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

In the Matter of	)	
	)	
COMSAT CORPORATION	)	
d/b/a COMSAT MOBILE	)	
COMMUNICATIONS	) File No.	ITC-97-222
	)	
Application for authority under	)	
Section 753(c) of the International	)	
Maritime Satellite Act and Section	)	
214 of the Communications Act of	)	
1934, as amended, to establish	)	
channels of communication between	)	
land earth stations at Brewster,	)	
Washington, Santa Paula, California,	)	
Southbury, Connecticut and	)	
Clarksburg, Maryland and Inmarsat	)	
Third generation satellites in the Atlantic	)	
Ocean Region-West and Pacific Ocean	)	
Region in support of Federal Aviation	)	
Administration's Wide Area	)	
Augmentation System	)	
	)	
	)	
COMSAT CORPORATION	)	
d/b/a COMSAT MOBILE	)	
COMMUNICATIONS	) File Nos.	SES-MOD-19980217-00197
	)	SES-LIC-19970520-00657
	)	SES-LIC-19980211-00183
For authority to permit communications	)	SES-LIC-19980211-00182
via its land earth stations at Brewster,	)	SES-LIC-19980217-00202
Washington, Santa Paula, California,	)	SES- LIC-19970812-01108
Southbury, Connecticut and Clarksburg,	)	SES- MOD-19990709-01203
Maryland and Inmarsat, Ltd. Third	)	
generation satellites in the Atlantic	)	
Ocean Region-West and Pacific Ocean	)	
Region in support of the Federal Aviation	)	
Administration's Wide Area	)	
Augmentation System	)	
	)	

COMSAT CORPORATION	)	
d/b/a COMSAT MOBILE	)	
COMMUNICATIONS	) File Nos.	SES-AMD-19990108-00012
	)	SES-AMD-20000501-00719
	)	SES-AMD-19990108-00015
	)	SES-AMD-20000501-00695
For authority to permit communications	)	SES-AMD-19990108-00041
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Washington, Santa Paula, California,	)	SES-AMD-19990108-00011
Southbury, Connecticut and Clarksburg,	)	SES-AMD-20000501-00721
Maryland and Inmarsat, Ltd. third	)	SES-AMD-19990108-00016
generation satellites for the provision of	)	SES-AMD-20000501-00722
mobile satellite services	)	SES-MOD-19990108-00051
	)	SES-AMD-20000501-00701
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	)	SES-AMD- 20000501-00703
	)	SES-MOD-19990108-00075
	)	SES-AMD- 19990405-00426
	)	SES-AMD-20000501-00699
	)	SES-MOD-19990108-00017
	)	SES-AMD-20000501-00711
	)	SES-AMD-19990108-00013
	)	SES-AMD-20000501-00723
	)	SES-MOD-19990108-00048
	)	SES-AMD- 19990405-00423
	)	SES-AMD-20000501-00718
	)	SES-MOD-19990108-00055
	)	SES-AMD-20000501-00702
	)	SES-MOD-19990108-00024
	)	SES-AMD- 19990405-00428
	)	SES-AMD-20000501-00704
	)	SES-MOD-19990108-00018
	)	SES-AMD-19990405-00424
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COMSAT CORPORATION d/b/a COMSAT MOBILE COMMUNICATIONS	) File No.	SES-LIC-20000609-00946
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MEMORANDUM OPINION, ORDER AND AUTHORIZATION

Adopted: September 24, 2001 Released: October 9, 2001

By the Commission: Commissioner Abernathy issuing a separate statement.

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I. INTRODUCTION

1. By this order, we grant Comsat Corporation, Comsat Corporation d/b/a Comsat Mobile Communications, Marinesat Communications Network d/b/a Stratos, Stratos Mobile Networks, LLC, IDB Mobile Communications Inc,[1] Honeywell, Inc. (Honeywell), Deere & Company (Deere), and SITA Information Computing Canada (SITA) authority to operate a variety of mobile earth terminals (METs) to provide domestic and international Mobile Satellite Service (MSS)[2] via the privatized Inmarsat Ltd. (now d/b/a Inmarsat, plc) satellite system using L-band frequencies.[3] We also modify the land earth station (LES)[4] licenses of Comsat and Stratos to permit domestic

[1] We will refer to the two closely affiliated Comsat companies as "Comsat," and the three closely affiliated Stratos companies, including IDB Mobile Communications, Inc., as "Stratos." We also note that on July 31, 2000, the Commission authorized the transfer of control of Comsat Corporation and its subsidiaries to a wholly-owned subsidiary of Lockheed Martin Corporation. *Applications for Transfer of Control of Comsat Corporation and Its Subsidiaries, Licensees of Various Satellite, Earth Station Private Land Mobile Radio and Experimental Licenses, and Holders of International Section 214 Authorizations*, 15 FCC Rcd 22910 (2000). We further note that Stratos is indirectly controlled by NewTel Enterprises Limited, a Canadian corporation, which is controlled by BCE, Inc., a Canadian holding company. The Commission has found that the transfer of control of Stratos' Section 214 and Title III authorizations to NewTel is in the public interest. *See Stratos Mobile Networks (USA) LLC, et al.*, 13 FCC Rcd 14040 (1998).

[2] MSS is a radiocommunication service between mobile earth stations and one or more space stations providing voice, data and other services. MSS is used generically in this order to encompass service to mobile terminals on land vehicles (Land Mobile Satellite Service (LMSS)), aircraft (Aeronautical Mobile Satellite Service (AMSS)), and ships (Maritime Mobile Satellite Service (MMSS)).

[3] The L-band encompasses frequencies from 1525-1544/1545-1559 MHz and 1626.5-1645.5/1646.5-1660.5 MHz. The frequencies 1525-1544 MHz and 1626.5-1645.5 MHz are referred to as the "lower L-band" and 1545-1559 MHz and 1646.5-1660.5 MHz as the "upper L-band." The band 1544-1545/1645.5-1646.5 MHz is limited to safety and distress communications in the MSS in accordance with Footnotes S5.356 and S5.365 to the Table of Frequency Allocations. 47C.F.R. § 2.106.

[4] Land earth stations, also called "gateway" or "hub" earth stations support communications between a MET and the Inmarsat satellite system. In a typical transmission path, a signal from a MET travels up to the satellite and then down to the LES, where the MET signal is interconnected with the terrestrial facilities

and international access to Inmarsat Ltd. satellites in conjunction with authorized METs. Grant of these applications will serve the public interest by increasing competition and providing additional services for U.S. consumers.

2. After providing some background concerning these applications and relevant Commission decisions, this Order and Authorization addresses issues raised by the applications. We first address whether Inmarsat has privatized consistent with the non-IPO requirements of the Open-Market Reorganization for the Betterment of International Telecommunications Act (ORBIT Act).[5] We then turn to spectrum availability, technical, national security and law enforcement and other issues raised by these applications.

II. BACKGROUND

A. INMARSAT

3. The International Maritime Satellite Organization (Inmarsat) was an intergovernmental organization created in 1978 to develop a global maritime satellite system to meet commercial maritime and safety communications needs of the United States and foreign countries. In the United States, Inmarsat space segment has been used primarily for the provision of maritime mobile satellite service (MMSS). Much of the MMSS use has been concentrated in the lower L-band. In limited instances, the Commission has also authorized use of Inmarsat space segment for the provision of domestic MSS, including land mobile satellite service (LMSS), to address emergency or other short-term and otherwise unsatisfiable communications needs.[6] The Commission has also authorized certain aeronautical mobile uses.[7]

B. AMSC

4. AMSC Subsidiary Corporation (AMSC) was formed after the Commission determined that the available L-Band spectrum could support only one U.S. space station licensee, and directed the applicants in an L-Band processing round to form a consortium.[8]

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such as the public switched telephone network or Internet. Return signals are sent by the LES to the satellite, which retransmits them to the MET.

[5] Pub. L. 106-180, 115 Stat 48 (2000).

[6] *See, e.g., American Mobile Satellite Corporation, et al.*, 7 FCC Rcd 942 (1992).

[7] In October 1989, amendments to the Inmarsat Convention and Operating Agreement allowed the organization to provide aeronautical services in addition to maritime services. *See also, Provision of Aeronautical Services via the Inmarsat System,* CC Docket 87-75, Report and Order and Authorization, 13 FCC Rcd 21155 (1998), note 1.

[8] *Amendment of Parts 2, 22, and 25 of the Commission's Rules to Allocate Spectrum for and to Establish Other Rules and Policies Pertaining to the Use of Radio Frequencies in a Land Mobile Satellite Service for the Provision of Various Common Carrier Services,* Second Report and Order, 2 FCC 2d 485 (1987).

In 1989, the Commission granted AMSC authority to construct, launch, and operate a three-satellite geostationary-satellite MSS system to operate in 28 megahertz (14 megahertz in each transmission direction) of L-band spectrum.[9] AMSC was authorized to operate in the "upper" portion of the L-band only, specifically the 1545-1559 MHz and 1646.5-1660.5 MHz bands, subject to international coordination. AMSC also sought authority to operate in the lower L-band, and currently operates some METs in the lower L-band pursuant to a grant of temporary authority.[10] AMSC currently operates one satellite, AMSC-1, at 101º W.L., and recently changed its named to Motient Services, Inc. (Motient).

C. L-Band Coordination Agreement

5. In North America and nearby international airspace and maritime areas, five satellite operators, including Motient, currently provide service in the L-band's 66 megahertz (33 megahertz in each transmission direction) MSS allocation.[11] Under the Radio Regulations of the International Telecommunication Union (ITU), operators of satellite systems are required to coordinate their spectrum use to prevent interference to, and receive protection from, other systems.[12] International coordination of the L-band frequencies has been difficult because the stated requirements of the five systems involved in the coordination far exceed the 66 megahertz of spectrum available.

6. In June 1996, after seven years of negotiations, the operators recognized that they would not be able to reach a long-term coordination agreement that would accommodate their business plans. As a result, the United States, Canada, Mexico, Russia, and Inmarsat[13] developed and agreed upon a unique framework to facilitate annual spectrum assignment agreements among the operators.[14] Pursuant to this agreement, often referred to as the Mexico City Agreement, the operators then signed an arrangement based upon current and projected traffic levels of each system, to be revisited annually. The

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[9] *Amendment of Parts 2, 22, and 25 of the Commission's Rules to Allocate Spectrum for and to Establish Other Rules and Policies Pertaining to the Use of Radio Frequencies in a Land Mobile Satellite Service, Memorandum Opinion Order and Authorization*, 4 FCC Rcd 6041 (1989); remanded, *Aeronautical Radio, Inc. v. FCC*, 928 F.2d 428 (D.C. Cir. 1991); 7 FCC Rcd 266 (1992) (remand decision); *aff'd sub nom. Aeronautical Radio, Inc. v. FCC*, 983 F.2d 275 (D.C. Cir. 1993) ("AMSC Authorization").

[10] *AMSC Subsidiary Corporation*, 10 FCC Rcd 10458 (1995) (authorizing AMSC to operate its existing data mobile terminals in the lower L-band on a temporary basis).

[11] The five operators are: Motient; MSAT, a Canadian operator; Solidaridad, a Mexican-licensed operator; TM Sat, a Russian operator; and Inmarsat Ltd., a United Kingdom operator.

[12] *See generally* International Telecommunication Union's Radio Regulations Article S9 (1998 edition).

[13] The United Kingdom has since informed the Commission that it is now a party to the Mexico City Agreement. *See* Letter from Steve Jones, United Kingdom Radiocommunications Agency, to Thomas S. Tycz, Federal Communications Commission, dated August 18, 1999.

[14] *See* International Action: "FCC Hails Historic Agreement on International Satellite Coordination," News Release, Report No. IN 96-16 (June 25, 1996) ("Mexico City Agreement").

1996 operator-to-operator agreement provided each system with an amount of spectrum based upon its current and projected near-term traffic requirements. Unlike most international coordinations that create permanent assignments of specific spectrum, the operators' assignments can change from year to year based on their marketplace needs. Significantly, each of the five operators received less spectrum than it had requested for its system, for its long-term use and, in some cases, less spectrum than it had been authorized to use by its respective administration. No operator-to-operator agreement has been in effect since year-end 1999.

D. World Trade Organization Agreement and DISCO II

7. The United States signed the World Trade Organization (WTO) Agreement on Basic Telecommunication Services in 1997. In the WTO Agreement, the United States committed to open its satellite market to foreign systems licensed by WTO-member countries to provide fixed and mobile satellite services (excluding direct-to-home fixed-satellite service).[15] In November 1997, the Commission adopted the *DISCO II Order* which implements the United States' satellite commitments made under the WTO Agreement. [16] In *DISCO II*, we stated that we would consider requests to serve the U.S. market pursuant to our public interest mandate[17] and identified public interest factors relevant to making this determination.[18] *DISCO II* established two procedures under which foreign satellite systems could seek access to the United States. The first is via a space station processing round. The second procedure involves requests by U.S. earth station applicants and licensees to access the foreign satellite system where the system is "already operating and for which the international coordination process has been initiated."[19]

[15] The results of the WTO basic telecommunications services negotiations are incorporated into the General Agreement on Trade in Services (GATS) by the Fourth Protocol to the GATS (April 30, 1996), 36 I.L.M. 336 (1997). These results, as well as the basic obligations contained in the GATS, are referred to herein as the "WTO Agreement."

[16] *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, *Notice of Proposed Rulemaking*, 11 FCC Rcd 18178 (1996), *Report and Order*, 12 FCC Rcd 24094 (1997) ("*DISCO II*").

[17] 47 USC at §§ 308(b), 309; *DISCO II* at ¶158.

[18] *DISCO II* at ¶15.

[19] *Id.* at ¶183-188.

E. The ORBIT Act and Inmarsat Privatization

8. The ORBIT Act was enacted in March, 2000 to promote a competitive market for satellite communications services through a fully privatized INTELSAT and Inmarsat.[20] It specifies a number of criteria for determining whether privatization is pro-competitive. Inmarsat privatized on April 15, 1999, prior to enactment of the ORBIT Act. The privatization entailed the transfer of the operational assets of the intergovernmental Inmarsat to a newly-created U.K. stock corporation, Inmarsat Holdings Ltd. Inmarsat Holdings Ltd. was renamed Inmarsat Ventures, Ltd., a private holding company. Inmarsat Ventures, Ltd., in turn, has an operating company subsidiary, Inmarsat Ltd., which is also an U.K. corporation. In anticipation of conducting an Initial Public Offering (IPO), Inmarsat Ventures, Ltd. was converted to a public limited company, Inmarsat Ventures, PLC.[21]

9. In deciding to privatize, the Inmarsat Assembly of Parties (comprised of the governments party to the Inmarsat Convention) decided to amend the Inmarsat Convention to leave in place a residual intergovernmental organization, the International Mobile Satellite Organization, now known by the acronym IMSO. IMSO's responsibility is to ensure continued provision of certain public services, principally those of the global maritime distress and safety system (GMDSS). This is done through a contractual relationship between IMSO and both Inmarsat Ventures, Ltd., and Inmarsat Ltd. The United States formally accepted the amendments to the Inmarsat Convention on February 13, 2001.[22]

10. Upon Inmarsat's privatization, Comsat and Stratos filed applications to modify the licenses of their LESs in the United States to reflect operation with the new private company. The International Bureau authorized Comsat and Stratos to continue operations with the new private company on a temporary basis pending enactment of legislation to authorize U.S. participation in IMSO and to eliminate provisions of the Communications Satellite Act no longer necessary or relevant to operation of the new private company in the United States.[23] The temporary authorizations have been renewed periodically pending action on the underlying applications for permanent authority.[24]

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[20] Pub. L. 106-180 § 2.

[21] Letter to Secretary, Federal Communications Commission from Kelly Cameron on behalf of Inmarsat Ventures, PLC, dated March 21, 2001.

[22] Report to the Committees on Energy and Commerce and International Relations of the House of Representatives and to the Committees on Commerce, Science, and Transportation and Foreign Relations of the Senate, pursuant to Section 646(A) of Section 3 of the ORBIT Act (Pub L 106-180) (Feb. 28, 2001) (the Administration Report).

[23] *Requests for Special Temporary Authority of Comsat Corporation and Stratos (USA) Limited to Change Points of Communications from Inmarsat to Inmarsat Limited,* DA 99-679 (rel. April 12, 1999*).*

[24] *Requests for Special Temporary Authority of Comsat Corporation and Stratos (USA) Limited to Change points of Communications from Inmarsat to Inmarsat Limited,* DA 99-2188 (rel. October 15, 1999); DA

11. Following enactment of the ORBIT Act, the Commission requested that Comsat and Stratos supplement their applications to address the privatization criteria established in the ORBIT Act.[25] The issues raised under the ORBIT Act by those applications are also raised by the separate applications filed by Comsat, Stratos, SITA, Honeywell and Deere and Co. requesting authority to provide various land mobile and aeronautical services in the United States via Inmarsat.

