

James M. Talens
Attorney-at-Law*
6017 Woodley Road, McLean, VA 22101

703.241.1144

jtalens@verizon.net

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Federal Communications Commission
Office of the Secretary

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: AtContact Communications, LLC, File Nos. SAT-MOD-20080813-00155 (S2346); SAT-AMD-20080930-00195 (S2680); SAT-AMD-20080505-00098 (S2381); SAT-AMD-20080930-00194 (S2682); SAT-MOD-20060511-00057 (S2683).

Dear Ms. Dortch:

The purpose of this submission is two-fold. First, it responds to the International Bureau's ("Bureau" or "IB") letter of January 9, 2009 regarding File Nos. SAT-MOD-20060511-00056 and SAT-MOD-20080813-0155 in the matter of AtContact Communications, LLC's ("AtContact") compliance with its milestone requirement to commence physical construction of its first non-geostationary satellite orbit ("NGSO") satellite.¹ The letter asks for additional showings to demonstrate that construction has in fact begun. The current Commission requirement in this regard demands no more than what a reasonable person would deem adequate to demonstrate commencement of construction and to that extent AtContact submits that the showing was sufficient.

* Admitted to practice in the District of Columbia only.

¹ Letter to Marlene H. Dortch, Secretary, Federal Communications Commission, from James M. Talens, Counsel for AtContact Communications, LLC (October 15, 2008) (demonstrating compliance with milestone for commencement of construction of first NGSO satellite).

AtContact strongly believes that the expenditure of millions of dollars on long-lead items such as travelling wave tube amplifiers (“TWTAs”) as a first step in actual construction is more than sufficient, especially under the circumstances outlined below regarding our national economic emergency.² Accordingly, AtContact submits that it has indeed satisfied the subject milestone and that the bond must be reduced by \$1,000,000 to \$2,000,000. Nonetheless, for the reasons discussed below, AtContact chooses to utilize these long-lead assets in its GSO satellite project and surrender the NGSO license.³

The second purpose of this letter relates to the entirety of AtContact’s efforts over the last eleven years to pursue its goal of constructing and launching a Ka-band satellite constellation capable of providing broadband services to underserved locations in the United States and elsewhere, and the need for revision of the current plan.

Background

In April 2006, following seven years of waiting, a license was granted to AtContact with the milestones established and bond paid, notwithstanding a request for waiver of the bond requirement based on the system’s provision of safety services.⁴ Two milestone

² See attachment hereto providing additional photographs as requested by the IB in its January 9, 2009 letter. The TWTAs were originally designed for use with GSO satellites but they were adaptable for use with AtContact’s NGSO satellites. These devices are manufactured and tested and are ready for integration. They remain valuable components in the construction of AtContact’s GSO satellites. The first payment for these TWTAs was made, as reflected in the milestone finding. In recognition of the need for expeditious resolution of the issues raised herein, AtContact asks that any public notice period associated with this submission be as short as reasonably possible.

³ The Bureau directed a second letter to AtContact regarding the mitigation of orbital debris associated with the NGSO satellites. See letter from Robert G. Nelson, Chief, Satellite Division, International Bureau, to James M. Talens, Counsel for AtContact Communications, LLC, dated January 9, 2009 in re: File No. SAT-MOD-20080813-00155. A response to this correspondence is due on April 30, 2009. However, in view of AtContact’s decision with regard to its NGSO authorization, the request would now appear to be moot.

⁴ contactMEO Communications, LLC, *Order and Authorization*, 21 FCC Rcd 4035 (Int’l Bur. 2006) (*Licensing Order*) (milestone schedule outlined at 4057.) AtContact was authorized by the Bureau under delegated authority to construct three (highly elliptical orbit) NGSO FSS satellites to operate in the 18.8-19.3 GHz and 28.6-29.1 GHz frequency bands on a primary basis, in the 29.5-30.0 GHz frequency band on a secondary basis, and in the 19.7-20.2 GHz frequency band on a non-conforming basis. It was also authorized to construct, launch and operate four GSO FSS satellites in the 28.6-29.1 GHz frequency band on a secondary basis, and in the 18.8-19.3 GHz frequency band on a non-conforming basis. AtContact’s bond waiver request based on safety services was denied. The GSO slots are 83° W.L., 121° W.L., 34° E.L. and 130° E.L. In 2007, AtContact requested relocation of its 83° W.L. slot to 87° W.L. with the addition of the GSO-band

dates have been successfully achieved and the third is pending review based on this submission. Investors in this system have expended many millions of dollars, with David Drucker himself dedicating over \$10 million in a sincere and persistent effort to build on two other satellite systems he helped create, one with Charlie Ergen called EchoStar, and the other called WildBlue Communications, Inc. (“WildBlue”).⁵ The success of both of these systems has been demonstrated but there is a massively different set of circumstances that has confronted AtContact over the last several years. As a result, AtContact now comes to the Commission asking that flexibility be applied in recognition of the unique and unprecedented economic emergency that currently characterizes the American economy and world capital markets, especially for the satellite industry. It is noteworthy as well that maintaining America’s lead in satellite technology and operation would be fostered by this kind of flexibility.

AtContact has separately been leasing Intelsat satellite bandwidth and providing broadband services via its Sedalia, Colorado teleport to thousands of customers in bush communities, hospitals and schools in rural regions of Alaska. This is the starting point for much of what AtContact has been endeavoring to create: A satellite delivery system for broadband services in unserved and underserved regions of the United States, especially Alaska and Hawaii.

The Reality

As anyone reading this submission fully understands, there has been no precedent in our lifetime for the current state of the world credit and capital markets. There is no willingness by investors to take any level of risk, there is a substantial possibility of deflation, and the business models for new concepts and proposals have been decidedly altered, none for the better. Stated simply, there is no financing today because the capital markets are seized. Indeed, the financing prospects that AtContact had until the onset of the current economic emergency have now evaporated, with investors withdrawing behind conditions in commitments and choosing to withhold capital investment, even for Ka-band satellite services that are in clear demand both domestically and worldwide.

primary spectrum. *See* SAT-MOD-20070924-00130, SAT-AMD-20071215-00176, SAT-AMD-20080505-00096, SAT-AMD-20080505-00100, and SAT-AMD-20080930-00195 (asking for the addition of primary GSO-band spectrum, relocation, and responding to requests for additional information by IB). In June 2006, contactMEO Communications, LLC notified the Commission of its name change to AtContact Communications, LLC. Letter to Marlene H. Dortch, Secretary, Federal Communications Commission, from James M. Talens, Counsel for AtContact Communications, LLC (June 5, 2006).

⁵ WildBlue is the most ubiquitous provider of Ka-band consumer broadband services by satellite with about 400,000 subscribers and considerable unsatisfied demand. Hundreds of millions of dollars have been expended developing WildBlue as an important satellite service provider.

In the broader perspective, the last several years have seen an overall decline in the fortunes of the entire satellite industry. No longer is it viable for a business plan to embrace a worldwide Ka-band satellite constellation that can reasonably expect to pay debt service or assure return on investment in the periods demanded by investors. A far more conservative approach that focuses on likely candidate markets, unique funding opportunities and partners is the only viable route going forward. In sum, the United States satellite business is ailing, especially for an entrepreneurial entity, and it requires help from the Commission to survive.

Despite the United States' commitment to market access by other nations on an equitable basis, there must still exist a primary concern for the survival of the United States satellite industry. It is therefore incumbent on the Commission to find a regulatory means to help its licensees weather the current economic crisis. Doing so is the only hope for satellite technology providing broadband services to the unserved and underserved areas of the United States.

New Plan

The reality of the marketplace mandates that AtContact focus on the viability of but two of its licensed GSO slots, 87° W.L. and 121° W.L. Of course, this assumes that IB grants AtContact's pending modification applications to relocate its current slot from 83° W.L. to 87° W.L. and include the GSO-band frequencies. The success of these activities also turn in large part on Commission flexibility with regard to the bond and milestone dates.

AtContact has engaged in serious discussions with several experienced satellite companies and is confident of an alliance that can provide broadband services for the first time to rural areas of the United States using AtContact's slot 87° W.L. In addition, from 121° W.L. AtContact can provide broadband services optimized for Alaska and Hawaii, key locations in our nation that still do not have broadband services generally available. In fact, the bulk of services likely to be provided by AtContact to Alaska and Hawaii from 121° W.L. as well as to much of the continental United States from 87° W.L. will be provided to public safety, health and educational users, consistent with the market that characterizes AtContact's current operations in Alaska. Importantly, public safety will be a primary beneficiary of the broadband services provided by the AtContact satellites at these locations. In these days of increased security and safety awareness, this emphasis on public safety provisioning alone should be sufficient under the standard set forth in the *First Space Station Licensing Reform Order* to justify a waiver of the bond requirement.⁶

⁶ Amendment of the Commission's Space Station Licensing Rules and Policies, Mitigation of Orbital Debris, *First Report and Order and Further Notice of Proposed Rulemaking in IB Docket No. 02-34, and First Report and Order in IB Docket No. 02-54*, 18 FCC Rcd 10760 (2003) (*First Space Station Licensing Reform Order*). The Bureau denied AtContact's public safety bond requirement waiver request in the *Licensing Order*, but the current world economic condition represents a more compelling

These services will be more affordable than in times of strained state budgets, a benefit that afforded by a proposed satellite offering such as these should be sufficient under the public safety standard of the At this stage in satellite evolution, the state of capital markets, and by AtContact's experience over the last several years, only two of its licensed slots are viable.⁷ But these two represent the essence of a business plan than can succeed even in this market, as opposed to the current constellation of NGSO and four GSO satellites.

Federal Funding and Request for Milestone Extensions

Congress and the Administration are aggressively embarking on a national economic stimulus package ("ESP") that will include funds to the states or through federal grants or low-interest loans in support of satellite-provided broadband services, especially to Alaska and Hawaii. AtContact's GSO at 121° W.L., as well as at 87° W.L., would be ideal for such a project, providing employment for many hundreds of people in the construction stage and during subsequent operations. In view of the real likelihood of such grants, though not likely to be secured by the next GSO milestone date of April 15, 2009, and by the benefits of consolidating its constellation to just two GSO satellites, AtContact submits that extending its extant milestones by at least 36 months would serve the public interest. As discussed below, such extensions are justified (1) because of the current world financial market situation, (2) because there is no detriment to others seeking to use the spectrum, (3) because warehousing is patently not AtContact's objective, and (4) because no other licensee would proceed any more quickly than AtContact to bring Ka-band satellite services to a reality. An additional period of at least 36 months for currently remaining milestones must be granted to provide this New Plan a substantial chance of success.

Bond Waiver Request and Public Interest Showing

While AtContact is cognizant that financial issues alone do not normally justify relief from milestone dates or other license conditions, it would not be equitable to ignore the unique times to which we all must now adapt in order to survive. Put simply, the purposes of the Commission's rules requiring strict adherence to milestone dates and the posting of bonds may have served legitimate purposes several years ago, but today there is simply no clamoring demand for Ka-band satellite spectrum, no evidence of license warehousing and no apparent or likely public detriment to appropriate relaxation of such requirements. Indeed, there appears to be no other American licensee seeking the NGSO or GSO licenses AtContact currently holds, in no small part because there is no other

environment for maintaining public safety connectivity, and therefore justifies a waiver under the standard enunciated in the *First Space Station Licensing Order*.

⁷ AtContact is also hereby surrendering its slots at 34° E.L. and 130° E.L., contingent on permission to continue under its New Plan.

known United States entity capable at this time or in the foreseeable future of financing the enormously costly launch and operation of Ka-band satellites. In any event, any new entrant would face the same challenges as AtContact but may not have the benefit of experience of currently providing broadband services by satellite or having an operating teleport.

There is no question regarding AtContact's *bona fides*. AtContact invested substantial sums through its Manager, David Drucker, and its investors, including EchoStar, ViaSat and Northrop Grumman Space Systems, of some \$35 million, in a sustained effort to create a state-of-the-art Ka-band satellite constellation. Moreover, David Drucker's previous efforts through the expenditure by WildBlue of hundreds of millions of dollars to launch and operate a Ka-band satellite system created an environment that under normal circumstances would allowed AtContact to become viable. Nonetheless, AtContact made substantial progress, achieving its first two milestone dates through a construction contract with Space Systems/Loral and completion of CDR (Critical Design Review), and a third milestone date by commencement of construction of its first NGSO satellite, with hundreds of millions of dollars committed to the project.⁸

Section 1.3 of the Commission's rules authorizes grant of waiver of the bond requirements where good cause has been shown. In this case AtContact seeks waiver of the Commission's bond requirements in order to obtain consent to withdraw and unconditionally release the performance bonds that remain outstanding, for both its NGSO and its GSO licenses – which are combined according to the NGSO schedule pursuant to Sections 25.164 and 25.165 of the Commission's rules. Good cause may be found and a waiver granted “where particular facts would make strict compliance inconsistent with the public interest.”⁹

⁸ AtContact filed its non-contingent satellite manufacturing contract for NGSO and GSO on or before April 15, 2007, its demonstration of completion of CDR for NGSO and GSO on or before April 15, 2008, and its showing of commencement of construction of its first NGSO satellite on or before October 15, 2008. The first two were found acceptable by the Bureau and the third is, as noted elsewhere herein, under review.

⁹ See *In the Matter of Rainbow DBS Company LLC, Consent to Withdraw and Unconditionally Release Bonds and Request for Waiver of the Bond Requirements*, File Nos. SAT-LOA-20030827-00172, SAT-LOA-20030827-00248, SAT-LOA-20030827-00175, SAT-LOA-20030827-00249, SAT-LOA-20030827-00173, *Memorandum Opinion and Order*, FCC 07-11 (rel. Mar. 2, 2007) (granting Rainbow waiver of the bond requirement and allowing it to withdraw and unconditionally release the bonds submitted to satisfy a condition of its Ka-band service licenses); see also Letter to Marlene H. Dortch, Secretary, Federal Communications Commission, from David A. Deitch, S.V.P and General Counsel, Rainbow DBS Company, LLC, January 30, 2006. The economic and finance markets have vastly degraded since this matter was considered. See discussion, *infra* at 3. AtContact also seeks, if deemed necessary, waiver of Section 25.146(h) of the rules regarding NGSO service coverage.

To make this public interest determination, the waiver cannot undermine the purposes of the rule, and there must be a stronger public interest benefit in granting the waiver than in applying the rule. AtContact invested a large amount of money from private and company resources to construct its satellites. Weeding out an entity with AtContact's resources and demonstrated commitment would not serve the purposes of the rule with respect to financial qualifications, and could even adversely impact AtContact's current broadband operations. Moreover, demanding strict compliance with the bond requirement in this case is not necessary to preserve its function as a mechanism to ensure good faith. Two milestones were achieved and a third remains pending.

Complications and impediments by what amounts to a *force majeure* event of national economic emergency are the principal reasons for AtContact's inability to proceed with its full constellation. Its good faith is beyond question and it simply cannot be said that AtContact entered into its licensing and construction contracts merely for the sake of speculation. Indeed, as noted above, significant progress was made, with more than \$10 million invested by David Drucker himself and substantial investment by others as well. Thus, grant of a waiver will not undermine the purpose of the bond requirement, nor is there a shortage of spectrum comparable to AtContact's holdings available to other potential providers of satellite service, especially in the NGSO portion of the Ka-band.

AtContact's activities have not "precluded another party willing and able to construct a satellite from doing so." When AtContact applied for its Ka-band licenses, such licenses were readily available. Since then, many licenses in that band have been returned or revoked and the first-come first-served procedure adopted by the Commission has ensured that potential entrants can secure Ka-band spectrum at many preferred locations.

Even if AtContact's slots were made available again, the successor licensees would face the same unprecedented challenges in securing financing in the currently seized capital markets, adding to the overall delay in implementation of Ka-band services to unserved and underserved areas of the United States. For this reason alone it would be appropriate for the Commission to consent to the withdrawal and release of the bond associated with the AtContact licenses, and, as necessary, waive any further application of the performance bond requirement.

AtContact submits that there is no warehousing effect and its licenses were not obtained for speculative purposes. As noted, even were another entity to follow, it would face the same financing challenges as AtContact. Moreover, as also noted above, the Commission's first-come, first-serve procedure for processing GSO satellite applications ensures that potential entrants are able to obtain available nearby Ka-band spectrum without significant delay.

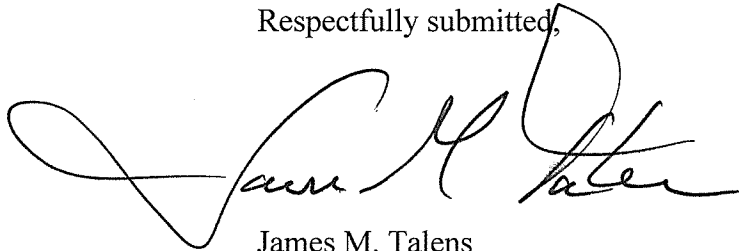
Grant of the requested waiver will better serve the public interest by encouraging the participation of other satellite providers should they choose to enter the market, as unlikely as that may appear today. Other companies are now more likely to participate with AtContact at 87° W.L. (and 121° W.L.) because there is no dilution by the need to also fund other, less viable slots such as 34° E.L. and 130° E.L. (or the HEO NGSO

component), which demonstrates the benefit of such a waiver. Finally, there is a strong public interest in (1) encouraging this kind of collaborative effort in times of uncertainty and economic stress, and (2) not adhering to *pro forma* application of the bond requirement in circumstances where, as here, the functions served by the requirement will not be undermined by the waiver grant.

Conclusion

In sum, AtContact requests that the Commission conclude that the public interest will be served by finding (1) that AtContact has satisfied the October 15, 2009 milestone submission demonstrating commencement of construction of its first NGSO FSS satellite, reducing the outstanding bond by \$1,000,000; (2) that the public interest will also be served by granting, pursuant to Sections 1.3, 25.164 and 25.165 of the Commission's rules, AtContact's request that any remaining bond requirement be waived, *i.e.*, that its outstanding bond be withdrawn and unconditionally released to satisfy its license condition; (3) that AtContact's modification applications, as amended, for relocation of its 83° W.L. license to 87° W.L. be granted expeditiously with inclusion of the requested additional GSO spectrum; (4) that AtContact's authorization at 121° W.L. be retained under conditions essentially identical to those associated with its license at 87° W.L.; and (5) that AtContact's milestone dates be extended by at least 36 months.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "James M. Talens". The signature is fluid and cursive, with a large loop at the beginning and a long, sweeping tail.

James M. Talens
Counsel to AtContact
Communications, LLC



