

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the matter of)	
)	
COMSAT CORPORATION,)	
)	
Complainant,)	
)	
v.)	File No. E-99-27
)	
STRATOS MOBILE NETWORKS (USA), LLC,)	
)	
Defendant.)	

MEMORANDUM OPINION AND ORDER

Adopted: November 15, 2000

Released: November 16, 2000

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this Order, we dismiss with prejudice a complaint that COMSAT Corporation (COMSAT) filed against Stratos Mobile Networks (USA), LLC (Stratos) pursuant to section 208 of the Communications Act of 1934, as amended (Communications Act or Act).¹ COMSAT alleges that Stratos violated the International Maritime Satellite Telecommunications Act² and sections 201(b) and 214 of the Communications Act³ by obtaining certain communications satellite capacity used by Stratos’s United States land earth stations (LEs) from an entity other

¹ 47 U.S.C. § 208.

² 47 U.S.C. §§ 751-757 (Maritime Satellite Act or Inmarsat Act). COMSAT also refers to the Inmarsat Convention, the Inmarsat Operating Agreement, and related Commission orders, but all of those references are derivative of COMSAT’s claim under the Maritime Satellite Act.

³ 47 U.S.C. §§ 201(b) and 214. COMSAT also refers to Stratos’s Commission authorizations to provide communications service, but those references are derivative of COMSAT’s claims under the Communications Act.

than COMSAT.⁴ In dismissing COMSAT's Complaint, we hold that the doctrine of *res judicata* precludes COMSAT from maintaining its claims here, because a federal district court has already issued a final judgment against COMSAT concerning claims that arose out of the same transaction from which the claims in this proceeding arise. That final judgment, which the court entered in favor of IDB Mobile Communications, Inc., (IDB), has preclusive effect here because Stratos and IDB are privies for purposes of COMSAT's claims. We further hold that section 207 of the Communications Act similarly precludes COMSAT from maintaining its claims against Stratos, because COMSAT previously elected to seek in a federal district court the same damages, arising from the same transaction, that are at issue in this action.⁵

II. BACKGROUND

2. This is the second complaint that COMSAT has filed with the Commission to attempt to recover damages for alleged violations of the Inmarsat Act and the Communications Act by IDB and Stratos. On January 6, 1999, COMSAT filed a complaint against IDB claiming that IDB violated the Inmarsat Act and the Communications Act by failing to obtain exclusively from COMSAT communications satellite capacity used by IDB's United States LESs.⁶ On May 8, 2000, we dismissed that complaint with prejudice.⁷ We ruled there, as we do here, that the doctrine of *res judicata* barred COMSAT from maintaining its claims at the Commission, because a federal district court had already issued a final judgment against COMSAT and in favor of IDB concerning claims that arose out of the same transaction from which the claims in COMSAT's FCC Complaint against IDB arose.⁸ We also ruled, as we do here, that section 207 of the Act precluded COMSAT from maintaining its claims at the Commission, because COMSAT previously elected to seek in a federal district court the same damages, arising from the same transaction, that were at issue in its FCC Complaint against IDB.⁹

3. In our May 8 Order, we described the history of the Inmarsat Convention, the

⁴ Formal Complaint of COMSAT Corporation, File No. E-99-27 (filed September 10, 1999) (Complaint).

⁵ 47 U.S.C. § 207. Given these holdings, we need not and do not reach Stratos's argument that no private right of action exists for violations of the Maritime Satellite Act.

⁶ Formal Complaint of COMSAT Corporation, File No. E-99-08 (filed January 6, 1999).

⁷ *COMSAT Corp. v. IDB Mobile Communications, Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 7906 (Enf. Bur. 2000) (May 8 Order). The Enforcement Bureau issued the May 8 Order on delegated authority. *See generally* 47 C.F.R. §§ 0.111, 0.311. COMSAT filed an Application for Review of the May 8 Order. *See generally* 47 C.F.R. § 1.115. On July 17, 2000, the Commission denied the Application for Review and upheld the Enforcement Bureau's decision for the reasons stated in the May 8 Order. *COMSAT Corp. v. IDB Mobile Communications, Inc.*, Order on Review, FCC No. 00-250 (rel. July 17, 2000).

⁸ May 8 Order at ¶¶ 23, 29.

⁹ May 8 Order at ¶¶ 24-29.

Inmarsat Operating Agreement, the Maritime Satellite Act, and COMSAT's relationship thereto, and we need not repeat that discussion here.¹⁰ We will, however, address the historical relationship of COMSAT to IDB and Stratos.