F. The Applications

12. The applications request authority to provide domestic and international MSS via a variety of METs and LESs that will access the Inmarsat Ltd. satellite system. The applications fall into the following categories: [26]

13. Mobile Earth Terminals (METs). Comsat and Stratos seek blanket authority to operate Inmarsat-B,-C,-M, Mini-M, and M4 METs,[27] with Inmarsat satellites for the provision of domestic services in portions of the 1626.5-1660.5 MHz and 1525-1559 MHz bands. The Inmarsat METs will be used to provide voice, data and fax services, enabling customers to access the public switched telephone network (PSTN) and Internet services. To the extent that these terminals will provide aeronautical services, the services will not be safety-related.

14. SITA, Honeywell, and Deere propose various services. SITA intends to provide an air-to-ground and ground-to-air non-safety-related aeronautical telecommunications service that will allow end users to make domestic and international calls to and from aircraft (commercial passenger aircraft, corporate aircraft, cargo aircraft and government aircraft) in flight.[28] Honeywell will use its METs via existing LESs to enable flight personnel or passengers on private aircraft to engage in non-safety related voice, data, and facsimile communications during flight.[29] Deere proposes to operate up to

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00-774 (rel. April 3, 2000). This STA has been renewed and is currently due to expire on September 30, 2001.

[25] *Requests for Special Temporary Authority of Comsat Corporation and Stratos (USA) Limited to Change Points of Communications from Inmarsat to Inmarsat Limited,* DA 00-744 (rel. April 3, 2000).

[26] A more detailed description of the applications is contained in Appendices A-D.

[27] T hese various designations for METs operating with the Inmarsat Ltd. system correspond to given technical parameters, based on intended uses and design parameters for the MET.

[28] SITA only requests Section 214 common carrier authority. SITA states that individual airlines or other end users would need to separately obtain radio frequency authorizations for METs, as required under Title III of the Communications Act. SITA intends to employ gateway earth stations outside the U.S., specifically, in Canada, France, Australia, and Japan, and provide services using Inmarsat space segment. SITA App. at 2.

[29] Honeywell states that Inmarsat, Ltd. has approved the mobile unit for its intended use and the Federal Aviation Administration (FAA) has authorized Honeywell to proceed with its plan to obtain supplemental Type Certification. Honeywell App. (Exhibit A at 1). Honeywell's request concerns radiofrequency

10,000 receive-only mobile earth stations to receive communications from Inmarsat's II F2 satellite at 98° W.L. through the LES at Laurentides, Canada, on the frequency of 1536.16 MHz. These mobile earth stations support Deere's GreenStar™ precision farming service. The service uses the Global Positioning System (GPS) operated by the Department of Defense to determine the longitude and latitude of each MET location where data is collected, and augments GPS to increase the accuracy of the data collected.[30]

15. Land Earth Stations (LESs). Comsat and Stratos seek permanent modification of their licensed LESs that support communications between METs and the Inmarsat system for the provision of international MSS. Comsat operates LES facilities at Brewster, Washington, Santa Paula, California, Southbury, Connecticut, Sunset Beach, Hawaii, and Clarksburg, Maryland. Stratos operates LES facilities at Alameda, California and Staten Island, New York.[31]

16. Comsat also requests permanent authority to use designated LESs in support of the Federal Aviation Administration's (FAA) Wide Area Augmentation System (WAAS). The WAAS system involves the transmission of positioning information originating from an FAA central processing facility. Information is transmitted via a leased line to COMSAT land earth stations and then on a dedicated communications channel to an Inmarsat satellite in the Atlantic Ocean Region-West (AOR-W) or the Pacific Ocean Region (POR).[32] The signal is broadcast by the Inmarsat satellite using L-band frequencies, and is available to any aircraft carrying a WAAS receiver. According to COMSAT, WAAS will make precision approach capability available at nearly all airports in the United States, will permit safe landings during low-visibility conditions and, when fully implemented, will become the primary means of navigation in U.S. airspace. In addition, WAAS will provide important information about the status of the GPS satellite constellation, and will be able to detect and ignore any corrupt or inaccurate signals.

17. Motient, GE American Communications, PanAmSat, and GlobalStar filed petitions to deny all of the applications based on Inmarsat's alleged failure to comply with the requirements of the ORBIT Act. Motient also argues that a grant of the

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licensing of METs only. Thus, Honeywell terminals will need to be used in conjunction with a separate service provider authorized to provide service pursuant to Section 214 or other provisions of Title II of the Communications Act.

[30] The GreenStar™ service assists farmers in comparing the crop yields from various fields to determine, among other things, the amount of fertilizer and seed appropriate for a particular field and crop. The system also records crop yields and moisture data as the farmer harvests the crop. Deere App. (Attachment B, at 1).

[31] These land earth stations are currently licensed to operate on the 6424-6454 MHz and 3600-3629 MHz feeder link frequencies and the L-band frequency bands 1525-1559 MHz and 1626.5-1660.5 MHz consistent with operations of INMARSAT Second and Third Generation satellites for the provision of international mobile satellite service.

[32] Comsat proposes to operate the WAAS LESs on the 6454.4-6456.6 MHz, 1574.4 -1576.6 MHz and 3629.4-3631.6 MHz frequencies.

applications will conflict with the Commission's spectrum management policies, violate a "freeze" currently in place on the acceptance of lower L-band applications, conflict with Commission technical requirements, and fail to adequately address law enforcement and national security concerns.

III. DISCUSSION

18. In considering the applications to operate METs and LESs to provide service in the United States using Inmarsat satellites, we must first determine whether the Inmarsat privatization is consistent with the criteria set forth in the ORBIT Act. If the Inmarsat privatization is consistent with the ORBIT Act, we must next determine whether the use of Inmarsat satellites satisfies the *DISCO II* public interest criteria for the use of non-U.S. satellites to provide service in the United States. As set forth below, we find that, subject to certain conditions, Inmarsat's privatization satisfies the ORBIT Act criteria. We also find that the provision of the proposed services via Inmarsat satellites satisfies the *DISCO II* public interest considerations. Consequently, we grant the pending applications subject to conditions.

A. ORBIT Act Analysis

1. ORBIT Requirements

19. The ORBIT Act establishes criteria for privatization of INTELSAT and Inmarsat as well as spin-offs.[33] As applied to Inmarsat, the ORBIT Act requires the Commission to determine when considering applications or requests to use Inmarsat for "non-core" services whether such use of Inmarsat in the United States will harm competition in the U.S. market.[34] This determination is to be made in considering applications or requests to use the Inmarsat system to provide services to, from, or within the United States. Section 601(b)(1) provides:

> (b) LICENSING FOR INTELSAT, INMARSAT, AND SUCCESSOR ENTITIES.—
>
> " (1) Competition Test.—
>
> (A) IN GENERAL. – In considering the application of INTELSAT, Inmarsat, or their successor entities for a license or construction permit, or for the renewal or assignment or use of any such license or permit, or in considering the request of any entity subject to United States jurisdiction for authorization to use any space

[33] Pub. L. 106-180, §§ 621-624.

[34] Under the ORBIT Act, "non-core" services for Inmarsat are services other than global maritime distress and safety services or other existing maritime or aeronautical services for which there are not alternative providers. Pub. L. 106-180, § 681(11).

> segment owned, leased, or operated by INTELSAT, Inmarsat, or their successor entities, to provide non-core services to, from, or within the United States, the Commission shall determine whether—
>
> (ii) after April 1, 2000, in the case of Inmarsat and its successor entities, Inmarsat and any successor entities have been privatized in a manner that will harm competition in the telecommunications markets of the United States."[35]

20. The ORBIT Act provides general privatization criteria applicable to Inmarsat.[36] It also provides specific criteria applicable to Inmarsat.[37] The Act requires the Commission to apply these criteria in determining whether competitive harm would result from Inmarsat's provision of service in the United States. Section 601(b)(2) provides:

> (2) CRITERIA FOR COMPETITION TEST. – In making the determination required by paragraph (1), the Commission shall use the licensing criteria in sections 621, 622 and 624, and shall determine that competition in the telecommunications markets of the United States will be harmed unless the Commission finds that the privatization referred to in paragraph (1) is consistent with such criteria.[38]

21. The licensing criteria set forth in the Act includes: 1) achieving independence through an Initial Public Offering (IPO) that substantially dilutes the aggregate ownership of former Signatories of Inmarsat (paras. 39-40 *infra*), and limitations on ownership by intergovernmental organizations (para. 41 *infra*); 2) termination of privileges and immunities that Inmarsat had as an intergovernmental organization (para. 42 *infra*); 3) conversion to a stock corporation with a fiduciary board of directors (paras. 43-45 *infra*); (4) limitations on interlocking officers, directors, or employees shared with any intergovernmental organization or any Signatory or former Signatory of Inmarsat (paras. 46-48 *infra)*; (5) an arms-length relationship between and among Inmarsat and any separated entities or INTELSAT (para. 49 *infra*);[39] (6) incorporation in a country that is a Signatory to the WTO Basic Telecommunications Agreement and that has effective laws and regulations that secure competition in telecommunications services (paras. 50-51 *infra*); and (7) restrictions of Inmarsat's relationship with its former affiliate (paras. 52-53 *infra*). The Orbit Act establishes specific duties in privatizing consistent with these criteria (paras. 54-56 *infra*). And it

[35] Pub. L. 106-180, § 601(b)(1)

[36] *Id.* § 621.

[37] *Id.* § 624.

[38] *Id.* § 601(a)(2).

[39] *Id.* at §§ 621, 623.

also directs the Commission to construe criteria in a manner consistent with the United States' WTO commitments (para. 38 *infra).*[40]

22. If the Commission determines that authorizing Inmarsat services will harm competition in the U.S. market, the ORBIT Act directs the Commission to "limit through conditions or deny such application or request, and limit or revoke previous authorizations to provide non-core services to, from or within the United States".[41] The Act defines "non-core services" as services other than global maritime distress and safety services. It also classifies "non-core services" as other "existing" maritime or aeronautical services for which there are no alternative providers.[42]

2. Comments on ORBIT Act Issues

(a) Comsat and Stratos Applications to Modify Existing Earth Station Licenses

23. PanAmSat filed a partial opposition to the applications of Comsat and Stratos to modify the licenses of their existing earth stations to reflect operation with Inmarsat. PanAmSat maintains that: (1) the Commission should hold Inmarsat to strict compliance with ORBIT Act criteria;[43] (2) Inmarsat's privatization is inconsistent with two principle criteria – restructuring of its Board of Directors and conducting an IPO; [44] and (3) the Commission therefore should not grant full ten-year licenses for Comsat and Stratos to provide non-core services via their earth stations.[45] PanAmSat argues that the Commission, at most, should only grant temporary authority pending full compliance with ORBIT Act criteria.[46]

24. In comments supporting both the Comsat and Stratos applications, Inmarsat states that it is entitled to access to the U.S. market based on U.S. commitments under the WTO Basic Telecommunications Agreement.[47] Inmarsat further states that it is in full compliance with the vast majority of the privatization criteria in the ORBIT Act and has reconstituted its Board of Governors and plans to hold an IPO consistent with the

[40] *Id.* at § 601(c).

[41] Pub. L. 106-180 § 601(b)(1)(3)

[42] *Id.* at § 681(11)

[43] Partial Opposition of PanAmSat Corporation, File Nos. SES-AMD-2000501-00695 et.al. and SES-AMD-2000426-00655 et. al., filed June 16, 2000. (PanAmSat Partial Opposition) at 4-5.

[44] PanAmSat Partial Opposition at 5-7.

[45] *Id.* at 2.

[46] *Id.* at 7-10.

[47] Inmarsat Comments on Comsat Applications at 2-3 and on Stratos Applications at 2-3.

Act's requirements.[48] It urges the Commission to grant the Comsat and Stratos applications to permit the provision of both core and non-core services in the United States.

25. Comsat and Stratos state in reply to PanAmSat that the Commission is required by the explicit terms of the ORBIT Act and by its *DISCO II* decision to accord Inmarsat the presumption of continued access to the U.S. market.[49] They point out that Inmarsat is a private commercial company licensed and located in the United Kingdom that has made a full commitment under the WTO Agreement to open its market for satellite services. They also contend that Inmarsat is now structured in a manner consistent with ORBIT Act criteria and that Inmarsat will restructure its Board and conduct an IPO within the timeframe permitted by the ORBIT Act.[50] They argue that the ORBIT Act permits the Commission to grant permanent authority to provide non-core services via Inmarsat subject to conditions that Inmarsat restructure its Board and conduct an IPO consistent with the ORBIT Act.[51] Stratos also argues that the services subject to its application are core services under the ORBIT Act and therefore not subject to the Act's licensing criteria.[52]

26. PanAmSat responds that the ORBIT Act requires strict rather than substantial compliance with the privatization criteria. It raises doubts that Inmarsat will restructure its Board or conduct an IPO consistent with the ORBIT Act.[53] PanAmSat argues that granting Comsat and Stratos permanent authorizations would deprive the Commission of tools to encourage compliance with the legislation.[54] It also contends that not all of Stratos's services can be considered core services.[55]

(b) Applications to Provide Mini-M, M-4 and Aeronautical Services

27. Motient filed petitions to deny the Comsat applications to provide Mini-M and M-4 services, the Stratos applications to provide M-4 services, the SITA and Honeywell applications to provide aeronautical services, and the Deere application to provide receive-only land mobile services. GE Americom and GlobalStar filed petitions

[48] Inmarsat Comments on Comsat Applications at 4-12 and on Stratos Applications at 4-12.

[49] Comsat Reply at 2-3; Stratos Reply at 6-7.

[50] Comsat Reply at 3-6; Stratos Reply at 7-14.

[51] Comsat Reply at 6-7; Stratos Reply at 14-15.

[52] Stratos Reply at 4-5.

[53] PanAmSat Response at 2-3

[54] *Id.* at 3.

[55] *Id.* at 1-2.

to deny the Comsat applications. PanAmSat filed a petition to deny the Deere application.

28. Motient argues that Inmarsat has failed to comply with ORBIT Act criteria in a number of respects: (1) by not conducting an IPO;[56] (2) by not restructuring its Board of Directors to a majority of members that are independent of Signatories or former Signatories;[57] (3) by having a manager of a former Signatory serving as its CEO and as a Board member;[58] (4) by having certain Inmarsat officers and managers who continue to hold shares in British Telecom (BT);[59] and (5) by continuing to hold more than a one percent share in ICO.[60] Motient also contends that other ORBIT Act considerations warrant dismissal of the above referenced applications.

29. GE Americom and Globalstar raise many of the same issues as Motient with respect to consistency with the ORBIT Act. GE Americom maintains that the ORBIT Act does not give Inmarsat additional time beyond the privatization deadline specified in the Act to restructure its board of directors consistent with the requirements of the Act.[61] GE Americom argues that the criteria in the Act addressing conversion to a stock corporation and make-up of Inmarsat's Board of Directors is subject to the July 1, 2000 overall privatization deadline and not the deadlines in the IPO provisions of the Act.[62] Globalstar maintains that Inmarsat must conduct an IPO before Comsat's applications may be granted. [63] It also states that Comsat has failed to show that Inmarsat has complied with the same provisions of the Act identified by Motient.[64] Globalstar further asserts that authorization of Inmarsat's provision of domestic land mobile and aeronautical services in the U.S. is precluded because these services must be considered as

[56] Motient Petitions to Deny: Comsat Applications at 15-16; Stratos Applications at 12-13; SITA Application at 14-15; Honeywell application at 14-15; and Deere Application at 8.

[57] Motient Petitions to Deny: Comsat Applications at 16; Stratos Applications at 13; SITA Application at 16; and Honeywell Application at 15; and Deere Application at 8.

[58] Motient Petitions to Deny: Comsat Applications at 17; Stratos Applications at 14-15; SITA Application at 16; and Honeywell Application at 16.

[59] Motient Petitions to Deny: Comsat Applications at 17-18; Stratos Applications at 14; SITA Application at 17; and Honeywell Application at 16-17; and Deere Application at 8

[60] Motient Petitions to Deny: Comsat Applications at 18; Stratos Applications at 13; SITA Application at 15; and Honeywell Application at 15.

[61] GE Americom Petition to Deny at 3-4.

[62] *Id.*

[63] Globalstar Petition to Deny at 4.

[64] *Id.* at 4-5.

"additional services" which may not be authorized under the Act until Inmarsat has complied with the Act's privatization criteria.[65]

30. In opposition, Comsat, Stratos, SITA and Honeywell all contend that the Commission should find Inmarsat's privatization is "consistent with" the ORBIT Act. They contend that the Commission has discretion under this standard and is not required to find that each and every one of the criteria is satisfied.[66] They also argue that Inmarsat is planning to conduct its IPO within the time frame provided in the Act,[67] and is compliant with other criteria in the Act. They state that: (1) Inmarsat plans to restructure its fiduciary board in a manner consistent with the Act prior to its IPO;[68] (2) Inmarsat's CEO is not disqualified from serving as a Board member by having been a manager of a former Signatory under the provision of the Act cited by Motient;[69] (3) Inmarsat's ownership in ICO is now less than one-tenth of one percent following ICO bankruptcy proceeding and therefore consistent with the Act;[70] and (4) the Commission has discretion to permit a *de minimis* financial interest in former Signatories by Inmarsat officers and managers.[71] They additionally contend that other considerations merit grant of these applications on a permanent basis, including the current unavailability of the services they propose to provide and U.S. obligations under the WTO Agreement.[72]

31. Deere also contends that the ORBIT Act's "consistent with" standard does not require that all privatization criteria must be met before the Commission may issue licenses.[73] Deere argues that the Commission only need take into consideration the Act's privatization criteria when reviewing applications and, in doing so, weigh satisfaction of the criteria when making its public interest findings.[74] Deere maintains that the

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[65] *Id.* at 5-6.

