

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

In the Matter of	)	IB Docket No. 08-143
)	
Robert M. Franklin, Trustee, Inmarsat plc	)	DA 08-1659
And Stratos Global Corporation)	
	)	FCC File Nos.:
)	
Applications for Consent to Transfer of	)	ITC-T/C-20080618-00276
Control of Stratos Global Corporation and Its)	
Subsidiaries from an Irrevocable Trust	)	ITC-T/C-20080618-00275
To Inmarsat plc, and Petition for a	)	SES-T/C-20080618-00818
Declaratory Ruling	)	SES-T/C-20080618-00821
	)	SES-T/C-20080618-00820
	)	SES-T/C-20080618-00819
	)	0003453455
	)	ISP-PDR-20080618-00013

To: The Commission

PETITION TO DENY OF VIZADA, INC. AND VIZADA SERVICES LLC

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SUMMARY

This transaction presents far-reaching implications for all customers and distributors of L-band mobile satellite services. Inmarsat plc (“Inmarsat”), the former monopoly and still dominant provider of MSS capacity, is proposing to take control of Stratos Global Corporation (“Stratos”), one of the largest distributors of its services.

This transaction fails the Commission’s test for a merger. The Commission must consider “whether the merger will accelerate the decline of market power by dominant firms in the relevant communications market” and give great weight to “preserving and enhancing competition.” The Applicants, however, provide no basis for a finding that the transaction will meet this core public interest test.

Quite the contrary, through the proposed transaction Inmarsat is exerting its market power to reduce or eliminate important MSS competition that has evolved since the company’s privatization. Notwithstanding limited development of alternative MSS systems, Inmarsat still continues to enjoy dominant market power arising from the benefits of its legacy operations as a sanctioned monopoly service provider. Many MSS customers today remain effectively “locked in” to Inmarsat-based services for important telecommunications requirements. In part this results from Inmarsat’s unique global system footprint and network: only Inmarsat can offer the combination of geographically ubiquitous coverage, with high data throughput, in a global service that is weather-insensitive, certified for providing safety at sea and in flight, and reliably delivered by a firm with a long and dependable performance record and a stable financial condition. Inmarsat also derives market power from MSS customers’ pre-existing large investments in Inmarsat-specific terminals, equipment, training, standardization, and operational experience. End user equipment investment also predisposes customers economically to prefer Inmarsat-based services when expanding the communications services and equipment for existing Inmarsat-supplied vessels or planes or when expanding coverage to new fleet additions.

Until now Inmarsat’s ability to exploit its market power has been checked by the requirements of its distribution agreements, which establish intra-brand competition among resellers such as Stratos, the petitioners here (Vizada, Inc. and VIZADA Services LLC), and other MSS services companies. Those agreements establish a business structure in which Inmarsat provides wholesale services to distributors on non-discriminatory terms, and the distributors compete vigorously against one another to serve commercial and government (including major U.S. defense, homeland security, and other civilian agency) accounts that require Inmarsat-based products.

Not coincidentally, the current Inmarsat distribution agreements expire on April 15, 2009, the earliest date that the company states it would close this acquisition of Stratos. Also not coincidentally, Inmarsat has filed this Application far in advance of its proposed closing date, transparently hoping that the Commission will not look beneath the covers at the fundamental question of what will happen to intra-brand competition in Inmarsat-based products when the current distribution agreements (and their critical non-discrimination provisions) expire next April.

However, the Commission cannot act on this Application without focusing directly on this question. It is telling that last year Inmarsat warned Stratos shareholders of the dire consequences if they did not approve the sale of their company to a trustee who would hold the stock for Inmarsat until April 2009. Inmarsat emphasized that the next distribution agreements “will result in materially less favorable terms for Stratos,” including higher prices and restrictions limiting Stratos’s ability to sell to major customers. Perhaps not surprisingly, the Stratos shareholders caved. But this does not mean that the Commission should do so; quite the contrary, the Communications Act and the public interest require this transaction to receive very close scrutiny.

First of all, the Commission should recognize that this Application is premature, as evidenced by the fact that the parties request waivers of Commission rules that otherwise could cause any authorization for the transaction to lapse in advance of next April. The Commission should dismiss the application without prejudice. Alternatively, the Commission should defer processing at least until Inmarsat has entered into new distribution agreements for its services effective in April with those incumbent distributors generating at least 75% of its 2007 revenue. The Commission directly relied upon non-discrimination provisions in the current Inmarsat distribution agreements when it approved the sale of Stratos to the Trustee. It can hardly approve the transfer of Stratos to Inmarsat itself without first evaluating whether the post-April 2009 distribution arrangements similarly prevent discrimination in favor of Stratos going forward. Any such discrimination would not “accelerate the decline” in Inmarsat’s market power; rather, it would eliminate the intra-brand competition that has developed to benefit consumers notwithstanding their legacy-based reliance on the underlying Inmarsat satellite network, services, and equipment types.

Absent demonstration that the post-April 2009 distribution agreements will be non-discriminatory, this Application must be denied. But even if those private agreements on the surface appear to address discrimination concerns, additional Commission-sponsored safeguards still would be needed. Private contract terms, while important, are not sufficient to protect the general public interest of all MSS customers that there is competition in the MSS market. The Commission therefore would need to condition any approval of this merger on

ongoing pro-competitive safeguards that are enforceable and subject to audit. These conditions should include (1) requirements for structural separation of Stratos from Inmarsat operations, (2) restrictions on Inmarsat discrimination among distributors in favor of Stratos, and (3) firewalls preventing the sharing of proprietary information of unaffiliated distributors (such as Vizada) with Stratos.

In sum, through this transaction Inmarsat is attempting to leverage its continuing market power in the MSS industry to reduce competition that has developed since its legacy monopoly was broken. The Commission must take care to prevent such competitive backsliding, and ensure that MSS competition continues to grow after April 2009. The time may come when other newer MSS satellite systems will be able to offer the same global ubiquity, speed, and service levels required by many customers, and when Inmarsat's legacy advantages from its installed customer terminal base are less significant. But that time has not yet arrived.

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To: The Commission

PETITION TO DENY OF VIZADA, INC. AND VIZADA SERVICES LLC

Vizada, Inc. (formerly Telenor Satellite Services, Inc.) and VIZADA Services LLC (formerly FTMSC US, LLC) (hereafter together “Vizada”) 1/, pursuant to Section 25.154 of the Commission’s rules, 2/ hereby petition for denial of the

1/ Telenor Satellite Services, Inc. changed its name to Vizada, Inc. effective, September 7, 2007. FTMSC US, LLC changed its name to VIZADA Services LLC effective June 7, 2007.

2/ 47 C.F.R. § 25.154. By Public Notice, DA 08-1659 (rel. July 14, 2008) (“Public Notice”), the Commission established a pleading cycle in this docket providing that petitions to deny are due August 13, 2008. An Erratum (rel. July 17, 2008) to the

above-captioned application of Robert M. Franklin, Trustee (“Trustee”) and Inmarsat plc (“Inmarsat”) and the related Petition for Declaratory Ruling (collectively, the “Application”) seeking Commission approval for the indirect transfer of control to Inmarsat of Stratos Global Corporation (“Stratos Global”) and its wholly-owned subsidiaries that hold Commission licenses and authorizations (hereafter referred to in the aggregate along with Stratos Global as “Stratos”). The Commission previously approved the transfer of control of Stratos to the Trustee without prejudice to consideration of any future application by the Trustee to transfer control to Inmarsat. [3/](#)

INTRODUCTION

This proposed transaction has far-reaching implications for all customers and distributors of L-band mobile satellite services (“MSS”). Inmarsat, the former monopoly and still dominant provider of MSS capacity, is proposing to take control of Stratos, one of the largest distributors of Inmarsat-based services in the United States and around the world. Vizada has a strong and direct interest in this proceeding because it is authorized to distribute (i.e., resell) Inmarsat MSS capacity in the United States and because Vizada’s affiliates also distribute

Public Notice added an additional international authorization to the original list as published on July 14.

[3/](#) *Stratos Global Corporation, Transferor, Robert M. Franklin, Transferee, Consolidated Application for Consent to Transfer of Control, Memorandum Opinion and Order and Declaratory Ruling, 22 FCC Rcd 21328 (2007) (“Stratos-Trust Order”). VIZADA Services LLC (with supporting comments of Telenor Satellite Services, Inc.) had petitioned to deny that transaction. Iridium Satellite, LLC also filed a petition to deny.*

Inmarsat capacity in other parts of the world. Vizada competes directly with Stratos and other Inmarsat distributors.

Currently Vizada, Stratos, and other distributors obtain capacity from Inmarsat through distribution agreements that foster a competitive market in Inmarsat services. These agreements provide for non-discriminatory treatment among and between Inmarsat distributors and also prohibit Inmarsat itself from selling directly to end users or from owning or controlling any distributor of Inmarsat services. The restrictions were necessary, in light of Inmarsat's legacy marine and aeronautical satellite operator monopoly, to ensure the development and preservation of a competitive intra-brand market in the distribution of Inmarsat-based services.

Developments in the MSS industry have not eliminated Inmarsat's dominant market power or diminished the continued importance of intra-brand competition among Inmarsat distributors. Many MSS customers today remain effectively "locked in" to Inmarsat-based services for important telecommunications requirements. Only Inmarsat can offer geographically ubiquitous global coverage, high data throughput (*e.g.*, 128 kbps plus), and a service that is weather-insensitive, certified for providing safety at sea and in flight, and reliably delivered by a firm with a long and dependable performance record and a stable financial condition. In addition to providing a unique combination of highly desirable service and operational characteristics, Inmarsat derives market power from customers' pre-existing large investments in Inmarsat-specific terminals, equipment, training,

standardization, and operational experience. This investment creates a large installed base for Inmarsat-dependent services and consequently requires MSS providers to include Inmarsat functionality in their offerings to serve their base. End user equipment investment also predisposes customers economically to choose Inmarsat-based service when upgrading the communications services and equipment for existing Inmarsat-supplied vessels and planes and when procuring new services and equipment for fleet additions.

Although other MSS companies are developing satellite systems and marketing their capacity, each of them has key limitations that prevent it from providing an adequate substitute to Inmarsat in important market segments. Some MSS providers cannot provide as much throughput as Inmarsat (*e.g.*, Iridium and Globalstar), some have recently suffered or continue to suffer from shaky financial circumstances (*e.g.*, Globalstar and, according to some reports, Iridium). Others lack coverage in the Americas (*e.g.*, Thuraya), or lack coverage in other key parts of the world (*e.g.*, MSV). Potential Fixed Satellite Service (“FSS”) alternatives to Inmarsat present their own disadvantages. Ku-band service is weather-sensitive and requires significant up-front equipment and installation costs, while C-band equipment is relatively bulky and costly. Both Ku- and C-band service are limited to specific coverage areas, and each is susceptible to capacity constraints. Thus, other MSS and Ku- or C-band satellite service providers are not able to constrain Inmarsat’s dominance in important market and customer segments. As Inmarsat’s Chairman and CEO has stated: “[W]e really don’t have much competition” in the

vital maritime sector where growth “tends to be data-driven” and in the equally important and growing aeronautical sector Inmarsat is also “embedded” with its customers. ^{4/}

Up until now, Inmarsat’s ability to assert its market power has been checked through intra-brand competition created by the existing distribution agreements. Those agreements, however, expire on April 15, 2009, which not coincidentally is also the earliest date upon which Inmarsat may close the proposed transaction, according to the Application. For some months, Vizada and other distributors (presumably including Stratos as well) have been negotiating with Inmarsat the terms of new distribution agreements that would take effect on or about April 15, 2009. To Vizada’s knowledge, no new distribution agreements for the post-April 2009 period have been concluded by any distributor.

The Commission’s review of this Application will go a long way to determining whether customers will enjoy competition in the market for L-band Inmarsat-based services after next April. Inmarsat should not be allowed to use its market power over L-band space segment to reduce or eliminate the vigorous downstream competition now enjoyed by users of Inmarsat-dependent services. As discussed below, there are sound reasons to dismiss this Application as premature. At the least, the Application should be held in abeyance until Inmarsat completes negotiation of new distribution agreements that will reveal how Inmarsat expects to act in the future *vis-a-vis* its distributors, including Stratos.

^{4/} A. Sukawaty, Inmarsat Chairman and CEO, Inmarsat Preliminary Full Year Results Presentation for 2006 (Feb. 27, 2007), excerpt provided, [Attachment A].

In any case, the public interest analysis of this transaction cannot turn solely on the terms of those new distribution agreements, even once completed to all parties satisfaction. Although those private contract terms will be evidence of how Inmarsat has agreed to operate with its distributors from and after April 2009, the agreements cannot substitute for ongoing Commission-directed regulatory conditions to protect the public – and especially those users most dependent upon Inmarsat-based service – against anti-competitive schemes that could arise from Inmarsat’s proposed takeover of one of its largest distributors. The Commission needs to ensure that any Stratos acquisition by Inmarsat does not diminish the vibrant intra-brand competition among all Inmarsat distributors that flourishes today.

To that end, the Commission should not grant this Application without binding, enforceable, and auditable legal conditions preventing all forms of anti-competitive discrimination by Inmarsat in favor of Stratos and against unaffiliated distributors in the post-April 2009 environment. These conditions should include: (1) requirements for structural separation of Stratos from Inmarsat operations, (2) restrictions on Inmarsat discrimination among distributors in favor of Stratos, and (3) firewalls preventing the sharing of proprietary information of unaffiliated distributors (such as Vizada) with Stratos and allowing access to such information by persons within Inmarsat only when necessary for Inmarsat to provide the

relevant wholesale service to the relevant unaffiliated distributor that originated the proprietary information. 5/

These matters are discussed in more detail below.