4. COMSAT and IDB entered into an intercarrier agreement, dated June 30, 1995, for the provision of satellite communications services.¹¹ Pursuant to this Agreement, from the summer of 1995 until the fall of 1997, IDB purchased space segment satellite capacity for its U.S. LESs solely from COMSAT.¹² Beginning in the fall of 1997, IDB began to purchase space segment capacity for its U.S. LESs from an entity other than COMSAT.¹³

5. At approximately the same time that IDB ceased acquiring space segment capacity from COMSAT, IDB transferred to Stratos most of IDB's authorizations under section 214 of the Communications Act to provide international mobile satellite services.¹⁴ Some time thereafter, Stratos began providing satellite communications services through the same U.S.-based LES's that IDB had previously operated.¹⁵ As this transfer of authorizations and operations might suggest, IDB and Stratos are closely related.¹⁶ They are both wholly owned by Stratos Global Corp., occupy the same office space, employ the same personnel, are managed by the same officers and directors, share the same counsel, and market and provide the same services.¹⁷

6. On January 28, 1998, after IDB had ceased purchasing space segment capacity solely from COMSAT and had transferred most of its section 214 authorizations to Stratos, COMSAT filed a complaint against IDB (but not Stratos) in the United States District Court for the District of Maryland, Southern Division (District Court).¹⁸ COMSAT asserted three counts

¹⁰ *Id.* at ¶¶ 3-5.

¹¹ Complaint at Exhibit 3, Agreement Between COMSAT Mobile Communications and IDB Mobile Communications, Inc. (1995 Agreement or Agreement). By its own terms, the Agreement terminated on September 1, 1999. *Id.* at § 1.1.

¹² Complaint at ¶¶ 18-20; Answer of Stratos Mobile Networks (USA), LLC, File No. E-99-27 (filed September 30, 1999) (Answer) at ¶¶ 10-11.

¹³ Complaint at ¶¶ 20-21; Answer at ¶ 13.

¹⁴ *Overseas Common Carrier Section 214 Applications: Actions Taken*, Report No. I-8273, Public Notice, 12 FCC Rcd 19542 (1997); Joint Statement, File No. E-99-27 (filed October 13, 1999) (Joint Statement) at ¶ 4; Answer at ¶ 8.

¹⁵ Joint Statement at ¶ 4; Complaint at ¶¶ 23-25; Answer at ¶¶ 8-9.

¹⁶ Answer at ¶ 8; Complaint at ¶ 8.

¹⁷ Answer at ¶ 8; Complaint at ¶¶ 8, 28.

¹⁸ *COMSAT Corporation v. IDB Mobile Communications, Inc. et al.*, No. AW 98-281 (D. Md., filed January 28, 1998) (District Court Complaint). The District Court Complaint also named Teleglobe, Inc. and WorldCom,

against IDB, all of them styled as “Breach of Contract.” Each count essentially alleged that (1) the Maritime Satellite Act and the Communications Act required IDB to purchase space segment capacity for IDB’s U.S. LESs exclusively from COMSAT; (2) the 1995 Agreement incorporated those requirements of federal law; and, therefore, (3) IDB’s purchasing of space segment capacity for its U.S. LESs from an entity other than COMSAT violated the 1995 Agreement.¹⁹ COMSAT sought damages in the amount of, *inter alia*, whatever charges IDB would have paid COMSAT had IDB complied with IDB’s alleged obligation to purchase space segment capacity for IDB’s U.S. LESs exclusively from COMSAT.²⁰ COMSAT’s District Court Complaint did not include any claim based directly on any alleged breach of the Maritime Satellite Act or the Communications Act.

7. In its District Court Complaint, COMSAT acknowledged the close relationship between IDB and Stratos. COMSAT averred that IDB is “wholly owned by Stratos Global Corporation” and that “IDB also conducts business as Stratos Mobile Networks.”²¹ Nevertheless, COMSAT elected not to name Stratos as a defendant in its District Court action against IDB.

8. In response to COMSAT's District Court Complaint, IDB filed a motion to dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure.²² IDB asked the District Court either to dismiss the complaint for failure to state a claim or to stay the proceedings and refer certain issues to the Commission pursuant to the primary jurisdiction doctrine.²³

9. On April 30, 1998, the District Court granted IDB's motion to dismiss COMSAT's District Court Complaint for failure to state a claim.²⁴ The District Court found that, even assuming, *arguendo*, that the Maritime Satellite Act required IDB to purchase space segment capacity for its U.S. LESs exclusively from COMSAT, IDB’s failure to do so did *not* breach the 1995 Agreement, because the Agreement permitted IDB to purchase such capacity from entities

Inc. as defendants, but COMSAT’s inclusion of these defendants in the District Court Complaint does not affect the issues here.