[66] Stratos Opposition at 6-7 and 14; SITA Opposition at 4-5; and Honeywell Opposition at 9-10; *See* also Comsat Opposition at 6, n6.

[67] Stratos Opposition at 9 and 12-13; SITA Opposition at 6; Honeywell Opposition at 11; Comsat Oppositions at 4-6 (SES-LLC-2000 609-00944 et. seq.) and at 4-6 (SAT-ITC-2000 605-00103).

[68] Stratos Opposition at 13-14; SITA Opposition at 6; Honeywell Opposition at 11 and Comsat Opposition at 4-6 (SES-LLC-2000 609 00944).

[69] Stratos Opposition at 15; Comsat Opposition at 5-6 (SES-LLC-2000609-00944 et. seq.); and Honeywell Opposition at 13.

[70] Stratos Opposition at 14; Comsat Opposition at 7 (SES-LLC-2000609-00944); SITA Opposition at 6; and Honeywell Opposition at 11.

[71] Stratos Opposition at 15-16; Comsat Opposition at 7 (SES-LLC-2000609-00944); and Honeywell Opposition at 13.

[72] Stratos Opposition at 18-19; and Comsat Opposition at 10 (SES-LLC-2000609-0944 et. seq.).

[73] Deere Consolidated Opposition at i and 6-10.

[74] *Id.*

Commission may authorize, subject to conditions, all services other than "additional services" as defined by the Act during a transition to full privatization.[75] And, it argues that Inmarsat has now met all ORBIT Act privatization criteria other than conducting an IPO.[76]

32. In reply, Motient maintains that Inmarsat must meet all ORBIT Act privatization criteria for the applications before us to be granted.[77] Motient states that the Act requires actual compliance and not mere statement of intent to comply in the future. It urges the Commission to take into account past anti-competitive conduct by Inmarsat and either deny the applications or impose the conditions that Motient has requested. [78]

(c) Additional Inmarsat Filings

33. In connection with the applications before us, Inmarsat provided additional information on its progress toward restructuring its Board of Directors and conducting an IPO consistent with ORBIT Act criteria. In a January 5, 2001 letter, Inmarsat states that, on October 30, 2000, a meeting of shareholders approved a restructuring plan that will entail a Board consisting of 13 directors, no more than five of whom will be officers, directors or employees of, or otherwise represent former Inmarsat Signatories.[79] Inmarsat also provides information as to the identity and background of the Board members who will be in office at the time of the IPO.[80] In a March 21, 2001 letter, Inmarsat states that five board members who were employees of former Signatories of Inmarsat had resigned, leaving a board comprised of 13 directors, only five of whom are in any way affiliated with former Signatories.[81] It also reaffirms that none of its directors, officers or managers, is a director, officer or manager of an IGO, including IMSO, and none of its officers and managers held officer or manager positions with former Signatories.[82]

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[75] *Id.*

[76] *Id.*

[78] Motient Replies to: Comsat Opposition at 11-13; Stratos Opposition at 12-13; and Honeywell Opposition at 12-13.

[79] Letter to Secretary, Federal Communications Commission from Kelly Cameron on behalf of Inmarsat Ventures, dated January 5, 2001 at 3. Comsat also filed a letter describing the meeting of shareholders October 30, 2000 action. *See* also letter to Secretary, Federal Communications Commission from Bruce A. Henoch, Assistant General Counsel, Comsat Corporation, dated November 14, 2000. PanAmSat and Motient filed responses to the Inmarsat and Comsat letters. Letter to Secretary, Federal Communications Commission from Joseph A. Godles on behalf of PanAmSat, dated November 21, 2000, and from Bruce Jacobs on behalf of Motient, dated November 27, 2000 and January 12, 2001.

[80] *Id.* Attachment B to Exhibit A.

[81] Letter to Secretary, Federal Communications Commission from Kelly Cameron on behalf of Inmarsat Ventures PLC, dated March 21, 2001.

[82] *Id.*

3. Standard of Review under the Act

34. The intent of the ORBIT Act is to promote a fully competitive market for satellite communications services through the pro-competitive privatization of INTELSAT and Inmarsat. In order to fulfill this intent, the ORBIT Act requires the Commission to find that competition in the U.S. telecommunications market will be harmed unless Inmarsat's privatization is "consistent with" the criteria specified in Sections 621 and 624 of the Act. These criteria are detailed for legislative action and set a high standard that reflects Congress's concern that the Commission only allow a pro-competitive privatized Inmarsat into the U.S. market. We will therefore carefully examine each of the criteria before concluding whether, as a whole, the proposed privatization meets the standards of Sections 621 and 622.

35. We recently addressed the standard of review under the ORBIT Act in our *INTELSAT ORBIT Act Compliance Order*.[83] As with INTELSAT, we review the Inmarsat privatization to determine whether it is "consistent with" all of the criteria identified in Sections 621 and 624 taken as a whole. When preceding the preposition "with," the courts recognize "consistent" as meaning "agreeing" or according in substance or in a form that is congruous or compatible.[84] In the context of applying the ORBIT Act criteria, we construe the "consistent with" standard as inferring a degree of flexibility by requiring "congruity or compatibility." [85] This flexibility allows us to avoid frustrating Congressional intent to enhance competition in the U.S. telecommunications market by an overly narrow interpretation.[86] Also, applying this reasonably flexible standard will allow the Commission to act in accordance with Section 601(c) which requires the Commission to construe the licensing requirements of the Act in accordance with United States trade obligations under the General Agreement on Trade in Services (GATS).[87] We therefore disagree with Motient and PanAmSat that the "consistent with" standard requires Inmarsat's strict compliance with each and every criteria specified in the Act. As shown below, we have reviewed the privatization plans in light of each of the criteria in Sections

[83] A*pplications of INTELSAT LLC for Authority to Operate, and to Further Construct, Launch and Operate C-band and Ku-band Satellites that form a Global Communications System in Geostationary Orbit*, Memorandum Opinion Order and Authorization, FCC 01-183 (rel. May 29, 2001), at 21-24 (*INTELSAT ORBIT Act Compliance Order*).

[84] *See Environmental Defense Fund, Inc. v. Environmental Protection Agency*, 82 F.3d 451, 457, 317 U.S.App. DC (D.C. Cir. 1996), amended on other grounds, 92 F.3d 1208 (D.C. Cir. 1996), citing Oxford English Dictionary 773 (2d 1989) (The phrase "consistent with" does not require exact correspondence. Where this flexible statutory language is used the court must defer to the agency's determination.) and *N.L. Indes, Inc. v. Kaplan*, 792 F.2d 896, 898-899 (9th Cir. 1996) (statutory phrase "consistent with" does not necessitate strict compliance with provisions).

[85] *INTELSAT ORBIT Act Compliance Order* at 22.

[86] *Applications of Ameritech Corp., Transferor, and SBC Communications Inc., Transferee*, 14 FCC Rcd 14714, n. 817 (1999)

[87] *INTELSAT ORBIT Act Compliance Order* at 22.

621 and 624 of the Act and conclude that, as a whole, Inmarsat's privatization is consistent with those sections and achieves the purpose of the Act.

36. We also disagree with Deere that the discretion permitted by the "consistent with" standard in the Act means that we only take into consideration the Act's privatization criteria among the factors under our public interest standard in issuing licenses. Nor do we agree that we can authorize "non-core" services without making an ORBIT Act finding required by Section 601(b)(1). The Act requires a threshold Commission determination as to whether competition in the U.S. market will be harmed by grant of an application or request to provide non-core services via Inmarsat. That determination must be made based on satisfaction of the privatization criteria in the Act. The Commission then may authorize "non-core" services in the U.S. via Inmarsat if it finds that competition will not be harmed and such authorization is otherwise in the public interest. Upon a finding that competition will be harmed, however, the Commission is directed to "limit through conditions or deny" applications or requests to provide non-core services via Inmarsat.

37. The ORBIT Act does provides additional direction to the Commission. Section 601(b)(1)(D) provides:

> "(D) RULE OF CONSTRUCTION.—Nothing in this subsection is intended to preclude the Commission from acting upon applications of INTELSAT, Inmarsat, or their successor entities prior to the latest date set out in section 621(5)(A), including such actions as may be necessary for the United States to become the licensing jurisdiction for INTELSAT, but the Commission shall condition a grant of authority pursuant to this subsection upon compliance with sections 621 and 622.

In the *INTELSAT ORBIT Act Compliance Order*, the Commission construed this provision to mean that it could authorize INTELSAT services prior to privatized INTELSAT conducting an IPO under the time frame provided in the Act, i.e., the "date set out in Section 621(5)(A)."[88] It reached the same conclusion with respect to Inmarsat.[89] In granting any such authorization, we would assess whether Inmarsat's privatization is "consistent" with other criteria in the Act and impose such conditions as may be necessary to ensure compliance with Section 621 of the Act. We have previously rejected Motient's argument that Section 601(b)(1)(D) applies only to applications filed by Inmarsat itself and not to other entities such as the applicants before us.[90] Under Motient's reading of the provision, the Commission would be able to authorize Inmarsat services in the

[88] *Id.* at 23-24.

[89] In the Matter of Inmarsat Ventures PLC Request for Further Extension of Time Under Section 621(5) of the ORBIT Act, Memorandum Opinion and Order, FCC 01-193, June 25, 2001 (*Second Extension Order*)

[90] *Second Extension Order* at ¶12; Motient Petition to Deny Deere Application at 13-14.

> U.S. market pending an IPO but not act on applications of its U.S. customers to operate earth stations with Inmarsat satellites. This result would frustrate the purpose of the provision. The purpose of the provision is to give the Commission discretion to authorize use of Inmarsat services pending conduct of an IPO under favorable market conditions within the time frame provided in the Act. The Act does not intend to penalize Inmarsat or its users by delaying access to the U.S. market pending an IPO if Inmarsat privatization is otherwise consistent with the Act's criteria.[91]

38. Further, our action now granting the earth station applications before us carries out the intent of Section 601(c) of the ORBIT Act, which requires the Commission to construe Section 601(b) "in a manner consistent with the United States obligations and commitments for satellite services under the Fourth Protocol to the General Agreement on Trade in Services." The Commission implements the WTO Agreement with respect to satellite services through its *DISCO II* decision.[92] In *DISCO II* the Commission decided not to require separate (and duplicative) U.S. licenses for space stations under the jurisdiction of another licensing or coordinating administration. Rather, it decided to consider access by non-U.S. satellite operators to the U.S. either through processing rounds, where applicable, or by the earth station licensing process independent of processing rounds.[93] The ORBIT Act did not change this regulatory scheme. Inmarsat is licensed by the U.K. There is no applicable processing round here. We therefore consider Inmarsat access to the U.S. market under ORBIT through the applications now before us. Thus, notwithstanding a finding that Inmarsat's privatization is consistent with ORBIT Act criteria, there could be no provision of service to, from or within the United States by Inmarsat without action on these applications under *DISCO II*. This is because any finding under the ORBIT Act that Inmarsat is qualified to serve the U.S. market would be operationally meaningless without a corresponding grant of the related earth station applications seeking to access Inmarsat space segment (no communication to or from the satellite is possible without an approved ground segment or earth station capacity). We do not believe that Congress intended that the Commission's determinations and licensing actions should endorse an approach (such as suggested by Motient) that would effectively negate the intent of Section 601(c). Hence, grant of the earth station applications here is necessary to carry out Section 601(c) of the ORBIT Act.

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[91] *INTELSAT ORBIT Act Compliance Order* at ¶ 24; *Second Extension Order* at ¶12.

[92] *DISCO II* at ¶ 183-188.

[93] *Id.*

4. Review of Criteria

(a) Independence

39. The Act requires Inmarsat to be an independent commercial entity and have a pro-competitive ownership structure.[94] Independence is to be achieved, in part, through an initial public offering to be conducted by October 1, 2000, unless the date is extended by the Commission to no later than December 31, 2001.[95] The purpose of the IPO is to "substantially dilute the aggregate ownership" in Inmarsat of Signatories or former Signatories of Inmarsat.[96] The Act requires the Commission to determine whether a public offering attains such substantial dilution taking into account the purposes and intent, privatization criteria, and other provisions in the Act, as well as market conditions.[97] The Act provides in part:

> ["The privatized successor entities of …Inmarsat"] shall operate as independent commercial entit[ies], and have a pro-competitive ownership structure. [Inmarsat] shall conduct an initial public offering in accordance with paragraph (5) to achieve such independence. Such offering shall substantially dilute the aggregate ownership of ["The privatized successor entities of …Inmarsat"] by such signatories or former signatories. In determining whether a public offering attains such substantial dilution, the Commission shall take into account the purposes and intent, privatization criteria, and other provisions of this title, as well as market conditions."[98]

40. In October, 2000, the Commission granted a request from Inmarsat for an extension of the original July 1, 2000 IPO deadline to July 1, 2001.[99] We recently granted a further extension to December 31, 2001.[100] For purposes of authorizing use of Inmarsat services at this time, we will condition the authorizations upon Inmarsat's compliance with Section 621 of the Act, and further make them subject to limitation and revocation under Section 601(b)(1) should Inmarsat fail to conduct an IPO as required by Section 621. We will require Inmarsat to file information with the Commission following its IPO to demonstrate that there has been substantial dilution of the aggregate ownership in the company of its former Signatories under the terms of Section 621(2) of the Act. We will

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[94] *Id.* § 621(2).

[95] *Id.* § 621(5)(A)

[96] *Id.* § 621(2).

[97] *Id.* § 621(2).

[98] *Id.*

[99] Inmarsat Ventures Ltd., Memorandum Opinion and Order, FCC 00-356, October 3, 2000 (*First Extension Order*).

[100] *Second Extension Order* at ¶¶14-22.

place this filing on public notice and make a determination and take any appropriate action under the Act, if any is required based on our determination. As discussed above, however, the pendency of Inmarsat's IPO does not preclude us from permitting use of Inmarsat services in the United States provided that we find Inmarsat's privatization "consistent with" the other criteria in Sections 621 and 624 of the Act.

(b) Prohibition on IGO Ownership

41. Section 621(2)(A) of the Act precludes an intergovernmental organization from having "more than a minimal ownership interest in Inmarsat or the successor or separate entities of Inmarsat." As noted above, Inmarsat has a contractual relationship with IMSO, the intergovernmental organization created to monitor Inmarsat's continued provision of certain "public services," principally those of the global maritime distress and safety system (GMDSS).[101] IMSO has a "special share" in Inmarsat that confers neither a right to participate in the profits nor normal voting rights. This share would allow IMSO to veto certain actions by Inmarsat that might threaten the GMDSS.[102] IMSO has no operational telecommunications or commercial functions of its own. No party in this proceeding has objected to the special share held by IMSO. We find that the existence of the special share to be a "minimal ownership" within the intent of the Act. Moreover, the "special share" provides a useful tool for the United States and other members of IMSO "to preserve space segment capacity of the GMDSS" as required by Section 624(3) of the Act.[103]

(c) Termination of Privileges and Immunities

42. Section 621(3) prohibits extension to Inmarsat of preferential treatment like that previously accorded by national governments and the Inmarsat Convention when Inmarsat was an Intergovernmental organization. The section provides:

> (3) TERMINATION OF PRIVILEGES AND IMMUNITIES.—The preferential treatment of INTELSAT and Inmarsat shall not be extended to any successor entity or separated entity of INTELSAT or Inmarsat. Such preferential treatment includes—
> (A) privileged or immune treatment by national governments;
> (B) privileges or immunities or other competitive advantages of the type accorded INTELSAT and Inmarsat and their Signatories through the terms and operation of the INTELSAT Agreement and the associated Headquarters Agreement and the Inmarsat Convention; and
> (C) preferential access to orbital locations. Access to new, or renewal of access to, orbital locations shall be subject to the legal or regulatory processes of a national government that applies due

[101] *See* ¶ 80, *supra.*

[102] Report of the Administration at 2, n4.

[103] Pub. L. 106-180, § 624(3).

> diligence requirements intended to prevent the warehousing of orbital locations.[104]

Inmarsat does not have privileges and immunities of the type currently accorded to the former intergovernmental organization.[105] Inmarsat will operate in the U.S. market subject to the same laws that apply to U.S. satellite service providers. It has no immune treatment from the Inmarsat Convention that provides for the creation of IMSO.[106] The U.K. government has not accorded it privileges and immunities. Inmarsat is subject to regulatory authority of the U.K. Government. The Radiocommunications Agency of the Department of Trade and Industry has due diligence requirements on operation of satellites under the U.K. jurisdiction intended to prevent warehousing of orbital locations and spectrum resources. The Radiocommunications Agency requires construction, launch and operation of a proposed satellite system in conformance with the time scales containing the applicants' business plan.[107] Failure to comply could result in cancellation of filings with the ITU. We find that Inmarsat meets the requirements set forth in Section 621(3) of the ORBIT Act.