I. THE COMMISSION SHOULD DISMISS THIS PREMATURE APPLICATION WITHOUT PREJUDICE, OR AT LEAST POSTPONE PROCESSING, UNTIL INMARSAT NEGOTIATES NEW DISTRIBUTION AGREEMENTS AND OTHER EVENTS REGARDING INMARSAT'S AND STRATOS'S FUTURE ARE CLARIFIED

This Application is premature on its face. The Applicants effectively concede that there is no pressing need for Commission action on their Application because they cannot consummate the proposed transaction until April 15, 2009, fully nine months from when the Application was submitted. In fact, the Applicants request waivers of Commission rules that otherwise could cause any authorization for the transaction to lapse in advance of next April. See Application at 12.

There is good reason why the Commission disfavors premature applications. The Commission and the International Bureau have many other important and resource-intensive matters on their plate. It is not in the public interest to encourage filings far in advance of when they are truly needed. More important, premature applications increase the danger that the Commission will not have an adequate or accurate record at the time it makes its decision. As the Commission well knows, the communications industry is subject to rapid and

5/ The conditions need to apply regardless of whether the Stratos distribution business remains entirely within the acquired Stratos entity, or some or all of those business functions are conducted by a different part of the overall Inmarsat enterprise. This will prevent gaming or some other subterfuge by Inmarsat.

sometimes abrupt change. To be sure, sometimes such unpredictable changes increase competition; at other times, however, they increase concentration and reduce consumer choice. The L-Band portion of the MSS industry is demonstrably subject to these forces, increasing the harm here that could flow from premature Commission action while other critical developments are ongoing. Consequently, the Commission should dismiss the Application without prejudice, or at least postpone further processing, until Inmarsat completes negotiation of new distribution agreements and until other important events in the MSS industry and regarding ownership of Inmarsat itself are clarified.

Indeed, it is not a coincidence that Inmarsat filed this Application in July 2008, far in advance of the earliest date upon which Inmarsat could possibly consummate the proposed transaction pursuant to a Commission grant, and before Inmarsat has reached new agreements with its distributors. Apparently Inmarsat would prefer the Commission to act in the blind, knowing nothing about how the Inmarsat/distributor relationships will actually work after April 2009. There is nothing in the Application to indicate what Inmarsat has actually proposed for new distribution agreements, or what future (if any) Inmarsat contemplates for promoting and protecting fair and vibrant intra-brand competition. And because the negotiations are in mid-course, quite obviously there is nothing yet to indicate the results of those negotiations. Evidently, Inmarsat would prefer the Commission to act now on the Stratos transaction, and not to see or consider the competitive and

public interest consequences of significant distribution changes Inmarsat might seek to impose for the period after April 2009.

As discussed in more detail below, these distribution agreements are central to the current competitiveness of the MSS market. Inmarsat is a former PTT-owned monopolist and remains today by far the dominant provider of MSS. Many customers are dependent upon and effectively locked into Inmarsat-based services for years to come. An important element of Inmarsat's privatization has been the structuring of its relationships with distributors who rely on Inmarsat space segment and related services to provide their own competing Inmarsat-based MSS offerings. The distribution agreements are central to the ability of firms such as Vizada and Stratos to offer competitive choice to end users, including important United States military and civilian government agencies, commercial accounts, and other resellers. Up to now these distribution agreements have limited the ability of Inmarsat to exploit its long-standing and persistent market power, not least of all because those agreements precluded Inmarsat itself from selling directly in those downstream markets and instead provided for price-, service-, and innovation-based intra-brand competition among multiple independent distributors of products based on Inmarsat capacity.

Vizada and other distributors have begun discussions with Inmarsat regarding the competitively crucial subject of how Inmarsat will permit and/or restrict distribution of its services when the current agreements expire in April 2009, and precisely how Inmarsat will govern itself *vis-a-vis* its distributors and

their customers in the post-April 2009 environment. The negotiations and the resulting agreements will have enormous implications for many of the important competition and public interest concerns necessarily raised by this Application and discussed in the next section below.

Inmarsat itself certainly appreciates the significance of this issue. In 2007 Inmarsat expressly warned Stratos shareholders that if they did not approve the sale to CIP and the Trustee (with an option to Inmarsat itself), Inmarsat was prepared to use its leverage to impose “materially less favorable terms for Stratos” in the post-April 2009 distribution agreements. Inmarsat warned that it would restrict Stratos from “signing major service providers directly,” free itself for “price increases” to Stratos and other distributors, and take other actions “each of [which] will be materially detrimental to Stratos’ competitive position and profitability.” ^{6/} Faced with this option, Inmarsat suggested, Stratos shareholders had little choice but to sell out. ^{7/}

Inmarsat’s threats to Stratos shareholders only underscore the need for Commission attention to the new distribution agreements in the context of its review of this transaction. It is one thing for Inmarsat to browbeat one of its major distributors into selling out to them. It is another for the Commission to ignore the

^{6/} Inmarsat and CIP powerpoint presentation, “Acquisition of Stratos Global Corporation by CIP Canada Investment Inc., 2007, excerpt provided, [Attachment B].

^{7/} Inmarsat’s comments underscore that from the outset, and notwithstanding its representations to the Commission, Inmarsat viewed itself as acquiring Stratos in all but legal title.

consequences for the public. If Inmarsat can harm Stratos, it can equally harm every other distributor of Inmarsat-based services, unilaterally impose major wholesale price increases, and by eliminating volume discounts effectively force up prices to downstream users.

In short, it makes no sense to place the cart before the horse and urge the Commission to rule expeditiously on the competitive and public interest implications of a transaction that cannot close before April 15, 2009, when an important factual predicate bearing fundamentally on those implications – the private negotiation of new distribution contracts – is in process and necessarily must be completed ahead of any acquisition of Stratos. Indeed the way in which Inmarsat is attempting to leverage its power to fundamentally change the nature of its distribution arrangements, diminish the strength of intra-brand competition, and raise prices is highly relevant to the Commission's analysis of the competitive harms entailed in the proposed acquisition.

The Commission has already recognized the significance of these distribution agreements. In its decision allowing the transfer of control of Stratos to the Trustee, the Commission relied heavily on the terms and conditions in the existing Inmarsat distribution agreements to address issues that were raised regarding competitive effects during the life of the Trust. Vizada expressed strong concern that, because Inmarsat was financing the transaction placing Stratos in the Trust, and because Inmarsat would possess an option to acquire direct control of Stratos by April 2009, Inmarsat would favor Stratos and discriminate against

Vizada and other distributors in an anti-competitive way. The Commission, however, concluded that “the current distribution agreement includes anti-discrimination provisions that would constrain Inmarsat’s ability to favor Stratos Global.” ^{8/} Without conceding the Commission was correct to rest its analysis at that point, Vizada would point out here that the Commission obviously felt it necessary in the earlier proceeding to have before it an understanding of the actual agreements that would continue to apply during the Trusteeship until April 2009.

So, here, it is equally important that the Commission hold off processing this Application until it can examine the forthcoming new agreements between Inmarsat and its distributors, including those with Vizada and with Inmarsat’s proposed direct affiliate, Stratos. Vizada is not suggesting that all terms of the current agreements must be perpetuated or that there should not be some room, under the appropriate competitive protections, for Inmarsat to consider growing its own competitive direct distribution business. But acquiring one of its major distributors without proper and fully enforceable conditions to ensure fair, non-discriminatory, and unimpaired intra-brand competition in the future is quite a different thing. In short, in this situation, the Commission should wait until the terms of the new distribution arrangements are available for its consideration and there is a complete and adequate factual predicate upon which to base any ruling regarding the proposed acquisition.

^{8/} *Stratos-Trust Order*, 22 FCC Rcd at 21355 ¶ 62.

Another recent development also suggests that the Commission would be prudent to dismiss the Application or at least hold it in abeyance for the time being. On July 25, 2008, the Harbinger Capital Partners Fund, (“Harbinger”) a private equity group and SkyTerra Communications Inc. (“SkyTerra”) announced their joint intention to acquire Inmarsat. ^{9/} Harbinger and SkyTerra already have substantial interests in several of the Commission’s MSS licensees. ^{10/} Although purportedly Inmarsat itself is not yet party to any merger arrangement with Harbinger (a significant existing Inmarsat shareholder) and SkyTerra, it is obvious that the prospect of such a combination would be relevant to competition in the MSS market and Inmarsat’s acquisition of Stratos. To be clear, the primary issues presented here arise from Inmarsat’s own dominant market power flowing from its historical monopoly position (including its unique, globally ubiquitous and high throughput network) and the economic lock in of existing end users to Inmarsat-based services and equipment. Nonetheless, current uncertainties regarding L-band industry structure simply underscore the importance of the Commission having a complete understanding of post-April 2009 arrangements for the

^{9/} Press Release, “Harbinger to Provide SkyTerra and MSV with \$500 Million in Financing; Sky Terra Communications and the Harbinger Capital Partners Fund Announce Agreement with Respect to a proposed Offer for Inmarsat,” July 25, 2008, available at http://www.msvlp.com/news_docs/releases/2008_07_25_MS_V_Harbinger_FINAL.pdf.

^{10/} SkyTerra Communications, Inc. owns and controls Mobile Satellite Ventures LP (“MSV”), an FCC MSS licensee. *Id.* Harbinger Capital Partners Funds owns 28.8 percent of Inmarsat and approximately 48.43 percent of SkyTerra *Id.* Harbinger also owns 30 percent of TerreStar. *See* “Harbinger in Deal for SkyTerra to Get Inmarsat,” *Communications Daily*, July 28, 2008.

distribution of Inmarsat services *before* deciding whether Inmarsat's acquisition of Stratos is in the public interest.

In short, this Application is premature simply as a technical legal matter because the parties cannot close their transaction until April 2009 at the earliest. It should be dismissed on that basis alone. But at the least, the Commission should defer processing until the overall situation is clarified and the record here can answer the question of whether Inmarsat will facilitate a pro-competitive distribution market in the future – *without unreasonable discrimination in favor of Stratos or any Inmarsat-owned direct distribution arm.* ^{11/} The new distribution agreements to be effective starting April 2009 are central to that analysis, yet they are not yet completed, much less placed into the Commission record.

^{11/} The Commission routinely delays action (sometimes for many months) on transfer of control applications where foreign ownership issues are involved and the U.S. national and homeland security officials request time to conduct an investigation and to attempt to negotiate an agreement with the parties on sensitive and decisionally-critical issues. Once the investigations and negotiations are complete and the security agencies and parties can jointly submit any resulting agreement, the Commission has the requisite factual predicate for moving forward to a decision on the initial transfer application. *See, e.g., Stratos-Trust Order*, 22 FCC Rcd at 21334-37 ¶¶ 18-26; *Intelsat Holdings, Ltd. and Serafina Holdings Limited*, 22 FCC Rcd 22141 ¶ 2 (2007); *T-Mobile USA Inc. and SunCom Wireless Holdings, Inc.*, 23 FCC Rcd 2515, 2518 ¶ 8 (2007). Indeed such a delay for national security reasons has just been proposed in this docket. *See* Letter from Joanne P. Ongman, National Security Division, Department of Justice, to Marlene H. Dortch, Secretary, FCC (filed Aug. 11, 2008). By analogy, a postponement of active processing of the Application by Commission personnel pending negotiation of new distribution agreements is what Vizada is requesting here.

II. THE VERTICAL INTEGRATION OF INMARSAT WITH STRATOS WILL IMPAIR COMPETITION IN THE DISTRIBUTION OF INMARSAT-BASED SERVICES UPON WHICH MANY GOVERNMENT AND COMMERCIAL USERS ARE DEPENDENT, AND WILL EXTEND INMARSAT'S MARKET POWER DOWNSTREAM TO THE DETRIMENT OF CONSUMER WELFARE AND THE PUBLIC INTEREST

A. Under Well-Established Public Interest Standards, The Commission Must Deny or Designate for Hearing A Transfer of Control Application That Raises Such Serious Anti-Competitive Concerns

If the Commission determines to reach the merits of the Application at this point in time, it should expressly deny the Application or at least designate it for hearing. ^{12/} The Commission should rule in this way because of the serious competitive concerns raised, the substantial and material unresolved questions of fact, and the complete failure of the Application Narrative and associated papers to address and resolve the competitive concerns inherent in the transaction.

Applicants bear the burden of proving by a preponderance of evidence that a grant of their Application will further the public interest. ^{13/} In determining whether a proposed transaction is on balance in the public interest, the Commission must give great weight to “preserving and enhancing competition.” ^{14/} In doing so, the

^{12/} See, e.g., *EchoStar Communications Corp., General Motors Corp. and Hughes Electronics Corp.*, Hearing Designation Order, 17 FCC Rcd 20559, 20665-666 ¶¶ 289-293 (“*Echostar-DIRECTV HDO*”).

^{13/} *Id.* at 20574 ¶ 25.

^{14/} *Id.* at 20575 ¶ 26.

Commission must consider “traditional antitrust principles” ^{15/} and thoroughly investigate credibly alleged antitrust harms. But the Commission also must go further and determine in its independent judgment as the expert communications agency not only (i) whether the transaction may substantially lessen competition so as to violate the Clayton Act or other antitrust laws, but also (ii) “*whether the merger will accelerate the decline of market power by dominant firms in the relevant communications markets.*” ^{16/}

As discussed below, this proposed merger fails the Commission’s test. It would entrench the dominant market power of one-time legal monopolist Inmarsat in certain large and important product/customer segments. It would distort, diminish, or eliminate intra-brand competition between Stratos and other distributors such as Vizada who are not affiliated with Inmarsat but are dependent on Inmarsat for key service inputs. These results hardly qualify as “accelerat[ing] the decline of market power by dominant firms.” To the contrary, the proposed transaction threatens to *extend* Inmarsat’s market power downstream and further insulate it from challenge. The transaction would reduce and potentially eliminate vigorous competition between Stratos and other distributors with respect to vital Inmarsat-based services (1) that are uniquely valuable to major US military, US civilian government, and US headquartered or US operating commercial users and (2) as to which those customers are “locked-in” economically and will have no

^{15/} *Id.* at 20575 ¶ 27.