¹⁹ District Court Complaint at 3-9.

²⁰ *Id.* at 10.

²¹ *Id.* at 2.

²² Fed. R. Civ. P. 12(b)(6).

²³ Defendant’s Motion to Dismiss or, in the Alternative, to Stay, *COMSAT Corp. v. IDB Mobile Communications, Inc.*, No. AW 98-281 (D. Md., filed February 24, 1998), attached as Tab 1 to Letter dated March 31, 2000, from Rebekah J. Kinnett, counsel for COMSAT, to Magalie Roman Salas, Secretary, Federal Communications Commission, File No. E-99-08 (filed March 31, 2000).

²⁴ Complaint at Exhibit 3, *COMSAT Corp. v. IDB Mobile Communications, Inc.*, Order, No. AW 98-281 (D. Md., April 30, 1998) (District Court Order).

other than COMSAT.²⁵

10. On January 6, 1999, COMSAT filed its FCC Complaint against IDB. COMSAT alleged that IDB violated the Maritime Satellite Act and sections 201(b), 202(a), and 214 of the Communications Act by purchasing space segment capacity for IDB's U.S. LESs from an entity other than COMSAT.²⁶ COMSAT sought damages in the amount of whatever charges IDB would have paid COMSAT had IDB purchased space segment capacity for its U.S. LESs exclusively from COMSAT during the relevant period.²⁷ Thus, COMSAT's FCC Complaint against IDB arose from the very same circumstances, and sought essentially the same relief, as COMSAT's District Court Complaint.²⁸ The two complaints differed only in that the District Court Complaint asserted a breach of contract theory, whereas the FCC Complaint asserted statutory theories.²⁹

11. In our May 8 Order, we dismissed COMSAT's FCC Complaint against IDB with prejudice. As previously noted, we concluded that *res judicata* precluded COMSAT from pursuing its claims at the Commission because the District Court had already entered a final judgment against COMSAT and in favor of IDB concerning claims that arose out of the same transaction from which the claims at issue in COMSAT's FCC Complaint arose.³⁰ Similarly, we ruled that section 207 of the Act also precluded COMSAT from maintaining the claims in its FCC Complaint, because COMSAT previously elected to seek in a federal District Court the same damages, arising from the same transaction, that were at issue in the FCC Complaint.³¹

12. Prior to our May 8 Order, but after COMSAT and IDB had briefed in that proceeding the applicability of the *res judicata* doctrine, COMSAT filed this action against Stratos. COMSAT's Complaint against Stratos is substantively identical to its FCC Complaint against IDB.

²⁵ *Id.* at 6-10.

²⁶ *See* May 8 Order at ¶ 11.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.* at ¶ 29.

³¹ *Id.*

III. DISCUSSION

A. The Doctrine Of *Res Judicata* Requires Dismissal Of All Of The Claims In COMSAT's Complaint Against Stratos.

1. We Have Already Concluded That Two of the Three *Res Judicata* Factors are Present.

13. According to the general rule of claim preclusion, a valid and final judgment rendered against a plaintiff and in favor of a defendant in one action bars another action by the same plaintiff against the same defendant *or its privy* that seeks to assert any legal theory regarding any right to any remedy relating to the same transaction from which the first action arose.³² In other words, a plaintiff usually must assert in one action all claims against a defendant *and those in privity with the defendant* that arise from the same operative facts.³³ This rule rests “largely on the ground that fairness to the defendant, and sound judicial administration, require that at some point litigation over the particular controversy come to an end.”³⁴

14. To implement the foregoing general rule and apply *res judicata*, courts require the presence of three elements: 1) there must have been a valid, final judgment on the merits; 2) the prior action must have involved the same parties or their privies; and 3) the prior action must have involved the same claim, defined to include not only those matters that were raised and addressed by the prior final judgment, but all those matters that could have been raised in the prior action.³⁵

15. In our May 8 Order addressing COMSAT's FCC Complaint against IDB, we effectively resolved the first and third elements of the *res judicata* test as it pertains to COMSAT's instant Complaint against Stratos. We ruled that the District Court Order was a valid and final judgment on the merits of COMSAT's claims.³⁶ We reach the same conclusion here. Moreover, because (1) COMSAT's FCC Complaint against Stratos is substantively identical to its prior FCC Complaint against IDB (i.e., COMSAT makes the same statutory claims against

³² See, e.g., Restatement (2d) of Judgments §§ 19, 24, 25; *Lubrizol Corp. v. Exxon Corp.*, 929 F.2d 960, 966 (3rd Cir. 1991).