(d) Conversion to Stock Corporation

43. The ORBIT Act requires that privatized Inmarsat be a "national corporation or similarly accepted commercial structure, subject to the laws of the nation in which incorporated."[108] This requirement has been satisfied. Upon its privatization in 1999, Inmarsat transferred its assets (satellites, associated facilities, headquarters building, etc.) to the newly created private company, incorporated in the United Kingdom.[109] Inmarsat Signatories were allocated shares in the corporation in proportion to their investment shares in Inmarsat. A shareholders' agreement reflected the intent to have an IPO at a later date. The newly created company became the owner and operator of the satellites previously owned and operated by Inmarsat. Customer and other contracts held by the IGO were novated to the private company. The newly created company is fully subject to the laws of the United Kingdom.

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[104] Pub. L. 106-180, § 621(3).

[105] *See* Report of the Twelfth Session of the Inmarsat Assembly of Parties, Assembly/12/Report (May 8, 1998); Report of the Thirteenth (Extraordinary) Session of the Assembly of Parties, Assembly/13/Report.

[106] *See* Stratos Applications (SES-AMD-20000426-00655, -00663, and –00664) Exhibit 1, Declaration of Alan Auckenthaler, General Counsel Inmarsat dated April 7, 2000.

[107] See Procedures of the United Kingdom Administration in Relation to Satellite Networks, www..radio.gov.uk

[108] Pub. L. 106-180, § 621(5).

[109] *See* Report of the Twelfth Session of the Inmarsat Assembly of Parties, Assembly/12/Report (May 8, 1998); Report of the Thirteenth (Extraordinary) Session of the Assembly of Parties, Assembly/13/Report (October 8, 1998).

44. Section 621(5)(D)(i) of the Act also requires that privatized Inmarsat "have a board of directors with a fiduciary obligation."[110] Under U.K. law, the Inmarsat board of directors must have fiduciary duties to the company.[111]

45. Section 621(5)(B) of the Act requires that Inmarsat be listed for trading on one or more major stock exchanges with transparent and effective securities regulation.[112] Inmarsat states that it is likely to list shares on Nasdaq on the New York Stock Exchange.[113] We will require Inmarsat to confirm the exchange on which it lists shares following its IPO.

(e) Limitations on Interlocking Directors, Officers and Managers

46. The Act places limitations on interlocking directors, officers, employees and managers with any intergovernmental organization or any Signatory or former Signatory of Inmarsat when it was an intergovernmental organization. Section 621(5)(C) provides:

> (C) A majority of the members of the board of directors of any successor entity or separated entity shall not be directors, employees, officers, or managers or otherwise serve as representatives of any signatory or former signatory. No member of the board of directors of any successor or separated entity shall be a director, employee, officer or manager of any intergovernmental organization remaining after the privatization.[114]

Inmarsat has recently received shareholder approval to restructure its Board of Directors in a manner consistent with Section 621(5)(C). Inmarsat has changed its Articles of Incorporation to assure that no more than five of 13 directors will be affiliated with former Inmarsat Signatories.[115] Neither will any member be a director, officer, or manager of IMSO. Inmarsat has implemented this restructuring with the recent resignation of board members whom were employees of former Signatories.[116] A review of the descriptions of the directors provided by Inmarsat confirms that eight of 13 directors will not have any of the affiliations with former Signatories proscribed by

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[110] Pub. L. 106-180, § 621(5)(D)(i).

[111] *Halsbury's Laws of England, Fourth Edition 1996 reissue , editor in chief the Right Honourable Lord Hailsham of St. Marylebone, Lord High Chancellor of Britain 1970-74 and 1979-87, Volume 7(1), Butterworths, London.*

[112] Pub. L. 106-180, § 621(5)(B).

[113] *See* Auckenthaler Declaration at ¶10.

[114] Pub. L. 106-180, § 621(5)(C).

[115] *See* Cameron January 5 letter at 3.

[116] Cameron March 21 letter.

Section 621(5)(C).[117] The composition of Inmarsat's Board of Directors therefore is consistent with Section 621(5)(C) of the Act. [118]

47. The Act also places additional restrictions on Inmarsat's officers, directors and managers. Section 621(5)(D) provides, in part, that Inmarsat shall:

> (ii) have no officers or managers who (I) are officers or managers of any signatories or former signatories, or (II) have any direct financial interest in or financial relationship to any signatories or former signatories, except that such interest may be managed through a blind trust or similar mechanism;
> (iii) have no directors, officers, or managers who hold such positions in any intergovernmental organization.

With respect to Section 621(5)(D)(ii) Inmarsat declares that none of its officers or managers are officers or managers of a former Signatory.[119] Inmarsat states however, that "several officers and managers of Inmarsat own *de minimis* numbers of shares in BT."[120] Inmarsat argues that the Commission has discretion to permit *de minimis* financial interests in former Signatories, but states that it would comply with having such investments placed in a blind trust as provided in the Act.[121] We believe that the Act gives us discretion to permit truly *de minimis* financial interests that do not raise concerns about former Signatories having undue influence on Inmarsat's officers and managers. Inmarsat however, provides no information on the record by which we can determine whether the financial interests of its officers and managers are *de minimis*. As a result, we will require these investments to be placed in a blind trust pursuant to the Act. Inmarsat may subsequently provide us with additional information on reconsideration which we may take into account in determining whether a blind trust is necessary for the

[117] *Id.* Attachment B.

[118] Notwithstanding this finding, we disagree with Comsat that Section 621(5)(C) must be read in a manner that would tie compliance with all of its requirements to the date of the IPO. Section 621(5) specifies criteria for conversion to a stock corporation from an IGO. Only subsections (A) and (B) address requirements for the corporation to become a publicly held company. Subsections (C), (D) and (E) placing limitations of directors, officers and managers and transactions among entities, apply whether or not the company is publicly owned.

[119] Auckenthaler Declaration at ¶13. It also initially indicated that its Chairman of the Board was a manager of a former Signatory, but resigned that position on September 30, 2000. We therefore need not address the contention of Inmarsat and applicants that the term "officers and managers" in Section 621(5)(D)(ii)(I) does not include the Chairman of the Board.

[120] *Id.* at ¶14.

[121] Inmarsat Reply Comments in Stratos Applications (SES-LIC 20000426-00630 and SES-MSC-2000426-00861) at 8.

investments involved.[122] With this condition, we find Inmarsat to be consistent with Section 621(5)(D)(ii).

48. Finally, with respect to Section 621(5)(iii), Inmarsat declares that none of its directors, officers or managers holds prohibited positions in IMSO.[123] Inmarsat is therefore structured consistent with this provision.

(f) Arm's-Length Relationship

49. The ORBIT Act requires that "[a]ny transactions or other relationship between or among any successor entity [Inmarsat], separated entity, INTELSAT, or Inmarsat shall be conducted on an arm's-length basis."[124] Inmarsat declares that it does no transactions with IMSO (except to lease it office space) nor does it have any other commercial relations with IMSO.[125] It describes its relationship with IMSO as analogous to that between a regulated telecommunications entity and the regulator, and is based on an arm's-length contract called the Public Service Agreement.[126] Inmarsat also states that there are no separated entities relative to Inmarsat.[127] Under these circumstances, we find that Inmarsat satisfies Section 621(5)(E).

(g) Regulatory Treatment

50. The ORBIT Act requires that "successor entities" created after its enactment "apply through the appropriate national licensing authorities for international frequency assignments and associated orbital registrations for all satellites."[128] As a privatized entity, Inmarsat is subject to the authority of the U. K. Radiocommunications Agency and other U.K. government agencies, and is authorized to operate its satellites under the U.K.'s Outer Space Act.[129] The Radiocommunications Agency has authorized

[122] By way of example, we note that in an analogous situation, Federal law regarding conflict of interest prohibits investment by individuals in entities in which they have a direct or indirect financial interest. 18 U.S.C. 208(a). The statute recognizes that in certain cases the nature and size of the financial interest might be too remote or too inconsequential to affect the integrity of the services of the individuals in question. 18 U.S.C. 208(b)(2). The regulations promulgated to implement this conflict of interest law provide an automatic *de minimis* exemption for securities where the aggregate market value of the holding of the individual and his or her family is less than $5,000. 5 C.F.R. 2640.202(a).

[123] Auckenthaler Declaration at ¶15.

[124] Pub. L. 106-180, § 621(5)(E).

[125] Auckenthaler Declaration at ¶16.

[126] *Id.*

[127] *Id.*

[128] Pub. L. 106-180, § 621(6).

[129] Outer Space Act 1986 (1986 Chapter 38).

Inmarsat to operate its satellites, submits and maintains satellite network filings with the International Telecommunication Union (ITU) on behalf of Inmarsat, and engages in international coordination for those filings with other administrations. Inmarsat, therefore, satisfies Section 621(6) of the Act.

(h) Competition Oversight

51. The ORBIT Act requires that Inmarsat be subject to a jurisdiction that: (1) has effective laws and regulations that secure competition in telecommunications services; (2) is a Signatory to the WTO Basic Telecommunications Services Agreement; and (3) has a schedule of WTO commitments that include non-discriminatory market access to its satellite market.[130] As noted above, the Radiocommunications Agency of the Department of Trade and Industry has authorized Inmarsat operations and is responsible for its filings before the ITU. Inmarsat is subject to the competition laws of the European Commission by virtue of membership of the U.K. in the European Union. The U.K. is a Signatory to the WTO Basic Telecommunications Services Agreement. It has committed to grant non-discriminatory market access to its satellite market.[131] We therefore find that Inmarsat satisfies the requirements in Section 621(7).

(i) Relationship with ICO

52. The ORBIT Act prohibits for 15 years after privatization "any merger or ownership of more than one percent of the voting securities, or management ties or exclusive arrangements between Inmarsat and any successor entity and ICO Global Communications (ICO)."[132] The Act also prohibits Inmarsat from having any officers, directors, or employees who are officers, directors or employees of ICO.[133]

53. Inmarsat established ICO in 1995 for the purpose of creating a satellite system to provide hand-held mobile services on a global basis. Inmarsat had a 9.537 percent investment in ICO and one representative on its Board of Directors[134] prior to ICO seeking protection under the bankruptcy code in August, 1999. ICO emerged from bankruptcy in May, 2000, following completion of a $1.2 billion investment led by a group of U.S. and international investors.[135] As a result, Inmarsat ownership interest in ICO has been reduced to less than one tenth of one percent.[136] Inmarsat states it has

[130] Pub. L. 106-180, § 621(7).

[131] Fourth Protocol to the GATS, April 30, 1996, 36 I.L.M.366 (1997)(Agreement on Basic Telecommunications containing specific commitments).

[132] Pub. L. 106-180 § 624(1).

[133] Pub. L. 106-180 § 624(2).

[134] Comments on Comsat Applications at 9-10.

[135] http://www.teledesic.com/about/newicofacts.htm.

[136] Inmarsat comments on Comsat Applications (SEC-AMD-20000501-00695 *et. seq*.) at 9-10.

written off the entire amount of this investment.[137] Further, Inmarsat states that there are no management ties or exclusive arrangements between either Inmarsat entity and ICO.[138] While there had been one interlocking director between Inmarsat and ICO, that person has resigned from the Boards of Inmarsat Holdings Ltd., and Inmarsat Ltd., and was replaced at the Annual General meeting of April 26, 2000.[139] We find that Inmarsat is structured consistent with Sections 624(1) and (2).

(j) Date of Privatization

54. The ORBIT Act identifies April 1, 2000 as the date for Inmarsat's privatization and directs the Commission to review the privatization after that date. Section 621(1)(B) requires that Inmarsat privatize in accordance with the criteria in the Act "as soon as practicable, but no later than July 1, 2000".[140] Section 601(b)(1)(A)(ii) provides for Commission review of the effect of Inmarsat's privatization on competition in the U.S. market after April 1, 2000 in considering applications or requests to provide non-core services.[141] As discussed above, the Act's requirement that Inmarsat conduct an IPO is not subject to the July 1, 2001 date and we may conditionally authorize use of Inmarsat prior to the latest date provided in Section 621(5)(A)(ii) for the conduct of an IPO.[142]

55. We conclude that we may now authorize use of Inmarsat for non-core services to, from, and within the United States. We do not believe the fact that Inmarsat did not take final steps to restructure its Board of Directors in a manner consistent with the Act until after July 1, 2000 requires us to limit authorization of non-core services under Section 601(b)(1)(B) of the Act.[143] We have heretofore refrained from acting upon pending applications to provide new non-core services until Inmarsat demonstrates it has privatized consistent with the Act's privatization criteria. As discussed above, the courts have construed the standard of "consistent with" to mean "congruent with" or "compatible with."[144] This flexibility allows us to consider important domestic and international public policy concerns in assessing compliance with the criteria set forth in Sections 621 and 622 of the Act in keeping with the intent of the legislation. We find in

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[137] *Id.*

[138] *Id.*

[139] *Id.*

[140] Pub. L. 106-180 § 621(1)(B).

[141] Pub. L. 106-180 § 601(b)(1)(ii).

[142] Pub. L. 106-180 § 625(5)(A)(ii).

[143] *See* Pub. L. 106-180 § 601(b)(1)(B).

[144] *See* note 82, *supra.*

this decision that Inmarsat's privatization, in total, is consistent with the non-IPO criteria of the Act and conclude that the intent of the Act is being achieved. Under the circumstances, no purpose would be served by delaying action on the applications or placing limitations on authorizations because of the requirements of Section 621(1)(B).

56. Finally, Section 601(B)(1)(A)(ii) requires the Commission to determine "after April 1, 2000" whether Inmarsat has been "privatized in a manner that will harm competition in the telecommunications market of the United States."[145] By this Order, we fulfill this requirement.

5. Exclusive Arrangements

57. The ORBIT Act specifically provides for restrictions against exclusive arrangements for the provision of satellite services between the United States and other countries. Section 648 provides:

> (a) IN GENERAL—No satellite operator shall acquire or enjoy the exclusive right of handling telecommunications to or from the United States, its territories or possessions, and any other country or territory by reason of any concession, contract, understanding, or working arrangement to which the satellite operator or any persons or companies controlling or controlled by the operator are parties.
>
> (b) EXCEPTION.-- In enforcing the provisions of this section the Commission—
> (1) shall not require the termination of existing satellite telecommunications services under contract with, or tariff commitment to, such satellite operator; but
> (2) may require the termination of new services only to the country that has provided the exclusive right to handle telecommunications, if the Commission determines the public interest, convenience, and necessity so requires.[146]

Nothing in the record before us indicates that Inmarsat has exclusive arrangements precluded by the Act. While Motient alleges anticompetitive conduct by Inmarsat, the alleged conduct does not appear to fall under Section 648. As the Commission did in licensing Intelsat LLC, we condition Inmarsat's operation in the United States through the authorizations we grant in this Order on compliance with Section 648.[147]

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[145] Pub. L. 106-180 § 601(b)(1)(A)(ii).

[146] Pub. L. 106-180, § 648.

[147] *Intelsat LLC Licensing Order,* 15 FCC Rcd at 15479-80.

6. ORBIT Act Conclusions

58. In view of the above, and subject to the conditions that we impose in this decision, we find that Inmarsat has privatized in a manner consistent with the non-IPO requirements of Sections 621 and 624 of the ORBIT Act. Inmarsat has been privatized into a national stock corporation with a fiduciary board of directors that satisfies the Act's restrictions against having interlocking directors, officers, managers and employees with any intergovernmental organization or Signatory or former Signatory. Inmarsat does not have privileges and immunities and is subject to the legal and regulatory processes of the United Kingdom. The U.K. has effective laws and regulations to protect competition and is a member of the European Union. It also is a Signatory to the WTO Basic Telecommunications Services Agreement and has committed under the Agreement to non-discriminatory access to its satellite market. Inmarsat maintains an arm's-length relationship with IMSO. The U.K. Radiocommunications Agency is responsible for making Inmarsat spectrum and orbital filings with the ITU and coordinating with other administrations. It imposes due diligence requirements on Inmarsat to prevent warehousing of orbital locations.

59. Under these circumstances, we find under Section 601(b) of the ORBIT Act that the use of space segment operated by Inmarsat for services to, from, or within the United States will not harm competition in the telecommunications market of the United States.[148] We condition the authorizations granted herein on Inmarsat conducting an IPO consistent with Sections 621(2) and 621(5)(A)(ii) of the ORBIT Act. We maintain the ability to take action that may be required by the Act should Inmarsat not conduct such an IPO or should we find Inmarsat in violation of any provision of the Act in the future.

60. Having found that Inmarsat privatized in a manner consistent with the non-IPO requirements of the Act, we may authorize any services, including "additional" services, under the ORBIT Act,[149] that meet our rules, subject to Inmarsat's conducting an IPO in compliance with Section 621.[150] Finally, our conclusions allowing access to the U.S. market, subject to our normal licensing procedures, moots the need to address Inmarsat's argument that it is entitled to access under the WTO notwithstanding the ORBIT Act criteria.[151]

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[148] Pub. L. 106-180 § 601(b)

[149] *See* Pub. L. 106-180 § 602(a) which precludes Commission authorization of additional services by Inmarsat until Inmarsat has privatized in accordance with the Act. Section 681(2) defines "additional services" for Inmarsat as the non-maritime and non-aeronautical services in the 1.5 and 1.6 GHz band on planned satellites in the 2 GHz band.