^{16/} *Id.* (emphasis added).

reasonable non-Inmarsat alternative anytime soon. [17/](#) Nothing could be further from the US national or general public interest.[18/](#)

[17/](#) Customers' dependence arises because Inmarsat uniquely offers L-band services that are global, remain operable in adverse weather such as snow, heavy rain, and sandstorms, use equipment that is relatively economical to install, are certified for safety at sea and in flight, offer speeds in excess of 128 kbps, and are delivered by a proven reliable and financially stable provider. Inmarsat's market power is reinforced by customers pre-existing and often quite substantial investments in Inmarsat equipment, training, and operational experience. Furthermore, Inmarsat service upgrades can sometimes be built up from the base of existing Inmarsat equipment, whereas upgrades to a service provided by another supplier will generally entail starting from scratch with all brand new equipment and possibly also the expense of removing the original Inmarsat equipment due to space, weight, or other considerations. *See* Section II.B.2., *infra*, for more detailed information regarding barriers deterring users of Inmarsat-based service from switching to alternative satellite communications service suppliers.

[18/](#) In the prior proceeding neither Inmarsat, Stratos, Vizada, nor any other party presented the Commission with the need to weigh the public interest pros and cons of any post-April 2009 integration of Inmarsat and Stratos. Inmarsat and Stratos both viewed that issue as becoming ripe in the future only if and when Inmarsat should seek Commission consent to exercise its option and take control of Stratos from the Trustee. Stratos Global Opposition to Petitions to Deny at 20; Inmarsat Opposition to Petitions to Deny at 11. Similarly, Vizada expressly reserved discussion on the merits of this takeover question, focusing instead on whether the creative "financing/option" structure proposed by the parties violated the Commission's real party in interest policies notwithstanding the intermediation of the Trustee. *See* Vizada Petition to Deny at 23 *et seq.*

Consequently, the Commission did not then have before it the question now presented: Would Inmarsat owning Stratos be in the public interest? Nor was the Commission presented with a detailed analysis (such as provided in this Petition) showing that Inmarsat has substantial market power by virtue of the fact that some of its services have features and coverage only Inmarsat can offer or is offering, and that important customers of Stratos, Vizada, and other distributors are economically locked into Inmarsat-based services and equipment for years to come.

Having found that the Trustee would operate Stratos independently, and that the pre-existing distribution agreements prevented anticompetitive discrimination in favor of Stratos until April 2009, the Commission did not need to go further and in

The Commission’s job, as it has articulated many times, is to promote more and better competition and not to preside over the lessening of competition through privately motivated restructuring of industrial relationships. Calling a transaction “vertical” hardly immunizes it from a very close and careful look, nor does such labeling give the proposal a presumption of legitimacy. ^{19/} The possible reduction or elimination of head-to-head horizontal competition between two merging communications companies has long been of great concern to the Commission. ^{20/} Here the prospective reduction or elimination of head-to-head horizontal competition between distributors of Inmarsat-based products brought

fact made no public interest judgment on the merits of the current proposed acquisition of Stratos by Inmarsat.

^{19/} In the transfer of control context, the Commission always looks at vertical issues on their merits and does not treat them in any way as presumptively irrelevant or of no concern. *See, e.g., Application for Consent to the Transfer of Control of Licenses from XM Satellite Radio Holdings Inc., Transferor, to Sirius Satellite Radio, Inc., Transferee*, MB Docket No. 07-57, FCC 08-78, ¶¶ 59-68 (rel. Aug. 5, 2008) (“*XM/Sirius*”); *In the Matter of News Corp. and The DirecTV Group, Inc., Transferors, and Liberty Media Corp., Transferee*, MB Docket No.07-18, 23 FCC Rcd 3265, 3294-332 ¶¶ 64-121 (rel. Feb. 26, 2008)(“*Liberty Media/DirecTV*”); *Applications for Consent to the Assignment and/or Transfer of Control of Licenses from Adelphia Communications Corp. to Time Warner Cable, Inc. and Comcast Corp.*, 21 FCC Rcd 8203, 8256-88 ¶¶ 115-91 (2006) (“*Adelphia*”).

In its *Stratos-Trust Order*, 22 FCC Rcd at 21355 ¶ 62 and n.195 , referring to the “general” economic literature, the Commission alluded to the efficiencies that vertical integration “can offer” and said that a vertical merger is “not intrinsically anticompetitive.” The Commission had before it only the Trust proposal, not a proposal to actually transfer Stratos to Inmarsat itself. Again, the Commission expressly noted that the pre-existing distribution agreements between Inmarsat and its distributors would continue to govern the relationships throughout the life of the Trust until April 2009.

^{20/} *See, e.g., Echostar-DIRECTV HDO*, 17 FCC Rcd at 20604-05 ¶¶ 99-103.

about by a new vertical relationship between one of those distributors and Inmarsat should be of great public concern.

Even if a transaction, as alleged in the instant Application, will purportedly “reduce transaction costs” and end “double marginalization” by eliminating the corporate independence of a downstream distributor (Stratos) from its upstream supplier (Inmarsat) [21/](#), the Commission has recognized that a transaction involving such alleged cost savings may still conflict unacceptably with the public interest because “it may create market power, create or enhance barriers to entry by potential competitors, and create opportunities to disadvantage rivals in anticompetitive ways.” [22/](#)

[21/](#) Application at 7-8.

[22/](#) *Echostar-DIRECTV HDO*, 17 FCC Rcd at 20575-76 ¶ 27.

Quite obviously, the Commission’s *obiter dictum* in its *Stratos-Trust Order* regarding the *possible* efficiency-enhancing aspects of a potential future Inmarsat acquisition of Stratos is not dispositive with respect to the competition concerns raised in detail for the first time in this Petition. Similarly, the Commission’s statement that “[g]iven the availability of alternative mobile satellite capacity, Inmarsat is not a monopolist in the supply of mobile satellite capacity for international mobile satellite services” (*id.* at ¶ 63), painted with far too broad a brush for present purposes.

As made clear in this Petition to Deny, Vizada is not arguing that Inmarsat is the *only* MSS licensee of any competitive significance, or that other MSS licensees do not *ever* compete against Inmarsat-based services. Rather, Vizada contends that for *certain* MSS services and *certain* “locked-in” users, Inmarsat has market power because it is the only practical supplier and no real alternatives exist. The fact, for example, that Iridium and Inmarsat may compete in *other* categories, e.g., handheld devices and low-end voice and short message service, is beside the point. Today, there is no truly comparable alternative to Inmarsat-based services for customers who need high-speed, truly global, weather-tolerant, and safety-certified satellite

The Commission is not unfamiliar with transactions that seriously threaten the public interest, as this one surely does. Typically, however, the Commission has withheld approval of such transactions unless the parties volunteer to comply with stringent conditions designed to protect competition and preserve the public interest that would be placed into the text of the Commission's approval order. ^{23/} Indeed, in addition to such volunteered conditions, the Commission often adds its own further conditions to ensure that competition is enhanced and third parties are protected. ^{24/} In this case, however, Inmarsat's Application offers no competition safeguards to address the market problems discussed further below. Consequently, at this stage, outright denial or designation for hearing are the only appropriate actions on the Application that the Commission may take.

B. The Transaction Would Increase Inmarsat's Ability To Exploit Its Significant Market Power That Derives from Inmarsat's Unique Ability to Meet the Specialized Needs of Important Government and Commercial End Users, and from Barriers to Use of Alternative Suppliers.

As discussed in more detail below, Inmarsat has long held and still retains dominant market power in important service categories for large numbers of service in the maritime, aeronautical, or land environments, delivered by an entity with a proven track record of reliability and financial stability.

^{23/} *E.g., XM/Sirius* at ¶¶ 3, 7; *Liberty Media/DirecTV*, 23 FCC Rcd at 3268 ¶ 3, 3289-90 ¶¶ 53-54, 3294 ¶ 65, 3299-3300 ¶ 77; *News Corp.-Hughes*, 19 FCC Rcd at 523 ¶ 107, 524 ¶ 109, 525-56 ¶ 113-15.

^{24/} *E.g., XM/Sirius* ¶¶ 104-50; *Liberty Media/DirecTV*, 23 FCC Rcd at 3294 ¶ 63, 3334-35 ¶¶ 153-58; *News Corp.-Hughes*, 19 FCC Rcd at 624-27 ¶¶ 358-70.

important end users. This market power arises in part because Inmarsat uniquely operates an MSS satellite system allowing truly global communications at much higher speeds than other MSS operators' systems, which systems operate only regionally or operate globally but with less throughput capability. Inmarsat's global L-band service is uniquely certified for safety at sea and in flight, and is reliably delivered by a financially stable company. Plus, there is a genuine economic incentive for those users that already have installed Inmarsat type-approved equipment and have standardized their training and operations to procure Inmarsat-based service for any new additions to their fleets or networks, and when upgrading their service for additional throughput and new features, rather than to switch to any theoretical alternative suppliers.

1. Origins of Inmarsat's Market Power

Inmarsat began life as an international satellite services monopoly, initially focused on maritime communications, but subsequently expanded to aeronautical and land-based communications. Early Inmarsat end users included the US Navy, the US Air Force, the US Army, the US Coast Guard, the US Marine Corps, and other US national defense and security agencies. Air Force One, Air Force Two, and other US Government VIP aircraft have long been users of Inmarsat-based service. Commercial maritime fleets serving US and global ports (*e.g.*, ocean-going cargo vessels, trans-oceanic cruise lines) and international commercial airlines and their airport operators were early Inmarsat users as well. For many of the types of communications services and locations involved, terrestrial

radio and wire communications provided by other firms were rarely, if ever, an alternative for Inmarsat services. Nor were fixed satellite service providers (Intelsat and domestic operators) legally or technically able to provide the ubiquitous services of the critical sort supplied by Inmarsat.

Given Inmarsat's legal monopoly situation in the past, it is not surprising that many major government and commercial users invested enormous sums in purchasing Inmarsat-specific antennas, terminals, transceivers, other on-board or ground equipment, software, etc. that is compatible only with Inmarsat satellite services. These users also invested large sums and immense amounts of employee time in testing that equipment, training personnel, developing training and operational manuals and guides, working with Inmarsat and its distributors to develop customized communications and ancillary services, and so forth.

Understandably, it would be highly improbable for these users to abandon their enormous investment in Inmarsat-based service and start anew with a different satellite services supplier, even assuming *arguendo* (1) that such a supplier (or choice of suppliers) existed today that could meet their current needs for ubiquity, reliability, and financial solidity, *and* (2) those users had current or prospective budgeted funds to do so. A few alternative MSS suppliers or even FSS suppliers and terrestrial wireless carriers may have services that can meet some current needs of these Inmarsat-based users in some geographic locations as a supplement to Inmarsat. But none offers services in those locations that can fully supplant the attributes inherent with Inmarsat-based services.

2. Inmarsat's Current Market Power

There is ample evidence that today Inmarsat possesses significant market power in important sectors of the MSS business. In the maritime area, for example, Inmarsat-based service underlies the extensive and mission-critical customized voice and data services of the US Navy. The Navy provisioned its entire fleet of over 300 vessels with Inmarsat B HSD shipboard terminals at a very substantial expense. Inmarsat B, Inmarsat C, Fleet 77, 55, and 33 global voice and data services are used by commercial oceangoing fleets. These Inmarsat users have expended considerable sums in outfitting their fleets with the requisite terminals and other equipment, training personnel, and developing extensive and long-standing experience operating such equipment. A single Fleet 77 terminal can cost between \$15,000 and \$26,000, and installation will cost on average an additional several thousand dollars. For these users, there is no reasonable alternative to Inmarsat's global availability, high speed service, and other characteristics. While other MSS and FSS operators may provide service in more limited regions, none has the extensive global coverage that the US Navy and large commercial fleets require.

Similarly in the aeronautical field, substantial end users are economically locked in to Inmarsat-based services. To be sure, key US Air Force VIP aircraft (*e.g.*, Air Force One and Air Force Two) may also have on board equipment for using the service from other MSS and FSS providers in certain regions of the world where such services are adequate. Nonetheless, at the end of the day, those users depend upon the high speed service and global coverage that

only the Inmarsat MSS network can supply today. Other MSS services supplement, but cannot replace, Inmarsat-based service.

