that by rationalizing the distribution of Inmarsat services, the acquisition may make Inmarsat a more efficient competitor, with the end results being lower prices, improved quality, and more widespread availability of international mobile satellite services to consumers.

5. Competition Conditions

50. Because we find that Inmarsat's acquisition of Stratos Global is unlikely to give Inmarsat the ability or the incentive to engage in anticompetitive conduct with respect to its distributors, we reject Vizada's argument that we need to attach competitive safeguards such as structural separation or non-discrimination guarantees.¹³⁶ Competition safeguards such as structural separation are something we have only imposed where we have found a company to be dominant (*i.e.*, to possess individual market power). Requiring structural separation could increase Inmarsat's costs and minimize the efficiencies of vertical

¹³² Vizada December 8 *Ex Parte* Letter at 16-18. *See also* Vizada Petition to Deny at 30-42.

¹³³ Inmarsat/Stratos Global December 17 *Ex Parte* Letter at 9.

¹³⁴ Vizada Petition at 29, n.35, 32; Vizada Reply at 2, 15-16, 22. *But see* Inmarsat Opposition at 25, n.70 (arguing that the software is not relevant to consumers because it is merely a tool to allow resellers to which Vizada wholesales to perform billing and activation-related activities, and is not unique to Vizada); *see also* Inmarsat/Stratos Global December 17 *Ex Parte* Letter at 10, n.4.

¹³⁵ With Inmarsat lacking market power over the provision of mobile satellite services, the vertical merger of Inmarsat and Stratos Global, which is an independent distributor that itself has no market power, is not likely to create market power.

¹³⁶ Vizada Petition at 43-4.

integration.¹³⁷ We would entertain the imposition of structural separation only upon a clear showing that Inmarsat is dominant and that separation is the only way to control that dominance, and Vizada failed to do so.

51. Similarly, we decline to attach specific non-discrimination safeguards or controls on Inmarsat's use of Vizada's proprietary information. The proprietary information of Vizada and other distributors is currently protected by confidentiality safeguards in Inmarsat's contracts with those distributors, and Vizada has remedies under contract law should Inmarsat fail to adhere to its contractual confidentiality requirements. Inmarsat has said that it values Vizada's expertise in providing satellite services and its relations with important customers and that it intends to continue to use Vizada to distribute some of its satellite services.¹³⁸ Were Inmarsat to discriminate against Vizada post-acquisition, it might lose the benefit of Vizada's expertise, thereby harming its ability to deliver service to end users. In fact, Inmarsat states that, because it has an interest in maintaining a vibrant and effective network of distributors, confidentiality protections will be part of the new contracts it is negotiating with its distributors.¹³⁹ Inmarsat states that it has already entered into new distribution contracts with several of its distributors that include non-discrimination and confidentiality provisions and has offered the same terms to Vizada.¹⁴⁰ Vizada confirms that Inmarsat has indeed offered it the same non-discrimination and confidentiality terms as Inmarsat has offered the other distributors.¹⁴¹ However, as we noted above, should Vizada find Inmarsat's confidentiality protections to be inadequate, Vizada is free to deal with any of Inmarsat's competitors that will give it more beneficial distribution arrangements. Therefore, we see no need to impose on Inmarsat special provisions regarding the proprietary information it receives from Vizada.

E. Potential Public Interest Benefits

52. The Commission applies a "sliding scale approach" to evaluating public interest benefit claims.¹⁴² Under this sliding scale approach, where potential harms appear "both substantial and likely, the Applicants' demonstration of claimed benefits also must reveal a higher degree of magnitude and likelihood than we would otherwise demand."¹⁴³ On the other hand, where potential harms appear to be less likely or less substantial, as in this case, we will accept a lesser showing to approve the transaction.¹⁴⁴ As the Commission has found before, because we do not find substantial public interest harms with this

¹³⁷ Inmarsat Opposition at 23, 27.

¹³⁸ *Id.* at 28.

¹³⁹ Inmarsat Opposition at 28-9.

¹⁴⁰ Inmarsat/Stratos Global December 17 *Ex Parte* Letter at 9.

¹⁴¹ Vizada December 8 *Ex Parte* Letter at 1.

¹⁴² *XM-Sirius Order*, 23 FCC Rcd at 12384 ¶ 76; *Verizon Wireless-RCC Order*, 22 FCC Rcd at 12506, ¶ 95; *AT&T-Dobson Order*, 22 FCC Rcd at 20332, ¶ 77; *AT&T-BellSouth Order*, 22 FCC Rcd at 5671, ¶ 203; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11565, ¶ 109; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13102, ¶ 137; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21600, ¶ 206.

¹⁴³ *EchoStar/DirecTV Order*, 17 FCC Rcd at 20631, ¶ 192 (quoting *SBC/Ameritech Order*, 14 FCC Rcd at 14825, ¶ 256); *cf. DOJ/FTC Guidelines* § 4 ("The greater the potential adverse competitive effect of a merger . . . the greater must be cognizable efficiencies in order for the Agency to conclude that the merger will not have an anticompetitive effect in the relevant market. When the potential adverse competitive effect of a merger is likely to be particularly large, extraordinarily great cognizable efficiencies would be necessary to prevent the merger from being anticompetitive.").

¹⁴⁴ *Verizon/MCI Order*, 20 FCC Rcd at 18531, ¶ 196; *SBC/AT&T Order*, 20 FCC Rcd at 18385, ¶ 185.

proposed transaction, we find the benefits that are likely to result from the transfer of control are sufficient for us to find that the transaction will serve the public interest.¹⁴⁵

53. We find Inmarsat's acquisition of Stratos Global is likely to give rise to public interest benefits. We believe that the vertical integration, such as is proposed here, can make Inmarsat's provision of its satellite services more efficient by streamlining the process by which its services are brought to market. As described above, we anticipate such efficiencies as the elimination of transactions costs that arise from distributing through an unaffiliated distributor; the elimination of redundant earth stations; the ability of Inmarsat to sell directly to resellers and end-users; and the extension of uniform discounts by Inmarsat to all resellers in place of discount arrangements favoring legacy distributors. The Commission already recognized these benefits in authorizing the transfer of Stratos Global to the Trust, where it said that Inmarsat's potential acquisition of Stratos Global would allow Inmarsat "to offer both wholesale and retail satellite services to its customers and realize the recognized economic efficiencies that vertical integration can offer."¹⁴⁶ The Commission also found that vertical integration could "improve coordination between the deployment and assignment of satellite capacity and the sales and marketing of retail satellite services."¹⁴⁷ We see nothing in the record now before us that would require us to change those views. Furthermore, as we found above, we do not believe that the transaction will harm competition or the public interest in the provision of Inmarsat satellite services.¹⁴⁸

54. We note that, even were we to deny Inmarsat's request to acquire Stratos Global, Inmarsat would be free to integrate vertically by creating its own affiliated distributor of its satellite services after the restrictions in its contracts expire on April 14, 2009. Inmarsat's proposal to acquire an existing distributor, rather than creating its own distributor affiliate, simply allows it to accelerate its ability to provide end-user service. The current restriction is unique to Inmarsat and is a legacy of its prior status as an IGO forbidden to compete with its owners.¹⁴⁹ As Applicants note, all other providers of satellite services currently have the ability to distribute their own satellite services.¹⁵⁰ Authorizing Inmarsat's acquisition of Stratos Global will merely put Inmarsat on the same footing as its competitors. Applicants assert that Inmarsat "intends to integrate Stratos [Global] into the Inmarsat family of companies, while continuing to utilize Inmarsat's existing network of third party distributors," thereby "facilitat[ing] Inmarsat's ability to compete with all other satellite operators, using all of the same methods of distribution [those operators] currently employ."¹⁵¹ If true, such a result should enhance the existing

¹⁴⁵ *Application of PacifiCorp Holdings, Inc. and Century Telephone Enterprises, Inc. for Consent to Transfer Control of Pacific Telecom, Inc., a Subsidiary of PacifiCorp Holdings, Inc.*, Report No. LB-97-49, Memorandum Opinion and Order, 13 FCC Rcd 8891, 8893-84, ¶ 3 (WTB 1997) (finding that the public interest standard was met even though the Applicants had not established the existence of substantial pro-competitive efficiency benefits to consumers).

¹⁴⁶ *2007 Stratos Order*, 22 FCC Rcd at 21355, ¶ 62.

¹⁴⁷ *Id.*

¹⁴⁸ See Section III.D.5, *supra*.

¹⁴⁹ As noted *supra* ¶ 7, the INMARSAT IGO did not distribute its satellite services to end users, relying instead on the Signatories for that function. When INMARSAT privatized in 1999, the former INMARSAT Signatories, who owned more than 95 percent Inmarsat, retained their status as sole distributors of Inmarsat services for five years. In 2003, when Inmarsat decided to become a publicly traded company, its offer of stock to non-Signatory stockholders had the effect of diluting the stock holdings of those Signatories. The former Signatories conditioned their consent to the conversion upon Inmarsat's agreeing to extend their special distributor status for an additional five years, until April 14, 2009. Inmarsat Opposition at 4-5.

¹⁵⁰ Narrative at 6-7.

¹⁵¹ *Id.* at 9.

competition in the satellite industry. Accordingly, we find that Inmarsat's acquisition of Stratos Global will provide public-interest benefits.¹⁵²

F. Section 310 Foreign Ownership Review

55. Applicants request a declaratory ruling under section 310(b)(4) of the Act that it would serve the public interest to allow up to 100 percent indirect foreign ownership of Stratos Offshore and Stratos Communications, subsidiaries of Stratos Global that hold Title III common carrier licenses.¹⁵³ In the *2007 Stratos Order*, the Commission required Inmarsat, should Inmarsat Finance decide to exercise its Option to acquire the stock of CIP UK (and, thereby, indirectly acquire control of Stratos Global), to seek a declaratory ruling under section 310(b)(4) of the Act to permit indirect foreign ownership by Inmarsat and its shareholders.¹⁵⁴ As explained above, Inmarsat Finance has decided to exercise its Option and intends to consummate the proposed transaction on or shortly after April 15, 2009.¹⁵⁵

56. Stratos Offshore and Stratos Communications hold common carrier earth station and terrestrial wireless licenses.¹⁵⁶ We therefore examine the foreign ownership interests that will be held indirectly in Stratos Offshore and Stratos Communications through their controlling U.S. parent company, Stratos Holdings, Inc. (Stratos Holdings) pursuant to the Commission's public interest analysis under section 310(b)(4) of the Act and the Commission's foreign ownership policies established in the *Foreign Participation Order*.¹⁵⁷ As part of that analysis, we consider any national security, law enforcement, foreign policy, or trade policy concerns raised by the foreign investment.¹⁵⁸ Relying on Commission precedent, we find that the proposed transfer of control does not raise any issues under sections 310(a) or

¹⁵² In reaching this conclusion, we reject Vizada's request that we require Inmarsat to provide copies of (i) all documents discussing its proposed acquisition of Stratos Global, and (ii) all other documents produced by or for Inmarsat since June 2006 discussing competition, market shares, and competitive entry and expansion of other operators in the MSS industry. *Vizada December 8 Ex Parte* at 2.

¹⁵³ 47 U.S.C. § 310(b)(4). *Petition for Declaratory Ruling* at 1, 2. *See* File No. ISP-PDR-20080618-00013.

¹⁵⁴ *2007 Stratos Order*, 22 FCC Rcd at 21370-71, ¶¶ 101-102. The *2007 Stratos Order* approved, *inter alia*, up to 100 percent indirect foreign equitable ownership of Stratos Offshore and Stratos Communications by Inmarsat, Inmarsat Finance, CIP UK and CIP Canada as part of the transfer of control of the domestic and international section 214 and Title III licenses held by subsidiaries of Stratos Global from Stratos Global to the Trust. *Id.*

¹⁵⁵ *See supra* Section II.B.