³³ See, e.g., *Cromwell v. Sac. County*, 94 U.S. (4 Otto.) 351, 352 (1876); *Mars Inc. v. Nippon Conlux Kabushiki-Kaisha*, 58 F.3d 616, 619 (Fed. Cir. 1995); *Lubrizol*, 929 F.2d at 963; *In re Teltronics Services, Inc.*, 762 F.2d 185, 190 (2d Cir. 1985).

³⁴ Restatement (2d) of Judgment § 19, comment a.

³⁵ See, e.g., *Cromwell*, 94 U.S. at 352; *People Who Care v. Rockford Bd. of Educ.*, 68 F.3d 172, 177 (7th Cir. 1995); *In re International Nutronics, Inc.*, 28 F.3d 965, 969 (9th Cir.), cert. denied, 513 U.S. 1016 (1994); *Citibank, N.A. v. Data Lease Fin. Corp.*, 904 F.2d 1498, 1501 (11th Cir. 1990); see also 18 Moore's Federal Practice § 131.01 (3d Ed. 1998).

³⁶ May 8 Order at ¶¶ 14 and 23.

Stratos that it made against IDB), and (2) our May 8 Order found that COMSAT's FCC claims arose out of the same transaction as COMSAT's District Court claims, we have no trouble concluding that COMSAT's claims against Stratos here arise out of the same transaction as COMSAT's court claims against IDB.

16. The question that remains, then, is whether IDB and Stratos are in privity for purposes of *res judicata*. If so, then COMSAT is precluded from asserting its statutory claims against Stratos for the same reasons that it is precluded from bringing those claims against IDB. As explained below, we conclude that IDB and Stratos are privies and, accordingly, for the reasons set forth in our May 8, 2000 Order, *res judicata* bars COMSAT from pursuing its alleged claims against Stratos.

2. Privity Exists Between IDB and Stratos.

17. Privity is a broad concept and a well-recognized component of *res judicata*.³⁷ Privity exists when the relationship between one who was a party of record in a prior action, and another who was not, is close enough that it is appropriate to include the non-party to the prior action within the scope of *res judicata* application.³⁸ The application of privity for *res judicata* purposes is limited by due process principles and concerns of fairness.³⁹ However, "a lesser degree of privity is required for a new defendant to *benefit* from claim preclusion than for a plaintiff to *bind* a new defendant in a later action."⁴⁰ Privity is generally found:

[w]here a plaintiff has sued parties in serial litigation over the same transaction; where the plaintiff chose the original forum and had the opportunity to raise all its claims relating to the disputed transaction in the first action; where there was a "special relationship" between the defendants in each action, if not complete identity of parties; and where although the prior action was concluded, the plaintiff's later suit continued

³⁷ See, e.g., *Chase Manhattan Bank, N.A. v. Celotex Corp.*, 56 F.3d 343, 346 (2d Cir. 1995); *Russell v. SunAmerica Securities, Inc.*, 962 F.2d 1169, 1173 (5th Cir. 1992).

³⁸ See, e.g., *SunAmerica*, 962 F.2d at 1173; *Bruszewski v. United States*, 181 F.2d 419, 423 (3rd Cir.) (Goodrich, J., concurring), *cert. denied*, 340 U.S. 865 (1950) ("Privity states no reason for including or excluding one from the estoppel of a judgment. It is merely a word used to say that the relationship between the one who is a party on the record and another is close enough to include that other within the *res judicata*.") As COMSAT concedes, privity does not require that parties fall within specified categories, such as principal and agent or a corporation and its legal successor. Reply Brief of COMSAT Corporation, File No. E-99-27 (filed December 10, 1999) (COMSAT Reply) at 4.

³⁹ *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1277 (9th Cir.), *cert. denied sub nom.*, *Hoffer v. City of Seattle*, 506 U.S. 953 (1992).