[150] We need not address Globalstar's argument that Inmarsat's provision of domestic land mobile and aeronautical services as proposed by the applications before us must be considered "additional services" under the Act.

[151] Inmarsat Comments on Comsat Applications at 2-3 and on Stratos Applications at 2-3.

B. DISCO II Analysis

61. Under the *DISCO II* decision, the Commission considers requests by foreign licensed satellite systems to serve the U.S. market pursuant to our public interest mandate and other factors relevant to making this determination. The factors we consider are the effect of competition in the United States, spectrum availability, eligibility requirements, technical requirements, and national security, law enforcement, foreign policy and trade issues, as appropriate.[152]

1. Competition Issues

62. When considering entry of foreign licensed satellites in the United States market, we presume that the provision of services for which the United States made market access commitments by satellite systems from WTO-member countries will promote competition. As discussed above, the purpose of the ORBIT Act is to promote competition through the entry of a privatized Inmarsat into the United States telecommunications market. Thus, our finding that Inmarsat has privatized consistent with the provisions of the ORBIT Act is largely dispositive of the traditional *DISCO II* competition analysis in this instance.

63. We also find that grant of these applications will make available to U.S. consumers more competitive options, enhance operational efficiency and may reduce the cost of service. In *DISCO I*, we recognized that, with the trend towards a globalized economy, users with wholly domestic or international service requirements might not be able to meet their needs under the then-current regulatory framework.[153] Under that framework, domestic satellites provided domestic service and international satellites provided international service, subject to certain limited exceptions.[154] The Commission eliminated the regulatory distinctions between U.S.-licensed domestic and international satellites, including those satellites providing MSS. As a result, U.S.-licensed domestic and international satellite systems could provide both domestic and international service in appropriate primary frequency bands subject to geographic coverage limitations and international coordination obligations.

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[152] *DISCO II* at ¶15.

[153] *Amendment to the Commission's Regulatory Policies Governing Domestic Fixed Satellites and Separate International Satellite Systems*, IB Docket No. 95-41, 11 FCC Rcd 2429 (1996)(*DISCO I).*

[154] Under the now defunct Transborder policy, U.S. domestic satellites could provide international service to countries within their footprints where: (1) Intelsat could not provide the service; or (2) it would be clearly uneconomical or impractical to use the Intelsat system for the service. *Transborder Satellite Video Services*, 88 FCC2d 258, 287 (1981). U.S. international satellite systems could provide domestic service ancillary to their primary international service. *Establishment of Satellite Systems Providing International Communications*, 101 FCC 2d 1046 (1985) ("*Separate Systems"* decision), *recon.*, 61 R.R.2d 649 (1986), *further recon.*, 1 FCC Rcd 439 (1986).

64. The actions we take today further implement the policy objectives set forth in *DISCO I*. Users with both international and domestic MSS requirements will be able to satisfy both using a single satellite system. For example, Deere states that its Starfire ™ service is available to farmers in Canada, Mexico, Central and South America via the Inmarsat system. Farmers in those countries pick up the valuable farming data with small, receive-only Deere receivers. Permitting Deere to offer its service using the same satellite throughout North America may offer efficiencies and cost savings. Similarly, other applicants with international and domestic MSS requirements will be able to realize operational efficiencies and cost savings through the use of one satellite system.

2. Spectrum Availability

(a) Requested Conditions

65. The second public interest factor we consider is spectrum availability, i.e. whether there is spectrum available to accommodate the various earth station requests. As the Commission noted in *DISCO II*, we will consider spectrum availability in determining whether to grant a foreign-licensed satellite access to the U.S. market.[155] Specifically, in considering earth station applications that propose to provide service in the United States using an operating foreign-licensed satellite, "[w]e must determine whether, and to what extent, the proposed U.S. service will impact existing operations in the United States." [156] For example, the Commission stated that "it did not expect to require existing U.S. satellite systems to change their licensed operating parameters or to decrease their capacity in order to accommodate additional non-U.S. systems."[157]

66. As noted previously, five satellite operators provide L-band services in North America and nearby geographic areas. Since 1996, the parties to the L-band coordination have recognized that they are not able to coordinate specific amounts of spectrum on a permanent basis. As a result, the operators signed a one-year agreement that is revisited annually based upon current and projected traffic levels of each system. The 1996 operator-to-operator agreement provided each system with an amount of spectrum based upon its current and projected near-term traffic requirements.

67. Recently, as a result of the U.S. WTO commitments, and the status of the L-band coordination, the Commission authorized TMI Communications and Satcom Systems to provide MSS throughout the continental United States via the Canadian MSAT-1 satellite.[158] The Commission rejected arguments by Motient that grant of the application would result in a modification of its license and cause interference to its

[155] *DISCO II* at ¶149.

[156] *Id.*, at ¶150.

[157] *Id.*, at ¶147.

[158] *Satcom Systems, Inc. and TMI Communications and Co.*, 14 FCC Rcd 20798 (1999) (*TMI Order*) aff'd *AMSC Subsidiary Corporation v. FCC,* 216 F.3d 1154 (D.C. Cir. 2000).

system. It noted that TMI's METs would only operate on the spectrum coordinated for the Canadian system that did not overlap with the spectrum coordinated for Motient's system.[159] It also denied Motient's request that no foreign-licensed system be permitted to operate in the United States until Motient had coordinated an additional 20 MHz to which Motient argued it was entitled.[160] The Commission also stated that, in the absence of an operator-to-operator agreement in the L-band, all of TMI's operations must be on a non-interference basis.[161]

68. Motient argues that there is not enough spectrum to permit the addition of so many new terminals and that the Commission must assess the cumulative impact of these additions.[162] Motient notes that the L-band operators have not been able to reach agreement on the most recent annual renewal of the operator-to-operator agreement since 1999. In the absence of such an agreement or a permanent coordination agreement, Motient argues that a grant of applications to access foreign-licensed satellites could take away lower L-band spectrum coordinated for Motient's system in the 1999 operator-to-operator agreement. [163] Under these circumstances, Motient believes that the Commission should explain what operation on a non-interference basis means or how the Commission will implement or enforce this license condition.

69. Motient requests that we attach conditions to any authorization to access Inmarsat for "non-core services" because of alleged anti-competitive actions by Inmarsat that Motient claims have impeded its ability to develop competitive services. [164] First, according to Motient, Inmarsat has exacerbated the problem with scarce L-band spectrum by using inefficient Standard A terminals. Second, Motient alleges that Inmarsat has not taken steps to make its system interoperable with Motient's system. And third, Motient alleges that Inmarsat has refused to provide proprietary information that would allow Motient to make its system interoperable with Inmarsat. In order to correct the effects of these alleged anti-competitive actions, Motient requests that we impose conditions that would: (i) provide Motient with permanent access to the additional 10 MHz of L-band spectrum needed for its commercial viability; (ii) establish a specific time table for phasing out Inmarsat's Standard A terminals, which Motient argues are spectrally inefficient; and (iii) require that Inmarsat be interoperable with Motient's MSS network or, alternatively, require Inmarsat's agreement to share relevant proprietary technical information with Motient so that its earth station can be made compatible with Inmarsat specifications.[165] Motient believes these conditions are necessary because of actions

[159] *Id.*, at ¶25.

[160] *Id.*, at ¶30.

[161] *TMI Order* at ¶34.

[162] Motient Petition to Deny Comsat at 24-5; SITA at 26.

[163] Motient Petition to Deny Comsat at 26.

[164] Motient Petition to Deny Comsat Mobile App. at 20

[165] Motient Petition to Deny at 20.

directly attributable to Inmarsat that have impeded its ability to develop competitive services.

70. Each applicant, and Inmarsat opposed Motient's requested conditions. Inmarsat notes that in the case of TMI, the Commission and the Court of Appeals rejected Motient's arguments. Specifically, Inmarsat notes that Motient has no guarantee to any particular spectrum and that all L-band use by any operator is contingent on coordination of that spectrum by the operator.[166] Moreover, Inmarsat and Comsat state that Motient has not demonstrated that the spectrum that is available is insufficient to meet its customers' needs or that it is suffering harmful interference from any other operator in the L-band. With respect to the conditions suggested by Motient, Comsat notes that Inmarsat has increased the spectrum efficiency of its Standard A operations, including optimization of its frequency plan to reduce Standard A carrier spacing and by interleaving Standard A and Standard B carriers.[167] As for interoperability of Motient's system with Inmarsat, Comsat states that there is no legal requirement that satellite systems be interoperable. Comsat also opposes conditions for gaining permanent access to Inmarsat's proprietary technical information. Comsat states that this information was available to Motient for a fee, and that Motient was unwilling to pay the reasonable royalty fee Inmarsat requested for the use of Inmarsat proprietary technology.[168] In reply, Motient argues that Inmarsat demanded unreasonable terms and conditions and excessive fees for such information.[169]

71. We find that granting the applications before us to use the Inmarsat system to serve the United States will not, under our *DISCO II* policies, impact Motient's existing operations, change its licensed operating parameters, or necessarily decrease its capacity. We recognize that the circumstances before us are different than in *TMI* because of the absence of an operator-to-operator agreement. Thus, unlike the *TMI Order*, we cannot state that Inmarsat will be operating on frequencies coordinated for it and that there is no chance of interference. The absence of such an agreement, however, is not a sufficient basis upon which to deny the pending applications.

72. Given the uncertain ability of L-band operators to reach a satisfactory coordination arrangement under the Mexico City agreement, the Commission recognized in the *TMI Order* that the five MSS operators in the L-band might not always reach an agreement on annual spectrum requirements.[170] The Commission stated that, if no operator-to-operator agreement could be reached, all of the systems must operate on a

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[166] Inmarsat Opposition at 4, Comsat Opposition at 11.

[167] Comsat Opposition at 10.

[168] *Id.* at 11.

[169] Motient Reply at 13.

[170] *TMI Order* at ¶26.

non-interference basis, consistent with ITU Radio Regulations.[171] The Commission said that, in the absence of an annual operator-to-operator agreement, it would not require operators to discontinue services after the agreement expired on December 31, 1999[172] and would continue to permit TMI to operate and acquire customers on a non-interference basis.[173] Based on these statements in the *TMI Order*, we conclude that the absence of an annual operator-to-operator agreement is not a sufficient basis upon which to deny the applications presented here. Moreover, we also note that the absence of an operator-to-operator agreement since 1999 has not led to any complaints of harmful interference by any of the five L-band operators. This indicates that, even in the absence of a formal agreement, the satellite operators have been able to operate *without* creating harmful interference to other L-band operators. This experience provides additional support for our belief that spectrum limitation concerns are best addressed in the L-band coordination process.[174] As in the *TMI Order*, we require that all services authorized herein be provided on a non-interference basis. We believe that the non-interference requirement promulgated in our rules and in the ITU Radio Regulations is sufficiently clear and needs no further explanation as Motient suggests.[175]

73. We also find no basis in the record to impose the conditions Motient requests on the provision of non-core Inmarsat services. We previously rejected the first condition--that we condition any grant of authority on Motient coordinating an additional 10 MHz of L-band spectrum to which it believes it is entitled—in the *TMI Order*. [176] As discussed in paragraph 5-6, *supra*, there is no permanent assignment of specific spectrum to any L-band operator. Thus, no operator can assert any claim with respect to a specific piece of spectrum.

74. As for technical efficiency, we conclude that the use of Standard A terminals, which Motient cites as inefficient, bears no immediate relationship to the Commission's inability to coordinate additional spectrum for Motient. In any event, we are not authorizing Inmarsat Standard A terminals by this Order.

75. With respect to interoperability, there is no current Commission requirement that competing mobile satellite systems be interoperable, such that METs designed to operate with one system could also be operated with other systems. We decline to adopt such a requirement on an *ad hoc* basis. While there are some

[171] *Id.* at ¶34.

[172] *Id.*

[173] *Id.*

[174] *Comsat Corporation*, 11 FCC Rcd 8021 (1996), ¶5.

[175] 47 C.F.R. § 25.111(b) and ITU Radio Regulations, Article S4.2.

[176] *See* footnote 9, *supra.*

circumstances in which the development of interoperable equipment is desirable,[177] there is no basis for concluding in this proceeding that requiring interoperability through regulatory intervention at this stage in the deployment of L-band MSS systems will result in any immediate benefits to consumers. We note, however, that footnote US308 states that systems not interoperable with AMS[R]S must operate on a secondary basis to that service.

76. We also find no basis to require that Inmarsat make certain proprietary technical information available to Motient. Motient states that Inmarsat had been obligated under the former Article 21(7)(b) of the Inmarsat Convention to make available certain technical information on fair and reasonable conditions. We note that former Article 21(7)(b)(ii) provided that technical information be made available "on fair and reasonable terms and conditions." On the basis of the evidence in the record, it appears that there was a commercial dispute between Inmarsat and Motient as to the value of the information to which Motient sought access and the terms and conditions under which access would be provided. We decline to resolve that dispute in the context of this licensing proceeding.

(b) Lower L-band Notice of Proposed Rulemaking

77. In June 1996, the Commission issued a Notice of Proposed Rulemaking to establish rules and policies for the use of spectrum for MSS in the lower L-band.[178] In the *Lower L-band NPRM*, the Commission acknowledged that in the course of international coordination it became clear that the United States would not be able to secure sufficient spectrum in the upper L-band to support Motient's system. Consequently, the Commission indicated that it would seek to coordinate spectrum in the lower L-band to provide additional spectrum for Motient's operations.

78. The Commission recognized that when it established licensing policies for L-band MSS in 1985, it had "estimated that an MSS system would require 20 megahertz"[179] (10 megahertz in each transmission direction). The Commission further recognized that, based on the status of coordination negotiations, it was unlikely to coordinate more than 20 to 24 megahertz (10 to 12 megahertz, respectively, in each transmission direction) in the entire L-band and significantly less than that amount in the

[177] *See, e.g. Establishment of Rules and Policies for the Digital Audio Radio Satellite Service in the 2310-2360 MHz Frequency Band*, Report and Order and Further Notice, 12 FCC Rcd 5754 (1997).

[178] *In the Matter of Establishing Rules and Policies for the Use of Spectrum for Mobile Satellite Service in the Upper and Lower L-band*, Notice of Proposed Rulemaking, 11 FCC Rcd 11675 (1996) ("*Lower L-band Notice*").

[179] *Lower L-band Notice* at ¶9, *citing Amendments of Parts 2, 22, and 25 of the Commission's Rules to Allocate Spectrum for and Establish Rules Pertaining to the Use of Radio Frequencies in Land Mobile Satellite Service*, Notice of Proposed Rulemaking, 50 Fed. Reg. 5983 (1985).

upper L-band.[180] The Commission stated that, while it could not guarantee the outcome of international coordinations regarding the L-band spectrum, it would attempt to secure sufficient spectrum "to ensure that our licensees have a fair opportunity to compete."[181] To provide Motient with this opportunity, the Commission proposed to modify Motient's authorization to permit it to operate in the lower L-band spectrum coordinated for the U.S. system, without considering competing U.S. lower L-band applications for U.S. space station licenses.[182] The Commission requested comment on this proposal, as well as on whether its 1985 estimate regarding the amount of spectrum (10 megahertz in each direction) needed to operate a viable MSS system was still valid.[183] The Commission also proposed that if the United States were able to coordinate more than 28 megahertz of spectrum in the upper and/or lower L-bands, it would allow other parties to apply for assignment of the additional spectrum for U.S. space station licenses.[184] The Commission indicated, however, that it viewed this possibility as unlikely, and indicated that it was proposing a rule under which " [it would] not now accept applications for spectrum coordinated in the Lower L-Band."[185]

79. These Commission statements have been cited as creating a "lower L-band freeze." Motient interprets this "lower L-band freeze" to preclude the granting of any earth station applications to access non-U.S. satellites to provide domestic service using lower L-band frequencies until Motient receives adequate L-band spectrum. Comsat, Honeywell, and Deere, on the other hand, argue that the Commission's statements were directed only to the acceptance of applications for U.S.-issued space station licenses, and to spectrum coordinated for use by U.S. space stations.[186]

80. The Commission's primary focus in the *Lower L-band* proceeding was to ensure that all spectrum coordinated for the U.S. space station licensee in the lower L-band would be allocated to Motient, the sole U.S. licensee, rather than opened up to applications for additional U.S. space station licenses.[187] Indeed, there was no policy in place governing entry into the U.S. market by non-U.S. satellite systems. Since the initiation of the *Lower L-band* proceeding, we issued our *DISCO II* decision that implemented the market opening commitments made by the U.S. in the WTO Agreement. In addition, Congress's enactment of the ORBIT Act, which seeks to promote a more

[180] *Lower L-band Notice* at ¶9.

[181] *Id.* at ¶14.

[182] *Id.* at ¶11.

[183] *Id.* at ¶10.

[184] *Id.* at ¶16.

[185] *Id.*, at ¶19.

[186] Honeywell Opposition at 3; Deere Opposition at 12; Comsat Opposition at 15.