¹⁵⁶ *Petition for Declaratory Ruling* at 1.

¹⁵⁷ 47 U.S.C. § 310(b)(4); *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, IB Docket No. 97-142, Report and Order and Order on Reconsideration, FCC 97-398, 12 FCC Rcd 23891 (1997) ("*Foreign Participation Order*"), Order on Reconsideration, 15 FCC Rcd 18158 (2000). Section 310(b)(4) governs only common carrier, broadcast, aeronautical en route and aeronautical fixed radio licenses. Therefore, we do not consider specifically in our discussion here the proposed transfer of the private radio licenses held by Stratos Offshore and Stratos Communications. Our findings with respect to competitive effects, *see supra* Section III.D. our section 310(b)(4) public interest determination for the common carrier licenses, *see infra* Section III.F. and Executive Branch resolution of any national security, law enforcement and public safety concerns, *see infra* Section III.J., collectively suffice to resolve any public interest implications related to foreign ownership, outside our review under section 310(b)(4), to the extent there are any, for the private radio licenses.

¹⁵⁸ The Commission considers national security, law enforcement, foreign policy and trade policy concerns when analyzing foreign investment pursuant to sections 310(b)(4) and 310(d). *Foreign Participation Order*, 12 FCC Rcd at 23918-21, ¶¶ 59-66. *See also infra* Section III.J. (National Security, Law Enforcement and Public Safety Concerns).

310(b)(1)-(3) of the Act.¹⁵⁹ Our analysis focuses on issues raised under section 310(b)(4). Based on the record before us, we conclude that, subject to certain conditions, it would not serve the public interest to withhold consent to the proposed transaction because of the foreign equity and voting interests that will be held indirectly in Stratos Offshore and Stratos Communications.

1. Legal Standard for Indirect Foreign Ownership of Radio Licensees

57. Section 310(b)(4) of the Act establishes a 25 percent benchmark for investment by foreign individuals, corporations, and governments in U.S.-organized entities that control U.S. common carrier radio licensees. This section also grants the Commission discretion to allow higher levels of foreign ownership if it determines that such ownership is not inconsistent with the public interest.¹⁶⁰ The presence of aggregated alien equity or voting interests in a common carrier licensee's U.S. parent in excess of 25 percent triggers the applicability of section 310(b)(4)'s statutory benchmark.¹⁶¹ Once the benchmark is triggered, section 310(b)(4) directs the Commission to determine whether the "public interest will be served by the refusal or revocation of such license."¹⁶²

58. In the *Foreign Participation Order*, the Commission concluded that the public interest would be served by permitting greater investment by individuals or entities from World Trade Organization (WTO) Member countries in U.S. common carrier and aeronautical fixed and aeronautical en route radio

¹⁵⁹ Section 310(a) prohibits any radio license from being "granted to or held by" a foreign government or its representative. See 47 U.S.C. § 310(a). In this case, no foreign government or its representative will hold any of the radio licenses at issue. Section 310(b)(1)-(2) of the Communications Act prohibit common carrier, broadcast, aeronautical fixed and aeronautical en route radio licenses from being "granted to or held by" aliens or their representatives, or foreign corporations. See 47 U.S.C. § 310(b)(1)-(2). We find that no alien, representative of an alien or foreign corporation will hold any of the radio licenses at issue in this matter. Accordingly, we find that the proposed transaction is not inconsistent with the foreign ownership provisions of sections 310(a) or 310(b)(1)-(2) of the Communications Act. See *Applications of VoiceStream Wireless Corp., Powertel, Inc., Transferors, and Deutsche Telekom, Transferee*, IB Docket No. 00-187, Memorandum Opinion and Order, 16 FCC Rcd 9779, 9804-09, ¶¶ 38-48 (2001). Additionally, because the foreign investment in Stratos Offshore and Stratos Communications will be held through a controlling U.S. parent, Stratos Holdings, the proposed transaction does not trigger section 310(b)(3) of the Communications Act, which places a 20% limit on alien, foreign corporate or foreign government ownership of entities that themselves hold common carrier, broadcast, aeronautical fixed or aeronautical en route Title III licenses. Compare 47 U.S.C. § 310(b)(3) with 47 U.S.C. § 310(b)(4); *Request for Declaratory Ruling Concerning the Citizenship Requirements of Section 310(b)(3) and (4) of the Communications Act of 1934, as amended*, Declaratory Ruling, 103 FCC 2d 511, 520-22, ¶¶ 16-20 (1985) (*Wilner & Scheiner I*), reconsidered in part, 1 FCC Rcd 12 (1986); see also *Applications of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC For Consent to Transfer Control of Licenses, Authorizations, and Spectrum Manager and De Facto Transfer Leasing Arrangements and Petition for Declaratory Ruling that the Transaction is Consistent with Section 310(b)(4) of the Communications Act*, WT Docket No. 08-95, Memorandum Opinion and Order and Declaratory Ruling, FCC 08-258 at ¶ 231 n.798 (rel. Nov. 10, 2008).

¹⁶⁰ 47 U.S.C. § 310(b)(4). The calculation of foreign ownership interests under section 310(b)(4) is a two-pronged analysis in which the Commission examines separately the equity interests and the voting interests in the licensee's direct or indirect parent. See *BBC License Subsidiary L.P.*, Memorandum Opinion and Order, 10 FCC Rcd 10968, 10973, ¶ 22 (1995) (*BBC License Subsidiary*). The Commission calculates the equity interest of each foreign investor in the parent and then aggregates these interests to determine whether the sum of the foreign equity interests exceeds the statutory benchmark. Similarly, the Commission calculates the voting interest of each foreign investor in the parent and aggregates these voting interests. *Id.* at 10972, ¶ 20, 10973-74, ¶¶ 22-25.

¹⁶¹ See *id.* at 10973-74, ¶ 25.

¹⁶² 47 U.S.C. § 310(b)(4).

licensees.¹⁶³ Therefore, with respect to indirect foreign investment from WTO Members, the Commission adopted a rebuttable presumption that such investment generally raises no competitive concerns.¹⁶⁴ 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.¹⁶⁵

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.¹⁶⁶ 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.¹⁶⁷ 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.¹⁶⁸

¹⁶³ *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*)).

¹⁶⁴ *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.

¹⁶⁵ 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).

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

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

¹⁶⁸ *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.¹⁶⁹

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,¹⁷⁰ 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.¹⁷¹

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,

¹⁶⁹ 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.*

¹⁷⁰ 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.").

¹⁷¹ 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.¹⁷²

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.¹⁷³ Cazenove investigates shareholdings in Inmarsat to identify, where possible, the underlying beneficial ownership of Inmarsat shares.¹⁷⁴ 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."¹⁷⁵ 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."¹⁷⁶ 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 2008.¹⁷⁷ Based on the results of this survey, Applicants have categorized and calculated Inmarsat's equity and voting interests as follows:¹⁷⁸ (1) certain individuals in Inmarsat senior management who are citizens of the

¹⁷² 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.

¹⁷³ 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.

¹⁷⁴ *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.

¹⁷⁵ Petition for Declaratory Ruling at 8.

¹⁷⁶ Petition for Declaratory Ruling at 8.

¹⁷⁷ Petition for Declaratory Ruling at 7.

¹⁷⁸ All percentages listed are approximate. Petition for Declaratory Ruling at 9.

United States or other WTO Member countries (1.08% equity and voting);¹⁷⁹ (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);¹⁸⁰ (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);¹⁸¹ (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);¹⁸² (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

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

¹⁸⁰ 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.

¹⁸¹ 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)).

¹⁸² 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);¹⁸³ (6) other foreign investors not covered above (7.1% equity and voting – including 1.32% non-WTO).¹⁸⁴

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.¹⁸⁵ 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,¹⁸⁶ we find no basis to conclude that the proposed transaction will harm competition. We also

¹⁸³ 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.

¹⁸⁴ 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.

¹⁸⁵ 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*.

¹⁸⁶ *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.¹⁸⁷

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.¹⁸⁸ 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.¹⁸⁹

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.¹⁹⁰ Applicants state that

¹⁸⁷ See *infra* Section III.J.

¹⁸⁸ 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

¹⁸⁹ *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).

¹⁹⁰ 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.¹⁹¹

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.¹⁹²

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.¹⁹³

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.¹⁹⁴ Applicants assert that nothing in this step of the transaction would change that status.¹⁹⁵ 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.¹⁹⁶ 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.¹⁹⁷ 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.¹⁹⁸ Pursuant to Section 1.65 of the rules, Applicants should amend any current

¹⁹¹ *Id.* at 3.

¹⁹² *Id.* at 4.

¹⁹³ 47 C.F.R. § 63.10(a)(3) (2008).

¹⁹⁴ *2007 Stratos Order*, 22 FCC Rcd at 21371, ¶ 106.

¹⁹⁵ Narrative at 11.

¹⁹⁶ Narrative at 12.

¹⁹⁷ 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).

¹⁹⁸ 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.¹⁹⁹

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 Authority²⁰⁰ under section 3.51 of the Commission's rules.²⁰¹ 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"²⁰² In its Form 44, Stratos Mobile notes that it is currently certified as an Accounting Authority²⁰³ 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."²⁰⁴ 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"²⁰⁵ 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."²⁰⁶

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.²⁰⁷ 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

¹⁹⁹ 47 C.F.R. § 1.65 (2008).

²⁰⁰ 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.

²⁰¹ 47 C.F.R. § 3.51 (2008).

²⁰² *Id.* at § 3.51(a).

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

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

²⁰⁵ Form 44, Attachment A at 1.

²⁰⁶ *Id.*

²⁰⁷ *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, 2007.²⁰⁸ The Agencies state that Agreement, so amended, adequately addressed their national security and public safety concerns.²⁰⁹

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.²¹⁰ 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).²¹¹ 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.²¹² 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.1.²¹³

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.²¹⁴ 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.²¹⁵ 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.²¹⁶ 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

²⁰⁸ DOJ/DHS Petition to Adopt Conditions at 4.

²⁰⁹ *Id.*

²¹⁰ *Id.* at 1-2.

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

²¹² DOJ/DHS Petition at 4.

²¹³ *Id.* at 4-5.

²¹⁴ 47 C.F.R. § 1.948(d) (2008).

²¹⁵ 47 C.F.R. § 25.119(f) (2008).

²¹⁶ *See supra* ¶ 10.

180 days from the date of consent to consummate the transaction.²¹⁷ 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.²¹⁸

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

²¹⁷ Application at 12, n.26.

²¹⁸ 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>
Mobile Earth Terminal Authorizations:		
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 MES” means an MES 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.

Inmarsat shall ensure that knowledge of the existence of any Lawful U.S. Process served upon Inmarsat's Outsourcing Contractor is limited to those individuals who are authorized to know and whose assistance is strictly necessary to ensure compliance. Inmarsat's Outsourcing Contractor shall maintain a list of the names, dates and places of birth, and current addresses of each such individual and the list shall include but not be limited to any technicians assisting in the implementation of Electronic Surveillance. Inmarsat's Outsourcing Contractor shall make the list available upon request to any law enforcement agency or officer seeking compliance with Lawful U.S. Process.

3.6 Information Security Plan. Inmarsat shall form and implement an Information Security Plan, which shall include provisions for the following:

- (a) Take appropriate measures to prevent unauthorized access to data or facilities that might contain Classified or Sensitive Information;
- (b) Assign U.S. citizens, who meet high standards of trustworthiness for maintaining the confidentiality of Sensitive Information, to positions that handle or regularly deal with information identifiable to such person as Sensitive Information;
- (c) Upon request from the Government Parties, provide the name and any other identifying information requested for each person who handles or regularly deals with Sensitive Information;
- (d) Require that personnel handling Classified Information, if any, shall have been granted appropriate U.S. security clearances; and
- (e) Provide that the points of contact described in Section 3.4 shall have sufficient authority over any of Inmarsat's employees who may handle Classified or Sensitive Information to maintain the confidentiality and security of such information in accordance with applicable U.S. legal authority and the terms of this Agreement.