⁴⁰ *Lubrizol*, 929 F.2d at 966 (emphasis added), citing *Bruszewski*, *supra*. See *Mars*, 58 F.3d at 619.

to seek essentially similar relief. . . .⁴¹

18. Stratos argues that each of the four factors described above are present here and establish that privity exists between IDB and Stratos: COMSAT has sued IDB and Stratos in serial litigation concerning the same transaction; COMSAT chose the original forum and had ample opportunity to join Stratos as a party to that action; Stratos and IDB have a close, “special relationship;” and COMSAT’s FCC Complaint against Stratos seeks essentially the same relief as its prior actions.⁴²

19. COMSAT does not dispute that it chose the initial District Court forum. Further, COMSAT acknowledges that the relief it seeks here is essentially the same relief as it sought against IDB.⁴³ COMSAT contests, however, that Stratos and IDB have a sufficiently close relationship to warrant a finding of privity.⁴⁴ COMSAT also contests that it has engaged in serial litigation over the same transaction, and that it could have raised all its claims against Stratos in district court. To support these latter arguments, COMSAT maintains that the District Court refused to hear the statutory claims raised here,⁴⁵ and that COMSAT could not have brought contract claims in court against Stratos because Stratos was not bound by COMSAT’s 1995 Agreement with IDB.⁴⁶ For the following reasons, we disagree with all of COMSAT’s arguments.

a. The Relationship Between Stratos and IDB is Sufficiently Close to Warrant a Finding of Privity.

20. We find that Stratos and IDB have the type of close, “special relationship,” particularly in the context of COMSAT’s claims, that courts have relied upon in finding privity.

⁴¹ *SunAmerica*, 962 F.2d at 1175.

⁴² Brief of Stratos Mobile Networks (USA), LLC, File No. E-99-27 (filed November 22, 1999) (Stratos Brief) at 8-10; Answer at ¶¶ 26-30.

⁴³ COMSAT Reply at 9, n.20. Compare FCC Complaint against Stratos at ¶ 40 and FCC Complaint against IDB at ¶ 79; see also Answer at ¶ 20.

⁴⁴ Initial Brief of COMSAT Corporation, File No. E-99-27 (filed November 22, 1999) (COMSAT Brief) at 9-10; COMSAT Reply at 4-6; Legal Analysis, File No. E-99-27 (filed October 5, 1999) (COMSAT Legal Analysis) at 8-9.

⁴⁵ COMSAT Brief at 9-10; COMSAT Reply at 7-8.

⁴⁶ COMSAT repeatedly argues here that the 1995 Agreement did not bind Stratos. See, e.g., COMSAT Brief at 11-12 (“COMSAT again notes that it does not have a contractual relationship with Stratos for the provision of these services, and hence that COMSAT could not have stated a claim against Stratos that the District Court would have heard”) (emphasis added); COMSAT Brief at 10; COMSAT Legal Analysis at ¶¶ 12, 17; COMSAT’s Reply to Affirmative Defenses, File No. E-99-27 (filed October 5, 1999) at ¶ 9.

COMSAT even acknowledges in its Complaint the closeness of this relationship. COMSAT notes that IDB and Stratos share “the same ownership, management, counsel and [FCC] authorizations.”⁴⁷ Further, COMSAT points out that Stratos and IDB are both wholly owned by the same company and “share their corporate headquarters and officers, and Stratos markets services with and for IDB.”⁴⁸ COMSAT was even more direct in linking the two companies in a prior filing with the Commission: “. . . *Stratos has fully absorbed IDB*. They involve the same personnel, the same services, the same customers, the same FCC authorizations. *IDB is now a shell*, with literally a handful of employees.”⁴⁹ Stratos agrees with COMSAT’s assessment of the closeness of the relationship between Stratos and IDB. As Stratos points out, Stratos is now effectively IDB’s successor, at least for purposes of COMSAT’s claims that Stratos and IDB are obligated to acquire certain satellite capacity solely from COMSAT.⁵⁰ All of these connections between Stratos and IDB amply support a conclusion that Stratos and IDB are sufficiently close to merit a finding of privity.

21. Courts have concluded in like circumstances that privity exists where, as here, the entities in question are close corporate affiliates.⁵¹ For example, in *Mars v. Nippon*, the plaintiff had originally sued a United States subsidiary of a Japanese corporation for patent infringement.⁵² After having prevailed on its liability claims against the United States subsidiary, the plaintiff instituted a second action against the Japanese parent corporation for infringement of the same patent based on the same product sales as were at issue in the first case.⁵³ The court concluded that the Japanese parent and the United States subsidiary were so closely related, particularly with respect to the conduct at issue and the plaintiff’s claims for relief, that privity applied and *res judicata* barred the plaintiff’s second suit.⁵⁴ The application of *res judicata* was especially

⁴⁷ Complaint at ¶ 28.

⁴⁸ *Id.* at ¶ 8.

⁴⁹ Reply of COMSAT Corporation to Opposition to Petition to Deny, File No. ITC 98-103 (filed August 13, 1998) (August 1998 Reply) at 18-19 (emphasis added).

⁵⁰ Reply Brief of Stratos Mobile Networks (USA), LLC, File No. E-99-27 (filed December 10, 1999) at 5-6.