[187] *Lower L-band Notice*, at ¶ 19.

competitive U.S. marketplace through the entry of a privatized Inmarsat, further underscores our belief that permitting Inmarsat satellites to serve the U.S. market will result in benefits to U.S. consumers. Consequently, we believe that the public interest is served by granting the applications at issue here to provide domestic and international MSS in the entire L-band in order to make available to U.S. consumers the benefits of competition.

81. The authorizations we grant here allowing the applicants to operate with Inmarsat in the lower L-band will not be significantly affected by policies adopted in the *Lower L-band* proceeding. However, the permanent authority granted herein shall not become effective until action in the *Lower L-band* proceeding. In the interim, we grant the applicants Special Temporary Authority to operate in the lower L-band, subject to the conditions in this Order. If our decision in the *Lower L-band* proceeding does not require modification of the authorizations we grant today, the authorizations will become effective without any further action by the applicants.

3. Technical Requirements

a. Real-time Access and Priority Preemption Requirements for the L-Band

82. In both the upper and lower L-band, MSS operators must be able to provide "real-time access and priority preemption capability" for certain safety and distress services. In the upper L-band, a portion is shared on a co-primary basis[188] between commercial MSS and a safety-related service--Aeronautical Mobile Satellite (Route) Service (AMS[R]S).[189] According to Footnote US308 to the Table of Frequency Allocations, MSS operators must be able to provide "real-time access and priority preemption" to provide AMS[R]S.[190] In the lower L-band, the relevant safety and

[188] Allocation of a given frequency band for a particular service on a primary basis entitles operators to protection against harmful interference from other services. Any use of that frequency band for service not allocated requires that the operator not cause harmful interference to authorized users operating in accordance with the Allocation Table and to accept any interference from such authorized users. Services operating on a co-primary basis have equal rights. However, MSS operations in the upper L-band are subject to Footnote US308.

[189] AMS[R]S is a mobile satellite service using mobile terminals on board aircraft. This service can be used to support domestic and international traffic, including air traffic control. The [R] indicates that the spectrum is used for aeronautical communications related to the safety and regularity of flights primarily along national and international civil air routes.

[190] Section 2.106 of the Commission's Rules, 47 C.F.R. § 2.106, contains the Table of Frequency Allocations. The Table includes footnotes with conditions applicable to both U.S. Government and non—Government stations. Footnote US308 states that in the 1549.5-1558.5/1651-1660 MHz frequency band the AMS[R]S requirements that cannot be accommodated in the 1545-1549.5 MHz, 1558.5-1559 MHz, 1646.5-1651 MHz and 1660-1660.5 MHz frequency bands shall have priority access with real-time preemptive capability with respect to communications in the mobile-satellite service. Systems not interoperable with AMS[R]S shall operate on a secondary basis. Account shall be taken of the priority of safety-related communications in the mobile-satellite service. S5.357A in the ITU's Radio Regulations

distress service is the Global Maritime Distress and Safety System (GMDSS). Footnote US315 to the Table of Frequency Allocations provides for real-time access and priority preemption capability for maritime mobile satellite service distress and safety communications.

83. Motient argues that several of the applicants, including Stratos, Honeywell, Comsat, and Deere have not provided information regarding the ability of the Inmarsat system to provide real-time access and priority preemption across the entire L-band.[191] Motient argues that the Inmarsat system is substantially different from the Motient system and that the Inmarsat system does not have the same technical capability that Motient has for preempting lower priority traffic.[192] Motient also questions how Inmarsat can comply with the real-time access and priority preemption requirements of the U.S. and other countries at the same time.

84. Stratos states that its M4 terminals are capable of being shut down on command of an Inmarsat system hub as required by FCC rules[193] and Footnote US308 to the Table of Frequency Allocations.[194] Stratos notes that the signaling control provided by Inmarsat assures that the M4 terminals satisfy Footnote US315 which sets forth the "real-time access and priority preemption" requirements for GMDSS. Similarly, Comsat states it complies with all of the Commission's real-time access and priority preemption requirements. Comsat notes that the Inmarsat System Definition Manual specifications for priority access and preemption meet or exceed all such requirements of the Commission.

85. Honeywell also notes that Inmarsat Ltd. will not use certain frequencies (1544-1545 MHz and 1645.5-1646.5 MHz that may only be used for distress and safety-related services and communications) in order to avoid interference with safety and distress communications.[195]

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has a similar priority and preemptive access requirement. We note, that in the 1545-1549.5 MHz, 1558-1559 MHz, 1646.5-1651 MHz and 1660-1660.5 MHz bands, MSS is secondary to AMS[R]S and the 1660-1660.5 MHz band is reserved for AMS[R]S with the further condition that mobile earth stations operating in these bands shall not cause harmful interference to stations in the Radio Astronomy Service.

[191] Motient Petition to Deny Honeywell at 27-8 ; Comsat at 22-3; Deere at 9.

[192] *Id.*

[193] *See* Footnotes S5.357A and US3086. Footnote S5.357A provides generally that in the bands 1545-1555 MHz and 1646.5-1656.5 MHz priority shall be given to accommodating the requirements of the aeronautical mobile-satellite (R) service communications which shall have priority access and immediate availability, by preemption if necessary, over all other mobile-satellite communications operating within a network.

[194] Stratos Opposition to Motient Petition to Deny at 21.

[195] Honeywell Opposition to Motient Petition to Deny at 14-5.

86. Deere states that Motient's argument regarding real-time access and priority preemption has no relevance to its application.[196] Deere notes that real-time access and priority preemption is an upper L-band issue and, in any event, its terminals are receive-only and thus, their characteristics do not affect the ability to preempt the communications they receive.[197]

87. In 1993, the National Telecommunications and Information Administration (NTIA) and the Federal Aviation Administration (FAA) proposed a minimum set of capabilities to ensure that METs and LESs operating in the bands 1545-1559 MHz and 1646.5-1660.5 MHz comply with US Footnote 308 and ITU Radio Regulation S5.357A [198] In applying the NTIA/FAA Guidelines, we have routinely found that full-duplex terminals, because of their ability to receive communications while transmitting, meet the priority preemption and real-time access requirements of Footnote US308. [199] With the exception of the Inmarsat Standard C terminals, we find no basis to question the ability of either the Inmarsat system or the applicants' terminals to meet the Commission's "real-time access and priority preemption" capability requirements under Footnotes US308 and US315. Aside from the Inmarsat Standard C terminals, all of the terminals that Comsat, Stratos, SITA and Honeywell propose to use are full duplex terminals. [200] Under these circumstances, we also conclude that Inmarsat's system complies with the Commission's "real-time access and priority preemption" requirements. We also note that every authorization to operate in the L-band will be conditioned on compliance with the Commission's "real-time access and priority preemption" requirements.[201]

88. As for the Inmarsat Standard C half-duplex terminals, we find that they do not satisfy the real-time access and priority preemption requirements of Footnote US308, as interpreted in the NTIA/FAA Guidelines, for operation in the upper L-band. All METs,

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[196] Deere Consolidated Opposition to Petitions to Deny at 4.

[197] *Id.*

[198] Letter from Richard D. Parlow, Associate Administrator, Office of Spectrum Management, National Telecommunications and Information Administration and Gerald Markey, Manager, Spectrum Engineering Division, Federal Aviation Administration to Cheryl Tritt, Chief, Common Carrier Bureau, FCC (January 14, 1993). *See also Lower L-band Notice*, Appendix B.

[199] *Rockwell International Corporation*, 10 FCC Rcd 10952 (1995) at ¶11.

[200] Full-duplex METs can receive a data message while simultaneously transmitting one. Thus, there would be no delay involved in a full-duplex terminal receiving a message to cease operations. Conversely, a half-duplex METs cannot receive and transmit data messages simultaneously and, therefore, must finish transmitting before receiving an incoming message. This could result in delay in preempting half-duplex operations.

[201] We agree with Inmarsat that the real-time priority and preemptive access requirements need not be incorporated directly in SITA's Section 214 application. SITA states that Title III authorizations are required to operate the terminals and will be sought by its customers. Appropriate conditions will attach to such authorizations.

whether operating in the upper or lower L-band, must comply with real-time access and priority preemption requirements. There are no exceptions or waivers in the upper L-band due to the quick reactions needed in an aeronautical environment. In the past, half-duplex METs were deemed incapable of satisfying the real-time access and priority preemption requirements because they cannot receive signals while transmitting. Although the NTIA/FAA Guidelines were recently modified to permit the operation of certain half-duplex terminals in the upper L-band,[202] neither Comsat nor Stratos has demonstrated that Standard C terminals meet the new standard. We will, however, permit operation of Standard C terminals in the lower L-band. Although Footnote US315 to the Table of Frequency Allocations and NTIA's Guidelines, as modified, provides for real-time access and priority preemption capability for maritime mobile satellite service distress and safety communications in the lower L-band, the Commission has previously permitted half-duplex terminals to operate in the lower L-band pursuant to a temporary waiver of Footnote US315 based on our experience with GMDSS where reaction time to an emergency is greater than in an aeronautical environment.[203] Accordingly, we grant Comsat and Stratos temporary waivers of Footnote US315 to permit operation of Inmarsat Standard C terminals in the lower L-band.

89. Finally, we note that the real-time access and priority preemption requirements are not applicable in this instance to the Deere terminals, which are receive-only, and have no transmit capability to preempt. Any preemption of the signal the terminals receive would be accomplished at the LES which is subject to the Commission's priority preemption and real-time access requirements.[204]

b. Extended C-band Frequencies

90. The LESs are licensed to operate on C-band feeder link frequencies, including 3600-3629 MHz, and on L-band frequencies. The frequency band 3600-3650 MHz is shared on a co-primary basis with the Federal government radiolocation systems. Methods to assess the potential for and mitigate interference from high power radars are addressed in the NTIA TR-99-361 report.[205] Comsat performed an Electromagnetic Compatibility (EMC) analysis as required by Footnote US245. Comsat has agreed to

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[202] *See* Letter from William T. Hatch, Associate Administrator, Office of Spectrum Management, Department of Commerce, National Telecommunication and Information Administration to Donald Abelson, Chief, International Bureau, FCC (August 25, 2000).

[203] *Rockwell International Corp.*, 10 FCC Rcd 10952 (1995), ¶ 16. We note that available evidence indicates that half-duplex METs currently in use have not so far adversely affected the effectiveness of the GMDSS.

[204] *See* ¶105 *infra*.

[205] The report is titled *Technical Characteristics of Radiolocation Systems Operating in the 3.1-3.7 GHz* Band *and Procedures for Assessing EMC with Fixed Earth Station Receivers*, and is available on the NTIA Web Site: http://www.ntia.coc.gov/osmhome/reports.html.

accept the levels of interference from these radiolocation systems based on the EMC analysis. Its LES authorizations will be conditioned accordingly.

91. We note, however, that Footnote US245 limits use of the 3600-3650 MHz frequency band to international inter-continental systems. Currently, the Comsat and Stratos LESs provide international MSS using these frequencies consistent with Footnote US 245. As noted herein, the purpose of the ORBIT Act was to permit a privatized Inmarsat to provide service to, from and within the United States. In light of our finding that Inmarsat has privatized consistent with the ORBIT Act, use of these feeder link frequencies by the Comsat and Stratos LESs to provide domestic MSS is a natural consequence. Moreover, the LESs have the technical capability to provide domestic MSS without any additional risk to government radiolocation systems. Consequently, we find that a waiver of Footnote US245 is required to permit the provision of domestic MSS and give effect to the express purpose of the ORBIT Act. Our waiver of Footnote US245 is limited to the particular facts of this case and any future requests for waiver will be reviewed on a case-by-case basis.

c. Out of Band Emissions

92. We require that the METs authorized herein meet current out of band emissions requirements. Specifically, MET emissions must be no greater than –70 dBW/MHz, averaged over any 20 ms interval, in the band 1559-1587.42 MHz. The EIRP of discrete emissions of less than 700 Hz bandwidth generated by such stations shall not exceed –80 dBW/MHz, averaged over 20 ms, in that band. Nor shall MET emissions exceed –64 dBW/MHz, averaged over 20 ms, in the band 1587.42-1605 MHz. The EIRP of discrete emissions of less than 700 Hz bandwidth generated by such stations shall not exceed –74 dBW, averaged over 20 ms, in that band. Furthermore, MET operations must conform to any regulations subsequently adopted by the Commission.[206]

93. In response to concerns raised by NTIA, Comsat and Stratos filed letters with the Commission certifying that the Inmarsat B, C, M, Mini-M, and M4 terminals comply with Sections 25.202(f) and Section 25.213(b) of the Commission's rules.[207] Section 25.202(f) specifies general unwanted emission limits (the combination of spurious and out-of-band emissions) from satellite networks, and Section 25.213(b) specifies protection for the GPS.[208] The Comsat and Stratos certifications are based on a letter

[206] *In the Matter of Amendment of Parts 2 and 25 to Implement the Global Mobile Personal Communications by Satellite (GMPCS) Memorandum of Understanding and Arrangements; Petition of the National Telecommunications and Information Administration to Amend Part 25 of the Commission's Rules to Establish Emissions Limits for Mobile and Portable Earth Stations Operating in the 1610-1660.5 MHz Band*, 14 FCC Rcd 5871 (1999).

[207] Letter from Bruce Henoch, Esq., Comsat Corporation to Magalie Salas, Secretary, FCC (June 1, 2001) and Letter from Alfred M. Mamlet, Esq., Steptoe & Johnson, LLP, to Magalie Salas, Secretary, FCC (June 1, 2001).

[208] 47 C.F.R. § § 25.202(f) and 25.213(b).

from Inmarsat confirming that the aforementioned Inmarsat terminals comply with the licensing requirements for unwanted emissions contained in Part 25 of the Commission's rules.[209] We find that the certifications adequately address this issue.

4. Law Enforcement, National Security, and Public Safety Concerns

94. In *DISCO II*, the Commission identified law enforcement, national security and public safety concerns as part of the public interest analysis for determining whether a non-U.S. satellite should be permitted to provide service in the United States market. The Commission stated that "other federal agencies have specific expertise in matters that may be relevant in particular cases." [210] The Commission also said it will "continue to accord deference to the expertise of the Executive Branch agencies in identifying and interpreting issues of concern related to national security, law enforcement, and foreign policy that are relevant to an application pending before us." [211] The Commission stated, however, that it "will make an independent decision on applications and will evaluate concerns raised by the Executive Branch agencies in light of all the issues raised (and comments in response) in the context of the particular application."[212]

95. Motient has raised questions about the Honeywell, SITA and Stratos applications. Concerning Honeywell, Motient states generally that Honeywell has failed to adequately address the law enforcement, national security, and public safety concerns presented by the application.[213] In response to Honeywell's argument that it is the responsibility of the service provider, i.e. Inmarsat, to ensure access to law enforcement, Motient notes that law enforcement and national security responsibilities belong to the earth station applicant since Inmarsat Ltd. is a foreign-licensed satellite provider that is not subject to the Commission's jurisdiction.

96. Concerning SITA, Motient states that SITA's application to provide aeronautical service raises law enforcement, national security and public safety concerns because SITA intends to employ only gateway earth stations outside the United States, specifically, in Canada, France, Australia and Japan. [214] Motient argues that the application raises the same issues as presented in the *TMI Order*—MSS through a foreign-

[209] Letters from Paul Branch, Vice President, Product Development & Engineering, Inmarsat to Alfred M. Mamlet, Esq., Steptoe & Johnson, LLP (June 1, 2001) and Kelly Cameron, Esq., Powell, Goldstein, Frazer & Murphy, LLP (June 1, 2001).

[210] *DISCO II* at ¶179.

[211] *Id.* at ¶180.

[212] *Id.* at ¶182.

[213] Motient Petition to Deny Honeywell Application at 23.

[214] Motient Petition to Deny SITA Application at 23.

licensed satellite to METs with traffic routed through earth stations located in foreign countries. Motient states that before the Commission can grant SITA's application, SITA must agree to route traffic through a switch to be located in the United States and to enter into an agreement similar to the one between TMI, the Department of Justice and the Federal Bureau of Investigation. [215]

97. With respect to Stratos, Motient notes that Stratos agreed to route U.S. traffic through a U.S. LES, but observes that there are other law enforcement concerns that Stratos' application does not address. Stratos states that there is no *a priori* requirement that it reach an agreement with the FBI on all aspects of its system's operation.

98. We find that SITA has adequately addressed law enforcement and national security concerns. We note that SITA consulted with the Department of Justice (DOJ) and addressed DOJ's concerns. We are including a copy of a letter memorializing those discussions in SITA's license file.

99. With respect to Honeywell, in the absence of views expressed in the record by the expert agencies, we decline to impose conditions on Honeywell's authorization. We note, however, that legal requirements concerning lawful interception are set forth in U.S. Code provisions, and our action in this Order does not alter the applicability of those laws to Honeywell.[216] Likewise, we find that Honeywell has adequately addressed law enforcement and national security concerns. Honeywell also consulted with DOJ and addressed DOJ's concerns. We are including a copy of a letter memorializing those discussions in Honeywell's license file.