It is not unusual for a typical government or business jet Swift 64 customer to spend more than \$300,000 for on-board avionics equipment, installation, testing, required certification and inspection. End users who have made these kinds of investments, particularly on multiple planes for critical cockpit communications, have retained their Inmarsat-based services even when choosing to install alternative offerings from an MSS company with non-global coverage, or a short operational track record, or a financially checkered recent past. In addition, the riskiness and uncertain prospects of new entry in this field and the loyalty and dependence of existing Inmarsat users are well known. For example, a six-year effort to launch a competing commercial high speed data global service in the aeronautical and maritime environments (called “Connexion by Boeing”) famously failed to gain traction and was abandoned by Boeing in August 2006, resulting in \$320 million in write-offs in that year alone. ^{25/}

Indeed, Inmarsat itself has publicly emphasized that for end users of core Inmarsat-based services, there is no realistic and economically practical alternative to Inmarsat when it comes to expanding fleet coverage or increasing capacity. As Inmarsat’s Chairman and CEO has said, Inmarsat’s growth in maritime services “tends to be more secure” [than other communications businesses]

^{25/} Press release, “Boeing to Discontinue Connexion by Boeing Service,” August 17, 2006 available at http://www.boeing.com/news/releases/2006/q3/060817a_nr.html.

and “it tends to be data-driven *where we really don’t have much competition*, and [the business] tends to be business that *gets installed and stays there for a very long period of time.*” ^{26/} “[A]ero[nautical],” he added, “again tends to be *embedded* but not quite as consistent [as maritime].” ^{27/} According to Inmarsat’s 2007 annual report to shareholders: “[T]he average life of one of Inmarsat’s terminals on a ship is approximately ten years and on aircraft our customers intend for it to be even longer.” ^{28/}

Importantly, this well-recognized relative immunity from inter-brand competition extends into the newer Inmarsat maritime and aeronautical broadband services to a considerable degree because the newer services can be built on the existing embedded Inmarsat infrastructure that the users have already installed, paid for, and worked with for years. Inmarsat’s SwiftBroadband service is capable of supporting broadband IP data speeds of up to 432 kbps and, in some cases, may be available more economically with an upgrade of previously installed Inmarsat Swift 64 equipment. But other MSS providers’ broadband offerings are not compatible with that Swift 64 installed base. Inmarsat’s president has said:

[SwiftBroadband] is an extension of a tried and tested satellite network and capability. Many of the existing users who will perhaps

^{26/} A. Sukawaty, Inmarsat Chairman and CEO, Inmarsat Preliminary Full Year Results Presentation for 2006 (emphasis added), excerpt provided, [Attachment A].

^{27/} *Id.* (emphasis added). Land terminals, however, tend to be changed out more readily. *Id.*

^{28/} Inmarsat plc, Annual report and accounts 2007 at 05, available at http://www.inmarsat.com/Downloads/English/Investors/Inmarsat_Annual_Report_Accounts_2007.pdf?language=EN&textonly=False.

step up to SwiftBroadband don't have to start from scratch. If you already access Inmarsat aeronautical services through a suitable high-gain [Inmarsat] antenna, you can simply upgrade the avionics of the aircraft to take advantage of the higher bandwidth of SwiftBroadband. It is much less inconvenient [than when you have no previously installed Inmarsat equipment] when you need to fit an entire fleet [with broadband]. Secondly, it is much more cost effective. To install a SwiftBroadband terminal is probably about 40 percent of the cost of putting Swift 64 in for the first time on a new aircraft, because it is much lower cost equipment. It is even lower if you are upgrading. [29/](#)

More specifically, when asked about “the cost for an airline to update from Swift64 to SwiftBroadband,” Inmarsat officials Sukawaty and Ailes said it could be “as low as a simple picocell [analogous to a WiFi access point] installation,” “[p]erhaps \$20,000 to purchase and then perhaps the same again or more for installation” “say \$40,000.” But “[if you are doing a complete, new installation with nothing on it on an existing aircraft you have to rip apart, well, it runs into *the hundreds of thousands . . .*” [30/](#)

[29/](#) M. Holmes, “Inmarsat Exec Explains Why Aerial Route Is So Appealing,” *Satellite News*, Oct. 29, 2007, excerpt provided, [Attachment C].

[30/](#) Transcript of Inmarsat Q1 2007 investor conference call of May 14, 2007 (emphasis added), excerpt provided, [Attachment D]. The upgrade to SwiftBroadband can be as minimal as a software upgrade where the aircraft already is equipped with a SwiftBroadband-ready Swift 64 installation, including the Inmarsat antenna, Diplexer, LNA, HPA, and cabling. But if the avionics equipment (e.g., satellite modem) on board the aircraft is Inmarsat Classic Aero only or an older Swift 64 installation, a changeout of the avionics hardware is likely required. Such a hardware change is a far cry, however, from first having to rip out the pre-existing cable, diplexer, HPA, and incompatible antenna. See Inmarsat's SwiftBroadband brochure, provided at [Attachment E].

3. Inmarsat Has Market Power Under the Merger Guidelines

Under the Commission-endorsed DOJ/FTC Horizontal Merger

Guidelines, if in the face of a small but significant and non-transitory increase in price (“SSNIP”) imposed by a hypothetical monopolist of a product (or product cluster), enough of that monopolist’s customers would not substitute alternatives so as to render the price increase unprofitable, the product (or cluster) is deemed to constitute the relevant market. ^{31/} Here, whether the relevant market is defined by multiple MSS products (services) or as multiple clusters of two or more MSS products (services) typically bought together, there can be no doubt that Inmarsat has dominance or market power with respect thereto. As the Guidelines expressly contemplate, a product market may be defined and market power inferred in the situation (as here) where a supplier has certain existing customers who are unlikely to switch to alternative suppliers. ^{32/} The concept that a supplier can possess market power with respect to a group of installed-base customers due to economic “lock-in” and the high relative costs for those customers to switch to another brand

^{31/} DOJ/FTC Horizontal Merger Guidelines (last revised 1997) § 1.11, available at <http://www.usdoj.gov/atr/public/guidelines/hmg.htm> .

^{32/} *Id.* § 1.12. (“Existing buyers sometimes will differ significantly in their likelihood of switching to other products in response to a ‘small but significant and nontransitory’ price increase. If a hypothetical monopolist can identify and price differently to those buyers (‘targeted buyers’) who would not defeat the targeted price increase by substituting to other products in response to a ‘small but significant and nontransitory’ price increase for the relevant product, and if other buyers likely would not purchase the relevant product and resell to targeted buyers, then a hypothetical monopolist would profitably impose a discriminatory price increase on sales to targeted buyers.”)

has been recognized by the Supreme Court in a landmark antitrust case. ^{33/} Similarly, in the economic literature, it is well understood that market power can result when “consumers are locked-in by having made an investment in a durable good that is incompatible with other comparable durable goods, or are locked in in other ways.” ^{34/} This Commission is well aware of such “lock in” effects, and indeed has promulgated rules to require remedies like number portability so that consumers are not locked into a particular provider if that can be avoided. The “lock in” need not be an absolute one that renders switching technically or economically impossible, but only needs to make switching costs sufficiently high so that the supplier can exercise substantial market power with respect to that group of customers.

4. The Importance of Continued Vigorous Intra-brand Competition

To the extent that there is any constraining force today on Inmarsat with respect to locked in end users, it is because Inmarsat cannot legally distribute directly to end users (or own a distributor) and because its distributors (including Stratos, Vizada, and others) compete vigorously against each other on the selling side with respect to Inmarsat brand services.

^{33/} *Eastman Kodak Co. v. Image Technical Services*, 504 U.S. 451, 466-67 (1992).

^{34/} N. Economides, *Competition Policy in Network Industries: An Introduction* (June 2003) at 22, available at <http://www.ftc.gov/be/seminardocs/economides.pdf>

This intra-brand competition extends to each distributor's unique earth station facilities and to the development and marketing of competing ancillary proprietary "value added" software and associated services. ^{35/} There is abundant case law, particularly in the antitrust realm ^{36/}, noting the considerable public interest value of downstream intra-brand competition, especially when inter-brand competition is lacking due to monopoly or where one upstream supplier largely dominates the field for certain categories of installed base customers, as Inmarsat does here.

There can be no doubt that intra-brand competition among Stratos, Vizada, and others has resulted in lower downstream prices to carriers and end-users than would have been the case if distribution of Inmarsat services were effectively monopolized. Stratos itself recently has conceded publicly the important role of rivalry among Inmarsat distributors causing margins to be compressed and prices to decline:

^{35/} A key Vizada value-added service is The Source, a web-based tool for service providers, providing access to traffic logs, invoices, and terminal status, enabling the activation of terminals, providing loading for pre-paid credit, setting traffic limits and alerts, enabling the barring/unbarring of service provider terminals, and summarizing selected key information for business overviews. [Attachment F] A comparable Stratos offering is "Stratos Dashboard," a description of which is available at

http://www.stratosglobal.com/documents/factsheets/stratosDashboard_fact_overview.pdf. [Attachment G].

^{36/} See, e.g., *Graphic Prods. Distribs. V. ITEK Corp.*, 717 F.2d 1560, 1578 (11th Cir. 1983); *Eilberger v. Sony Corp. of Am.*, 622 F.2d 1068, 1077-81 (2d Cir. 1980); *New York v. Anheuser-Busch, Inc.*, 1990-2 Trade Cas. (CCH) ¶ 69,184 at 64,492 (E.D.N.Y. 1990); *Tunis Bros. Co. v. Ford Motor Co.*, 696 F. Supp. 1056, 1061 ((E.D. Pa. 1988)). .

Significant competition has led to declining pricing and margins for the Corporation's [Stratos'] services. If such price competition continues, it could have a material adverse effect on the Corporation's revenue and cash flows. The average selling prices and margins of remote telecommunications services historically have declined over their life cycles. This trend reflects, in part the intense competition in the industry in which the Corporation operates. The Corporation competes against 22 other Inmarsat LESOs [land earth station operators], including those affiliated with major international telecommunications companies such as France Telecom/Apax Partners, Telenor [the first two now being Vizada businesses] and Singtel, and approximately 440 distributors of Inmarsat services. The competitive environment has resulted in, and may continue to contribute to, downward pressure on pricing and lower margins. The recently announced acquisition of Telenor Satellite Services by Apax Partners, following Apax Partners' earlier acquisition of France Telecom Mobile Satellite Communications SA, could increase competition and pricing pressures. 37/

C. This Acquisition Poses Substantial Risk of Serious Anti-Competitive Vertical Harms

As the Commission and the antitrust authorities have recognized in analogous contexts, 38/ vertical integration through common ownership of an

37/ Stratos' SEC Annual Form 40-F for the year ended December 31, 2006 at 28, dated March 29, 2007 (emphasis added) available at <http://www.sec.gov/Archives/edgar/data/1178832/000095013307001460/0000950133-07-001460-index.htm>

38/ For representative Commission discussions of vertical integration, see, e.g., *Adelphia*, 21 FCC Rcd 8203, at 8256 ¶ 117; *Liberty Media/DirecTV*, 23 FCC Rcd 3265, at 3294-95 ¶ 66; *News Corp.-Hughes*, 19 FCC Rcd 473, at 510-11 ¶ 76-78. For representative Department of Justice antitrust consent decrees relating to vertical mergers and acquisitions, see, e.g., *United States v. Northrup Grumman Corp. and TRW Inc.*, Civ. Action No. 1:02CV02432 (D.D.C., complaint filed Dec. 11, 2002, final judgment entered June 10, 2003) <http://www.usdoj.gov/atr/cases/f200600/200605.pdf> ; *United States v. Premdor*, , Civ. Action No. 1:01CV01696 (D.D.C. filed Aug. 3, 2001) Competitive Impact Statement available at <http://www.usdoj.gov/atr/cases/f9000/9017.htm> ; *United States v. Sprint Corp. and Joint Venture Co.*, Civ. Action No. 95-1304 (D.D.C., complaint filed July 13, 1995, final judgment entered Feb. 16, 1996) <http://www.usdoj.gov/atr/cases/f0400/0452.pdf> *United States v. MCI*

upstream input supplier (such as Inmarsat) that holds market power in important product or customer segments and a downstream distributor (such as Stratos) can raise serious concerns affecting competition and the public interest. The three main competition policy concerns in this context are that the downstream entity's competitor (such as Vizada) will be (1) foreclosed permanently or temporarily from access to critical inputs, (2) subjected to unreasonable quantitative (price) and/or qualitative (service quality) discrimination that improperly raises its costs relative to the costs of the vertically integrated competitor (Stratos), and (3) exposed to misuse of proprietary information in a way that unfairly tilts or otherwise distorts downstream competition (between Stratos and other distributors). As a result of the vertical combination, the incentives of the upstream entity (Inmarsat) are changed. The integrated firm becomes incented to use its upstream market power strategically in the foregoing three ways to eliminate or distort downstream competition and, once successful, to raise price, reduce output, and extract greater overall profits at the expense ultimately of end-users. [39/](#)

Communications Corp. and BT Forty-Eight Company, Civ. Action No. 94-1317(TFH) (D.D.C., complaint filed June 15, 1994, final judgment entered Sept. 29, 1994), <http://www.usdoj.gov/atr/cases/f0000/0070.pdf> . For an FTC vertical merger case, see, e.g., *In the Matter of Lockheed Martin Corp.*, Docket No. C- 3685 (FTC Sept. 19, 1996) <http://www.ftc.gov/os/1996/09/c3685cmp.pdf> and consent order ¶¶ VI-XIV available at <http://www.ftc.gov/os/1996/09/c3685.do.pdf>

[39/](#) Moreover, the acquisition of the downstream entity (Stratos) may incrementally raise the already high barriers to entry at the upstream level (MSS provider) by eliminating the independence of one distributor (Stratos), weakening remaining non-vertically integrated distributors (e.g., Vizada), and making it clear that any new entrants at the upstream level (as rivals to Inmarsat) cannot hope to succeed unless they undertake concurrently expensive and risky entry at the

1. The Merged Company Is Likely to Engage in An Anti-Competitive Strategy of Permanent or Temporary Foreclosure

First, with respect to foreclosure, the Commission has held that a foreclosure strategy can be a rational and logical (albeit anticompetitive) result of vertical integration. By withholding a critical input from independent downstream rivals, the upstream supplier can drive customers to its own downstream affiliate which, of course, has no difficulty obtaining the critical input from its sister entity. The strategy will be profitable to the vertically integrated firm so long as the profits from increased downstream sales exceed losses incurred in reduced overall upstream sales of the input. ^{40/} If customers view the input as critical, they will have no choice but to switch to the vertically owned distributor and will do so even if the ancillary innovative and value-added features normally offered by the foreclosed distributor in conjunction with that critical input are of genuine value to those customers.

Even when *permanent* foreclosure arguably might be unprofitable, the Commission has found that the *temporary* foreclosure (or even just the *threat* of temporary foreclosure) of a rival distributor's access to a critical input may be a profitable and anticompetitive strategy for a firm to follow once it has vertically

downstream level as well (i.e., simultaneous two-level entry). See DOJ Non-Horizontal Merger Guidelines §§ 4.21-4.213 (1984), available at <http://www.usdoj.gov/atr/public/guidelines/2614.pdf>.

^{40/} *Adelphia*, 21 FCC Rcd 8203, at 8256-58 ¶¶ 117-121, *Liberty Media/DirecTV*, 23 FCC Rcd 3265, at 3294-96 ¶¶ 64-71; *News Corp.-Hughes*, 19 FCC Rcd 473, at 510-13 ¶¶ 78-84.

integrated. [41/](#) By temporarily foreclosing (or threatening to foreclose) supply of the critical input, “the integrated firm may improve its bargaining position so as to be able to extract a higher price” and/or more valuable non-price commitments from the unintegrated distributor-competitor “than it could have negotiated if it were [still] a non-integrated [input] supplier.” [42/](#) Such an anti-competitive temporary withdrawal/threat strategy would be rational and probable of occurrence if there is “a credible risk that [the non-integrated distributor’s customers] would switch [distributors] . . . for a long enough period to make the strategy profitable.” [43/](#)

In the instant case, Inmarsat-based services are absolutely critical to major government (military and civilian) and commercial customers of Vizada. These customers have made enormous investments in terminals, associated ground equipment and software, installation, training, and the like for the use of Inmarsat space segment. Additionally, with respect to many types of satellite services, as discussed *supra*, only Inmarsat of all the MSS suppliers offers the global ubiquity, high speed capacity, and technical, operational, and financial reliability that end users require. Inmarsat knows full well that those customers have strong economic incentives to continue to use their installed Inmarsat equipment base and are

[41/](#) *News Corp.-Hughes*, 19 FCC Rcd 473, at 511-12 ¶¶ 79-81; *Adelphia*, 21 FCC Rcd 8203, at 8257-58 ¶ 121, *Liberty Media/DirecTV*, 23 FCC Rcd 3265, at 3295-96 ¶ 69.

[42/](#) *Adelphia*, 21 FCC Rcd 8203, at 8257-58 ¶ 121, *News Corp.-Hughes*, 19 FCC Rcd 473, at 512 ¶ 81; *Liberty Media/DirecTV*, 23 FCC Rcd 3265, at 3295-96 ¶ 69.

[43/](#) *Adelphia*, 21 FCC Rcd 8203, at 8257-58 ¶ 121, *News Corp.-Hughes*, 19 FCC Rcd 473, at 512 ¶ 79; *Liberty Media/DirecTV*, 23 FCC Rcd 3265, at 3295-96 ¶ 69.

unable and unwilling to switch to another less adequate MSS service as a full-blown substitute for Inmarsat. Consequently, Inmarsat is just like other critical input suppliers whose proposals for downstream vertical integration by means of acquisition were found by the Commission to pose unacceptable risks of permanent or temporary foreclosure.

Foreclosure could take the form of Inmarsat refusing to negotiate in good faith and a timely fashion the distribution renewal agreements that Vizada or other distributors need. Or, it could take more subtle forms, *e.g.*, refusing to agree to particular agreement terms and conditions which any reasonable person in Vizada's (or another distributor's) position would insist upon, refusing to guarantee in writing equitable non-discriminatory treatment of competing distributors relative to Stratos, refusing to provide wholesale price parity, refusing to work with other distributors on customer-desired service enhancements, accelerating termination of certain products to promote migration to services more profitable to Inmarsat and/or Stratos, without regard to unaffiliated distributors, and refusing to implement structural separation mechanisms adequate to ensure proprietary information of other distributors will not be available to Stratos employees or to any Inmarsat employees engaged in the direct distribution of services. [44/](#)

[44/](#) When a party to a vertical merger has market power with respect to a critical input, the antitrust authorities have not hesitated to craft decrees that help ensure there will be no unreasonable refusal to supply that input for the use of rival, less-integrated firms. *See, e.g., United States v. Monsanto Co. and Delta and Pine Land Co.*, Civ. Action No. 1:07-cv-00992 (D.D.C., complaint and proposed consent decree filed May 31, 2007) available at <http://www.usdoj.gov/atr/cases/monsanto.htm> ; *United States v. Enova Corp.*, 107 F.

2. There Is a Substantial Risk That the Combined Inmarsat/Stratos Will Engage in an Anti-Competitive Strategy of Raising Rivals' Costs by Means of Price or Non-Price Discrimination

Another harm attributable to vertical integration identified by the Commission is discrimination in access to critical inputs over which the upstream supplier exercises market power. ^{45/} A vertically integrated Inmarsat may simply bill Vizada or other competing distributors more than the ostensible transfer price it charges Stratos and do so for no reason other than to give Stratos an unmerited competitive advantage with customers downstream. ^{46/} Alternatively, “a vertically integrated firm [*i.e.*, Inmarsat/Stratos] could disadvantage its downstream competitors [*e.g.*, Vizada] by raising the price of an input to all downstream firms

Supp. 2d 10 (D.D.C. 2000) and Competitive Impact Statement available at <http://www.usdoj.gov/atr/cases/fl700/1789.htm>; *United States v. Sprint Corp. and Joint Venture Co.*, Civ. Action No. 95-1304 (D.D.C., complaint filed July 13, 1995, final judgment entered Feb. 16, 1996) available at <http://www.usdoj.gov/atr/cases/sprint1.htm> ; *United States v. MCI Communications Corp. and BT Forty-Eight Company*, Civ. Action No. 94-1317(TFH) (D.D.C., complaint filed June 15, 1994, final judgment entered Sept. 29, 1994), available at <http://www.usdoj.gov/atr/cases/mci0000.htm>; *In the Matter of Cadence Design Systems, Inc.*, FTC Dkt. No. C-3761 (May 8, 1997) available at <http://www.ftc.gov/os/caselist/c3761.shtm> *In the Matter of America Online Inc. and Time Warner Inc.*, FTC File No. 001 0105, Docket No. C-3989 available at <http://www.ftc.gov/opa/2000/12/aol.shtm>.

^{45/} *Adelphia*, 21 FCC Rcd 8203, at 8256 ¶ 117, *News Corp.-Hughes*, 19 FCC Rcd 473, at 510-11 ¶ 78; *Liberty Media/DirectTV*, 23 FCC Rcd 3265, at 3295 ¶ 68.

^{46/} If there are no clearcut FCC conditions prohibiting Inmarsat from price discriminating in favor of Stratos, Vizada’s own reseller customers may well presume that Inmarsat will disfavor Vizada and as a consequence they will shift their allegiance to Stratos. With fewer reseller customers, Vizada will find it harder to compete vigorously in the distribution of Inmarsat services and the result is likely to be higher resale prices due to diminished intra-brand competition.

(including itself [Stratos]) to a level greater than that which would be charged by a non-vertically integrated supplier of the input.” [47/](#) “A vertically integrated [firm] might employ such a strategy to raise its rivals’ costs. * * * The vertically integrated distributor [Stratos] could then enjoy a competitive advantage, because the higher price for the [input] that it would pay would be an internal transfer that it could disregard when it sets its own [downstream] prices.” [48/](#)

The Commission calls this “stealth discrimination.” [49/](#) In this way the input supplier with market power can distort competition at the distributor level and, in any event, raise prices to ultimate end-users. Inmarsat is already on the public record saying it favors elimination or drastic reduction of volume discounts to distributors like Vizada, notwithstanding that such discounts reasonably reflect economic efficiencies. [50/](#) As indicated, even if volume discounts are decreased

[47/](#) *Adelphia*, 21 FCC Rcd 8203, at 8257 ¶ 119, *News Corp.-Hughes*, 19 FCC Rcd 473, at 512 ¶ 81; *Liberty Media/DirecTV*, 23 FCC Rcd 3265, at 3294-95 ¶ 66.

[48/](#) *Adelphia*, 21 FCC Rcd 8203, at 8256 ¶ 119, *News Corp.-Hughes*, 19 FCC Rcd 473, at 512 ¶¶ 81-82; *Liberty Media/DirecTV*, 23 FCC Rcd 3265, at 3294-945 ¶ 66.

[49/](#) *Adelphia*, 21 FCC Rcd 8203, at 8258 ¶ 123; *see also News Corp.-Hughes*, 19 FCC Rcd 473, at 512 ¶ 82 (“In the case of a wholly owned downstream affiliate, it may be difficult to detect if price discrimination is occurring and anti-discrimination rules may not function effectively.”).

[50/](#) Inmarsat’s CEO said recently that starting in April 2009, Inmarsat’s plan is to drastically reduce the volume discounts going to its primary distributors, Vizada and Stratos. A. Sukawaty, Preliminary 2007 Inmarsat plc Earnings Presentation, March 6, 2008, Thomson StreetEvents Transcript, excerpt provided, [Attachment H]. The percentage reduction in volume discounts appears to be at least one-third of the total but the reduction percentage could run higher depending on precisely how Inmarsat intends to ensure it [the discount money] “comes back to us.” *Id.* (The reduction in volume discounts granted to Stratos post-acquisition will be a

identically for Stratos as well, the net effect of the strategy enabled by vertical integration could be for Inmarsat to raise prices and extract more money from end-users dependent upon or economically locked into Inmarsat's critical services.

A similar effect can also be achieved by favoring the vertically owned distributor (Stratos) with quicker and qualitatively superior provisioning of critical inputs and associated services than is provided to the non-integrated distributor (such as Vizada). For instance, Inmarsat would have the incentive and ability post-merger to raise the costs of non-Stratos distributors by discriminatorily "slow-rolling" requests or operational requirements for Vizada or other unaffiliated distributors, *e.g.*, adjusting spot beams where needed for Vizada customers, reasonably prioritizing space segment for Vizada customers during times of congestion, identifying and resolving outages or other service problems, providing assistance and trouble shooting for customer-specific problems, responding to end-user needs to develop special customized features, and/or providing timely information about planned or considered network or systems upgrades or other changes affecting services. Inmarsat also could elect to charge Vizada and other distributors for these activities but not charge Stratos for similar activities, thus raising the costs for unaffiliated distributors. Inmarsat could also give Stratos'

wash within the vertically integrated family of Inmarsat companies. Not so for Vizada or other distributors, of course.) Inmarsat's CFO Rick Medlock made no bones about the fact that "taking what is essentially a big chunk of volume discount away from distribution partners is painful for them." *Id.*

customers unwarranted priority over other distributors' customers when allocating space segment resources.

After the merger, Inmarsat could coordinate its deployment of satellites and assignments of frequency and bandwidth to closely match the specific wishes of Stratos' sales and marketing arm, ignoring or delaying comparable action on other distributors' communicated needs. [51/](#) In addition to skewing important satellite capacity and locational decisions intentionally in Stratos' favor, [52/](#)

[51/](#) For example, some satellite slots will be better than others – because of teleport locations, customer needs, or some other factors – for Stratos versus Vizada (or another distributor). Post merger Inmarsat would have the incentive and ability to skew important business decisions and otherwise allocate resources unfairly to favor Stratos over other distributors. For instance, the Inmarsat I-4 satellites have some 228 narrow spot beams that can be dynamically reconfigured where high data usage is expected. If Vizada were to need Inmarsat to command the satellite to reshape spot beams so they are more adapted to a prospective Vizada customer's needs, after the merger Inmarsat might reject such a request on pretextual grounds or simply slow-roll its response so as to supply a competitive advantage to Stratos in obtaining that customer's Inmarsat business.

[52/](#) These concerns are very real. Inmarsat had originally planned to keep an I-3 spacecraft at 142° WL to support spot beam leasing, primarily Swift Closed User Group (CUG) service. This was beneficial to Vizada because the region served from 142° WL could be serviced from Vizada's Santa Paula, California earth station whereas Stratos' access to this region is provided via a New Zealand earth station, which is a non-US facility much closer to the edge of coverage. To be ready to support leasing services at 142° WL, Vizada made a significant investment in the form of antenna upgrades, hardware purchase, deployment, testing, and securing proper FCC licensing. Despite that substantial detrimental reliance by Vizada, Inmarsat has just announced that it no longer intends to support spot beam leasing at 142° WL and that any spot beam leases originally destined for 142° WL (such as the CUG service) will have to be moved to the spacecraft at 98° WL. Stratos as well as Vizada already provide Gen-2 leasing at 98° WL via North American teleports. Thus, Inmarsat effectively eliminated any commercial or strategic advantage that Vizada might have gained when it obtained FCC authorization on July 23, 2008 for CUG service on the satellite at 142° WL based on Inmarsat's originally announced plans.

Inmarsat could readily discriminate against rivals and in favor of Stratos in terms of when and how it communicates to distributors critical changes in previously announced Inmarsat plans upon which such firms rely. [53/](#) Inmarsat also could delay the production of technical documents to Vizada or other distributors so as to disadvantage them and help Stratos in terms of timely initiating services to customers and maintaining a good reputation for responsiveness to prospective customers. [54/](#)

Inmarsat might also cause unaffiliated distributors such as Vizada but not Stratos to undertake certain out-of-pocket expenditures for ground station equipment and upgrades that later become stranded investments due to changes in technology or the way Inmarsat does business. [55/](#) Or, Inmarsat may discriminate

[53/](#) Fear of such discrimination post-merger is very realistic. Contrary to the original plan for relocking, Inmarsat's revised relocking strategy will result in an I-4 spacecraft at 143.5° EL with coverage of the Far East and the Pacific. Given that Stratos is already equipped (and Vizada is not) with a Gen-3 antenna that provides access to the 143.5° EL location, Inmarsat's change of plan will create a significant competitive disadvantage for Vizada relative to Stratos.

[54/](#) Inmarsat has slow-rolled the release of technical data relative to the Aero I-4 Interface Control Document, thereby creating a disadvantage for Vizada and its primary Classic Aero customer, ARINC. Stratos and its key customer SITA have not encountered similar technical disadvantages.

[55/](#) Inmarsat has been known to issue Change Notices that require significant expenditures and operational changes by distributors. For example, in November 2005, Inmarsat issued a Change Notice that affected Classic Aero services on the I-3 satellites and the interoperation of ground earth stations (GESs) operated by Vizada (and Stratos) and aeronautical earthstations (AESs) (i.e., the equipment on board the aircraft). With Vizada having made the substantial expenditures necessary to comply with the new requirements for Classic Aero, Inmarsat then decided to provide the Classic Aero service on its just-launched I-4 satellites.

in how much it reimburses or credits distributors in such circumstances. The net effect, however, is to raise costs of unaffiliated distributors relative to Stratos.

Because of its former long-standing and special status as an Intergovernmental Organization (IGO), Inmarsat retains an almost unparalleled level of visibility and access into the nonpublic thinking and plans of regulators worldwide, especially with respect to next generation converged broadband services (BGAN, SwiftBroadband, FleetBroadband, handheld, *et al.*). Historically, Vizada, Stratos and other distributors have depended heavily on Inmarsat's sharing that information with them so that they can then share it with their present and prospective customers. If the regulatory information flow from Inmarsat were to be skewed or disrupted in some way as to favor Stratos and disfavor others following the Inmarsat/Stratos merger, that would put unaffiliated distributors at a severe competitive disadvantage substantively and reputationally.

In similar situations involving vertical mergers that change incentives and make probable blatant or concealed discrimination by an upstream supplier with market power, the Commission and the antitrust authorities have not hesitated to require extensive commitments from the applicants and also to impose

Vizada incurred a substantial cost in timely complying with the 2005 Change Notice but may never recover that investment as a consequence of this decision. Obviously, post-merger Inmarsat could use the Change Notice process in a way that hurts unaffiliated distributors and advantages Stratos (or any Inmarsat-owned direct distribution arm).

stringent conditions on the merged firm to ensure that discrimination does not take place post merger. [56/](#)

3. There Is a Demonstrable Danger that Post Merger Inmarsat May Misuse Vizada's Proprietary Information to Impair Competition Between Stratos and Unaffiliated Distributors

A third way in which the vertically integrated Inmarsat/Stratos will be able to distort competition is when Inmarsat broadly seeks and/or genuinely needs competitively-sensitive proprietary information from Vizada (or other unaffiliated distributors), *e.g.*, to enable Vizada (or such other distributors) to prepare a bid for customized services or to expand services to a customer. For example, the problem can arise insofar as Inmarsat makes Vizada-proprietary information available to Stratos (or to any direct distribution business within Inmarsat) so that the integrated firm can either outcompete Vizada on the pending project(s) or use the

[56/](#) *Sprint Corporation Petition for Declaratory Ruling Concerning Section 310(b)(4) and (d) and the Public Interest Requirements of the Communications Act of 1934, as amended, Declaratory Ruling and Order, 11 FCC Rcd 1850, 1867-72 ¶¶ 101-33 (1996); see also Request of MCI Communications Corp., British Telecoms. Plc, Joint Petition for Declaratory Ruling Concerning Section 310(b)(4) and (d) of the Communications Act of 1934, as amended, Declaratory Ruling and Order, 9 FCC Rcd 3960, 3969 ¶ 43 (2004).* The antitrust authorities have also imposed various restrictions to help prevent anticompetitive discrimination in vertical merger situations. *See, e.g., United States v. Northrup Grumman Corp. and TRW Inc.*, Civ. Action No. 1:02CV02432 (D.D.C., complaint filed Dec. 11, 2002, final judgment entered June 10, 2003) available at <http://www.usdoj.gov/atr/cases/f200600/200605.pdf>; *United States v. Sprint Corp. and Joint Venture Co.*, Civ. Action No. 95-1304 (D.D.C., complaint filed July 13, 1995, final judgment entered Feb. 16, 1996) available at <http://www.usdoj.gov/atr/cases/sprint1.htm>; *United States v. MCI Communications Corp. and BT Forty-Eight Company*, Civ. Action No. 94-1317(TFH) (D.D.C., complaint filed June 15, 1994, final judgment entered Sept. 29, 1994), available at <http://www.usdoj.gov/atr/cases/mci0000.htm>.

information to help determine Stratos' own (or Inmarsat's direct) bids on future projects. Given the vigorous price competition among Inmarsat-based service providers that has flourished heretofore, [57/](#) it is especially important that Vizada's actual and prospective prices and pricing plans not find their way to Stratos (or any Inmarsat entity engaged in direct distribution) by way of Inmarsat. By failing to put in place, audit, and strictly enforce a fully adequate firewall for proprietary information of unaffiliated distributors, Inmarsat would have the ability to deprive downstream end users of merits-based competition. In several comparable vertical merger clearance situations, this Commission [58/](#) and the antitrust authorities [59/](#)

[57/](#) See Stratos Form 40-F for year ended 2006 quoted in footnote 39, *infra*.

[58/](#) *Sprint Corporation*, Declaratory Ruling and Order, 11 FCC Rcd 1850, 1870-71 ¶¶ 118-28 (1996).

[59/](#) For representative vertical merger decisions in which firewalls were imposed, as part of consent decrees negotiated by the Department of Justice's Antitrust Division, see, e.g., *United States v. Northrup Grumman Corp. and TRW Inc.*, Civil Action No. 1:02CV02432 (D.D.C., complaint filed Dec. 11, 2002, final judgment entered June 10, 2003), see competitive impact statement (CIS) filed Dec. 23, 2002, at 18-19, regarding rationale for imposing firewalls, CIS available at <http://www.usdoj.gov/atr/cases/f200600/200605.pdf> ; *United States v. Sprint Corp. and Joint Venture Co.*, Civil Action No. 95-1304 (D.D.C., complaint filed July 13, 1995, final judgment entered Feb. 16, 1996), see CIS filed July 13, 1995, 24, 43-45 regarding rationale for imposing firewalls, CIS available at <http://www.usdoj.gov/atr/cases/f0400/0452.pdf> ; *United States v. AT&T Corp. and McCaw Cellular Communications, Inc.*, Civil Action No. 94-1555 (D.D.C. complaint and proposed final judgment filed July 15, 1994, see CIS regarding rationale for imposing firewall; *United States v. MCI Communications Corp. and BT Forty-Eight Company*, Civil Action No. 94-1317(TFH) (D.D.C., complaint filed June 15, 1994, final judgment entered Sept. 29, 1994), see CIS filed June 15, 1994, at 12, 25-26 regarding rationale for imposing firewalls, CIS available at <http://www.usdoj.gov/atr/cases/f0000/0070.pdf> . For FTC vertical merger cases settled along similar lines with firewalls in consent orders, see, e.g., *In the Matter of*

and this Commission have insisted upon strict firewalling, compliance training and reporting, and auditing to prevent the competitive harm.

III. ABSENT ENFORCEABLE CONDITIONS TO ADDRESS INMARSAT INCENTIVES FOR ANTI-COMPETITIVE CONDUCT, THIS APPLICATION MUST BE DENIED

Given the serious vertical harms that are threatened by this transaction, should the Commission nonetheless reach a point where it is inclined to consider granting the Application, it is absolutely critical that the Commission condition any approval on:

(1) auditable arms-length structural separation between Inmarsat and Stratos;

(2) auditable, enforceable, and comprehensive non-discrimination guarantees with respect to everything material to the competitive process, including:

(a) satellites, bandwidth, and services/products/enhancements, (b) wholesale pricing and volume discounting and other sales incentive programs, (c) Service Level Agreements, (d) access to Inmarsat personnel, Inmarsat technical infrastructure, systems, software, databases, applications, and technical, regulatory, and market information, (e) commercial, technical, and regulatory support, and (f) concrete recognition of Vizada's past and future expensive investments in developing customized solutions to meet certain significant customers' needs; and

Lockheed Martin Corp., Docket No. C- 3685 (FTC Sept. 19, 1996) complaint ¶ 36 available at <http://www.ftc.gov/os/1996/09/c3685cmp.pdf> and consent order ¶¶ VI-XIV available at <http://www.ftc.gov/os/1996/09/c3685.do.pdf> .

(3) auditable, enforceable, and comprehensive confidentiality firewalls to prevent misuse of (and unneeded access to) Vizada proprietary information. It would not be sufficient for the Commission to rely upon whatever language may be in distribution agreements proposed by Inmarsat.

IV. CONCLUSION

For the foregoing reasons, the Commission should dismiss the Application or postpone further processing until Inmarsat has completed new distribution agreements to take effect after April 2009, and until the current questions regarding the MSS industry and Inmarsat's future ownership are clarified. In the event that the Commission nevertheless continues to process the Application, the Application should be denied outright or designated for hearing to resolve the serious competition and public interest concerns raised therein and discussed above. At the least, the Application cannot be granted without conditions (1) requiring structural separation of Stratos (and any Inmarsat entity engaged in direct distribution) from Inmarsat network operations, (2) restricting discrimination

among distributors in favor of Stratos, and (3) preventing the sharing of proprietary information of unaffiliated distributors with Stratos or with persons within Inmarsat except as necessary for Inmarsat to provide the relevant satellite communications service.

Respectfully submitted,

VIZADA, INC.
VIZADA SERVICES LLC

By: /s/ David J. Saylor

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Their Counsel

August 13, 2008

DECLARATION

I, Robert M. Baker, President of Vizada, Inc. and VIZADA Services LLC, hereby declare under penalty of perjury that I have reviewed the foregoing Petition to Deny and that the factual statements made therein are true and correct to the best of my knowledge, information, and belief.

By: 
Robert M. Baker, President
Vizada, Inc.
VIZADA Services LLC

August 13, 2008

[Attachment A]

FINAL TRANSCRIPT

Thomson StreetEvents™

ISAT.L - Preliminary Full Year Results Presentation

Event Date/Time: Feb. 27, 2007 / 4:00AM ET

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Feb. 27. 2007 / 4:00AM, ISAT.L - Preliminary Full Year Results Presentation

As far as EBITDA is concerned, you can see we've targeted healthy increases in our EBITDA margins. I think we've targeted a 70% EBITDA margin by 2010. We are on track to deliver that, taking our margins this year from 64% in '05 to 66% in 2006. Some of this is due certainly to cost control. Also, I think you should look, underlying this, though, we had end of the Inmarsat IV program, which produced a reduction in headcount and produced a one-off one-time redundancy cost which is also embedded in this figure, so an extremely robust underlying EBITDA growth.

Dividends--as we've said, our commitment to returning cash to shareholders is deeply embedded in this company from the day we listed the Company and the shares. Our 2005 pro forma figure was \$0.2562. With this \$0.16 final dividend, it takes our total-year dividend for 2006 up to \$0.2666 per share, an increase of 4%, again conservatively in line with the underlying operating cash flow growth of the business. We look forward to continuing on that trend as operating cash flows continue to increase.

On the operational highlight side, which we will come onto in more detail through the course, strong core business is driving sustainable new revenues. I think that is the most encouraging piece. If you look at that maritime growth, and we've said this many times in quarters past, we will take \$1 in maritime growth over \$1 in just about any other sector because it tends to be more secure, it tends to be data-driven where we really don't have much competition, and it tends to be business that gets installed and stays there for a very long period of time. So if you compare that to land customers, which can change terminals very easily, you compare it to aero, which again tends to be embedded but not quite as consistent, our maritime revenues are sustainable new revenues and we're getting quite a significant now and diversified base of terminals in this market out there.

Our BGAN service, which is an important first step into the more broadband area, higher data speeds for us, has been successfully launched. It's in the marketplace with satisfied customers, and within those customers' groups, we are seeing growing demand. It's one thing, with our highly industrial governmental base of customers, to get those first sales in the customers that have known us for a long time, but they will test and trial, put it among different user groups within their group. It's only when they get that positive feedback do you see continued growth of terminals.

You've heard us talk a lot in the early stages about the media. Certainly, you would be hard pressed to see BBC, CNN, Al Jazeera, CCTV from China, you'd be hard pressed to see a 30 to 60-minute segment without at least one transmission now on BGAN with Inmarsat. They don't put our name at the bottom but you can recognize the picture. It's the full-screen instead of that little fuzzy picture in the corner, but it's a full-screen that's not quite broadcast-quality. But they can do this inexpensively, effectively, on-the-scene reporting. They are fanning these terminals out now to more and more of their reporters. That's just an example of the way we see this getting deployed within our various customer groups. It starts with one, two, and they're growing it amongst them. It's not particularly quick take-up in the early stages, but as it proves itself in and we're getting performance figures back showing it is working as presented, then they will start to buy and put it on their purchase lists and authorize their users to buy. That's the development we are seeing.

We are seeing new distribution partners come on as well. We are up to I think 18 now total distribution partners for BGAN, so a diversified group of distributors globally. The handheld service of course we are extremely excited about. It's only available today in Southeast Asia on the Garuda satellite. I think we're going to show you some geographic depictions of that in a moment. We will expand this coverage in 2007 and full global service in 2008.

You may have seen some of the announcements by some of the players in this market recently. We are hitting them at a vulnerable time. Globalstar's constellation is failing. They have I want to say 130 to 150,000 terminals out there, subscribers. We're going to go after them. Iridium is trying to take advantage of that as best they can, but they have a constellation that is also reaching the end of its life, and we intend to hit them hard as well. So this is just a golden opportunity and I think we're moving in in a golden time to address it.

Lastly but not least before I hand over to Rick is the decision to launch our third Inmarsat IV satellite. We said we were going to do it during the course of last year based on growth in some of these categories exceeding our expectations. We have now exercised our option with Lockheed, so it will be an Atlas V rocket that we use to launch this satellite, some would say fortunate, given what happened to the C launch for those of you that follow this, but we actually exercised the option prior to that C

[Attachment B]



Acquisition of Stratos Global Corporation by CIP Canada Investment Inc.



A Renewed CFA Will Result in Materially Less Favorable Terms for Stratos

- *Andrew Sukawaty, Inmarsat Q4 2006 Results Call, February 2007:*
 - *[The CFA] was good in many respects. It created stability for [our distributors] and for the Company post the private equity privatisation of the company*
 - *We look to that volume discount scheme to drive not only more volume but better pricing to customers. We didn't necessarily see that happen with DP consolidation*
 - *We are not in...negotiations at this stage, but I can tell you we are clear that things like the volume discount scheme will not continue, aspects like restrictions on us appointing new distributors will not continue, prohibition on price increases will not continue*
 - *What will most likely significantly change:*
 - *Volume Discount Scheme*
 - *Restriction on direct sales*
 - *Restriction on signing major service providers directly*
 - *Limitations on wholesale price increases*

[Attachment C]

66 of 178 DOCUMENTS

Satellite News

October 29, 2007 Monday

Inmarsat Exec Explains Why Aerial Route Is So Appealing

SECTION: Vol. 30 No. 43

LENGTH: 991 words

By Mark Holmes

Inmarsat's launch of SwiftBroadband service, capable of supporting broadband IP data at speeds up to 432kbps, is a significant milestone for the company as it looks to crack the commercial airline market for data services. Inmarsat's president Michael Butler believes the service takes its offering to the aeronautical sector to a new level. As well as boosting its offering to government and business jet users, the company also hopes the service will prove a hit with commercial airlines. Butler told Satellite News, "This is an extension of a tried and tested satellite network and capability. Many of the existing users who will perhaps step up to SwiftBroadband don't have to start from scratch. If you already access Inmarsat aeronautical services through a suitable high-gain antenna, you can simply upgrade the avionics of the aircraft to take advantage of the higher bandwidth of SwiftBroadband. It is much less inconvenient when you need to fit an entire fleet. Secondly, it is much more cost effective. To install a SwiftBroadband terminal is probably about 40 percent of the cost of putting Swift 64 in for the first time on a new aircraft, because it is much lower cost equipment. It is even lower if you are upgrading. This is evolutionary for us, but for the customer, the applications and the support might be revolutionary."

Significance

For Inmarsat, the launch of SwiftBroadband is the launch of another major

[Attachment D]

FINAL TRANSCRIPT

Thomson StreetEvents™

ISAT.L - Q1 2007 Inmarsat plc Earnings Conference Call

Event Date/Time: May. 14. 2007 / 10:00AM ET

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May. 14. 2007 / 10:00AM, ISAT.L - Q1 2007 Inmarsat plc Earnings Conference Call

military market, and with SwiftBroadband coming, we expect that kind of growth to continue in our aero market, even without the, I guess, huge potential that exists in the commercial airline market. So I think we still feel very confident about the aero market, but we sure would like the regulatory approvals to start to take some added momentum. Thanks for your questions, Ottavio.

Ottavio Adorisio -- Analyst

Is it possible to just follow up on the SwiftBroadband? Could you just give us a bit of color in terms of the cost for an airline to upgrade from Swift64 to SwiftBroadband, please?

Andy Sukawaty - Inmarsat - Chairman and CEO

It depends. If the airline already has an existing antenna installation, if the airline is putting in broadband for Wi-Fi hot spots to the seats, they're putting in a picocell, if they have no installation of any antenna system and are doing it to an existing aircraft or if they are doing it to a brand-new aircraft at the point of manufacture, each of those is pretty dramatically different cases in terms of the cost. Cost can be as low as a simple picocell installation. Simon is --

Simon Ailes - Inmarsat - IR

Perhaps \$20,000 to purchase and then perhaps the same again or more for installation.

Andy Sukawaty - Inmarsat - Chairman and CEO

So say \$40,000. And if you are doing a complete, new installation with nothing on it on an existing aircraft that you have to rip apart, well, it runs into the hundreds of thousands, so it really varies by what point of installation you are doing and what you are trying to implement.

Operator

Paul Howard.

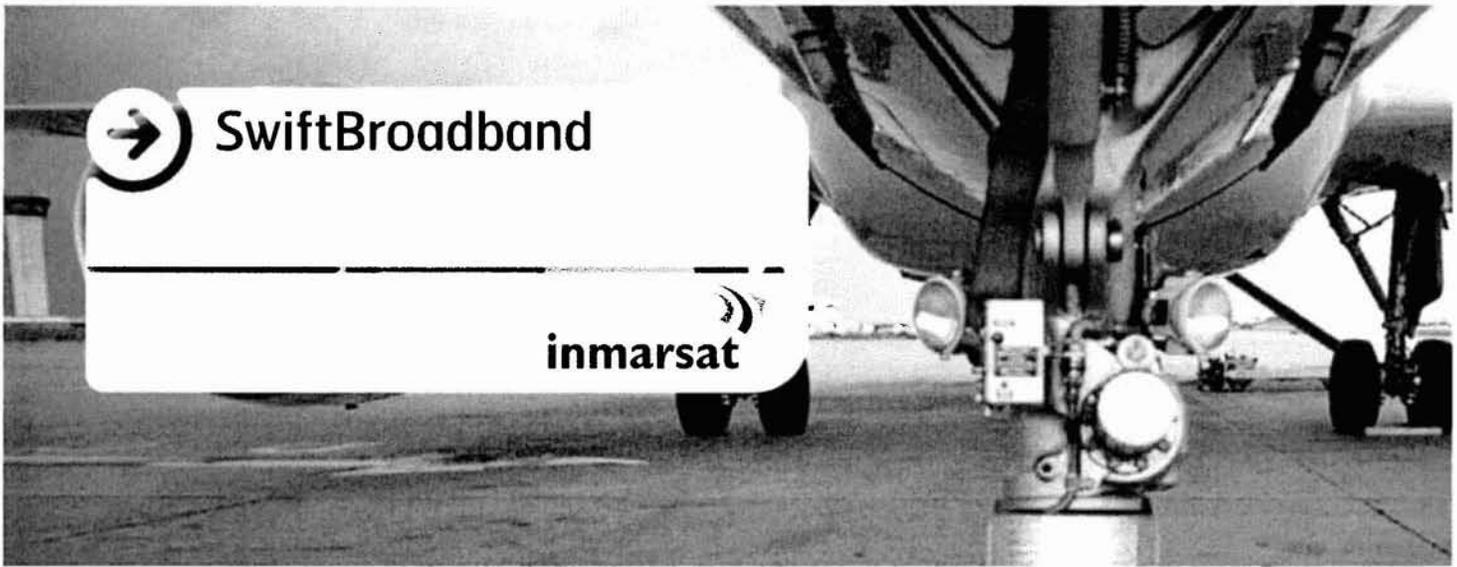
Paul Howard -- Analyst

A couple of questions. Firstly, on maritime, I wonder whether you could split or give an indication of the split of the 13% revenue growth between new ship builds and existing revenue coming or revenue coming from existing ships that already have Inmarsat equipment on.

Secondly, on the handset launch, help us sort of understand what the thinking is about pricing strategy in terms of how much -- in terms of how aggressive you could be in terms of the control you have over distribution and perhaps also the ability to almost cross-subsidize from some of the BGAN products into the handheld market.

And then finally, just as we look out into the future in terms of operating leverage, as revenue growth picks up, are you now more optimistic of achieving EBITDA margins in excess of 70%, given the largely fixed cost base you've got? Thank you.

[Attachment E]



• SwiftBroadband provides voice and high-speed data, simultaneously, through a single installation on a global basis.



High-speed, IP-based voice and data

SwiftBroadband is an IP-based packet-switched service that provides a symmetric 'always-on' data connection of up to 432kbps per channel. In Standard IP mode, the service is shared with other concurrent users of the system, providing a 'best effort' service. SwiftBroadband can also provide a pre-determined quality of service through streaming classes of 32, 64 or 128kbps. Higher bandwidth can be achieved by combining channels, currently up to two per installation.

SwiftBroadband provides a high-quality voice channel with the full functionality of land-based fixed phone services and a generic SMS service. For backward compatibility, it also provides a circuit-switched ISDN service.

It is possible to have a combination of multiple packet-switched services with one circuit-switched service active at the same time.

The end-user experience depends on the native performance of SwiftBroadband, as well as any performance-enhancing technologies that are being used eg. data compression, IP and application optimisation.

Features

- Standard IP data – currently up to two channels per aircraft:
 - Up to 432kbps per channel over a high-gain antenna
 - Up to 332kbps over an intermediate-gain antenna
- IP data streaming on demand at 32, 64, 128kbps – can be combined for higher rates
- Simultaneous voice and high-speed data:
 - Packet data (TCP/IP) and ISDN
 - Circuit-switched voice and VoIP
- Standalone or simultaneous operation with Inmarsat's Aero H/H+ and Swift 64 services
- GPRS and UMTS compatible
- Compliant with ARINC 781
- Support for high-assurance applications, including NATO secret and NSA Type-1 encryption systems providing remote mobile access to classified networks – STU-III/IIB, STE, KIV-7, Brent and HAPE devices including KG-175 TAFLANE, KG-235 Sectera, KG-250 Altasec, subject to verification testing

Requirements

The following is required to operate SwiftBroadband:

- SwiftBroadband avionics - the satellite modem to access the service
- An aircraft antenna capable of receiving SwiftBroadband and related equipment, eg. Diplexer, LNA, HPA and cabling
- An agreement with a SwiftBroadband service provider

Aircraft without an Inmarsat system

For new aircraft, airframe manufacturers can advise if SwiftBroadband avionics are an option either as SFE or BFE. For aircraft already in use, SwiftBroadband avionics manufacturers can advise on recommended equipment and STC status.

Upgrading an existing Inmarsat installation

Users can upgrade to SwiftBroadband, depending on the equipment already installed on the aircraft.

The minimum requirement is a software upgrade, where the aircraft is equipped with a 'SwiftBroadband-ready' installation.

If the avionics onboard the aircraft are either Classic Aero only (eg. Aero H/H+, Aero I), or an older Swift 64 installation, a hardware change to the avionics is most likely required. Other scenarios may require replacement or upgrading of associated equipment, such as cabling, diplexer, HPA, to be able to install SwiftBroadband.

Consultation with the relevant avionics and antenna manufacturers is necessary to establish which upgrade path is appropriate for each particular aircraft configuration.

Applications

SwiftBroadband supports a wide range of crew and passenger applications:

Crew

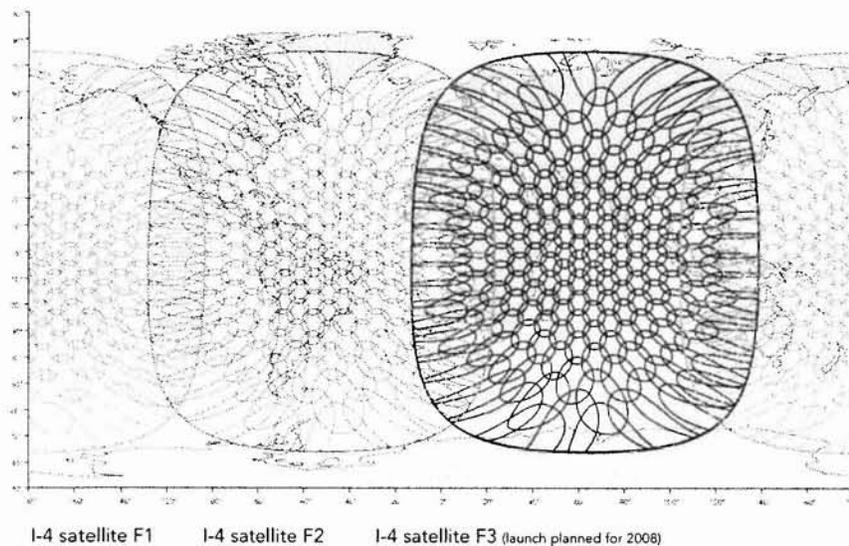
- Safety services – Automatic Dependent Surveillance (ADS), Controller / Pilot Datalink Communications (CPDLC)
- Voice communications
- Electronic Flight Bag (EFB), flight plan, weather and chart updates
- Engine performance monitoring and fault reporting for major systems
- General operational planning
- Crew reporting and general administration

Passengers

- Telephony: in-seat, mobile, VoIP and text messaging
- Email, intranet, internet and instant messaging
- Secure VPN access
- Large file transfer – presentations, graphics, video
- Videoconferencing
- In-flight news updates

Coverage

SwiftBroadband uses the narrow spot-beams of the Inmarsat-4 satellites. Initially accessible over the Indian and Atlantic Ocean regions, it will be available globally, except the extreme polar regions, following the successful launch of the third I-4 satellite.



The map depicts Inmarsat's expectations of coverage, but does not represent a guarantee of service. The availability of service at the edge of coverage areas fluctuates depending on various conditions. The launch of the F3 satellite is planned for 2008.

How to buy

Avionics/Antennas

SwiftBroadband avionics will be offered by Chelton Satcom (avionics and antennas), Esterline/CMC (antennas), EMS Technologies (avionics and antennas), Honeywell (avionics), Rockwell Collins (avionics), TECOM Industries (antennas), Thales (avionics) and Thrane & Thrane (avionics).

Each manufacturer has their own timetable for product availability.

Service provision

Aircraft operators must contract with an Inmarsat service provider. The service provider invoices for the service, either on a data volume or time basis, depending on the service used. Visit our website for contact details.

inmarsat.com/swiftbroadband

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[Attachment F]

VIZADA

Satellite communications. And more.™

The Source®

The Source® is a Web-based information management system designed especially for Vizada Service Providers.

Using a secure Web interface, The Source provides direct access to Vizada databases making it easy to track and manage end-user accounts as well as to perform everyday account management tasks. The Source is part of our portfolio of Vizada Solutions™.



At a Glance

- **Account management:** access real-time user account information 24-hours a day.
- **Service administration:** manage activation of Inmarsat BGAN, Iridium and Thuraya services as well as Satellite Direct® and Terralink Secure accounts and Prepaid Calling Cards.
- **Simplicity:** track and manage accounts via a user-friendly, simple web interface.
- **Financial control:** reduce and manage credit exposure.
- **Secure:** password protected access with Secure Socket Layer (SSL) encryption.

Account Information. And More.

With The Source, you can access Vizada's database services 24 hours a day, seven days a week with an easy-to-navigate, point-and-click menu system. You can also track the activity of Inmarsat and Iridium services, as well as prepaid traffic and manage these services including fixed-to-mobile calling - all via the Internet.

- **Usage and Payments** – Access and download account and billing information via a range of search capabilities, including by day, month or by invoice. Administer a single terminal or groups of terminals. View traffic details and download traffic files.
- **Call Monitoring** – Access up to the minute traffic information for all calls made via Vizada's global teleport network and access traffic information for Iridium SIMs. Review historical summaries of call volumes and search call logs for user-support and problem diagnosis. Call details include date, time, origin and destination, type of service, and call termination, and can be downloaded for analysis using other software programs.



Solutions

- **Barring** – Bar traffic to or from individual Inmarsat terminals or SIM cards, review activation and barring histories and annotate account records for later reference.
- **Contract Suspension** – Suspend and unsuspend Iridium and Thuraya service contracts.
- **Traffic Limits** – Manage credit exposure on individual or groups of postpaid Inmarsat SIM cards and terminals by setting limits that automatically block traffic after a predetermined volume. Establish email alerts that report when traffic totals increase by a specified volume.
- **Prepaid Calling** – Activate, recharge, and block/unblock Vizada Prepaid Calling Cards and Prepaid Accounts. View account balances and call logs that show unit consumption and volume rebates. Establish email alerts for prepaid calling limits that are approaching or reached.
- **Fixed-to-Mobile Calling** – Activate new accounts and manage Calling Line Identification* (CLI) options for automatic recognition of Satellite Direct users. (*CLI is available only when provided by the terrestrial carrier.) Block/unblock Satellite Direct accounts.

Potential Applications

Point of Sale Provisioning

Rapid service activation is key to overall customer satisfaction. The Source enables Vizada Service Providers to provide immediate service activation to their end-users.

Credit Exposure Management

A significant cost of doing business is uncollectable revenue. The Source helps Vizada Service Providers manage credit risk using predefined activity limits and automatic email alerts when limits are approaching or reached. Service Providers have direct and immediate control over terminals or SIM cards that pose a credit risk.

How to register:

Vizada Service Providers can take advantage of The Source by registering online at www.vizada.com. New users will receive a user name and password via email.

For more information about Vizada's The Source or to learn more about Vizada Solutions™, contact your Vizada key account manager or Vizada Customer Care.

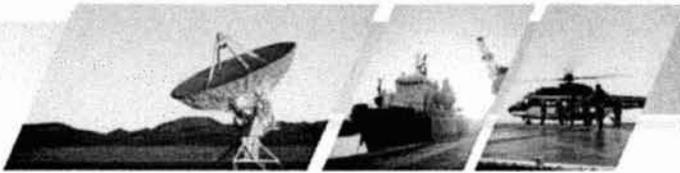
Vizada EMEA & Asia

Email: customercare.europe@vizada.com
Phone: +33 (0)5 61 28 89 99

Vizada Americas

Email: customercare.us@vizada.com
Phone: +1 301 838 7700

[Attachment G]



Revised: 11-Feb-08

FACTSHEET

Stratos Dashboard™

All-in-one tool for BGAN, RBGAN, Inmarsat Satellite Phone Services, FleetBroadband and SwiftBroadband

The Stratos Dashboard offers all the functionality you require for use with your BGAN SIM cards, as well as for RBGAN SIM cards*. In addition, the Dashboard will include a number of new services Stratos is launching in 2007 including Inmarsat Satellite Phone Service, FleetBroadband and SwiftBroadband.

The Dashboard allows users to activate, deactivate, suspend, resume and make any changes to their SIM cards. It provides a (near real-time) overview of all traffic usage, rated against Stratos invoice price, which not only includes completed calls, but also calls that are currently in progress. At the beginning of the new month users can download invoices from Stratos Dashboard in PDF format. In addition, users can subscribe online to electronic invoices in D91 or CSV format and receive files by email when the invoice is generated.

In addition to all of this, the Stratos Dashboard includes full credit control monitoring for all services. Users can assign a credit allowance in dollars, either to SIM cards or groups of SIM cards. Next to this the BGAN and Inmarsat Satellite Phone prepaid services are also fully supported. It is possible to allow end-users to view their usage information for postpaid and prepaid cards.

Benefits of the Stratos Dashboard

- Users are in complete control of all provisioning and monitoring
- Limit credit risk with the Credit Control functionalities
- All online actions are performed real time, traffic is made available as near to real time as possible
- Allow end-users to view their (priced or un-priced) usage information
- Customise the Dashboard view by hiding and moving columns and saving your preferred layouts
- Export all data to Excel or txt format for further processing or distribution

Access to the Stratos Dashboard is Available on the Following Levels:

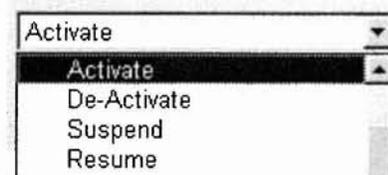
- Customer: all accounts and SIM cards for one Stratos partner
- Sub-Customer: SIM cards that are activated under one customer-ID, allowing provisioning by a customer of our partners (full provisioning, CDRs without pricing)
- Service Group: all SIM cards under one service group (suspending, CDRs with pricing). This service group is created by the Stratos customer and can be, for example, one of his own departments
- Service Group Light: all SIM cards under one service group. (no provisioning, CDRs without pricing); this service group is created by the Stratos Partner and can be, for example, one of his own customers)
- End User: one SIM card only (no provisioning, CDRs without pricing)

Online Provisioning

- Activation and deactivation
- Suspending and resuming
- Changing service details (i.e. voicemail)
- Adding or removing IP addresses
- Adding or removing ISDN and fax numbers

All provisioning can be future dated for forward planning

Actions:



* Stratos originated RBGAN SIM cards are not included in the Dashboard

Detailed Information on your Company and SIM Cards

- Complete installed base, including the history of all performed actions
- Contact data / Company address and invoice address, plus your Stratos Contracts

Monitoring of Traffic and Usage

- Create Credit Control groups
- Assign credit (in US\$) to SIM cards / Assign credit to CC groups
- Have traffic counted down automatically when calls are made
- Set alert thresholds (in US\$)
- If required, have the SIM card or group suspend automatically when credit has been used.
- Send out alert messages to SIM cards or groups that reach the alert threshold or reach 0

Traffic and Call Types

All BGAN, R-BGAN, ISPS, SBB and FBB traffic types are included, both for the finalized calls and calls in progress. For both types of calls there are two possibilities: pricing included (this is the price as on your invoice) and pricing excluded (usage information only). Calls with pricing included are available on customer and service group level, other users can only see usage.

Service	Trans	ICC-ID	Start	Orig	Dest	Orig IP	Dest Phone	Unit type	Used volume	Billed volume	Rounded volume	Cur. Tot. Price	Product
BGAN	901112112118488	898709906412118488	27 Mar 2007 22:13:07	CAN	Terrestrial	10.185.105.108		bit	1484104	1556480	0	USD 1.41	BGAN Background IP Mobile to Fixed to Terrestrial
BGAN	901112112118489	898709906412118489	27 Mar 2007 22:12:52	CAN	Canada		1709748****	sec	11	30	30	USD 0.55	BGAN Telephone Mobile to fixed to Terrestrial

Frequency of Call Data

- A "call in progress" CDR is received every hour for voice calls, and every 2 MB for data calls
- Final calls: these calls will be processed and made available after receipt from Inmarsat, which is between 15-60 minutes after the call is made
- Call details, including as a minimum: time and date; ICC-ID, IMSI and MSISDN of the SIM card making the call; Called Number; Duration; Traffic type; Origin and destination of the call

User requirements:

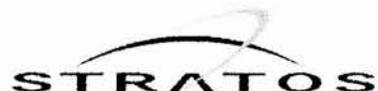
- Connection with a browser equivalent to IE 6.0
- The highest level user (customer) must have a signed BGAN / ISPS/ SBB or FBB Stratos contract, access for the lower level users (service groups and end-users) must be approved by the higher level (customer)

About Stratos

Stratos is the world's trusted leader for vital communications. With more than a century of service, Stratos offers the most powerful and extensive portfolio of remote communications solutions including mobile and fixed satellite and microwave services. More than 20,000 customers use Stratos products and industry-leading value-added services to optimize communications performance. Stratos serves U.S. and international government, military, first responder, NGO, oil and gas, industrial, maritime, aeronautical, enterprise, and media users on seven continents and across the world's oceans. For more information visit www.stratosglobal.com.

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[Attachment H]

FINAL TRANSCRIPT

Thomson StreetEvents™

ISAT.L - Preliminary 2007 Inmarsat plc Earnings Presentation

Event Date/Time: Mar. 06. 2008 / 4:00AM ET

THOMSON

www.streetevents.com

[Contact Us](#)

Mar. 06. 2008 / 4:00AM, ISAT.L - Preliminary 2007 Inmarsat plc Earnings Presentation

of the new handsets. At the time we went into the program on SBS, we weren't certain whether a manufacturer would pay that and recover it through the price of the handsets, or we would pay it. We've chosen to pay it ourselves and we commissioned that, and we haven't made a decision yet as to whether we will charge a markup on the handsets to recover that, or we will keep -- effectively take the CapEx and have a low-cost handset to grow volume. Decision yet to be made. So this is a clear additional incremental investment that drives business. And remember, we will spend \$100 million going into the satellite phone service market, whereas Iridium is spending 2.7. It just shows the economics, the massive difference.

Alphasat is the other element -- again, a brand-new investment, not even a cost at the time of the IPO. It's not a pre; it's a new project. And we think this is a really valuable investment for Inmarsat. It gives us more spectrum. It gives us more capacity to cope with the incremental services. And when that launches in 2012, 2013, it will drive more revenues.

So I would say the only element to change since the IPO in terms of CapEx creep, as we like to call it, is the launch of the third satellite has cost us more. We made a decision on the third SAS to be more redundant. That's a purely sensible, rational economic decision. Even though the S-3 launch is costing us more, we have made savings on the BGAN and I-4 programs. So all in all, I don't think it's a sign of creep, Paul; I think it's a sign of sensible management making (inaudible)

Andrew Sukawaty - *Inmarsat - Chairman and CEO*

I have to also say we keep growing at these kinds of rates (inaudible) it's just prudent. And particularly when I look at the Alphasat program and the redundancy in Hawaii, it's just prudent to have this kind of cover for capacities (inaudible). [John]?

Unidentified Audience Member

(Inaudible question - microphone inaccessible)

Andrew Sukawaty - *Inmarsat - Chairman and CEO*

Sorry, distribution. I think we've been fairly consistent on the distribution point. I think with 60 to 70 million of volume discounts is the total volume discount for 2008. The way we see that going forward changing is about a third of it would go into reduced prices to customers, about a third of it would go in volume discount that goes away and comes back to us, and about a third of it stays in the channel, but in a more balanced way as a discount. Remember, something like 90 to 95% of this discount goes to two players. So it's going to be a much more balanced distribution. One of those players in April 2009 we may own. So I think we're absolutely focused on putting the discount where it belongs, both in reduced prices to customers, which should have a certain elasticity to it, in keeping the channel healthy with discount that's spread in a more even way to some of the more smaller distributors, and some of it is going to come back to us where it was originally intended to go. So that's the way we intend to manage it. In terms of timing, April 2009 is when I think it would be safe to assume that would start.

Rick Medlock - *Inmarsat - CFO*

But to get to the (inaudible) will not be a big bang; it will be an evolutionary process over a number of years. Clearly, taking what is essentially a big chunk of volume discount away from distribution partners is painful for them. And that (inaudible) to ensure that (inaudible) transition that ensures that their (inaudible)

Unidentified Audience Member

(inaudible). Just trying to clarify the revision to the CapEx guidance, my arithmetic goes something like this. You started at 1.5 billion (inaudible) whatever it is (inaudible) five-year period (inaudible) minus 100 for what was deferred, minus 40 because you had cost savings on (multiple speakers)

CERTIFICATE OF SERVICE

I, Kimberly Reindl, hereby certify that on this 13th day of August, 2008, I caused to be served a true copy of the foregoing "Petition to Deny of VIZADA Services LLC" by electronic mail and by first-class, postage-prepaid U.S. mail upon the following:

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