3.7 Nondisclosure of Protected Data. Inmarsat shall not directly or indirectly disclose information concerning Lawful U.S. Process, Classified Information, or Sensitive Information to any third party, or officer, director, shareholder, employee, agent, or Contractor of Inmarsat (other than the Outsourcing Contractor when authorized and there is a need to know), including those who serve in a supervisory, managerial or officer role with respect to the employees working with the information, unless disclosure has been approved by prior written consent obtained from the Government Parties, or there is an official need for disclosure of the information in order to fulfill an obligation consistent with the purpose for which the information is collected or maintained and the disclosure has been approved by the entity that provided the information to Inmarsat. Any such disclosure shall be in strict compliance with Section 3.5 of this Agreement.

3.8 Written Notice of Obligations. By a written statement, Inmarsat shall instruct all appropriate officials, employees, contractors, and agents of Inmarsat as to the obligations of this Agreement, including the individuals' duty to report any violation of this Agreement and the reporting requirements in Sections 5.2, 5.5, and 5.8 of this Agreement, and shall issue periodic reminders to

them of such obligations. The written statement shall set forth in a clear and prominent manner the contact information for a senior manager to whom such information may be reported, and shall also state that Inmarsat will not discriminate against, or otherwise take adverse action against, anyone who reports such information to management or the United States government.

3.9 Access to Classified or Sensitive Information. Nothing contained in this Agreement shall limit or affect the authority of a U.S. Government Authority to deny, limit, or revoke whatever access Inmarsat might have to Classified or Sensitive Information under that Government Authority's jurisdiction.

ARTICLE 4: DISPUTES

4.1 Informal Resolution. The Parties shall use their best efforts to resolve any disagreements that may arise under this Agreement. Disagreements shall be addressed, in the first instance, at the staff level by the Parties' designated representatives. Any disagreement that has not been resolved at that level shall be submitted promptly to higher authorized officials, unless any of the Government Parties believes that important national interests can be protected, or Inmarsat believes that its paramount commercial interests can be resolved, only by resorting to the measures set forth in Section 4.2. If, after meeting with higher authorized officials, any of the Parties determines that further negotiation would be fruitless, then that Party may resort to the remedies set forth in Section 4.2. If resolution of a disagreement requires access to Classified Information, the Parties shall designate a person or persons possessing the appropriate security clearances for the purpose of resolving that disagreement.

4.2 Enforcement of Agreement. Subject to Section 4.1 of this Agreement, if any Party believes that any other Party has breached or is about to breach this Agreement, that Party may bring an action against the other Party for appropriate judicial relief. Nothing in this Agreement shall limit or affect the right of a U.S. Government Authority to:

- (a) require that the Party or Parties believed to have breached, or about to breach, this Agreement cure such breach within thirty (30) days, or whatever shorter time period is appropriate under the circumstances, upon receiving written notice of such breach;
- (b) request that the FCC modify, condition, revoke, cancel, or render null and void any license, permit, or other authorization granted or given by the FCC to Inmarsat, request that the FCC take other action, or request that the FCC impose any other appropriate sanction, including but not limited to a forfeiture or other monetary penalty, against Inmarsat;
- (c) seek civil sanctions for any violation of any U.S. law or regulation or term of this Agreement; or
- (d) pursue criminal sanctions against Inmarsat or any of their respective directors, officers, employees, representatives or agents, or against any other person or entity, for violations of the criminal laws of the United States; or

- (e) seek suspension or debarment of Inmarsat from eligibility for contracting with the U.S. Government.

4.3 Irreparable Injury. Inmarsat agrees that the United States would suffer irreparable injury if for any reason Inmarsat failed to perform any of its obligations under this Agreement, and that monetary relief would not be an adequate remedy. Accordingly, Inmarsat agrees that, in seeking to enforce this Agreement, the U.S. Parties shall be entitled, in addition to any other remedy available at law or equity, to specific performance and injunctive or other equitable relief.

4.4 Waiver. The availability of any civil remedy under this Agreement shall not prejudice the exercise of any other civil remedy under this Agreement or under any provision of law, nor shall any action taken by a Party in the exercise of any remedy be considered a waiver by that Party of any other rights or remedies. The failure of any Party to insist on strict performance of any of the provisions of this Agreement, or to exercise any right they grant, shall not be construed as a relinquishment or future waiver; rather, the provision or right shall continue in full force. No waiver by any Party of any provision or right shall be valid unless it is in writing and signed by the Party.

4.5 Waiver of Immunity. Inmarsat agrees that, to the extent that it or any of its property (including FCC licenses and authorizations and intangible property) is or becomes entitled at any time to any immunity on the ground of sovereignty or otherwise based upon a status as an agency or instrumentality of government from any legal action, suit, or proceeding or from setoff or counterclaim relating to this Agreement, from the jurisdiction of any competent court or the FCC, from service of process, from attachment prior to judgment, from attachment in aid of execution of a judgment, from execution pursuant to a judgment or arbitral award, or from any other legal process in any jurisdiction, it, for itself and its property expressly, irrevocably and unconditionally waives, and agrees not to plead or claim, any such immunity with respect to matters arising with respect to this Agreement or the obligations herein (including any obligation for the payment of money) in any proceeding brought by a U.S. federal, state or local Government Authority. Inmarsat agrees that the waiver in this provision is irrevocable and is not subject to withdrawal in any jurisdiction or under any statute, including the Foreign Sovereign Immunities Act, 28 U.S.C. § 1602 *et seq.* The foregoing waiver shall constitute a present waiver of immunity at any time any action is initiated by a U.S. federal, state or local Government Authority against Inmarsat with respect to compliance with this Agreement.

4.6 Forum Selection. Any civil action among the Parties for judicial relief with respect to any dispute or matter whatsoever arising under, in connection with, or incident to, this Agreement shall be brought, if at all, in the United States District Court for the District of Columbia.

4.7 Effectiveness of Article 4. This Article 4, and the obligations imposed and rights conferred herein, shall become effective upon the execution of this Agreement by all the Parties.

ARTICLE 5: REPORTING AND NOTICE

5.1 Filings Concerning *de jure* or *de facto* control of Inmarsat. If Inmarsat makes any filing with the FCC or any other U.S. Government Authority relating to the *de jure* or *de facto* control of Inmarsat,

except for filings with the FCC for assignments or transfers of control that are *pro forma*, Inmarsat shall promptly provide to the Government Parties written notice and copies of such filing. This Section 5.1 shall become effective upon execution of this Agreement by all the Parties.

5.2 Change in Control. If any member of the management of Inmarsat (including officers and members of the Board of Directors) acquires any information that reasonably indicates that any single Foreign entity or individual, Foreign Governmental Authority, or Foreign Governmental Authority-controlled entity – other than those already identified to the Government Parties – has or will likely obtain an ownership interest (direct or indirect) in Inmarsat of more than 10 percent, as determined in accordance with 47 C.F.R. § 63.09, or if any Foreign entity or individual, Foreign Governmental Authority, or Foreign Governmental Authority-controlled entity singly or in combination with other Foreign entities or individuals, Foreign Governmental Authority(ies), or Foreign Governmental Authority-controlled entities has or will likely otherwise gain either (1) Control or (2) *de facto* or *de jure* control of Inmarsat, then such Director, officer or manager shall promptly cause Inmarsat to notify the Government Parties in writing within ten (10) calendar days. Notice under this Section 5.2 shall, at a minimum, if such information is known or reasonably available:

- (a) identify the Foreign entity or individual(s), Foreign Governmental Authority, or Foreign Governmental Authority-controlled entity (specifying the name, addresses and telephone numbers);
- (b) identify the beneficial owners of the increased or prospective increased interest in Inmarsat by the Foreign entity or individual(s), Foreign Governmental Authority, or Foreign Governmental Authority-controlled entity (specifying the name, addresses and telephone numbers of each beneficial owner); and
- (c) quantify the amount of ownership interest that the Foreign entity or individual(s), Foreign Governmental Authority, or Foreign Governmental Authority-controlled entity has or will likely obtain in Inmarsat and, if applicable, the basis for its prospective Control of Inmarsat.

5.3 Joint Ventures. In the event that Inmarsat enters into joint ventures or other arrangements under which the joint venture or another entity may provide Domestic Communications:

- (a) if Inmarsat has the power or authority to exercise *de facto* or *de jure* control over such joint venture or entity, then Inmarsat will require the entity to fully comply with the terms of this Agreement; or
- (b) if Inmarsat does not have *de facto* or *de jure* control over such joint venture or entity, the provisions of Section 5.4, Outsourcing Contracts, shall apply as if the joint venture or other arrangement was an Outsourcing Contract.

5.4 Outsourcing Contracts. Inmarsat shall ensure the following with regard to any Outsourcing Contracts, including any contracts for the resale or distribution of BGAN Service:

- (a) Inmarsat shall include written provisions in any Outsourcing Contract that require the contractor to comply with all applicable terms of this Agreement and the Implementation Plan, or shall take other reasonable, good-faith measures to ensure that the contractor is aware of, agrees to, and is bound to comply with all such terms.
- (b) Inmarsat shall not enter into any Outsourcing Contract that affords the contractor access to Sensitive Information, unless such access has been lawfully approved by the entity that provided the information.
- (c) Inmarsat shall not induce the contractor either to violate its obligations to Inmarsat related to this Agreement or the Implementation Plan, or to take any action that, if taken by Inmarsat, would violate this Agreement.
- (d) If Inmarsat receives any information that a contractor or any of its employees or agents has taken an action that, had it been taken by Inmarsat, would violate a provision of this Agreement or the Implementation Plan, or has violated its obligations to Inmarsat related to this Agreement or the Implementation Plan, Inmarsat (1) will notify the Government Parties promptly, and (2) in consultation and cooperation with them, will take all reasonable steps necessary to rectify promptly the situation, including terminating the Outsourcing Contract (with or without notice and opportunity for cure) or initiating and pursuing litigation or other remedies at law and equity.
- (e) Neither an Outsourcing Contract nor any provision of this Section 5.4 does nor shall it be construed to relieve Inmarsat of any of its obligations under this Agreement or the Implementation Plan.

5.5 Notice of Foreign Influence. If Inmarsat or its agents (including officers and members of the Board of Directors) acquires any information that reasonably indicates that any Foreign entity or individual, Foreign Governmental Authority, or Foreign Governmental Authority-controlled entity plans to participate or has participated in any aspect of the day-to-day management of Inmarsat or to exercise any Control of Inmarsat in such a way that (1) interferes with or impedes the performance by Inmarsat of its duties and obligations under the terms of this Agreement; (2) interferes with or impedes the exercise by Inmarsat of its rights under the Agreement; or (3) raises a concern with respect to the fulfillment by Inmarsat of its obligations under this Agreement, then such manager shall promptly notify the Government Parties in writing of the timing and the nature of the Foreign entity's or individual's, Foreign Governmental Authority's, or Foreign Governmental Authority-controlled entity's plans or actions.

5.6 Procedure and Process on Reporting. Within thirty (30) days of the Effective Date, Inmarsat shall adopt and distribute to all officers and directors, a written procedure or process for the reporting by officers and directors of noncompliance with this Agreement or the Implementation Plan, which shall incorporate the notice of reporting obligations by officials, employees, agents and contractors required under Section 3.8 of this Agreement. Any violation by Inmarsat of any material term of such corporate policy shall constitute a breach of this Agreement.

5.7 Non-retaliation. Within thirty (30) days of the Effective Date, Inmarsat shall, by duly authorized action of its Board of Directors, adopt and distribute to all officers and directors an official corporate policy that strictly prohibits Inmarsat from discriminating or taking any adverse action against any officer, director, employee, contractor, or agent because he or she has in good faith initiated or attempted to initiate a notice or report under Sections 5.2, 5.5, or 5.8 of this Agreement, or has notified or attempted to notify the management to report information that he or she believes in good faith is required to be reported to the Government Parties under either Sections 5.2, 5.5, or 5.8 of this Agreement or under Inmarsat's written notice to employees on the reporting of any such information. Any violation by Inmarsat of any material term of such corporate policy shall constitute a breach of this Agreement.