⁵¹ *See, e.g., Lubrizol*, 929 F.2d at 966 (wholly owned affiliate of defendant in first suit is entitled to benefit of claim preclusion in second suit); *Teltronics*, 762 F.2d at 191 (privity existed between a company and its successor by merger and between a wholly owned subsidiary and its parent); *Midcontinent Broadcasting Co. v. Dresser Industries*, 669 F.2d 564, 567 (8th Cir. 1982) (privity existed where companies shared common ownership, officers, and directors and where substantial identity of interests existed between companies for purposes of claims at issue).

⁵² 58 F.3d at 617.

⁵³ *Id.* at 617-618.

⁵⁴ *Id.* at 619.

appropriate because a new defendant sought to use *res judicata* as a “shield” to bind the plaintiff to the outcome of the plaintiff’s first action, rather than the plaintiff seeking to use *res judicata* as a “sword” to bind a new defendant who was not a party to the first action.⁵⁵ The circumstances here strongly resemble those in *Mars v. Nippon*: Stratos and IDB have a similarly close relationship, and Stratos likewise seeks to use *res judicata* as a shield, rather than COMSAT seeking to use it as a sword. Accordingly, *Mars v. Nippon* amply supports a finding of privity here.

22. Our conclusion that privity exists is further supported by contemporaneous evidence that COMSAT believed, even before it filed its District Court action against IDB, that Stratos and IDB functioned as a single entity for purposes of COMSAT’s claims that IDB and Stratos were obligated to acquire certain satellite capacity solely from COMSAT.⁵⁶ In the District Court Complaint itself, COMSAT expressly linked Stratos and IDB by noting that “IDB also conducts business as Stratos Mobile Networks.” Shortly after filing its District Court action against IDB, COMSAT continued to emphasize in other Commission proceedings the close relationship between the two companies by representing that Stratos and IDB were jointly liable under the 1995 Agreement to acquire satellite capacity solely from COMSAT.⁵⁷

23. Notwithstanding its characterization of IDB and Stratos as a single entity in other

⁵⁵ *Mars*, 58 F.3d at 619; *see also Lubrizol*, 929 F.2d at 966 (“a lesser degree of privity is required for a new defendant to benefit from claim preclusion than for a plaintiff to bind a new defendant in a later action”).

⁵⁶ For example, in a November 7, 1997, filing with the Commission, COMSAT noted that “IDB Mobile recently announced that it will change its name to Stratos Mobile Networks.” Comments of COMSAT filed in *In the Matter of IDB Mobile Communications, Inc.*, File No. ITC-97-594 (filed November 7, 1997) at 4, n.8. Moreover, correspondence that COMSAT attached to its FCC Complaint against Stratos shows that COMSAT communicated with IDB and Stratos in the fall of 1997 concerning obligations under the 1995 Agreement as if they were one entity. Complaint at Exhibit 3 (*see, e.g.*, November 17, 1997 letter from COMSAT to IDB’s counsel referencing IDB’s alleged failure to comply with the 1995 Agreement and attaching an invoice, made out to “Stratos Mobile Networks,” for services rendered under the Agreement).

⁵⁷ In a March 11, 1998, Commission filing in connection with a Stratos application for section 214 authorization, COMSAT stated: “Stratos has all but completely absorbed IDB into Stratos’s operation.” Petition to Deny of COMSAT filed in *In the Matter of Stratos Mobile Networks (USA), LLC*, File No. ITC-98-103 (filed March 11, 1998) (COMSAT Petition to Deny), at 3. COMSAT emphasized that this fact was material in determining obligations under its 1995 Agreement with IDB: “IDB/*Stratos* remains contractually bound [under the 1995 Agreement] to utilize COMSAT for all U.S. – originated Inmarsat-M and –B traffic through September 1, 1999.” *Id.* at 30 (emphasis added). *See also* Petition to Deny Application for Special Temporary Authority, filed by COMSAT in *In the Matter of Stratos Mobile Networks (USA), LLC*, File No. ITC-98-103 (filed July 24, 1998) at 7 (“[T]he contract [referring to the 1995 Agreement] expressly binds all affiliates of IDB, which includes *Stratos*”) (emphasis added); August 1998 Reply at 7-8 (“[T]he contract between COMSAT and IDB directly, explicitly, and unambiguously requires *Stratos* to utilize COMSAT ‘combined’ space and ground segment ‘on an exclusive basis’ for all U.S. originated Inmarsat-M and –B services through September 1, 1999”) (emphasis added).