100. With respect to Stratos, we note that Stratos has applied for an extension of the CALEA "capability" requirement deadline and that it is fully subject to FCC rules concerning system security. We also note that Stratos stated that it will route all traffic involving U.S. METs through a point of presence in the United States. Under such circumstances, and in the absence of specific allegations of fact regarding national security concerns, we see no reason to impose additional conditions on Stratos' authorizations. As with all Commission licensees, however, we encourage Stratos to work cooperatively and promptly to address law enforcement and national security concerns directly with the expert agencies.

101. In addition, on August 13, 2001, the Department of Justice and the Federal Bureau of Investigation filed a Petition to Adopt Conditions to Authorization and Licenses (Petition to Adopt Conditions). The Petition to Adopt Conditions requests that the Commission: (i) approve an agreement reached between Stratos and the Department of Justice and Federal Bureau of Investigation (the Agreement); and (ii) condition grant of certain of Stratos's authorizations on compliance with the terms of the Agreement.

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[215] *Id.* at 24.

[216] *See, e.g.,* Communications Assistance for Law Enforcement Act, 47 U.S.C. §§ 1001 *et. seq.* ("CALEA").

102. In assessing the public interest, we take into account the record and afford the appropriate level of deference to Executive Branch expertise on national security and law enforcement issues.[217] We recognize that, separate from our licensing process, Stratos has entered into the Agreement, and that the Agreement expressly states that these agencies will not object to grant of the pending Stratos applications, provided that the Commission approves the agreement and conditions grant of the Stratos applications on compliance with it.

103. We note that the Agreement contains certain provisions relevant to this transaction that, if broadly applied, would have significant consequences for the telecommunications industry. These provisions, if viewed as precedent for other service providers and potential investors, would warrant further inquiry on our part, and we will consider any subsequent agreements on a case-by-case basis. Notwithstanding these concerns about the broader implications of the Agreement, however, we see no reason to modify or disturb the agreement of the parties on this matter. Therefore, in accordance with the request of the Department of Justice and the Federal Bureau of Investigation, in the absence of any objection from the Applicants, and given the discussion above, we condition our grant of the Stratos Applications on compliance with the Agreement.

5. Other Issues.

104. Foreign Carrier Authorization. We further conclude that there is no impediment to authorizing SITA, a foreign carrier, to provide non-dominant common carrier service in the United States pursuant to Section 214 of the Communications Act of 1934, as amended.[218] SITA is a company based in Montreal and incorporated in the Province of Quebec, Canada. It is a wholly-owned subsidiary of SITA S.C., a Belgian cooperative company based in Brussells. In its *Foreign Participation Order*, the Commission stated that a presumption in favor of entry by carriers from WTO countries would best advance the public interest.[219] The Commission adopted a rebuttable presumption that applications for Section 214 authority from carriers from WTO Members do not pose concerns that would justify denial of an application on competition grounds.[220] The Commission noted that, in exceptional circumstances, entry into the U.S. market by an applicant affiliated with a foreign telecommunications carrier from a WTO Member may pose competitive risks by virtue of the applicant's ability to exercise market

[217] *See Rules and Policies on Foreign Participation in the U.S. Telecommunications Market,* IB Docket No. 97-142, 12 FCC Rcd 23891 (1997) (*Foreign Participation Order*) ¶¶ 61-66.

[218] Applications for Section 214 authority are not encompassed under our *DISCO II* analysis, which concerns entry into the U.S. by non-U.S. satellite systems.

[219] *Foreign Participation Order* at ¶50.

[220] *Id.*

power in a relevant foreign market.[221] Under the circumstances of this case, we conclude that authorization of SITA's application will serve the public interest. Both Canada and Belgium are WTO Members and SITA states in its application that is not affiliated with any foreign telecommunications carrier.[222] Accordingly, we will authorize SITA to provide services as a non-dominant common carrier.

105. Motient states that a Section 214 authorization is insufficient for SITA to provide AMSS using Inmarsat satellites and that some entity must first obtain Title III authority for such operations. We agree with Motient. We see no reason, however, to delay granting Section 214 authority to SITA because it has not applied for a Title III license for the aeronautical terminals. SITA states that the aeronautical terminals will be licensed by individual airlines. Part 87 of our Rules provides procedures for licensing of terminals to provide aeronautical safety service involving the Inmarsat system.[223] Accordingly, we will condition SITA's authorization on an entity obtaining appropriate Title III authorization before SITA can provide service under its Section 214 authorization.

106. Confidentiality. By letter dated August 9, 2000, Motient requested confidential treatment of those portions of its petitions to deny various applications relating to ongoing frequency coordination processes.[224]SITA opposes Motient's request, stating that Motient's request is inadequate.[225] In addition, Comsat seeks to strike Petitions to Deny filed by Motient stating that Motient's request for confidentiality is insufficient.[226]Comsat notes that it unsuccessfully sought to review the redacted information on several occasions. Motient's justification for requesting confidential treatment is that the information is the subject of a confidentiality agreement between the parties involved in the Mexico City coordination process.

107. The Mexico City Agreement and related coordination documents, such as minutes of coordination meetings, are considered confidential.[227] We have reviewed the materials submitted by Motient under its request for confidentiality and agree that these

[221] *Id.*, at ¶51.

[222] SITA App. at 4.

[223] 47 C.F.R. §§ 87.1 *et. seq.*

[224] Letter from Lon Levin, Vice President and Regulatory Counsel, Motient Services, Inc. to Magalie Salas, Secretary, FCC (April 9, 2000).

[225] Letter from Stephen L. Goodman, Esq., Halprin, Temple, Goodman & Maher, to Magalie Salas, Secretary, FCC (April 15, 2000).

[226] Comsat Motion to Strike, at 1-2. Comsat seeks to strike Motient petitions to deny the following applications: SES-LIC-20000609-00944, 20000609-00946, 20000609-00947, 20000609-00948 and 20000609-00949.

[227] *See Robert J. Butler*, 6 FCC Rcd 5414 (1991).

materials are generally within the scope of confidentiality of the Mexico City Agreement and related coordination documents.[228] The materials either concern provisions of that agreement directly, or involve information disclosed as part of the annual operator-to-operator coordination. We conclude that the information submitted provides no basis for denying these applications. In particular, one matter raised involves what appears to be a disagreement among the operators concerning both the interpretation of a provision of the Mexico City Agreement, and its utility for addressing competing spectrum requirements. We have addressed the current impasse in the operator-to-operator discussions above, [229]and conclude that this particular disagreement does not alter our view that granting these applications would serve the public interest. Other material submitted consists of statistics concerning the number of Inmarsat A terminals in use. The information submitted does not rebut Inmarsat's showing on this issue, or the determinations made above, [230]concerning Inmarsat Standard A terminals.

IV. CONCLUSION

108. After review of the applications and pleadings, we find that authorizing U.S. earth station applicants to provide various MSS via Inmarsat space segment will serve the public interest. We also note that nothing in this Order is intended to exempt any party from complying with any of the requirements under Parts 80[231] and 87 [232] of our Rules.

V. ORDERING CLAUSES

109. Accordingly, IT IS DETERMINED that: (1) Inmarsat's privatization is consistent with the non-IPO criteria specified in Sections 621 and 624 of the Open-Market Reorganization for the Betterment of International Telecommunications Act (the "ORBIT Act"), Pub. L. 106-180, §§ 621 and 624; and (2) the use of space segment operated by Inmarsat for services to, from, or within the United States will not harm competition in the telecommunications market of the United States as contemplated by Section 601(b) of the ORBIT Act, Pub. L. 106-180, § 601(b).

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[228] We note that Motient appears to have erroneously withheld from public disclosure a statement concerning the fact that the aggregate amount of spectrum coordinated for its system is less than Motient's goal. This information is already publicly available. *See TMI Order* at ¶¶ 26-31.

[229] See supra, ¶¶ 65-72.

[230] *See supra*, ¶¶ 69, 74.

[231] 47 C.F.R. Part 80.

[232] *See* § 87.171 through § 87.191. *See also Amendment of Parts 2, 22, and 25 of the Commission's Rules to Allocate Spectrum for and to Establish Other Rules and Policies Pertaining to the Use of Radio Frequencies in a Land Mobile Satellite Service, Memorandum Opinion Order and Authorization*, 4 FCC Rcd 6041 at ¶102. We also note that on June 19, 2001, Honeywell amended its application to reflect that it has been issued a Supplemental Type Certificate by the FAA approving the Honeywell SCS-1000 terminal for its intended installation and use on the Honeywell Cessna 560 Series aircraft.

110. IT IS FURTHER ORDERED that the authorizations issued herein are subject to a future Commission finding that Inmarsat has conducted an IPO under Sections 621(2) and 621(5)(A)(ii) of the ORBIT Act.

111. IT IS FURTHER ORDERED that Inmarsat shall file with the Commission within 30 days after conduct of its IPO a demonstration that the IPO is in compliance with Section 621(2) and 621(5)(A)(ii) of the ORBIT Act.

112. IT IS FURTHER ORDERED that the authorizations for non-core services issued herein are subject to limitation or revocation pursuant to Section 601(b)(1) of the ORBIT Act and Title III of the Communications Act of 1934, 47 U.S.C. 301 et. seq., should Inmarsat fail to conduct an IPO in compliance with the requirements of Section 621 of the ORBIT Act.

113. IT IS FURTHER ORDERED that the authorizations issued herein are subject to operation of Inmarsat under Section 648 of the ORBIT Act imposing restrictions on exclusive arrangements for the provision of satellite services between the United States and other countries.

114. IT IS FURTHER ORDERED that the applications of Comsat Corporation and Stratos Mobile Networks (USA) LLC listed in the Appendix B and D for authority to permit their land earth stations to permanently access Inmarsat satellites, including in support of the Federal Aviation Administration's Wide Area Augmentation System (WAAS) program, ARE GRANTED.

115. IT IS FURTHER ORDERED that the applications listed in Appendix C to operate mobile earth terminals to provide domestic and international Mobile Satellite Service via the privatized Inmarsat system ARE GRANTED subject to the following conditions:

a. Operation of Inmarsat Standard C METs is limited to the 1525-1544 and 1626.5-1645.5 MHz bands;

b. Grant of permanent authority to operate in the 1525-1544 and 1626.5-1645.5 MHz bands shall not become effective until further action in the *Lower L-band* proceeding and the operation in the lower L-band is subject to further action in the *Lower L-band* proceeding;

c. Operations shall be limited to the portions of the 1525-1559 and 1626.5-1660.5 MHz band coordinated for the Inmarsat satellite system in the most recent annual L-Band operator-to-operator agreement;

d. In the absence of a continuing annual L-band operator-to-operator coordination agreement, operations of METs in the 1525-1559 and 1626.5-1660.5 MHz bands will be on a non-interference basis until a future operator-to-operator agreement is concluded. In this instance, each

licensee must notify the other four operators in these frequency bands that it will be operating on a non-interference basis. Each licensee must notify its customers that its operations are on a non-interference basis

e. METs will be subject to any applicable out-of-band emission standards subsequently incorporated in the Commission's rules for protection of the Global Navigation Satellite Service.

116. IT IS FURTHER ORDERED that the applicants seeking to operate in the lower L-band (1525-1544 MHz and 1626.5-1645.5 MHz bands) are granted Special Temporary Authority on an interim basis for up to 180 days from the release of this Order, subject to the conditions contained in paragraph 112, *supra*, subparagraphs c, d, and e. In addition, operations in these frequency bands must comply with the requirements of footnotes US315 and S5.353A regarding real-time access and priority preemption. Further, during this interim period the operators shall comply with the minimum set of requirements set forth in paragraph 115, *infra*, for METs and 116, *infra*, for LESs until permanent requirements regarding real-time access and priority preemption are developed in the *Lower L-band* proceeding.

117. IT IS FURTHER ORDERED that for the half-duplex METs authorized herein to operate in the 1525-1544 MHz and 1626.5-1645.5 MHz bands, footnotes US315 and S5.353A to Section 2.106 of the Commission's Rules ARE WAIVED to permit the half-duplex METs authorized herein to operate in a portion of the lower L-band (1530-1544 MHz and 1626.5-1645.5 MHz) on a non-real-time preemptive basis. Under this waiver, operations of half-duplex METs in the lower L-band shall be on a secondary basis to safety and distress communications of those stations operating in the GMDSS.

118. IT IS FURTHER ORDERED that all METs operating in the 1545-1559 MHz and 1646.5-1660 MHz frequency bands shall have the following minimum set of capabilities to ensure compliance with Footnotes S5.357A and US308 to Section 2.106 of the Commission's Rules, 47 C.F.R. 2.106:

a. All MET transmissions shall have a priority assigned to them that preserves the priority and preemptive access given to aeronautical distress and safety-related communications sharing the band;

b. Each MET with a requirement to handle distress and safety-related communications shall be capable of recognizing message and call priority identification when transmitted from its associated Land Earth Station;

c. Each MET shall be assigned access to a unique technical identification number that will be transmitted upon any attempt to gain access to a system;

d. After a MET has gained access to a system the mobile terminal shall be under the control of a Land Earth Station and shall obtain all channel assignments from it;

e. All METs that do not continuously monitor a separate signaling channel shall have provisions for signaling within the communications channel;

f. Each MET shall automatically inhibit its transmissions if it is not correctly receiving a separate signaling channel or signaling within the communications channel from its associated Land Earth Station;

g. Each MET shall automatically inhibit its transmission on any or all channels upon receiving a channel-shut-off command on a signaling or communications channel it is receiving from its associated Land Earth Station.; and

h. Each MET with a requirement to handle distress and safety-related communications shall have the capability within the station to automatically preempt lower precedence traffic.

119. IT IS FURTHER ORDERED that Land Earth Stations associated with the MSS operating in the 1545-1559 MHz and 1646.5-1660.5 MHz frequency bands shall have the following minimum set of capabilities to ensure that the MSS System complies with Footnotes S5.357A and US308 to Section 2.106 of the Commission's Rules, 47 C.F.R. 2.106:

a. All LES transmissions to METs shall have a priority assigned to them that preserves the priority and preemptive access given to distress and safety-related communications;

b. The LES shall recognize the priority of calls to and from METs and make channel assignments taking into account the priority access that is given to aeronautical distress and safety-related communications;

c. The LES shall be capable of receiving the MET identification number when transmitted and verifying that it is an authorized user of the system to prohibit unauthorized access;

d. The LES shall be capable of transmitting channel-assignment commands to the METs;

e. The communications channels used between the LES and the MET shall have provision for signalling within the channel, for any MET which does not continuously monitor the LES signalling channel during the time of a call;

f. The LES shall automatically inhibit all transmissions to METs to which it is not transmitting a signalling channel or signalling within the communications channel;

g. The LES shall be capable of transmitting channel-shut-off commands to the METs on signaling or communications channels;

h. An LES with a requirement to handle distress and safety-related communications shall have the capability within the station to automatically preempt lower precedence traffic; and

i. Each LES shall be capable of automatically turning off one or more of its associated channels.

120. IT IS FURTHER ORDERED that, in accordance with US Footnote 308, the operation of METs in the 1545-1549.5, 1558.5-1559 MHz, 1646.5-1651 MHz and 1660-1660 MHz is on a secondary basis to U.S. AMS[R]S requirements of other U.S.-authorized MSS providers operating in the 1545-1559 and 1646.5-1660 MHz bands.

121. IT IS FURTHER ORDERED that the applications for Section 214 authorizations listed in Appendix C ARE GRANTED, provided that service shall only be offered to terminals for which appropriate Title III authorizations have been granted.

122. IT IS FURTHER ORDERED that the Petition to Adopt Conditions to Authorization and Licenses filed by the Department of Justice and the Federal Bureau of Investigation, on August 9, 2001, IS GRANTED, and that the authorizations and licenses related thereto which are granted by this Order are subject to compliance with provisions of the Agreement between Stratos on the one hand, and the Department of Justice and the Federal Bureau of Investigation on the other, attached hereto as Appendix E. Nothing in the 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 Commission's implementing regulations.

123. IT IS FURTHER ORDERED that the petitions to deny filed by Motient, GlobalStar, and GE American Communications, Inc., and the partial opposition filed PanAmSat, ARE DENIED.

124. IT IS FURTHER ORDERED that Comsat's motion to strike Motient petitions to deny application file numbers SES-LIC-20000609-00944, 20000609-00946, 20000609-00947, 20000609-00948 and 20000609-00949 IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary

APPENDIX A

DESCRIPTION OF APPLICATIONS

Applications to modify the existing Land earth stations (gateway stations) to change the points of communications from INMARSAT to INMARSAT Ltd.:

On January 8, 1999, Comsat Corporation/Comsat Mobile Communications (Comsat) filed applications to modify their licenses of land earth stations to reflect the transfer of the Inmarsat satellites to the new private company – Inmarsat Limited. Comsat's land earth stations are licensed to operate on the 6417.5-6454 MHz, 6454.4-6456.6 MHz, 3600-3629 MHz and 4192.5-4200 MHz feeder link frequencies and/or the L-band frequency bands 1525-1559 MHz, 1574.4-1576.6 MHz and 1626.5-1660.5 MHz. See applications listed in APPENDIX B.

On January 8, 1999, Stratos Mobile Networks (USA), LLC (Stratos) filed applications to modify their licenses of land earth stations to reflect the transfer of the Inmarsat satellites to the new private company – Inmarsat Limited. Stratos's land earth stations are licensed to operate on the 6417.5-6439 MHz, 6440-6454 MHz, 3600-3614 MHz, 3615-3629 MHz and 4192.5-4200 MHz feeder link frequencies and the L-band frequency bands 1525-1544 MHz, 1545-1559 MHz, 1626.5-1645.5 MHz, 1646.5-1655.5 and 1656.5-1660.5 MHz. See applications listed in APPENDIX B.

On September 24, 1999, Comsat Corporation d/b/a Comsat Mobile Communications filed application for authority to operate one 1.8-meter transmit-only land earth station at Santa Paula, California, to provide TT&C operations with the INMARSAT 3F3 satellite, using the 1626.5-1652.5 MHz frequency, application file no. SES-LIC-19990924-01627, Call Sign E990422.

On March 13, 2000, COMSAT GENERAL CORPORATION filed application for authority to modify its existing 2.4-meter land earth station at Sunset Beach, HI, to add INMARSAT Ltd.-2 and Ltd.-3 satellites in the Pacific Ocean Region as points of communications, application file no. SES-MOD-20000313-00409, Call Sign E970053.

Applications seeking authority to operate mobile earth stations (METs) for the provision of mobile satellite services via INMARSAT Ltd.:

Honeywell, Inc. filed an application seeking a blanket license authorizing the operation of up to 500 full duplex SCS-1000, single-channel mobile earth stations (METs), which will communicate with the Inmarsat satellites through land earth station facilities at the United States and foreign countries. Honeywell, Inc. proposes to operate its METs on the 1626.5-1646.5 MHz and 1525-1545 MHz frequencies. Honeywell, Inc.

intends to market, sell, and install the SCS-1000 METs for use onboard aircraft to enable flight personnel or passengers to engage in non-safety related voice, data, and facsimile communications during flight. The SCS-1000 will be flown in domestic, international, and combinations of domestic and international flight scenarios. See applications listed in Appendix C.

Deere & Company filed an application to operate up to 10,000 receive-only Starfire™ mobile earth stations to receive communications from Inmarsat's IIF2 satellite at 98 W.L. through the land earth station at Laurentides, Canada, in the frequency of 1536.16 MHz to support Deere's GreenStar™ precision farming service. The GreenStar™ service assists farmers in comparing the crop yields from various fields to determine, among other things, the amount of fertilizer and seed appropriate for a particular field and crop. Deere's GreenStar™ system automatically records crop yield and moisture data as the farmer harvests the crop, and at the same time uses the Global Positioning System to locate the longitude and latitude of each location where data are collected. See applications listed in Appendix C.

Marinesat Communications Network, Inc. d/b/a Stratos Communications (Stratos) filed applications for authority to operate 1000 each Inmarsat-B, -M, Mini-M, M4 and C mobile earth stations for the provision of domestic land mobile satellite service. These METs will communicate with the Inmarsat Ltd. satellites in the East and West Atlantic Ocean Regions through its land earth station facility at Laurentides, Canada and a switch physically located in the United States. The Inmarsat METs will be used to provide voice, data and facsimile services, enabling customers to access PSTN and Internet services using the frequencies 1626.5-1646.5 MHz and 1525-1545 MHz. See applications listed in Appendix C.

Comsat filed separate applications for authority to operate up to 1000 each Inmarsat B, C, M, Mini-M, and M-4 mobile earth stations with Inmarsat Ltd. satellites in the East and West Atlantic and Pacific Ocean Regions through its land earth station facilities at Southbury, Connecticut and Santa Paula, California. The Inmarsat C terminals provide domestic land mobile satellite services, including half-duplex data messaging service. Inmarsat M terminals provide domestic land mobile satellite services, including full-duplex switched voice, facsimile and data services. Mini-M mobile earth stations will provide domestic land mobile satellite service, including full-duplex switched voice service. The Inmarsat B terminals will provide domestic land mobile satellite services including, full-duplex switched voice, facsimile and data services. Inmarsat M-4 mobile earth stations will provide domestic land mobile satellite service, including full-duplex switched voice and data services. The INMARSAT M, Mini-M, and M-4 terminals operate in the 1626.5-1660.5 MHz and 1525-1559 MHz frequency bands. The INMARSAT B and C terminals operate in the 1626.5-1646.5 MHz and 1525-1545 MHz frequency bands. For Maritime units only, services include priority routing of distress and safety related communications. See applications listed in Appendix C.

Applications pursuant to Section 214 of the Communications Act of 1934 seeking authority to provide mobile satellite services via INMARSAT Ltd.:

Marinesat Communications Network, Inc. d/b/a Stratos Communications (Stratos) filed an application, pursuant to Section 214 of the Communications Act of 1934, for authority to provide INMARSAT M-4 domestic land mobile satellite service, using Inmarsat-M4 mobile terminals. Stratos will provide this service using the Inmarsat Ltd. Satellite System's third generation satellites in the East and West Atlantic Ocean Regions through its land earth station facility at Staten Island, New York. Inmarsat-M4 services will allow U.S. customers to have access to high-speed Internet and other data services from laptop size mobile terminals. See applications listed in Appendix C.

Marinesat Communications Network, Inc. d/b/a Stratos Communications (Stratos) filed an application, pursuant to Section 214 of the Communications Act of 1934, for authority to provide INMARSAT B, M, Mini-M, and C domestic land mobile satellite service, using Inmarsat-B, -M, Mini-M, and –C mobile terminals. Stratos will provide these services using the Inmarsat Ltd. Satellite System's third generation satellites in the East and West Atlantic Ocean Regions through its land earth station facility at Laurentides, Canada and a switch physically located in the United States. See applications listed in Appendix C.

Comsat filed an application, pursuant to Section 214 of the Communications Act of 1934, for authority to provide domestic land mobile and aeronautical mobile satellite services, using Inmarsat-M4, -B, -M, Mini-M, and –C, and aeronautical terminals. COMSAT will provide these services using the Inmarsat Ltd. Satellite System's second and third generation satellites in the Atlantic and Pacific Ocean Regions through its land earth station facilities at Southbury, Connecticut and Santa Paula, California. See applications listed in Appendix C.

SITA filed an application pursuant to Section 214 of the Communications Act of 1934, as amended, and Section 63.18(e)(2) and 63.18(e)(4) of the Commission's rules, for authority to operate as a facilities-based carrier and to resell international services on all U.S. international aeronautical routes, except to countries listed on the Commission's exclusion list. In addition, SITA requests authority to operate as a nondominant domestic common carrier, pursuant to Section 63.07 of the Commission's rules. See applications listed in Appendix C.

IDB Mobile Communications, Inc. filed an application pursuant to Section 214 of the Communications Act of 1934 and Section 63.18(e)(6) of the Commission's rules, for authority to operate as a facilities-based carrier for the provision of domestic aeronautical mobile satellite services via the INMARSAT satellite system. See applications listed in Appendix C.

Applications filed by COMSAT seeking authority to operate Land earth Stations for the provision of aeronautical mobile satellite services in support of Wide Area Augmentation System (WAAS) via INMARSAT Ltd.:

Comsat filed an application for authority under Section 753(c) of the international Maritime Satellite Act and Section 214 of the Communications Act of 1934, as amended, to establish channels of communication between land earth stations at Brewster, Washington, Santa Paula, California, Southbury, Connecticut and Clarksburg, Maryland and Inmarsat Third generation satellites in the Atlantic Ocean Region-West, Atlantic Ocean Region-West and Pacific Ocean Region in support of the Federal Aviation Administration's Wide Area Augmentation System. See application listed in Appendix D.

Comsat Corporation/Comsat Mobile Communications filed applications requesting authority to operate land earth stations in support of the Department of Defense's the Global Positioning System (GPS) wide area augmentation system (WAAS) program. The geographic coverage of the WAAS program includes the continental U.S., Canada and northern Mexico, and U.S. offshore continental coastal waters. The WAAS system has three functional segments: (1) the wide area reference segment, (2) the wide area master segment and (3) the geostationary communication segment. The wide area reference segment consists of differential ground stations that are linked to form an U.S. WAAS network. Signals from GPS satellites are received by users as well as the WAAS ground stations. These ground stations are precisely surveyed, allowing each to determine any error in the GPS signals being received at its geographical location. Each ground station in the network relays this data to a WAAS master facility where correction information are processed and integrated. A navigation message is prepared and uplinked to an INMARSAT satellite via COMSAT's WAAS land earth station. The message is then broadcast on the same frequency as GPS by the INMARSAT satellites to receivers on board aircraft flying within the broadcast coverage area of the WAAS. COMSAT proposes to operate WAAS LES on the 6454.4-6456.6 MHz, 1574.4–1576.6 MHz and 3629.4-3631.6 MHz frequencies. Operations on these frequencies have been coordinated and cleared by NTIA. See applications listed in Appendix D.

APPENDIX B

Applications to modify the existing Land earth stations (gateway stations) to change the points of communications from INMARSAT to INMARSAT Ltd.:

CALL SIGN	FILE NUMBER	APPLICANT NAME
E890649	SES-AMD-19990108-00012	COMSAT CORPORATION / COMSAT MOBILE COMMUNICATIONS
E970322	SES-AMD-19990108-00015	COMSAT CORPORATION / COMSAT MOBILE COMMUNICATIONS
E980136	SES-AMD-19990108-00041	COMSAT CORPORATION / COMSAT MOBILE COMMUNICATIONS
E980137	SES-AMD-19990108-00011	COMSAT CORPORATION / COMSAT MOBILE COMMUNICATIONS
E980144	SES-AMD-19990108-00016	COMSAT CORPORATION / COMSAT MOBILE COMMUNICATIONS
E990027	SES-MOD-19990108-00051	COMSAT CORPORATION / COMSAT MOBILE COMMUNICATIONS
E990032	SES-MOD-19990108-00071	COMSAT CORPORATION / COMSAT MOBILE COMMUNICATIONS
E990034	SES-MOD-19990108-00075	COMSAT CORPORATION / COMSAT MOBILE COMMUNICATIONS
KA31	SES-MOD-19990108-00017	COMSAT CORPORATION / COMSAT MOBILE COMMUNICATIONS
KA249	SES-AMD-19990108-00013	COMSAT CORPORATION / COMSAT MOBILE COMMUNICATIONS
KA304	SES-MOD-19990108-00048	COMSAT CORPORATION / COMSAT MOBILE COMMUNICATIONS
KA305	SES-MOD-19990108-00055	COMSAT CORPORATION / COMSAT MOBILE COMMUNICATIONS

CALL SIGN	FILE NUMBER	APPLICANT NAME
KA312	SES-MOD-19990108-00024	COMSAT CORPORATION / COMSAT MOBILE COMMUNICATIONS
KA313	SES-MOD-19990108-00018	COMSAT CORPORATION / COMSAT MOBILE COMMUNICATIONS
KB34	SES-MOD-19990108-00062	COMSAT CORPORATION / COMSAT MOBILE COMMUNICATIONS
WA28	SES-MOD-19990108-00020	COMSAT CORPORATION / COMSAT MOBILE COMMUNICATIONS
KA63	SES-MOD-19990108-00009	STRATOS MOBILE NETWORKS (USA), LLC
KA76	SES-MOD-19990108-00010	STRATOS MOBILE NETWORKS (USA), LLC
KA227	SES-MOD-19990108-00083	STRATOS MOBILE NETWORKS (USA), LLC

APPENDIX C

Applications seeking authority to operate mobile earth stations (METs) for the provision of mobile satellite services via INMARSAT Ltd.:

CALL SIGN	FILE NUMBER	APPLICANT NAME (Terminals)
E000156	SES-LIC-20000403-00534	HONEYWELL, INC. (500 SCS-1000, Mini Aero.)
E000180	SES-LIC-20000426-00630	MARINESAT COMMUNICATIONS NETWORK, INC. D/B/A STRATIOS COMMUNICATIONS (1000 INMARSAT M-4)
E000280	SES- LIC-20000609-00944	COMSAT CORPORATION / COMSAT MOBILE COMMUNICATIONS (Up to 1000 INMARSAT M-4)
E000282	SES- LIC-20000609-00946	COMSAT CORPORATION / COMSAT MOBILE COMMUNICATIONS (Up to 1000 INMARSAT Mini-M)
E000283	SES- LIC-20000609-00947	COMSAT CORPORATION / COMSAT MOBILE COMMUNICATIONS (Up to 1000 INMARSAT M)
E000284	SES- LIC-20000609-00948	COMSAT CORPORATION / COMSAT MOBILE COMMUNICATIONS (Up to 1000 INMARSAT C)
E000285	SES- LIC-20000609-00949	COMSAT CORPORATION / COMSAT MOBILE COMMUNICATIONS (Up to 1000 INMARSAT B)
E010011	SES- LIC-20010112-00051	DEERE & COMPANY (10,000 Rx-only Starfire™)
E010047	SES-LIC-20010221-00360	MARINESAT COMMUNICATIONS NETWORK, INC. D/B/A STRATIOS COMMUNICATIONS (1000 INMARSAT M)

APPENDIX C (cont'd)

CALL SIGN	FILE NUMBER	APPLICANT NAME (Terminals)	SATELLITE
E010048	SES-LIC-20010221-00361	MARINESAT COMMUNICATIONS NETWORK, INC. D/B/A STRATIOS COMMUNICATIONS (1000 INMARSAT Mini-M)	
E010049	SES-LIC-20010221-00362	MARINESAT COMMUNICATIONS NETWORK, INC. D/B/A STRATIOS COMMUNICATIONS (1000 INMARSAT B)	
E010050	SES-LIC-20010221-00363	MARINESAT COMMUNICATIONS NETWORK, INC. D/B/A STRATIOS COMMUNICATIONS (1000 INMARSAT C)	

Applications pursuant to Section 214 of the Communications Act of 1934 seeking authority to provide mobile satellite services via INMARSAT Ltd.:

	SES-MSC-20000209-01020	SITA INFORMATION NETWORKING COMPUTING (Resale service for AMSS)
	SES-MSC-20000426-00861	MARINESAT COMMUNICATIONS NETWORK, INC. D/B/A STRATIOS COMMUNICATIONS (INMARSAT M-4 service / LMSS)
	SAT-ITC-20000605-00103	COMSAT CORPORATION (INMARSAT M-4, M, Mini-M, B & C Services / AMSS & LMSS)
	SES-MSC-20010220-00349	MARINESAT COMMUNICATIONS NETWORK, INC. D/B/A STRATIOS COMMUNICATIONS (INMARSAT M, Mini-M, B & C services / LMSS)
	ITC-214-19981214-00859	IDB MOBILE COMMUNICATIONS, INC. (domestic AMSS)

APPENDIX D

Applications filed by COMSAT seeking authority to operate Land earth Stations for the provision of aeronautical mobile satellite services in support of Wide Area Augmentation System (WAAS) via INMARSAT Ltd.:

CALL SIGN	FILE NUMBER	APPLICANT NAME
E890649	SES-MOD-19980217-00197	COMSAT CORPORATION / COMSAT MOBILE COMMUNICATIONS
E970322	SES-LIC-19970520-00657	COMSAT CORPORATION / COMSAT MOBILE COMMUNICATIONS
E980136	SES-LIC-19980211-00183	COMSAT CORPORATION / COMSAT MOBILE COMMUNICATIONS
E980137	SES-LIC-19980211-00182	COMSAT CORPORATION / COMSAT MOBILE COMMUNICATIONS
E980144	SES-LIC-19980217-00202	COMSAT CORPORATION / COMSAT MOBILE COMMUNICATIONS
KA249	SES- LIC-19970812-01108	COMSAT CORPORATION / COMSAT MOBILE COMMUNICATIONS
KA312	SES- MOD-19990709-01203	COMSAT CORPORATION / COMSAT MOBILE COMMUNICATIONS
	ITC-97-222	COMSAT CORPORATION d/b/a COMSAT MOBILE COMMUNICATIONS (WAAS)

APPENDIX E

This Agreement is made this ____ day of _____, _____ 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-MSC-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-MSC-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 ___, 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-MSC-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-MSC-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: _____ By: _____
Printed Name:
Title:

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

Date: _____ By: _____
Printed Name:
Title:

United States Department of Justice

Date: _____ By: _____
Printed Name:
Title:

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 _____ __, 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 (

SEPARATE STATEMENT OF
COMMISSIONER KATHLEEN ABERNATHY

In re: Applications for Authority to Operate Mobile Earth Terminals and Land Earth Stations via Inmarsat Satellites to Provide Domestic and International Mobile Satellite Service, File No. ITC-97-222, Memorandum Opinion, Order and Authorization (rel. DATE)

Today's decision represents another significant step in the International Bureau's effort to reduce its backlog. Indeed, with this single Order, the Bureau has granted more than 60 pending applications. Since taking office, I have stressed the need for the Commission to focus on quality and timely service, and the need to reduce any remaining backlogs. Although I am pleased with the Bureau's diligence and dedication in this effort, we must remain vigilant to ensure that the backlog dragon is slayed, buried, and never rises to plague our licensees again. I look forward to working with the Bureau staff, my fellow commissioners and the Chairman to ensure that the public receives the quality service it deserves.