5.8 Reporting of Incidents. Inmarsat shall report to the Government Parties any information acquired by Inmarsat or any of its officers, directors, employees, contractors, or agents that reasonably indicates:

- (a) a breach of this Agreement;
- (b) access to or disclosure of Domestic Communications, or the conduct of Electronic Surveillance, in violation of federal, state or local law or regulation;
- (c) access to or disclosure of CPNI, Call-Associated Data, Transactional Data, or Subscriber Information, in violation of federal, state or local law or regulation; or
- (d) improper access to or disclosure of Classified or Sensitive Information.

This report shall be made in writing by the appropriate Inmarsat officer to the Government Parties no later than ten (10) calendar days after Inmarsat acquires information indicating a matter described in this Section. Inmarsat shall lawfully cooperate in investigating the matters described in this Section. Inmarsat need not report information where disclosure of such information would be in violation of an order of a court of competent jurisdiction in the United States.

5.9 Notice of Decision to Store Information Outside of the United States. Inmarsat shall provide to the Government Parties thirty (30) days advanced notice if it plans to store or have stored on its behalf outside the United States any of the information specified in Section 2.4 herein. Such notice shall, at a minimum:

- (a) include a description of the type of information to be stored outside the United States;
- (b) identify the custodian of the information, if other than Inmarsat;
- (c) identify the location where the information is to be located; and
- (d) identify the factors considered, pursuant to Section 2.5 of this Agreement, in deciding to store the information outside of the United States.

5.10 Access to Information and Facilities.

(a) The Government Parties or their designees may visit any part of Inmarsat's Domestic Communications Infrastructure to conduct on-site reviews concerning the implementation of the terms of this Agreement, and Inmarsat will provide unimpeded access for such on-site reviews.

(b) Inmarsat will voluntarily provide prompt and unimpeded access to and disclosure of all records and information concerning technical, physical, management, or other security measures, as needed by the Government Parties or their designees to verify compliance with the terms of this Agreement including the Implementation Plan.

5.11 Access to Personnel. Upon reasonable notice from the Government Parties or their designees, Inmarsat shall make available for interview any officers or employees of Inmarsat and any contractors located in the United States, who are in a position to provide information to verify compliance with the terms of this Agreement.

5.12 Annual Report. On or before the last day of January of each year, a designated senior corporate officer of Inmarsat shall submit to the Government Parties a report assessing Inmarsat's compliance with the terms of this Agreement for the preceding calendar year (or since the Effective Date in the case of the first such report). The report shall include:

- (a) a copy of the then-current policies and procedures adopted to comply with this Agreement;
- (b) a summary of the changes, if any, to the policies or procedures, and the reasons for those changes;
- (c) a summary of any known acts of noncompliance with the terms of this Agreement, whether inadvertent or intentional, with a discussion of what steps have been or will be taken to prevent such acts from occurring in the future; and
- (d) identification of any other issues that, to Inmarsat's knowledge, will or reasonably could affect the effectiveness of or its compliance with this Agreement.

5.13 Notices. Effective upon execution of this Agreement by all the Parties, all notices and other communications relating to this Agreement, such as a proposed modification, shall be in writing and shall be deemed given as of the date of receipt and shall be sent by electronic mail (if an email is specified below or in a subsequent notice) and one of the following methods: (a) delivered personally, (b) sent by facsimile, (c) sent by documented overnight courier service, or (d) sent by registered or certified mail, postage prepaid, addressed to the Parties' designated representatives at the addresses shown below, unless provided otherwise in this Agreement; provided, however, that upon written notification to the Parties, a Party may unilaterally amend or modify its designated representative information, notwithstanding any provision to the contrary in Section 8.6 of this Agreement:

Department of Justice
Assistant Attorney General for National Security
National Security Division

950 Pennsylvania Avenue, NW
Washington, DC 20530

Department of Homeland Security
Assistant Secretary for Policy
3801 Nebraska Avenue, N.W.
Washington, D.C. 20528

Note: All notices and other communications shall, in addition to the foregoing methods of delivery, be sent by email to ip-fcc@dhs.gov and/or such other email account as DHS may designate in the future.

Diane Cornell
Vice President, Government Affairs
Inmarsat
1101 Connecticut Avenue, N.W.
Suite 1200
Washington, D.C. 20036

ARTICLE 6: CONFIDENTIALITY; USE OF INFORMATION

6.1 Confidentiality. The Government Parties shall take all measures required by law to protect from public disclosure all information submitted by Inmarsat (or other entities in accordance with the terms of this Agreement including the Implementation Plan) to them in connection with this Agreement and clearly marked with the legend “Business Confidential; subject to protection under 5 U.S.C. § 553(b)” or similar designation. Such markings shall signify that it is the company’s position that the information so marked constitutes “trade secrets” and/or “commercial or financial information obtained from a person and privileged or confidential,” or otherwise warrants protection within the meaning of 5 U.S.C. § 552(b)(4). For the purposes of 5 U.S.C. § 552(b)(4), the Parties agree that information so marked is voluntarily submitted. If a request is made under 5 U.S.C. § 552(a)(3) for information so marked, and disclosure of any information (including disclosure in redacted form) is contemplated, Inmarsat shall be provided with the notices and procedures required by law, including those specified in Executive Order 12600, 52 Fed. Reg. 23781 (June 25, 1987)).

6.2 Use of Information by U.S. Government for Any Lawful Purpose. Nothing in this Agreement shall prevent the Government Parties or any other U.S. Governmental Authority from lawfully disseminating this Agreement or using any information produced under or otherwise related to this Agreement to seek enforcement of this Agreement, or for any other lawful purpose.

ARTICLE 7: FCC CONDITION

7.1 FCC Approval. Upon the execution of this Agreement, including the Implementation Plan, by all of the Parties, Inmarsat shall request that the FCC adopt a condition to Inmarsat’s existing

or pending FCC authorizations, substantially the same as set forth in Exhibit A attached hereto (the "Condition to FCC Authorization").

7.2 Right to Object to Future FCC Filings. Inmarsat agrees that in any application or petition by Inmarsat, filed with or granted by the FCC after the execution of this Agreement by all the Parties, for a license or other authority under Titles II and III of the Communications Act of 1934, as amended, to provide service to or operate MESs in the United States for communications utilizing the Inmarsat system, or to offer, distribute, or resell Domestic Communications in the United States for communications utilizing the Inmarsat system, Inmarsat shall request that the FCC condition the grant of such licensing or other authority on compliance with the terms of this Agreement, as amended if necessary. Notwithstanding Section 8.9, nothing in this Agreement shall preclude the Government Parties or any other U.S. Governmental Authority from opposing, formally or informally, any FCC application or petition by Inmarsat for other authority, or to transfer its license(s) to a third party (except with respect to *pro forma* assignments or *pro forma* transfers of control), and to seek additional or different terms that would, consistent with the public interest, address any concerns regarding the ability of the United States to enforce the laws, preserve the national security, and protect the public safety, raised by the services and transactions underlying any such application or petition.

ARTICLE 8: OTHER

8.1 Right to Make and Perform Agreement. Inmarsat represents that it has and shall continue to have throughout the term of this Agreement the full right to enter into this Agreement and perform its obligations hereunder and that this Agreement is a legal, valid, and binding obligation of Inmarsat enforceable in accordance with its terms.

8.2 Headings. The article and section headings and numbering in this Agreement are inserted for convenience only and shall not affect the meaning or interpretation of the terms of this Agreement.

8.3 Other Laws. Nothing in this Agreement is intended to limit or constitute a waiver of (a) any obligations imposed by any U.S. federal, state, or local law or regulation on Inmarsat, (b) any enforcement authority available under any U.S. federal, state, or local law or regulation, (c) the sovereign immunity of the United States, or (d) any authority the U.S. Government may possess over the activities or facilities if Inmarsat located within or outside the United States (including authority pursuant to the International Emergency Economic Powers Act). Nothing in this Agreement is intended to or is to be interpreted to require the Parties to violate any applicable U.S. law.

8.4 Statutory References. All references in this Agreement to statutory provisions and executive orders shall include any future amendments to such statutory provisions and executive orders.

8.5 Non-Parties. Nothing in this Agreement is intended to confer or does confer any rights on any person other than the Parties and any Government Authorities entitled to effect Electronic Surveillance pursuant to Lawful U.S. Process.

8.6 Modification. This Agreement may only be modified by written agreement signed by all of the Parties, provided that the Government Parties may, by a written notice to Inmarsat signed by all of

them, waive any provision of this Agreement intended for their benefit unless such waiver is objected to by Inmarsat. The Government Parties agree to consider promptly and in good faith possible modifications to this Agreement if Inmarsat believes that the obligations imposed on it under this Agreement are substantially more restrictive than those imposed on other U.S. and foreign licensed service providers in like circumstances in order to protect U.S. national security, law enforcement, and public safety concerns. Any substantial modification to this Agreement shall be reported to the FCC within thirty (30) days after approval in writing by the Parties.

8.7 Severability. The provisions of this Agreement shall be severable and if any provision thereof or the application of such provision under any circumstances is held invalid by a court of competent jurisdiction, it shall not affect any other provision of this Agreement or the application of any provision thereof.

8.8 Changes in Circumstances for Inmarsat. The Government Parties agree to negotiate in good faith and promptly with respect to any request by Inmarsat for relief from application of specific provisions of this Agreement if those provisions become unduly burdensome or have an adverse affect on Inmarsat's competitive position.

8.9 Changes in Circumstances for the Government Parties. If after the date that all the Parties have executed this Agreement, the Government Parties find that the terms of this Agreement are inadequate to address national security, law enforcement, or public safety concerns, then Inmarsat will negotiate in good faith to modify this Agreement to address those concerns.

8.10 Counterparts. This Agreement may be executed in one or more counterparts, including by facsimile, each of which shall together constitute one and the same instrument.

8.11 Successors and Assigns: This Agreement shall inure to the benefit of, and shall be binding upon, the Parties, and their respective successors and assigns. This Agreement shall also be binding on all subsidiaries, divisions, departments, branches, and other components or agents of Inmarsat, and on all Affiliates of Inmarsat.

8.12 Effectiveness of Article 8. This Article 8, and the obligations imposed and rights conferred herein, shall be effective upon execution of this Agreement by all the Parties.

8.13 Effectiveness of Agreement. Except as otherwise specifically provided elsewhere in this Agreement, the obligations imposed and rights conferred by this Agreement shall take effect upon the Effective Date.

8.14 [NOT USED]

8.15 Suspension of Agreement and Obligations Hereunder. This Agreement shall be suspended upon thirty (30) days notice to the Government Parties that neither Inmarsat, nor any transferee or assignee of the FCC licenses or authorizations held by Inmarsat, provides or facilitates Domestic Communications in the United States, unless any of the Government Parties, within that 30-day period, seeks additional information or objects to the suspension.

8.16 Termination of Agreement. This Agreement shall be terminated in its entirety upon the written determination of the Government Parties that Inmarsat has provided notice and reasonably satisfactory documentation that no foreign entity or combination of foreign entities (including one or more persons under common Control) either Controls Inmarsat or holds, directly or indirectly, a ten (10) percent or greater interest in Inmarsat, and that this Agreement is no longer necessary to in order to protect U.S. national security, law enforcement, or public safety concerns. It is expressly acknowledged that this Agreement shall not be terminated with respect to Inmarsat during such time as BGAN Service is provided or facilitated within the United States by Inmarsat via any facilities or equipment, including but not limited to any land earth station, located outside of the U.S. If this Agreement is not terminated pursuant to this provision, the Government Parties agree to consider promptly and in good faith possible modifications to this Agreement.

8.17 Notice of Additional Services. Inmarsat shall provide a minimum of thirty (30) days advanced notice to the Government Parties in the event that Inmarsat or any Affiliate changes or intends to change its present services with respect to Domestic Communications, as set forth in the Recitals to this Agreement, such that the material representations made therein are no longer fully accurate, true and complete. In no event will such notice relieve any Party to this Agreement of obligations under this Agreement or be construed as a waiver of any Party's rights under this Agreement.

This Agreement is executed on behalf of the Parties:

Inmarsat

Date: 9/23/08

By: Diane Cornell
 Printed Name: Diane Cornell
 Title: Vice President, Government Affairs

United States Department of Justice

Date: _____

By: _____
 Printed Name: J. Patrick Rowan
 Title: Acting Assistant Attorney General for National Security

Department of Homeland Security

Date: _____

By: _____
 Printed Name: Stewart A. Baker
 Title: Assistant Secretary for Policy

8.16 Termination of Agreement. This Agreement shall be terminated in its entirety upon the written determination of the Government Parties that Inmarsat has provided notice and reasonably satisfactory documentation that no foreign entity or combination of foreign entities (including one or more persons under common Control) either Controls Inmarsat or holds, directly or indirectly, a ten (10) percent or greater interest in Inmarsat, and that this Agreement is no longer necessary to in order to protect U.S. national security, law enforcement, or public safety concerns. It is expressly acknowledged that this Agreement shall not be terminated with respect to Inmarsat during such time as BGAN Service is provided or facilitated within the United States by Inmarsat via any facilities or equipment, including but not limited to any land earth station, located outside of the U.S. If this Agreement is not terminated pursuant to this provision, the Government Parties agree to consider promptly and in good faith possible modifications to this Agreement.

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This Agreement is executed on behalf of the Parties:

Inmarsat

Date: _____

By: _____
Printed Name: Diane Cornell
Title: Vice President, Government Affairs

United States Department of Justice

Date: 9-17-08

By: [Signature] /c. Steele for JPR
Printed Name: J. Patrick Rowan
Title: Acting Assistant Attorney General for National Security

Department of Homeland Security

Date: _____

By: _____
Printed Name: Stewart A. Baker
Title: Assistant Secretary for Policy

8.16 Termination of Agreement. This Agreement shall be terminated in its entirety upon the written determination of the Government Parties that Inmarsat has provided notice and reasonably satisfactory documentation that no foreign entity or combination of foreign entities (including one or more persons under common Control) either Controls Inmarsat or holds, directly or indirectly, a ten (10) percent or greater interest in Inmarsat, and that this Agreement is no longer necessary to in order to protect U.S. national security, law enforcement, or public safety concerns. It is expressly acknowledged that this Agreement shall not be terminated with respect to Inmarsat during such time as BGAN Service is provided or facilitated within the United States by Inmarsat via any facilities or equipment, including but not limited to any land earth station, located outside of the U.S. If this Agreement is not terminated pursuant to this provision, the Government Parties agree to consider promptly and in good faith possible modifications to this Agreement.

8.17 Notice of Additional Services. Inmarsat shall provide a minimum of thirty (30) days advanced notice to the Government Parties in the event that Inmarsat or any Affiliate changes or intends to change its present services with respect to Domestic Communications, as set forth in the Recitals to this Agreement, such that the material representations made therein are no longer fully accurate, true and complete. In no event will such notice relieve any Party to this Agreement of obligations under this Agreement or be construed as a waiver of any Party's rights under this Agreement.

This Agreement is executed on behalf of the Parties:

Inmarsat

Date: _____

By: _____
Printed Name: Diane Cornell
Title: Vice President, Government Affairs

United States Department of Justice

Date: _____

By: _____
Printed Name: J. Patrick Rowan
Title: Acting Assistant Attorney General for National Security

Department of Homeland Security

Date: _____


By:  _____
Printed Name: Stewart A. Baker
Title: Assistant Secretary for Policy

EXHIBIT B

This Agreement is made this 7th day of August, 2001 by and between: MarineSat Communications Network, Inc. and Stratos Mobile Networks (USA) LLC (collectively, "Stratos"), and the U.S. Department of Justice ("DOJ") and the Federal Bureau of Investigation ("FBI") (collectively with all other parties hereto, "the Parties"). This Agreement is effective as of the date of last signature affixed hereto.

RECITALS

WHEREAS, the U.S. telecommunications system is essential to the U.S. economy and to U.S. national security, law enforcement, and public safety;

WHEREAS, the U.S. government considers it critical to maintain the viability, integrity and security of the U.S. telecommunications system (*see, e.g.*, Presidential Decision Directive 63 on Critical Infrastructure Protection);

WHEREAS, the U.S. government considers it critical to ensure the confidentiality of its lawfully authorized surveillance and related activities, and to ensure the confidentiality of Classified, Controlled Unclassified, and Sensitive Information;

WHEREAS, Stratos currently provides service to Inmarsat mobile earth terminals ("METs") outside of the United States, and has filed with the Federal Communications Commission ("FCC") license applications under Sections 214 and 310(b) of the Communications Act of 1934, as amended, to provide service to METs inside the United States (*see Application Pursuant to Section 214 for Authority to Provide Domestic Land Mobile Services Using the Inmarsat Ltd. Satellite System*, File No. SES-MS-20010220-00349, *Applications for Blanket Licenses to Operate Mobile Earth Terminals with Non-U.S. Licensed Satellites*, File Nos. SES-LIC-20010221-00360; SES-LIC-20010221-00361; SES-LIC-20010221-00362; SES-LIC-20010221-00363, *Application for Section 214 Authority to Provide Inmarsat M4 Services*, File No. SES-MS-20000426-00861, and *Application for Blanket Authority to Operate Mobile Earth Terminals*, File No. SES-LIC-20000426-00630);

WHEREAS, MarineSat Communications Network, Inc. d/b/a Stratos Communications is 100 percent owned by Stratos Holdings, Inc., a Delaware holding corporation, which is in turn 100 percent owned by Stratos Global Corp., which has its principal place of business in Toronto, Ontario, Canada and is 65 percent indirectly owned by Aliant, Inc., a Canadian holding company with its principal place of business in Saint John, New Brunswick, Canada;

WHEREAS, Stratos Mobile Networks (USA) LLC is a Delaware-registered limited liability corporation 91 percent owned by TII Aeronautical Corp. ("TIIA") and 9 percent owned by IDB Mobile Communications, Inc., which is in turn 100 percent owned by TIIA. TIIA is 100 percent owned by Stratos Wireless, Inc., which has its principal place of business in Saint John's, Newfoundland, Canada and is in turn 100 percent owned by Stratos Global Corp., which has its principal place of business in Toronto, Ontario, Canada;

WHEREAS, Stratos has met with the FBI and DOJ to discuss the proposed services and the government's responsibilities concerning national security, law enforcement and public safety. In these meetings, Stratos advised: (a) that some of the Domestic Communications Infrastructure Stratos would employ (e.g., satellite gateway earth stations) to route Domestic Communications are located outside the United States; (b) that the Domestic Communications Infrastructure that is located outside the United States is located for *bona fide* commercial reasons; (c) that Stratos plans to route all Domestic Communications through a Point of Presence physically located in the United States, from which the government can conduct Electronic Surveillance pursuant to U.S. Lawful Process; and (d) that Stratos' Domestic Communications Infrastructure within the United States currently consists of the Nortel MMCS switch (and related trunking equipment) located in the Stratos facility at 5 Teleport Drive, Staten Island, New York, which is also Stratos' current Point of Presence within the United States;

NOW THEREFORE, the Parties are entering into this Agreement to address national security, law enforcement, and public safety concerns.

ARTICLE I: INFORMATION STORAGE AND ACCESS

- 1.1 Point of Presence: Pursuant to the Stratos Implementation Plan, Domestic Communications shall be routed through a Point of Presence, which is a network switch under the control of Stratos and is physically located in the United States, from which Electronic Surveillance can be conducted pursuant to Lawful U.S. Process. Stratos will provide technical or other assistance to facilitate such Electronic Surveillance.
- 1.2 Stratos Implementation Plan: Certain of the rights and obligations of the Parties are set forth in further detail in an Implementation Plan dated August 7, 2001, which is consistent with this Agreement. Stratos shall comply with the Implementation Plan, which may be amended from time to time pursuant to Section 7.7.
- 1.3 CPNI: Stratos 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(f)(1).
- 1.4 Compliance with Lawful U.S. Process: Stratos shall take all practicable steps to configure its Domestic Communications Infrastructure such that Stratos is capable of complying, and Stratos employees in the United States will have unconstrained authority to comply, in an effective, efficient, and unimpeded fashion, with Lawful U.S. Process, 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 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.*).

- 1.5 Information Storage and Access: Stratos shall make available in the United States:
- (i) stored Domestic Communications, if such communications are stored by or on behalf of Stratos for any reason;
 - (ii) any Wire Communications or Electronic Communications (including any other type of wire, voice or electronic communication not covered by the definitions of Wire Communication or Electronic Communication) received by, intended to be received by, or stored in the account of a Stratos U.S.-Licensed MET, or routed to Stratos' Point of Presence in the United States and stored by or on behalf of Stratos for any reason;
 - (iii) Transactional Data and Call Associated Data relating to Domestic Communications, if such information is stored by or on behalf of Stratos for any reason (although all Parties recognize that Stratos currently does not store such information except as part of billing records);
 - (iv) billing records relating to Stratos customers or subscribers for its U.S. Licensed METs, Stratos customers and subscribers domiciled in the United States, or Stratos customers and subscribers who hold themselves out as being domiciled in the United States, as well as billing records related to any call routed through Stratos' Point of Presence in the United States, if such information is stored by or on behalf of Stratos for any reason, for so long as such records are kept pursuant to applicable U.S. law or this Agreement; and
 - (v) Subscriber Information concerning Stratos customers or subscribers for its U.S.-Licensed METs, Stratos customers or subscribers domiciled in the United States, or Stratos customers or subscribers who hold themselves out as being domiciled in the United States, as well as Subscriber Information related to any call routed through Stratos' Point of Presence in the United States, if such information is stored by or on behalf of Stratos for any reason.
- 1.6 Storage Pursuant to 18 U.S.C. § 2703(f): Upon a request made pursuant to 18 U.S.C. § 2703(f) by a governmental entity within the United States to preserve any of the information enumerated in Section 1.5, Stratos shall store such preserved records or other evidence in the United States.
- 1.7 Mandatory Destruction: Stratos shall take all practicable steps to store the data and communications described in Section 1.5 in a manner not subject to mandatory destruction under any foreign laws, if such data and communications are stored by or on behalf of Stratos for any reason. Except for strictly *bona fide* commercial reasons, such data and communications shall be stored in the United States.
- 1.8 Billing Records: Stratos shall store for at least eighteen (18) months all billing records maintained for a U.S.-Licensed MET.

- 1.9 Communications of a U.S.-Licensed MET: No communications of a U.S.-Licensed MET shall be routed outside the United States except for strictly *bona fide* commercial reasons.
- 1.10 Communications of a Non-U.S.-Licensed MET: Electronic Surveillance pursuant to Lawful U.S. Process of a Non-U.S.-Licensed MET shall be conducted pursuant to the Stratos Implementation Plan.
- 1.11 Domestic Communications Infrastructure: Except for strictly *bona fide* commercial reasons, Domestic Communications Infrastructure shall be located in the United States and shall be directed, controlled, supervised and managed by Stratos.
- 1.12 Compliance with U.S. Law: Nothing in this Agreement shall excuse Stratos from any obligation it may have to comply with U.S. legal requirements for the retention, preservation, or production of such information or data. Similarly, in any action to enforce Lawful U.S. Process, Stratos has not waived any legal right it might have to resist such process.

**ARTICLE II: NON-OBJECTION BY DOJ AND FBI TO GRANT
OF LICENSES TO STRATOS**

- 2.1 Non-Objection to Current Application: Upon the execution of this Agreement by all the Parties, the FBI and DOJ shall promptly notify the FCC that, provided the FCC adopts a condition substantially the same as set forth in Exhibit A attached hereto, the FBI and DOJ have no objection to the FCC's grant or approval of Stratos' applications (*Application Pursuant to Section 214 for Authority to Provide Domestic Land Mobile Services Using the Inmarsat Ltd. Satellite System*, File No. SES-MS-20010220-00349, *Applications for Blanket Licenses to Operate Mobile Earth Terminals with Non-U.S. Licensed Satellites*, File Nos. SES-LIC-20010221-00360; SES-LIC-20010221-00361; SES-LIC-20010221-00362; SES-LIC-20010221-00363, *Application for Section 214 Authority to Provide Inmarsat M4 Services*, File No. SES-MS-20000426-00861, *Application for Blanket Authority to Operate Mobile Earth Terminals*, File No. SES-LIC-20000426-00630, and *Application Pursuant to Section 214 for Authority to Provide Domestic Aeronautical Mobile Satellite Services via the Inmarsat System*, File No. ITC-214-19981214-00859).
- 2.2 Non-Objection to Future Applications: The FBI and DOJ agree not to object, formally or informally, to the grant of any other FCC application of Stratos for a license under Titles II and III of the Communications Act of 1934, as amended, to provide service to and operate METs in the United States for communications via the Inmarsat Space Segment, provided that such application makes clear that the terms and conditions of this Agreement and the Implementation Plan shall apply to any license issued pursuant to that application. Nothing in this Agreement shall preclude the DOJ or the FBI from opposing,

formally or informally, a FCC application by Stratos to transfer its license(s) to a third party.

ARTICLE III: SECURITY OFFICE

- 3.1 Location of Security Office: Stratos shall maintain within the United States a security office. Stratos shall within the security office:
- (i) take appropriate measures to prevent unauthorized access to data or facilities that might contain Classified Information or Sensitive Information;
 - (ii) assign U.S. citizens, who meet high standards of trustworthiness for maintaining the confidentiality of Sensitive Information, to positions that handle or that regularly deal with information identifiable to such person as Sensitive Information;
 - (iii) upon request from the DOJ or FBI, provide the name, social security number, and date of birth of each person who regularly handles or deals with Sensitive Information;
 - (iv) require that personnel handling Classified Information shall have been granted appropriate security clearances;
 - (v) provide that the points of contact described in Section 3.6 shall have sufficient authority over any of Stratos' employees who may handle Classified Information or Sensitive Information to maintain the confidentiality and security of such information in accordance with applicable U.S. legal authority and the terms of this Agreement; and
 - (vi) maintain appropriately secure facilities (e.g., offices) for the handling and storage of any Classified Information and Sensitive Information.
- 3.2 Measures to Prevent Improper Use or Access: Stratos shall take reasonable measures to prevent the use of or access to Stratos' equipment or facilities to conduct Electronic Surveillance in violation of any U.S. federal, state, or local law or the terms of this Agreement. These measures shall take the form of technical, organizational, personnel-related policies and written procedures, necessary implementation plans, and physical security measures.
- 3.3 Access by Foreign Government Authorities: Stratos shall not provide access to Domestic Communications, Call Associated Data, Transactional Data, or Subscriber Information stored in the United States to any person, if the purpose of such access is to respond to the legal process or the request of or on behalf of a foreign government, identified representative, or a component or subdivision thereof, without the express written consent of the DOJ or the authorization of a court of competent jurisdiction in the United

States. Any requests or submission of legal process described in this Section shall be reported to the DOJ as soon as possible and in no event later than five (5) business days after such request or legal process is received by Stratos, unless the disclosure of the request or legal process would be in violation of an order of a court of competent jurisdiction within the United States. Stratos shall take reasonable measures to ensure that it will learn of all such requests or submission of legal process described in this Section.

- 3.4 Disclosure to Foreign Government Authorities: Stratos shall not, directly or indirectly, disclose or permit disclosure of, or provide access to:

- (i) Classified or Sensitive Information, or
- (ii) Subscriber Information, Transactional Data, Call Associated Data, or a copy of any Wire Communication or Electronic Communication intercepted or acquired pursuant to Lawful U.S. Process

to any foreign government or a component or subdivision thereof without satisfying all applicable U.S. federal, state and local legal requirements pertinent thereto, and obtaining the express written consent of the DOJ or the authorization of a court of competent jurisdiction in the United States. Stratos shall notify the DOJ of any requests or any legal process submitted to Stratos by a foreign government or a component or subdivision thereof for communications, data or information identified in this paragraph. Stratos shall provide such notice to the DOJ as soon as possible and in no event later than five (5) business days after such request or legal process is received by Stratos, unless the disclosure of the request or legal process would be in violation of an order of a court of competent jurisdiction within the United States. Stratos shall take reasonable measures to ensure that it will learn of all such requests or submission of legal process described in this Section.

- 3.5 Notification of Access or Disclosure Requests: Stratos shall notify DOJ in writing of legal process or requests by foreign non-governmental entities for access to or disclosure of Domestic Communications unless the disclosure of the legal process or requests would be in violation of an order of a court of competent jurisdiction within the United States. Stratos shall provide such notice to the DOJ no later than ninety (90) days after such request or legal process is received by Stratos, unless the disclosure of the request or legal process would be in violation of an order of a court of competent jurisdiction within the United States.

- 3.6 Points of Contact: Within sixty (60) days after execution of this Agreement by all parties, Stratos shall designate points of contact within the United States with the authority and responsibility for accepting and overseeing compliance with Lawful U.S. Process. The points of contact will be available 24 hours per day, 7 days per week and shall be responsible for accepting service and maintaining the security of Classified Information and any Lawful U.S. Process for Electronic Surveillance in accordance with the requirements of U.S. law. Stratos will immediately notify in writing the DOJ and the

FBI of such designation, and thereafter shall promptly notify the FBI and DOJ of any change in that designation. The points of contact shall be resident U.S. citizens who are eligible for appropriate U.S. security clearances. If necessary to receive or handle Sensitive or Classified Information, Stratos shall cooperate with any request by a government entity within the United States that a background check and/or security clearance process be completed for a designated point of contact.

- 3.7 Security of Lawful Process: Stratos shall protect the confidentiality and security of all Lawful U.S. Process served upon it and the confidentiality and security of Classified Information and Sensitive Information in accordance with U.S. federal and state law or regulations.
- 3.8 Notice of Obligations: Stratos shall instruct appropriate officials, employees, contractors and agents as to their obligations under this Agreement and issue periodic reminders to them of such obligations.
- 3.9 Access to Classified or Sensitive Information: Nothing contained in this Agreement shall limit or affect the authority of a U.S. government agency to deny, limit or revoke Stratos' access to Classified and Sensitive Information under that agency's jurisdiction.
- 3.10 Reporting of Incidents: Stratos shall take practicable steps to ensure that, if any Stratos official, employee, contractor or agent acquires any information that reasonably indicates: (i) a breach of this Agreement; (ii) Electronic Surveillance conducted in violation of U.S. federal, state or local law or regulation; (iii) access to or disclosure of CPNI or Subscriber Information in violation of U.S. federal, state or local law or regulation (except for violations of FCC regulations relating to improper use of CPNI); or (iv) improper access to or disclosure of Classified Information or Sensitive Information, then Stratos shall notify the FBI and DOJ. This report shall be made promptly and in any event no later than ten (10) calendar days after Stratos acquires such information. Stratos shall lawfully cooperate in investigating the matters described in this Section. Stratos need not report information where disclosure of such information would be in violation of an order of a court of competent jurisdiction within the United States. This Section is effective thirty (30) calendar days after execution of this Agreement by all Parties.
- 3.11 Notice of Decision to Store Information Outside the United States: Stratos shall provide to the FBI and DOJ thirty (30) calendar days advance notice if Stratos (or any entity with which Stratos has contracted or made other arrangements for data or communications processing or storage) plans to store outside of the United States Domestic Communications, Transactional Data, Call Associated Data, or Subscriber Information that was previously stored within the United States. Such notice shall, at a minimum, (a) include a description of the type of information to be stored outside the United States, (b) identify the custodian of the information if other than Stratos, (c) identify the location where the information is to be stored, and (d) identify the factors considered in deciding to store the information outside of the United States (see Section 1.7). This section is effective thirty (30) calendar days after execution of this Agreement by all Parties.

- 3.12 Joint Ventures: Stratos may enter into joint ventures under which the joint venture or entity may provide Domestic Communications. To the extent Stratos does not have *de facto* or *de jure* control over such joint venture or entity, Stratos shall in good faith endeavor to have such entity comply with this Agreement as if it were a subsidiary of Stratos and shall consult with the FBI or the DOJ about the activities of such entity. This Section is effective upon execution of this Agreement by all the Parties. Nothing in this Section relieves, nor shall it be construed to relieve, Stratos of its obligations under Sections 1.5 and 1.7.
- 3.13 Outsourcing Third Parties: If Stratos outsources functions covered by this Agreement to a third party, Stratos shall take reasonable steps to ensure that those third parties comply with the applicable terms of this Agreement.
- 3.14 Access to Information: In response to reasonable requests made by the FBI or the DOJ, Stratos shall provide access to information concerning technical, physical, management, or other security measures and other reasonably available information needed by the DOJ or the FBI to assess compliance with the terms of this Agreement.
- 3.15 Visits and Inspections: Upon reasonable notice and during reasonable hours, the FBI and the DOJ may visit and inspect any part of Stratos' Domestic Communications Infrastructure and security office for the purpose of verifying compliance with the terms of this Agreement. Stratos may have appropriate Stratos employees accompany U.S. government representatives throughout any such inspection.
- 3.16 Access to Personnel: Upon reasonable notice from the FBI or the DOJ, Stratos will make available for interview officers or employees of Stratos, and will seek to require contractors to make available appropriate personnel located in the United States who are in a position to provide information to verify compliance with this Agreement.
- 3.17 Annual Report: On or before the last day of January of each year, a designated senior corporate officer of Stratos shall submit to the FBI and the DOJ a report assessing Stratos' compliance with the terms of this Agreement for the preceding calendar year. The report shall include:
- (i) a copy of the policies and procedures adopted to comply with this Agreement;
 - (ii) a summary of the changes, if any, to the policies and procedures, and the reasons for those changes;
 - (iii) a summary of any known acts of noncompliance with the terms of this Agreement, whether inadvertent or intentional, with a discussion of what steps have been or will be taken to prevent such acts from occurring in the future; and
 - (iv) identification of any other issues that, to Stratos' knowledge, will or reasonably could affect the effectiveness of or compliance with this Agreement.

ARTICLE IV: DEFINITIONS

As used in this Agreement:

- 4.1 “Call Associated Data” means any information possessed by Stratos relating to a Domestic Communication or relating to the sender or recipient of that Domestic Communication and may include 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, dual tone multifrequency (dialed digit extraction), inband and outofband signaling, and party add, drop, and hold.
- 4.2 “Classified Information” means any information that has been determined pursuant to Executive Order 12958, or any predecessor or successor Executive Order, or the Atomic Energy Act of 1954, or any statute that succeeds or amends the Atomic Energy Act, to require protection against unauthorized disclosure.
- 4.3 “De facto” and “de jure” control have the meaning provided in 47 C.F.R. § 1.2110.
- 4.4 “Domestic Communications” means (i) Wire Communications or Electronic Communications (whether stored or not) between a U.S.-Licensed MET and another U.S. location, and (ii) the U.S. portion of a Wire Communication or Electronic Communication (whether stored or not) that originates from or terminates to a U.S.-Licensed MET.
- 4.5 “Domestic Communications Infrastructure” means the facilities and equipment of Stratos used to provide, process, direct, control, supervise or manage Domestic Communications. Domestic Communications Infrastructure may be located, for *bona fide* commercial reasons, outside the United States.
- 4.6 “Electronic Communication” has the meaning given it in 18 U.S.C. § 2510(12).
- 4.7 “Electronic Surveillance” means (i) 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); (ii) access to stored wire or electronic communications, as referred to in 18 U.S.C. § 2701 *et seq.*; (iii) acquisition of dialing 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.*; (iv) acquisition of location-related information concerning a telecommunications service subscriber; (v) preservation of any of the above information pursuant to 18 U.S.C. § 2703(f); and (vi) including access to, or acquisition or interpretation of, communications or information as described in (i) through (v) above and comparable State laws.
- 4.8 “Foreign” where used in this Agreement, whether capitalized or lower case, means non-U.S.