proceedings,⁵⁸ COMSAT disputes in this case that the corporate relationship between Stratos and IDB warrants a finding of privity. COMSAT supports this argument primarily by attempting to distinguish this case from that of *SunAmerica*, on which Stratos relies. COMSAT argues that *SunAmerica* is not on point because in that case, unlike here, the second company had effectively taken over the first company's operations.⁵⁹

24. We are not persuaded by COMSAT's effort to distinguish *SunAmerica*. In *SunAmerica*, the court applied *res judicata* to bar the plaintiff from making claims against a corporation that was closely related to a corporation the plaintiff had sued earlier. The court found that privity existed because the two corporations shared the same officers, employees, and office space, and the second corporation had acquired relevant contract rights of the first corporation.⁶⁰ Further, privity existed and *res judicata* applied because the plaintiff's claims in both cases were based on the same cause of action. Stratos and IDB are as similarly situated as the two corporations at issue in *SunAmerica*. Stratos has effectively taken over the operations of IDB that are the subject of COMSAT's claims – the provision of certain satellite services through United States based LESSs. Moreover, Stratos and IDB share the same personnel, officers, directors, parent corporation, and office space. Thus, *SunAmerica* strongly supports a finding of privity here.

25. Finally, COMSAT relies upon *Eagle Transport v. O'Connor* to support its assertion that IDB and Stratos are not sufficiently related to merit a finding of privity.⁶¹ COMSAT's reliance is misplaced. In *Eagle Transport*, unlike here, the plaintiff was attempting to use *res judicata* as a sword against new defendants, rather than the new defendants asserting *res judicata* as a shield against the plaintiff. Further, contrary to COMSAT's representation, the court did not rule that privity did *not* exist between corporations that shared the same president, stockholder, address, and phone numbers. Rather, the court concluded only that fact issues prevented it from granting summary judgment to the plaintiff on *res judicata* grounds.⁶² Moreover, as stated above and acknowledged by COMSAT in another Commission proceeding, IDB and Stratos share more than simply a single officer, stockholder, and address. Indeed, according to COMSAT, Stratos "has completely absorbed IDB" and they share "the same

⁵⁸ COMSAT correctly notes that privity "is determined upon a balance of the equities." COMSAT Reply at 4 (citing *Shamrock Technologies, Inc. v. Medical Sterilization, Inc.*, 903 F.2d 789, 793 (Fed. Cir. 1993)). Certainly, the equities favor our consideration of COMSAT's prior statements regarding the relationship of IDB and Stratos to confirm a finding of privity here.

⁵⁹ COMSAT Reply at 6.

⁶⁰ 962 F.2d at 1169, 1172.

⁶¹ COMSAT Brief at 9, citing *Eagle Transport Ltd, Inc. v. O'Connor*, 470 F. Supp. 731 (S.D.N.Y. 1979).

⁶² 470 F. Supp. at 734.

personnel, the same services, the same customers, [and] the same FCC authorizations.”⁶³ Thus, Stratos and IDB are more closely related than the companies at issue in *Eagle Transport*.⁶⁴

b. COMSAT Could Have Sued Stratos in the District Court Action.

26. COMSAT next argues that the District Court judgment cannot have *res judicata* effect here because the District Court considered only COMSAT’s breach of contract claims and not the statutory violation claims alleged in the instant Complaint.⁶⁵ Therefore, in COMSAT’s view, COMSAT’s statutory claims and its contract causes of action are not the same claim for *res judicata* purposes, and COMSAT did not have an opportunity to raise its statutory claims against Stratos in the District Court action.⁶⁶ We disagree.

27. As explained above, the Commission has already considered and rejected COMSAT’s contention that *res judicata* does not apply to its statutory claims because COMSAT raised, and could have raised, only contract claims, and not statutory claims, in the District Court case against IDB.⁶⁷ We also concluded that COMSAT’s statutory claims at the Commission arose out of the same circumstances and sought essentially the same relief as its court claims.⁶⁸ Further, we noted that *res judicata* applied not only to those claims actually alleged, but also to those claims that could have been alleged because they arose from the same operative facts.⁶⁹ We also found that the District Court did not direct COMSAT to bring its statutory claims to the Commission.⁷⁰ The very same analysis and conclusions apply here, because COMSAT’s statutory claims against Stratos are the same statutory claims it attempted to assert against IDB.

⁶³ August 1998 Reply at 18-19; *see also* Answer at ¶ 8; Complaint at ¶ 8.