- 4.9 “Intercept” or “Intercepted” has the meaning defined in 18 U.S.C. § 2510(4).
- 4.10 “Lawful U.S. Process” means lawful requests by U.S. federal, state or local law enforcement agencies or U.S. intelligence agencies, certifications, and court orders regarding Electronic Surveillance and the acquisition of Subscriber Information.
- 4.11 “Non-U.S.-Licensed MET” means an Inmarsat MET that is not covered by a Stratos license or authorization to provide service to METs inside the United States.
- 4.12 “Parties” has the meaning given it in the Preamble.
- 4.13 “Pro forma assignments” or “pro forma transfers of control” are transfers or assignments that do not “involve a substantial change in ownership or control” of the licenses as provided in 47 U.S.C. § 309(c)(2)(B).
- 4.14 “Sensitive Information” means unclassified information regarding (i) the persons or facilities that are the subjects of Lawful U.S. Process, (ii) the identity of the government agency or agencies serving such Lawful U.S. Process, (iii) the location or identity of the line, circuit, transmission path, or other facilities or equipment used to conduct Electronic Surveillance, (iv) the means of carrying out Electronic Surveillance, (v) the type(s) of service, telephone number(s), records, communications, or facilities subjected to Lawful U.S. Process, and (vi) other unclassified information 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.”
- 4.15 “Subscriber Information” means information 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.
- 4.16 “Transactional Data” means:
- a) any “call identifying information,” as defined in 47 U.S.C. § 1001(2), possessed by Stratos, including without limitation the telephone number or similar identifying designator associated with a Domestic Communication;
 - b) Internet address or similar identifying designator associated with a Domestic Communication;
 - c) the time, date, size and duration of a Domestic Communication;
 - d) any information possessed by Stratos relating specifically to the identity and physical address of a Stratos U.S. subscriber, user, or account payer;

- e) to the extent associated with such a U.S. subscriber, user or account payer, any information possessed by Stratos relating to telephone numbers, Internet addresses, or similar identifying designators; the physical location of equipment if known and if different from the location information provided under (f) below; types of service; length of service; fees; and usage, including billing records; and
- f) to the extent permitted by U.S. laws, any information possessed by Stratos indicating as closely as possible the physical location to or from which a Domestic Communication is transmitted.
- 4.17 “United States” or “U.S.” means the United States of America including all of its States, districts, territories, possessions, commonwealths, and the territorial and special maritime jurisdiction of the United States.
- 4.18 “U.S.-Licensed MET” means a MET covered by Stratos’ *Applications for Blanket Licenses to Operate Mobile Earth Terminals with Non-U.S. Licensed Satellites*, File Nos. SES-LIC-20010221-00360; SES-LIC-20010221-00361; SES-LIC-20010221-00362; SES-LIC-20010221-00363, *Application for Blanket Authority to Operate Mobile Earth Terminals*, File No. SES-LIC-20000426-00630, or by any future Stratos Title III license granted to provide service to METs inside the United States.
- 4.19 “Wire Communication” has the meaning given it in 18 U.S.C. § 2510(1).
- 4.20 Other Definitional Provisions: Other capitalized terms used in this Agreement and not defined in this Article IV 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 the feminine and neuter genders of such term. Whenever the words “include,” “includes,” or “including” are used in this Agreement, they shall be deemed to be followed by the words “without limitation.”

ARTICLE V: FREEDOM OF INFORMATION ACT

- 5.1 Protection from Disclosure: The DOJ and FBI shall take all reasonable measures to protect from public disclosure all information submitted by Stratos to the DOJ or FBI in connection with this Agreement and clearly marked with the legend “Confidential” or similar designation. Such markings shall signify that it is Stratos’ position that the information so marked constitutes “trade secrets” and/or “commercial or financial information obtained from a person and privileged or confidential,” or otherwise warrants protection within the meaning of 5 U.S.C. § 552(b)(4). If a request is made under 5 U.S.C. § 552(a)(3) for information so marked, and disclosure of any information (including disclosure in redacted form) is contemplated, the DOJ or FBI, as appropriate, shall notify Stratos of the intended disclosure as provided by Executive Order 12600, 52 Fed. Reg. 23781 (June 25, 1987). If Stratos objects to the intended disclosure and its

objections are not sustained, the DOJ or FBI, as appropriate, shall notify Stratos of its intention to release (as provided by Section 5 of Executive Order 12600) not later than five (5) business days prior to disclosure of the challenged information.

- 5.2 Use of Information for U.S. Government Purposes: Nothing in this Agreement shall prevent the DOJ or the FBI from lawfully disseminating information as appropriate to seek enforcement of this Agreement, provided that the DOJ and FBI take all reasonable measures to protect from public disclosure the information marked as described in Section 5.1.

ARTICLE VI: DISPUTES

- 6.1 Informal Resolution: The Parties shall use their best efforts to resolve any disagreements that may arise under this Agreement. Disagreements shall be addressed, in the first instance, at the staff level by the Parties' designated representatives. Any disagreement that has not been resolved at that level shall be submitted promptly to higher authorized officials, unless the DOJ or the FBI believe that important national interests can be protected, or Stratos believes that paramount commercial interests can be resolved, only by resorting to the measures set forth in Section 6.2 below. If, after meeting with higher authorized officials, either party determines that further negotiations would be fruitless, then either party may resort to the remedies set forth in Section 6.2 below. If resolution of a disagreement requires access to Classified Information, the Parties shall designate a person possessing the appropriate security clearances.
- 6.2 Enforcement of Agreement: Subject to Section 6.1 of this Agreement, if any Party believes that any other Party has breached or is about to breach this Agreement, that Party may bring an action against the other Party for appropriate judicial relief. Nothing in this Agreement shall limit or affect the right of a U.S. Government agency to:
- (i) seek revocation by the FCC of any license, permit, or other authorization granted or given by the FCC to Stratos, or seek any other action by the FCC regarding Stratos; or
 - (ii) seek civil sanctions for any violation by Stratos of any U.S. law or regulation or term of this Agreement; or
 - (iii) pursue criminal sanctions against Stratos, or any director, officer, employee, representative, or agent of Stratos, or against any other person or entity, for violations of the criminal laws of the United States.
- 6.3 Forum Selection: It is agreed by and between the Parties that a civil action for judicial relief with respect to any dispute or matter whatsoever arising under, in connection with, or incident to, this Agreement shall be brought, if at all, in the United States District Court for the District of Columbia.

- 6.4 Irreparable Injury: Stratos agrees that the United States would suffer irreparable injury if for any reason Stratos failed to perform any of its significant obligations under this Agreement, and that monetary relief would not be an adequate remedy. Accordingly, Stratos agrees that, in seeking to enforce this Agreement against Stratos, the FBI and DOJ shall be entitled, in addition to any other remedy available at law or equity, to specific performance and injunctive or other equitable relief.

ARTICLE VII: OTHER

- 7.1 Right to Make and Perform Agreement: The Parties represent that, to the best of their knowledge, they have and shall continue to have throughout the term of this Agreement the full right to enter into this Agreement and perform their obligations hereunder and that this Agreement is a legal, valid and binding obligation enforceable in accordance with its terms.
- 7.2 Waiver: The availability of any civil remedy under this Agreement shall not prejudice the exercise of any other civil remedy under this Agreement or under any provision of law, nor shall any action taken by a Party in the exercise of any remedy be considered a waiver by that Party of any other rights or remedies. The failure of any Party to insist on strict performance of any of the provisions of this Agreement, or to exercise any right they grant, shall not be construed as a relinquishment or future waiver, rather, the provision or right shall continue in full force. No waiver by any Party of any provision or right shall be valid unless it is in writing and signed by the Party.
- 7.3 Headings: The article and section headings and numbering in this Agreement are inserted for convenience only and shall not affect the meaning or interpretation of this Agreement.
- 7.4 Other Laws: Nothing in this Agreement is intended to limit or constitute a waiver of (i) any obligation imposed by any U.S. laws on the Parties or by U.S. state or local laws on Stratos, (ii) any enforcement authority available under any U.S. or state laws, (iii) the sovereign immunity of the United States, or (iv) any authority over Stratos' activities or facilities located outside the United States that the U.S. Government may possess. Nothing in this Agreement is intended to, or is to be interpreted to, require the Parties to violate any applicable U.S. law.
- 7.5 Statutory References: All references in this Agreement to statutory provisions shall include any future amendments to such statutory provisions.
- 7.6 Non-Parties: Nothing in this Agreement is intended to confer or does confer any rights or obligations on any Person other than the Parties and any other U.S. Governmental Authorities entitled to effect Electronic Surveillance pursuant to Lawful U.S. Process.

- 7.7 Modification: This Agreement and the Implementation Plan may only be modified by written agreement signed by all of the Parties. The DOJ and FBI agree to consider in good faith possible modifications to this Agreement if Stratos believes that the obligations imposed on it under this Agreement are substantially more restrictive than those imposed on other U.S. and foreign licensed service providers in like circumstances in order to protect U.S. national security, law enforcement, and public safety concerns. Any substantial modification to this Agreement shall be reported to the FCC within thirty (30) days after approval in writing by the Parties.
- 7.8 Partial Invalidity: If any portion of this Agreement is declared invalid by a U.S. court of competent jurisdiction, this Agreement shall be construed as if such portion had never existed, unless such construction would constitute a substantial deviation from the Parties' intent as reflected in this Agreement.
- 7.9 Good Faith Negotiations: The DOJ and the FBI agree to negotiate in good faith and promptly with respect to any request by Stratos for relief from application of specific provisions of this Agreement to future Stratos activities or services if those provisions become unduly burdensome to Stratos or adversely affect Stratos' competitive position. If the DOJ or the FBI find that the terms of this Agreement are inadequate to address national security concerns presented by an acquisition by Stratos in the United States after the date that all the Parties have executed this Agreement, Stratos shall negotiate in good faith to modify this Agreement to address those concerns.
- 7.10 Successors and Assigns: This Agreement shall inure to the benefit of, and shall be binding upon, the Parties and their respective successors and assigns.
- 7.11 Control of Stratos: If Stratos makes any filing with the FCC or any other governmental agency relating to the *de jure* or *de facto* control of Stratos, except for filing with the FCC for assignments or transfers of control to any U.S. subsidiary of Stratos that are *pro forma*, Stratos shall promptly provide to the FBI and DOJ written notice and copies of such filing.
- 7.12 Notices: All written communications or other written notices relating to this Agreement, such as a proposed modification, shall be deemed given: (i) when delivered personally; (ii) if by facsimile, upon transmission with confirmation of receipt by the receiving Party's facsimile terminal; (iii) if sent by documented overnight courier service, on the date delivered; or (iv) if sent by mail, five (5) business days after being mailed by registered or certified U.S. mail, postage prepaid, addressed to the Parties' designated representatives at the addresses shown below, or to such other representatives at such other addresses as the Parties may designate in accordance with this Section:

Department of Justice
Assistant Attorney General
Criminal Division
950 Pennsylvania Ave., N.W.
Washington, D.C. 20530

Federal Bureau of Investigation
Assistant Director
National Security Division
935 Pennsylvania Ave., N.W.
Washington, D.C. 20535

Federal Bureau of Investigation
Office of General Counsel
935 Pennsylvania Ave., N.W.
Washington, D.C. 20535

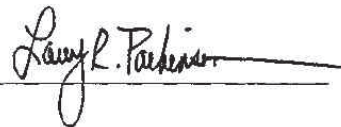
Stratos Mobile Networks (USA) LLC
Facilities Manager
5 Teleport Drive
Staten Island, NY 10311

with copy to:
Alfred M. Mamlet
Steptoe & Johnson, LLP
1330 Connecticut Ave., N.W.
Washington, D.C. 20036

This Agreement is executed on behalf of the Parties:

Federal Bureau of Investigation

Date: August 9, 2001
Printed Name: Larry R. Parkinson
Title: General Counsel

By: 

MarineSat Communications Network, Inc. and Stratos Mobile Networks (USA) LLC

Date: August 7, 2001
Printed Name: Carmen Lloyd
Title: President

By: 

United States Department of Justice

Date: 8/13/01 By: M. Ellen Warlow
Printed Name: Mary Ellen Warlow
Title: Acting Deputy Assistant Attorney General

Exhibit A**CONDITION TO FCC LICENSES**

IT IS FURTHER ORDERED, that the authorizations and licenses related thereto are subject to compliance with the provisions of the Agreement attached hereto between MarineSat Communications Network, Inc. and Stratos Mobile Networks (USA) LLC on the one hand, and the U.S. Department of Justice (the "DOJ") and the Federal Bureau of Investigation (the "FBI") on the other, dated August 7, 2001, which Agreement is designed to address national security, law enforcement and public safety issues of the DOJ and the FBI regarding the authority and licenses granted herein. Nothing in this Agreement is intended to limit any obligation imposed by Federal law or regulation including, but not limited to, 47 U.S.C. § 222(a) and (c)(1) and the FCC's implementing regulations.

EXHIBIT C

Amendment No. 1

THIS AMENDMENT NO. 1 (hereinafter "Amendment") to the Agreement dated August 7, 2001 ("Agreement"), by and between Stratos Communications, Inc. (previously MarineSat Communications Network, Inc.), and Stratos Mobile Networks (USA) LLC (collectively, "Stratos Parties") and the Department of Justice ("DOJ") and the Federal Bureau of Investigation ("FBI") (collectively with the Stratos Parties, "the 2001 Signatories"), a copy of which is attached as Exhibit A, is hereby agreed by and between the 2001 Signatories, Robert M. Franklin ("Trustee"), CIP Canada Investment Inc. ("CIP Canada"), Stratos Mobile Networks, Inc. and the Department of Homeland Security ("DHS") (collectively "the 2007 Signatories"). This Amendment is effective as of the date of the last signature hereto ("Effective Date").

WHEREAS the 2001 Signatories desire to enter into this Amendment to add parties to the Agreement, to add commitments by the Trustee and CIP Canada in connection with a proposed transaction to be effective if such transaction is consummated, and to clarify the obligations of all signatories under the Agreement, as of the Effective Date;

WHEREAS CIP UK Holdings Limited ("CIP UK"), its subsidiary CIP Canada, and Stratos Global Corporation ("Stratos Global") have entered into a Plan of Arrangement effective March 19, 2007, which provides that upon receipt of regulatory approvals including by the FCC, all of the issued and outstanding shares of Stratos Global will be transferred to a Canadian trust created by CIP Canada;

WHEREAS CIP Canada and the Trustee have entered into a Trust Agreement effective April 2, 2007, which provides for an irrevocable trust ("Trust") giving the Trustee legal title to the Stratos Global shares, until either the dissolution of the Trust, or the removal of the Trustee and replacement by a successor at the election of CIP Canada following (i) a finding by an independent party that the Trustee has engaged in malfeasance, criminal conduct, or wanton or willful neglect, or (ii) a judgment of incompetence by a court of competent jurisdiction, either of which would require regulatory approval;

WHEREAS the Trust Agreement also provides that the Trustee has a fiduciary duty to manage the Stratos Global shares for the benefit of CIP Canada, that the Trustee does not have authority to sell, transfer, assign, or otherwise dispose of the Stratos Global shares during the trust period, that CIP Canada will have no legal control over, or operational responsibility for, Stratos Global prior to the dissolution of the Trust, and whereas the Stratos Global Board of Directors and Stratos management retain operational responsibility for Stratos Global notwithstanding the Trust Agreement and the Plan of Arrangement; and

WHEREAS, the Trust Agreement provides that, subject to receipt of regulatory approval, the Trust will dissolve on or before April 14, 2009 and the Trustee will transfer legal title to the Stratos shares to CIP Canada, or to a third party in the event Inmarsat Finance does not exercise its call option to acquire CIP UK.

NOW, THEREFORE, in consideration of the promises, terms and conditions of this

Amendment, and for other consideration, receipt of which is hereby acknowledged, the 2007 Signatories hereby agree as follows:

SECTION 1. This Amendment is entered into pursuant to Section 7.7 of the Agreement.

SECTION 2. The Agreement shall be amended as of the Effective Date such that Stratos Mobile Networks, Inc. is hereby added as a signatory and party to the Agreement with all of the full rights, benefits and obligations of the Stratos Parties.

SECTION 3. The Agreement shall be amended as of the Effective Date such that DHS is hereby added as a signatory and party to the Agreement with all the rights, benefits and obligations of DOJ and FBI.

SECTION 4. During the period between the Effective Date and either the dissolution of the Trust or the resignation or removal of Trustee, Trustee undertakes the obligation not to interfere with or impede the ability of the Stratos Parties or Stratos Mobile Networks, Inc. to discharge their obligations under the Agreement.

SECTION 5. During the period between the Effective Date and the purchase of the issued and outstanding shares of Stratos Global by a third party, pursuant to regulatory approval, CIP Canada undertakes the obligation not to interfere with or impede the ability of the Stratos Parties or Stratos Mobile Networks, Inc. to discharge their obligations under the Agreement.

SECTION 6. The Agreement shall be amended as of the Effective Date, to modify Section 7.12 by adding the following addresses:

Department of Homeland Security
Assistant Secretary for Policy
Email: ip-fcc@dhs.gov

Robert M. Franklin, Trustee
34 Plymbridge Crescent
Willowdale, Ontario
M2P 1P5 Canada

CIP Canada Investment Inc.
Suite 600, 570 Queen Street
Fredericton, New Brunswick
E3B 6Z6 Canada

with copies to:

James D. Scarlett
Torys LLP

Suite 3000
79 Wellington Street West
Box 270, TD Centre
Toronto, Ontario
M5K 1N2 Canada
Counsel for Robert M. Franklin, Trustee

Patricia J. Paoletta
Harris, Wiltshire & Grannis LLP
1200 18th Street, N.W., Suite 1200
Washington, D.C. 20036-2516
Counsel for CIP Canada Investment Inc.

and

Laura Fraedrich
Kirkland & Ellis LLP
655 15th Street, N.W.
Washington, D.C. 20005-5793
Counsel for CIP Canada Investment Inc.

In addition, the following address is hereby substituted for the Stratos Mobile Networks (USA) LLC address in Section 7.12:

Stratos Communications, Inc.
Stratos Mobile Networks (USA), LLC
Stratos Mobile Networks, Inc.
6901 Rockledge Drive, Suite 900
Bethesda, MD 20817

SECTION 7. Except as provided in this Amendment, all terms of the Agreement remain in full force and effect. This Amendment may be signed in any number of counterparts, each of which shall constitute an original and all of which shall constitute one and the same agreement.

SECTION 8. The Stratos Parties, Stratos Mobile Networks, Inc., DOJ, FBI, and DHS further agree pursuant to Section 1.2 and 7.7 of the Agreement to an Amended Implementation Plan dated _____, 2007, a copy of which is attached hereto as Exhibit B. For clarification, the Amended Implementation Plan is confidential and will not be attached to any public filing of this Amendment.

[Remainder of this Page Intentionally Left Blank; Signature Pages follow]

This Amendment is Executed on behalf of the 2007 Signatories:

Department of Justice

Date: _____

By: _____
Sigal Mandelker
Deputy Assistant Attorney General
Criminal Division

Department of Homeland Security

Date: _____

By: _____
Stewart A. Baker
Assistant Secretary for Policy

Federal Bureau of Investigation

Date: _____

By: _____
Elaine N. Lammert
Deputy General Counsel

**Stratos Communications, Inc.
Stratos Mobile Networks (USA) LLC
Stratos Mobile Networks, Inc.**

Date: _____

By: 
James J. Parin
Chief Executive Officer

Robert M. Franklin, Trustee

Date: _____

By: _____
Robert M. Franklin
Trustee

CIP Canada Investment Inc.


Date: _____

By: _____
Johannes Jacobus (Hans) Lipman
Chairman and Director

This Amendment is Executed on behalf of the 2007 Signatories:

Department of Justice

Date: 8/8/2007

By: 
Sigal Mandelker
Deputy Assistant Attorney General
Criminal Division

Department of Homeland Security

Date: _____

By: _____
Stewart A. Baker
Assistant Secretary for Policy

Federal Bureau of Investigation

Date: 8/14/2007

By: 
Elaine N. Lammert
Deputy General Counsel

**Stratos Communications, Inc.
Stratos Mobile Networks (USA) LLC
Stratos Mobile Networks, Inc.**

Date: _____

By: 
James J. Parh
Chief Executive Officer

Robert M. Franklin, Trustee

Date: _____

By: _____
Robert M. Franklin
Trustee

This Amendment is Executed on behalf of the 2007 Signatories:


Department of Justice

Date: _____

By: _____
Sigal Mandelker
Deputy Assistant Attorney General
Criminal Division

Department of Homeland Security

Date: 10 Aug 07

By: 
Stewart A. Baker
Assistant Secretary for Policy

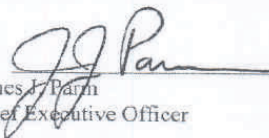
Federal Bureau of Investigation

Date: _____

By: _____
Elaine N. Lammert
Deputy General Counsel

Stratos Communications, Inc.
Stratos Mobile Networks (USA) LLC
Stratos Mobile Networks, Inc.

Date: _____

By: 
James J. Parrin
Chief Executive Officer

Robert M. Franklin, Trustee

Date: _____

By: _____
Robert M. Franklin
Trustee

This Amendment is Executed on behalf of the 2007 Signatories:

Department of Justice

Date: _____

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Sigal Mandelker
Deputy Assistant Attorney General
Criminal Division

Department of Homeland Security

Date: _____

By: _____
Stewart A. Baker
Assistant Secretary for Policy

Federal Bureau of Investigation

Date: _____

By: _____
Elaine N. Lammert
Deputy General Counsel


**Stratos Communications, Inc.
Stratos Mobile Networks, Inc.**

Date: _____

By: _____
James J. Parm
Chief Executive Officer

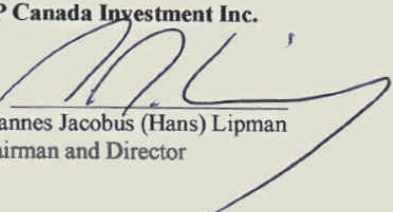
Robert M. Franklin, Trustee

Date: July 18, 2007

By: 
Robert M. Franklin
Trustee

Date: 23/7/2007

CIP Canada Investment Inc.

By: 
Johannes Jacobus (Hans) Lipman
Chairman and Director

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of January, 2009, I caused a true and correct copy of the foregoing PETITION TO ADOPT CONDITIONS TO AUTHORIZATIONS AND LICENSES to be served via electronic mail delivery to each of the following parties:

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Federal Communications Commission
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/s/ Valerie M. Barrish

Valerie M. Barrish