⁶⁴ COMSAT also relies on *Eli Lilly and Co. v. Premo Pharmaceutical Laboratories, Inc.*, 843 F.2d 1378 (Fed. Cir. 1988), and that reliance is equally misplaced. COMSAT suggests that *Eli Lilly* stands for the proposition that a company must acquire all the assets of another company in order for privity to exist between the two. COMSAT Reply at 6. The court in *Eli Lilly* did not so rule. *Eli Lilly* concerned whether an order granting an injunction was binding, under Fed. R. Civ. P. 65(d), on a company that had acquired only one asset of the company that had originally been enjoined. The court said no and emphasized that there were important differences between the two companies, including, *inter alia*, that they did not have any officers, directors, or principals in common. 843 F.2d at 1381. Thus, *Eli Lilly* is not instructive here.

⁶⁵ COMSAT Brief at 10; COMSAT Reply at 7-8.

⁶⁶ COMSAT Brief at 10-11; COMSAT Reply at 7-9.

⁶⁷ May 8 Order at ¶¶ 12-23.

⁶⁸ *Id.*

⁶⁹ *Id.* at ¶ 13.

⁷⁰ *Id.* at ¶ 18.

28. COMSAT tries to muddy the waters on this issue by contending that it could not have sued Stratos in the District Court action because that action was contract-based and COMSAT did not have a contractual relationship with Stratos.⁷¹ COMSAT's argument is a red herring. The question here is whether COMSAT could have brought against Stratos in court the same *statutory* claims alleged in the instant Complaint, not the same *contract* claims already alleged in court against IDB. Thus, whether COMSAT has or had a contractual relationship with Stratos is irrelevant.⁷² In any event, as previously stated, contemporaneous evidence, including positions taken by COMSAT in other Commission filings, demonstrate that COMSAT believed Stratos *was* bound by its contract with IDB and could have sued Stratos in court for breach of contract, but simply elected not to do so.⁷³

B. Section 207 Of The Communications Act Requires Dismissal Of COMSAT's Complaint.

29. Stratos argues that, even if *res judicata* does not require us to dismiss the instant Complaint, we should dismiss it on another ground. In Stratos's view, section 207 of the Communications Act requires dismissal of the Complaint because it arises from the same facts, and seeks the same damages, as COMSAT's District Court Complaint against IDB.⁷⁴ COMSAT counters that section 207 does not require dismissal of the instant Complaint, because it asserts different legal theories than the District Court Complaint (statutory theories in the former, contract theories in the latter), and the District Court allegedly ruled that it lacked jurisdiction over COMSAT's statutory claims and "directed" COMSAT to assert such claims at the FCC.⁷⁵

30. COMSAT's arguments here are the same arguments that we rejected in our May 8 Order. We concluded therein that section 207 precluded COMSAT from proceeding with its

⁷¹ See *supra* at n.46.

⁷² COMSAT appears to recognize the irrelevance of the contract point, but only after repeatedly emphasizing that the absence of a contractual relationship with Stratos prevented it from suing Stratos in the district court. COMSAT Reply at 8 ("the issue of whether COMSAT has or has had any sort of contractual relationship with Stratos does not alter the undisputed fact that at issue in this proceeding is whether Stratos has [engaged in statutory violations]").

⁷³ See *supra* at n.57. COMSAT's contradictory positions before the Commission regarding the Agreement's application to Stratos are very troubling. Compare n.46, *supra*, with n.56, 57, *supra*. Given COMSAT's contradictory representations, it would be appropriate to draw an adverse inference against COMSAT on the question of whether it could have named Stratos as a defendant in the District Court action against IDB. See *Amendment of Rules Governing Procedures to be Followed When Formal Complaints are Filed Against Common Carriers*, Report and Order, 12 FCC Rcd 22497, 22610 (1997) at ¶ 278. However, we need not go that far to find privity here.

⁷⁴ Answer at ¶¶ 34-35.

⁷⁵ COMSAT Brief at 13-15; COMSAT Reply at 2-3.

FCC Complaint against IDB because it sought in court the *very same* damages it was seeking in the FCC Complaint – lost revenues resulting from IDB’s failure since the fall of 1997 to purchase space segment capacity for its U.S. LESs exclusively from COMSAT. For the reasons stated in our May 8 Order, we find that section 207 bars COMSAT from making the same claims here against IDB’s privy, Stratos.

IV. ORDERING CLAUSE

31. Accordingly, IT IS ORDERED, pursuant to sections 4(i), 4(j), 207, and 208 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 207, 208, and authority delegated by sections 0.111 and 0.311 of the Commission’s rules, 47 C.F.R. §§ 0.111, 0.311, that the formal complaint in this proceeding IS DISMISSED WITH PREJUDICE and this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau