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ORIGINAL

September 21, 2009

BY HAND DELIVERY

Marlene H. Dortch
Secretary
Federal Communications Commission
The Portals
455 12th Street, S.W.
Washington, D.C. 20554

FILED/ACCEPTED
SEP 21 2009
Federal Communications Commission
Office of the Secretary

**REDACTED
For Public Inspection**

**Re: ATCONTACT Communications, LLC, Motion for Stay of International Bureau
Order DA 09-1850**

**REQUEST FOR CONFIDENTIAL TREATMENT - REDACTED VERSION - Motion for
Stay of AtContact Communications, LLC**

Dear Ms. Dortch:

ATCONTACT Communications, LLC (“AtContact”), pursuant to the provisions of Sections 0.457 and 0.459 of the Commission’s Rules governing submission of confidential materials,¹ respectfully requests that the unredacted copy of its Petition for Reconsideration, Motion for Stay, and accompanying exhibits of the above-referenced *Order* be afforded confidential treatment and not be placed in the Commission’s public files. AtContact is submitting a redacted version of the petition, motion, and accompanying exhibits simultaneously.

The redacted portions constitute or discuss commercial arrangements between AtContact and third parties that are ongoing. These arrangements include the contract between AtContact and Space Systems/Loral (“Loral”) as well as the agreement to purchase certain Travelling Wave Tube Amplifiers (“TWTA”)s between AtContact and another company. That material qualifies as “commercial or financial information” that “would customarily be guarded from competitors” regardless of whether or not such materials are protected from disclosure by a privilege.² In

¹ 47 C.F.R. §§ 0.457, 0.459.

² See 47 C.F.R. § 0.457(d); *Critical Mass Energy Project v. NRC*, 975 F.2d 871, 879 (D.C. Cir. 1992) (“[W]e conclude that financial or commercial information provided to the

(Continued ...)

addition, one of the redacted documents (a test report conducted by Loral for certain of the TWTAs) is said to include information that is controlled by the International Traffic in Arms Regulations (“ITAR”). Release of ITAR-controlled information has serious national implications and its confidentiality, therefore, must be protected.³ ITAR-controlled information may only be shared with U.S. persons, as the term is defined in the ITAR, unless authorization from the Department of State is received or a special exemption is issued.⁴ AtContact therefore requests that review of this material by Commission staff be confined to U.S. persons.

As an initial matter, most businesses do not publicly reveal their contracts or details about negotiations for proprietary and sophisticated equipment that enable them to provide services to the marketplace. Thus, this type of information would be the type of commercial information that “would not customarily be released to the public” and should be treated as confidential. In addition, companies, including AtContact, as well as (to AtContact’s knowledge) Loral and the company that has agreed to sell the TWTAs, routinely guard information about their future plans or operations from their competitors, including who they are doing business with. Thus, the Commission should treat the redacted information as confidential under Section 0.457(d).

In addition, the redacted portions of the materials also contain highly sensitive information that if disclosed could place AtContact, Loral, and the TWTAs contracting party at a competitive disadvantage, including specific information regarding future actions and other obligations. There are a number of entities who would stand to benefit competitively from any knowledge of the redacted items in the petition and its exhibits.

In support of this request and pursuant to 47 C.F.R. § 0.459(b), AtContact hereby states as follows:

1. The information for which confidential treatment is requested includes information on commercial arrangements that are ongoing, with future

Government on a voluntary basis is ‘confidential’ for the purpose of Exemption 4 if it is of a kind that would customarily not be released to the public by the person from whom it was obtained.”); *see also DIRECTV, Inc.; Request for Special Temporary Authority to Relocate DIRECTV 3 to 82° W.L. and to Conduct Telemetry, Tracking and Command (“TT&C”) Operations for an Interim Period*, File No. SAT-STA-20030903-00300 (application in which the FCC accepted redacted contract as part of record).

³ 47 C.F.R. § 0.457(a).

⁴ 15 C.F.R. § 734.2(b)(2). A “U.S. person” means “a person . . . who is a protected individual as defined by 8 U.S.C. § 1324b(a)(3). It also means any corporation, business association, partnership, society, trust or any other entity, organization or group that is incorporated to do business in the United States. It also includes any governmental (federal, state or local) entity. It does not include any foreign person as defined in § 120.16 of this part.” 22 C.F.R. § 120.15.

REDACTED
For Public Inspection

obligations of the parties still to be finally determined. A redacted version of the petition and its exhibits is being filed simultaneously with this submission.

2. The redacted information is being submitted as part of AtContact's petition for reconsideration and motion for stay of the Bureau's *Order* nullifying its authorization for an NGSO/GSO Ka-band satellite system.
3. The redacted portions of the attachment contain sensitive commercial information. Specifically, the redacted information addresses the nature of the relationships between AtContact, Loral, and the TWTA contracting party that are ongoing and still subject to future definition. In addition, some of the redacted information is said on the face of the relevant document to be subject to ITAR control, as duly noted on the attachment, and must be protected for national security reasons. All of this information is commercial information that has not been made public and is not available to the parties' competitors.
4. The redacted information pertains to the construction of AtContact's satellite system. The satellite industry is a competitive market with a diversity of operators, providers and users.⁵ Various competitors could potentially use the redacted information to gain an advantage in the different satellite service and satellite construction markets.
5. Disclosure of the redacted information could result in substantial competitive harm to AtContact and the other parties concerned. The redacted information regarding future operations would give the parties' competitors advanced notice of future plans that have not previously been made public. This would allow these competitors to take steps to counter whatever advantage the parties may gain in the market based on the future operations of AtContact's satellite system. In addition, the redacted information regarding commercial terms and obligations could prejudice both parties in future service contract negotiations. It is easy to envision a competitor of AtContact, for instance, seeking to obtain certain terms in that company's own relationship with Loral based on the discussion of the relationship between AtContact and Loral, if this discussion were in the public domain.

⁵ See generally Second Annual Report and Analysis of Competitive Market Conditions with Respect to Domestic and International Satellite Communications Service, IB Docket No. 07-252, *Second Report*, FCC 08-247 (rel. Oct. 16, 2008)

6. AtContact and (to AtContact's knowledge) Loral and the TWTA contracting party take significant measures to ensure that this confidential information is not disclosed to the public.
7. The redacted material for which non-disclosure is sought is not available to the public.
8. AtContact requests that the redacted materials be withheld from disclosure for an indefinite period. Disclosure of this information at any time could jeopardize the competitive positions of the parties mentioned and could threaten national security due to the claimed status of some information as ITAR-controlled.
9. Finally, AtContact notes that a denial of its request that this information be kept confidential would impair the Commission's ability to obtain this type of voluntarily disclosed information in the future. The ability of a government agency to continually obtain confidential information was behind the legislative purpose in developing exemptions from the Freedom of Information Act.⁶ The U.S. Court of Appeals for the D.C. Circuit has recognized a "private interest in preserving the confidentiality of information that is provided the Government on a voluntary basis."⁷ The Commission should extend a similar recognition to the redacted materials.

AtContact requests that the Commission return the relevant portions of the submissions if its request for confidentiality is denied. *See* 47 C.F.R. § 0.459(e). To the extent that the Commission concludes that the disclosure of some or all of the redacted terms should be made available to any parties to this proceeding, AtContact would be willing to discuss the terms of a Protective Order and provide a somewhat less redacted version of the Agreement for review by outside counsel for those parties.

⁶ *See Critical Mass Energy Project v. NRC*, 975 F.2d 871, 878 (D.C. Cir. 1992) ("Where, however, the information is provided to the Government voluntarily, the presumption is that [the Government's] interest will be threatened by disclosure as the persons whose confidences have been betrayed will, in all likelihood, refuse further cooperation.").

⁷ *Id.* at 879.

Marlene H. Dortch
September 21, 2009
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For Public Inspection

Respectfully submitted,

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Enclosures

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of) File Nos. SAT-LOA-19971222-0022
) SAT-LOA-20040322-
) 00234/35/36/37
) SAT-MOD-20060511-
) 0057/58/59/60
ATCONTACT Communications, LLC) SAT-AMD-20031030-00317
) SAT-AMD-20040719-00141
) SAT-AMD-20040322-00057
) SAT-AMD-20051118-00243
) SAT-MOD-20070924-00130
) SAT-AMD-20071215-00176
For Authority to Launch and Operate) SAT-MOD-20070924-00132
a Non-Geostationary Orbit Fixed-Satellite) SAT-AMD-20080505-00100
System in the Ka-band Frequencies) SAT-AMD-20080505-00096
) SAT-AMD-20080505-00099
) SAT-MOD-20080813-00155
) SAT-AMD-20080930-00195
) SAT-AMD-20080930-00194
)
)
) Call Signs: S2346, S2680, S2681, S682
) S2682, S2683
)

EXPEDITED ACTION REQUESTED

To: The International Bureau

MOTION FOR STAY

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)	
)	Call Signs: S2346, S2680, S2681, S682
)	S2682, S2683

EXPEDITED ACTION REQUESTED

To: The International Bureau

MOTION FOR STAY

ATCONTACT Communications, LLC (“AtContact”), by its counsel, seeks a stay of an Order issued by the Chief, International Bureau (“Bureau”) on August 21, 2009 nullifying AtContact's Ka-band FSS satellite licenses.¹ AtContact also seeks a stay of the related action by the Commission’s Chief Financial Officer dated August 26, 2009

¹ See ATCONTACT Communications, LLC, *Order*, DA 09-1850 (rel. Aug. 21, 2009) (“*Order*”). Absent grant of this Motion, AtContact’s bond will be forfeited in the early part of October.

advising Safeco Insurance Company of America (“Safeco”) of a Notice of Default and instructing Safeco to remit the sum of \$3 million to the United States Treasury as a result of AtContact’s alleged failures to meet the third milestone (“commencement of construction”) in the AtContact *Licensing Order*.² AtContact respectfully requests action on this motion on or before October 2, 2009, the date by which the surety has indicated it needs to be informed of the Commission’s action.

Today, AtContact is also filing a petition for reconsideration of the Bureau’s *Order*. In that petition, AtContact will demonstrate that the public interest requires *nunc pro tunc* reinstatement of the above-referenced licenses and withdrawal of the Notice of Default. This Motion for Stay seeks suspension of the effectiveness of the *Order* and Notice of Default pending a final resolution of this matter.³

All of the prerequisites to a stay are met: AtContact will likely succeed on the merits: among other things, AtContact introduces significant new evidence demonstrating beyond peradventure that it had in fact commenced physical construction

² See Letter from Mark Stephens, Chief Financial Officer, FCC, to Safeco, August 26, 2009. See also contactMEO Communications, LLC, *Order and Authorization*, DA-06-864, 21 FCC Rcd. 4035 (2006) (“*Licensing Order*”). In June 2006, the licensee notified the Commission of its name change from contactMEO Communications, LLC to ATCONTACT Communications, LLC. Letter from James M. Talens, Counsel to ATCONTACT Communications, LLC, to Marlene H. Dortch, Secretary, FCC (June 5, 2006).

³ See the four-prong test for issuance of a stay set forth in *Va. Petroleum Jobbers Assoc. v. Fed. Power Comm’n*, 259 F.2d 921, 925 (D.C. Cir. 1958) as modified by *Wash. Metro Area Transit Comm’n v. Holiday Tours, Inc.*, 559 F.2d 841, 843 (D.C. Cir. 1977). A stay is warranted if the movant can demonstrate that: (1) it is likely to prevail on the merits; (2) it will suffer irreparable harm, absent a stay; (3) other interested parties will not be harmed if the stay is granted; and (4) the public interest would favor a grant of the stay.

at an NGSO satellite by the October 15, 2008 milestone. AtContact will suffer irreparable injury – no less than the likely destruction of its business – if the bond were to be fortified. So will the public. Not only will consumers be deprived of an innovative plan to provide satellite service to the frontier states of Alaska and Hawaii, in furtherance of Congress’s and the Commission’s paramount goal of widening broadband availability. Existing customers of AtContact’s service will not be able to upgrade to the large-city-equivalent service that they yearn for, and may lose their current service. And the Treasury will not suffer any injury from a granted stay, as its claim will continue to be secured by the bond. As for Intelsat, the only other entity to submit a letter in the proceeding, it will similarly not suffer any injury, as its letter pertained only to the unrelated issue of a waiver, and as AtContact’s proposed secondary use of the NGSO spectrum at certain GSO slots will not stand in anyone’s way, either during the stay or at all.

Justification for Grant of Stay

A stay is warranted if the movant can demonstrate that: (1) it is likely to prevail on the merits; (2) it will suffer irreparable harm, absent a stay; (3) other interested parties will not be harmed if the stay is granted; and (4) the public interest would favor a grant of the stay.⁴ As outlined below, a careful review of each of these factors warrants the grant of this motion.

⁴ *See, e.g. id.* These factors are not prerequisites that must be met, but interrelated considerations that must be balanced together. *See Mich. Coalition of Radioactive Materials Users v. Griepentrog*, 945 F.2d 150, 153 (6th Cir. 1991); *In re DeLorean Motor Co.*, 755 F.2d 1223, 1229 (6th Cir. 1985).

AtContact Will Likely Prevail on the Merits. For numerous reasons, discussed in more detail in the Petition, which is incorporated here by reference, AtContact meets handily the first prong of the stay standard.

First of all, the Bureau's action sweepingly cancels AtContact's licenses for its geostationary ("GSO") and nongeostationary ("NGSO") systems alike, based on a claimed failure to commence construction of its first NGSO satellite. This draconian sanction does not recognize the fact that the Commission decided to treat the two system authorizations (NGSO and GSO) as "separate." It is moreover inconsistent with the Commission's "three-strikes—you're out" rule. AtContact should not, alone of all Fixed-Satellite Service ("FSS") licensees, be expelled from the industry with a single strike.

Second, in deciding that AtContact failed to commence construction of its first NGSO satellite, the Bureau improperly heightened the bar set by the applicable standard. Based on "experience" that the Bureau had acquired while implementing the Commission's milestone rule, the Bureau took it upon itself to alter that rule on an *ad hoc* basis. From now on, it seems to have decided, "commencement of construction" means that the licensee has paid at least 25% of the contract's price. But being a quarter of the way there is not the same as starting; the test is not a comparative one, where a licensee will fail to meet a milestone if it has done less than some of the licensees who have been found to have met it; and most importantly, the Bureau lacked authority from the Commission to alter the test anyway.

Troublingly, third, this raising of the bar results in discrimination against AtContact and in favor of other licensees. Only three years ago, the Bureau confirmed that Digital Globe had met the commencement-of-construction milestone simply on the

ground that “long-lead equipment began to be procured from contractors” pursuant to precursor agreements of its then-current satellite construction agreements, and on a conclusory declaration from a company officer.⁵ AtContact has accomplished more than Digital Globe, and should not see all of its licenses cancelled when a similarly (indeed worse) situated licensee had its authorization reaffirmed.

But, in any event, AtContact has taken the evidentiary failings identified in the *Nullification Order* to heart. It supplies here additional evidence remedying these failings. Among other things, the declaration from its satellite manufacturer makes clear that Loral was aware of AtContact’s purchase of the [REDACTED] Travelling Tube Wave Amplifiers (“TWTA”s), had successfully tested those all-important satellite components already, and fully intended to incorporate them in AtContact’s satellites, GSO and NGSO alike.

AtContact’s proposed use of the [REDACTED] TWTAs is a matter for applause, not castigation. Originally purchased by a company that has since abandoned its satellite construction plans, these components might have gone to the scrap heap if AtContact had not agreed to salvage them. Such creative recycling is necessary in an industry that has huge fixed costs before any service can start, and at a time when Wall Street is particularly disinclined to fund these costs. License cancellation is an undue punishment for AtContact’s ability to find a bargain.

⁵ Digital Globe, Inc., Request for Determination of Compliance with Satellite Implementation of Milestones, File No. SAT-MOD-20040728-00151 at 7 (Oct. 2, 2006).

But most important of all, reconsideration is warranted by the Commission's public interest mandate. Today, there is no more obvious and more urgent manifestation of the public interest than the need for the Commission to ensure universal broadband availability throughout the nation, and to encourage as wide actual broadband adoption as possible. Congress has said so, and so has the Commission. Poignantly, the *Nullification Order* comes on the heels of two applications, one filed by AtContact, the other by AtContact with a Native American partner, requesting federal funding for groundbreaking rural broadband projects using the Ka-band. As witnessed by the Declarations of Mr. Drucker, both of these projects entirely depend on, or would be dramatically enhanced by, use of two of AtContact's licensed GSO orbital locations.⁶ They would bring rich and fast Internet access service to the frontier states of Alaska and Hawaii, placing inhabitants of these faraway lands on an almost level field with New Yorkers and Los Angelenos.⁷ Nor is this a quixotic dream – AtContact has proved itself by starting to provide some Alaskans with the best satellite broadband service available using existing resources.⁸ Today, AtContact serves more than 100 customers directly and thousands of end users, in Alaska and other rural areas. For example, Mr. MacPherson, whose Declaration is attached and who explains the harm he would suffer if AtContact

⁶ Drucker Declaration ¶¶ 7, 13.

⁷ *Id.* ¶ 6.

⁸ Satellite Alaska Declaration ¶ 2.

were to be prevented from upgrading its service, is hardly the only Alaskan resident who is in the same position.⁹

Finally, while advancing the public interest, the reconsideration requested by AtContact will not take away one iota from the goals underlying the Commission's milestone rules in the unusual circumstances of this case. AtContact does not stand in anyone's way, as it has only secondary rights to use of its GSO slots and has already coordinated its NGSO system with Viasat.

Irreparable Harm. The Commission has already issued instructions to the bond surety requiring payment of \$3,000,000 because of the erroneous conclusion of the *Order* that AtContact's licenses must be revoked.¹⁰ Absent a stay issued prior to October 2, 2009, the payment will likely have to be made notwithstanding reconsideration of the *Order*.¹¹ At the very least, a stay of the effectiveness of the *Order* and *Letter* is appropriate pending resolution of the Petition for Reconsideration AtContact is filing contemporaneously with this Motion for Stay. The *Order* and *Letter* hold the potential for causing immediate, permanent and devastating damage to AtContact and to its current customers.

⁹ *Id.* ¶ 4.

¹⁰ As demonstrated elsewhere herein, the Bureau's conclusion on the facts was wrong with regard to compliance with the commencement of construction milestone demonstration, and the Bureau did not consider the public interest issues attendant upon the letter of February 6. *See* February 6 letter, *supra*. Also *see* Letter from Chief Financial Officer, Office of the Managing Director, *supra*.

¹¹ By AtContact's calculation, the due date is October 13 (30 business days from the surety's August 28 receipt of notice), but the surety apparently takes a different view.

To appreciate the scope and irreversibility of the harm that is portended, it is useful to survey AtContact's current services and its plans for the future, both of which are at mortal risk.

As AtContact's founder David Drucker testifies, AtContact's current communications services include teleport and VSAT services, content distribution and high speed Internet connectivity throughout Alaska and other underserved areas.¹² AtContact provides these services by leasing transponder capacity from established FSS systems such as Intelsat. AtContact now serves about one hundred direct customers in Alaska and the Continental United States, providing last-mile broadband to thousands of end users — many of its customers are institutional, and each of them provides Internet access to dozens of local residents. AtContact also works closely with remote communities (for example, the Northwest Arctic Borough in the far Northwest region of Alaska) to educate consumers about the cultural, instructional and other manifold applications of broadband and to encourage their adoption (an issue nearly as important as availability).¹³ This experience and AtContact's current services have laid the groundwork to make affordable broadband services a reality for the unserved and the underserved.¹⁴

¹² Drucker Declaration ¶¶ 5-6.

¹³ *Id.* ¶ 5.

¹⁴ *Id.*

The service provided by AtContact today is the best, or the only, broadband alternative available to many of our customers.¹⁵ At the same time, that service suffers from inadequate and affordable bandwidth and is still sluggish compared to the data speeds that the cable and phone companies offer in the big cities.¹⁶ AtContact's customers and many others in the nation's faraway areas, who do not have any service today, yearn for the faster, richer service that Washingtonians and New Yorkers can enjoy. Moreover, many suburban and city consumers, captive to the duopoly of cable and DSL today, would benefit significantly from a low-cost, no-frills satellite alternative.¹⁷

There is, of course, a reason why some of the country's largest companies fall far short of providing the country with universal broadband service, leaving large swaths of geography and population unserved or underserved. The infrastructure is expensive, and private sector funding for such high capital cost ventures is scarce to say the least. For that reason, the stimulus funds allocated to promoting broadband deployment are, in Mr. Drucker's words, nothing less than a godsend, an essential element in the Government's objective of realizing the vision of rural broadband.¹⁸ Tapping these funds is, by the same token, essential to complete financing for AtContact's system. In August 2009, AtContact filed two applications with the NTIA and RUS requesting funding for

¹⁵ Satellite Alaska Declaration ¶¶ 2, 4.

¹⁶ *Id.* ¶ 2.

¹⁷ Drucker Declaration ¶ 7.

¹⁸ *Id.*

broadband projects using its licensed Ka-band system. One of them would use AtContact's licensed orbital location at [REDACTED]. The other was filed by a joint venture between AtContact and Native Broadband Satellite, LLC, a project that would use AtContact's licensed orbital location at [REDACTED]. In addition to the requested federal funds, the Applicant has secured a private equity commitment of [REDACTED], contingent on receiving these funds. Moreover, the Northwest Arctic Borough has endorsed AtContact's plan and declared itself ready to enter into an agreement with AtContact to serve the Borough's broadband needs.²¹

Nullification of the satellite license and forfeiture of the associated performance bond threatens both AtContact's current business, the service AtContact provides today to Alaska, and its plans to upgrade that service dramatically in the future, with total obliteration.²² [REDACTED]

[REDACTED] AtContact has now paid down that loan by two million dollars. If the bond and the security for the

¹⁹ [REDACTED]

²⁰ [REDACTED]

²¹ Northwest Arctic Borough Resolution 09-28 (adopted Aug. 9, 2009).

²² Drucker Declaration ¶ 13.

²³ [REDACTED]

corresponding loan are forfeited, it is highly doubtful that AtContact can continue to be in business and provide its current services.²⁴

Also, if the bond is forfeited now, and the Bureau agrees with AtContact that its licenses ought not to have been canceled, it would be too late. It would no longer be possible to use the same security to raise additional funds to supplement stimulus funds in order to proceed with construction of the system.

By the same token, forfeiture of the bond would either prevent or significantly hamper the prospects of AtContact proceeding with the projects for which it has requested federal funding, the [REDACTED] private equity commitment contingent on that funding, and the availability of broadband services to the Northwest Arctic Borough.²⁵ Nullification of AtContact's license also prevents it from using the satellite to enhance its current services with a more robust, higher quality, and more bandwidth-intensive, and hence faster, Internet service.²⁶

And all of that would severely curtail (if not take away) AtContact's current ability to provide broadband services to many unserved and underserved communities. This includes the underserved Alaskans who rely on AtContact as their only broadband option.

Harm to Other Parties. While denial of the stay would have nothing short of catastrophic consequences, grant of the stay will conversely cause no harm to any other

²⁴ *Id.* ¶ 14.

²⁵ *Id.* ¶ 13.

²⁶ *Id.*

interested party. The United States Treasury will face no risk whatsoever. Its claim will continue to be fully secured by the bond. Intelsat is the only other party to the proceeding and it will likewise not face any harm by grant of the requested stay, let alone an irreparable injury. This is because, as mentioned above, AtContact will not be in anyone's way, either during the requested stay or at all. Its rights to use the NGSO spectrum at its GSO slots are secondary, and therefore pose no hindrance to any primary user of the spectrum at these slots. Its NGSO system can likewise share with other NGSO spectrum users, and indeed has already been coordinated with Viasat's proposed system.

Public Interest Factors. While no other interested party would be harmed by a grant of this requested stay, the public could be harmed if it is not granted. Many of AtContact's current customers rely on it as their only source for broadband communications. They are in desperate need of more bandwidth at a lower cost as the attached Affidavit of Satellite Alaska demonstrates.²⁷ And, if the stay is not granted, they will be harmed because a rejection of the stay will make it more difficult for AtContact to move forward with its proposed enhancements to its current services and it is doubtful that any comparable service will become available for these communities in the foreseeable future from any other supplier.²⁸

²⁷ Satellite Alaska Declaration ¶ 3.

²⁸ *Id.* ¶ 4.

Conclusion

Accordingly, AtContact requests that its Motion for Stay of the aforementioned Order and Notice of Default be granted until a final order is entered in response to AtContact's reconsideration petition pursuant to Sections 1.104, 1.106 and 1.115 of the Commission's rules, 47 C.F.R. §§ 1.104, 1.106 and 1.115.

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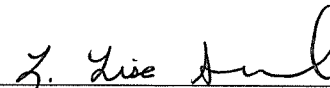
Counsel for AtContact Communications, LLC

CERTIFICATE OF SERVICE

I, L. Lisa Sandoval, do hereby certify that on this 21st day of September, 2009, I sent by U.S. first-class, postage prepaid mail, a copy of the redacted for public inspection version of the foregoing Motion for Stay to the following:

Phillip L. Spector
Executive Vice President,
Business Development & General Counsel Intelsat
3400 International Drive, NW
Washington D.C. 20008

Safeco Insurance Company of America
Safeco Plaza
1001 4th Avenue
Seattle, WA 98184



L. Lisa Sandoval

Exhibits

Exhibit A – Declaration of David Drucker – Redacted Version

Attachment 1 – Redacted

Attachment 2 – Executive Summaries of Broadband Stimulus Applications – Partially Redacted

Attachment 3 – Northwest Arctic Borough Resolution 09-28

Attachment 4 – Redacted

Exhibit B – Redacted

Exhibit C – Declaration of Satellite Alaska

Exhibit D – Redacted

Attachment 1 – Redacted

Exhibit A – Declaration of David Drucker – Redacted Version

DECLARATION OF DAVID DRUCKER

1. My name is David M. Drucker and I am the manager and founder of AtContact Communications, LLC (“AtContact”). I have been deeply involved with many companies in the satellite industry, including as a co-founder of EchoStar Satellite Corporation and the founder of WildBlue Communications Corp. This declaration details the steps AtContact has taken to physically construct its satellite and the injury it would incur if its satellite authorizations were nullified and the performance band associated with these authorizations were to be forfeited.

2. In short, AtContact has started construction of its system, and we provide here the evidence answering all the questions that the Bureau believed were left open by our prior submissions. Among other things, the photographs of the Travelling Wave Tube Amplifiers (“TWTA”s) we submitted to the Bureau show the very same transponders that are the subject of the Asset Sales Agreement between [REDACTED] and AtContact. Loral has tested the tubes, and fully intends to incorporate them in the AtContact satellite and to give us credit for them under the contract.

3. As for the threatened injury to AtContact, our customers and the public, it is great and irreparable. If the invalidation is left to stand and our bond forfeited, our business is faced with imminent destruction and our Alaskan customers with loss of service. Such a course of events would also strike a likely mortal blow for one or both of the applications that AtContact has filed with the NTIA and RUS, requesting funds for essential rural broadband projects.

AtContact Is Real And Its Plans Will Further the Public Interest

4. AtContact filed its initial FCC application in 1997 for the purpose of creating a satellite network to provide ubiquitous high speed Internet throughout our service areas. The teleport facility in Sedalia, Colorado was started in 1999 to further that project and provide immediate services to meet the demand for high-speed data, audio and video communication, including public safety services in remote and underserved areas of the United States, and with a particular focus on Alaska and rural areas in the lower 48.

5. AtContact’s current communications services include teleport and VSAT services, content distribution and high speed internet connectivity throughout Alaska and other underserved areas. AtContact provides these services by leasing transponder capacity from established FSS systems such as Intelsat. AtContact now serves about one hundred direct customers in Alaska and the Continental United States, providing last-mile broadband to thousands of end users. (Many of our customers are institutional, and each of them provides Internet access to dozens of local residents.) We also work closely with remote communities (for example, the Northwest Arctic Borough in the far Northwest region of Alaska) to educate consumers about the cultural, instructional and other manifold applications of broadband and to encourage their adoption (an issue nearly as important as availability). This experience and our current services have laid the groundwork to make affordable broadband services a reality for the unserved and the underserved.

6. The service provided by AtContact today is the best, or the only, broadband alternative available to many of our customers. At the same time, that service suffers from inadequate and affordable bandwidth and is still sluggish compared to the data speeds that the cable and phone companies offer in the big cities. I know that our customers and many others in the nation's faraway areas, who do not have any service today, yearn for the faster, richer service that Washingtonians and New Yorkers can enjoy. Moreover, I know that many suburban and city consumers, captive to the duopoly of cable and DSL today, would benefit significantly from a low-cost, no-frills satellite alternative.

7. There is, of course, a reason why some of the country's largest companies fall far short of providing the country with universal broadband service, leaving large swaths of geography and population unserved or underserved. The infrastructure is expensive, and private sector funding for such high capital cost ventures is scarce to say the least. For that reason, the stimulus funds allocated to promoting broadband deployment are nothing less than a godsend, an essential element in the Government's objective of realizing the vision of rural broadband. Tapping these funds is, by the same token, essential to complete financing for AtContact's system. Consistent with what we advised the FCC in April of 2009, AtContact filed two applications with the NTIA and RUS in August 2009 requesting funding for broadband projects using its licensed Ka-band system. One of them would use AtContact's licensed orbital location at [REDACTED]. The other was filed by a joint venture between AtContact and Native Broadband Satellite, LLC. That last project is set to use AtContact's licensed orbital location at [REDACTED] and is designed to address the needs of the remote unserved and underserved communities in Alaska and Hawaii (*see* attached executive summary of the project). In addition to the requested federal funds, the Applicant has secured a private equity commitment of [REDACTED], contingent on receiving these funds (*see* attached agreement). Moreover, the Northwest Arctic Borough has endorsed our plan and declared itself ready to enter into an agreement with AtContact to serve the Borough's broadband needs (*see* attached Northwest Arctic Borough Resolution 09-28). As I will discuss in greater detail below, these projects would be struck, perhaps mortally, by a Bureau invalidation of AtContact's authorizations.

AtContact Has Started Construction of Its First NGSO Satellite

8. On February 6, 2009, James M. Talens, Counsel to AtContact, provided photographs of TWTAs that AtContact agreed to purchase through an Asset Sales Agreement dated October 14, 2008 with [REDACTED]. I can confirm and attest that these photographs and the representations of their proposed use for the physical construction of the AtContact satellite system are true and accurate. They show the actual tubes that are the subject of the Asset Sales Agreement that we have with [REDACTED]. AtContact has duly made the first payment of \$250,000 under that contract (*see* canceled check). While further payments have been delayed, largely due to regulatory uncertainties, the TWTAs remain available to AtContact for our use in the construction of our satellites.

9. The TWTAs, originally procured by [REDACTED] for use in its then-planned GSO satellites, are also suitable for use in NGSO satellites. Specifically, based on a test of two of the TWTAs, Loral has concluded that they "may be suitable for use in the [REDACTED] downlink band range."

10. Payments have been made under both the manufacturing contract with Loral and the Asset Sales Agreement with [REDACTED]. Loral also is prepared to issue a credit to AtContact for the TWTAs under the Asset Sales Agreement.

Potential Harm Due to Nullification of Licenses

11. AtContact pursued and obtained its satellite authorization so it would be able to affordably reach the unserved and underserved markets with high-quality broadband services. A bond was not required when the initial filing was made some nine years before the grant.


12. It is no surprise that the current economic crisis has caused the private financing prospects for AtContact's NGSO/GSO hybrid satellite system to deteriorate. We have discovered the same harsh realities that led Congress to earmark federal stimulus funds for broadband deployment: potential investors are currently withdrawing and choosing to withhold capital investment, for any projects with large upfront costs whose commercial success and cost recovery prospects are not already tested and demonstrated. Broadband satellites fall in that category. We have persevered, however. As we have indicated to the Commission, the system will likely have to be modified and streamlined. But we are very serious about deployment, and as discussed, have turned to the stimulus funding opportunities to supplement the private funds that may still be available.

13. Nullification of the satellite license and forfeiture of the associated performance bond threatens both AtContact's current business, the service AtContact provides today to Alaska, and our plans to upgrade that service dramatically in the future, with total obliteration. [REDACTED]

[REDACTED] We have now paid down that loan by two million dollars. If the bond and the security for the corresponding loan are forfeited, it is highly doubtful that AtContact can continue to be in business and provide its current services. Also, if the bond is forfeited now, and the Bureau agrees with AtContact that its licenses ought not to have been canceled, it would be too late. It would no longer be possible to use the same security to raise additional funds to supplement stimulus funds in order to proceed with construction of the system. By the same token, forfeiture of the bond would either prevent or significantly hamper the prospects of AtContact proceeding with the projects for which it has requested federal funding, the [REDACTED] private equity commitment contingent on that funding, and the availability of broadband services to the Northwest Arctic Borough. Nullification of AtContact's license also prevents it from using the satellite to enhance its current services with a more robust, higher quality, and more bandwidth-intensive, and hence faster, Internet service.

14. And all of that would severely curtail (if not take away) AtContact's current ability to provide broadband services to many unserved and underserved communities. This includes the underserved Alaskans who rely on AtContact as their only broadband option.

I declare under penalty of perjury that the foregoing is true and correct.



David M Drucker

Executed on September 29, 2019

Attachments

Attachment 1 –Redacted

**Attachment 2 – Executive Summaries of Broadband Stimulus Applications – Partially
Redacted**

StimUSAt: National Rural Broadband Gapfiller Program

EasyGrants ID: 475

Applicant: AtContact Communications, LLC

Contact Person: David J. Goldstein

Contact Phone: (303) 862-8745

C. Executive Summary

Executive Summary of Project for BIP and BTOP:

8. Infrastructure Projects Executive Summary

Providing affordable broadband to rural America is a challenge due to the sheer expanse of our nation. While BIP/BTOP wireline and terrestrial wireless projects will improve access, inevitably some will remain underserved due to the vastness of the geography involved.

A satellite network dedicated to rural broadband will fill the gaps after BIP/BTOP implementation and will directly support wireline and terrestrial wireless with middle mile service. There is value in starting now; given the time to build and launch a rural broadband satellite and the flexibility to offer service anywhere in the lower 48, this ensures “gapfiller” access as soon as possible after the last round of funding.

It is not enough to simply place a satellite in the sky—if so, BIP/BTOP would not be needed. [REDACTED]

AtContact Communications, LLC was founded SPECIFICALLY to deliver broadband to rural and underserved users. Since 1997, AtContact has delivered satellite broadband to remote and underserved areas of the US and overseas. [REDACTED]

The proposed “StimUSAt” GSO satellite program will provide reliable and affordable rural broadband to nearly all the contiguous US beginning in 2012, with a “Quickstart” in 2010 providing early service to community anchors. The project is committed to providing service only to qualifying rural census blocks not covered by other successful BIP/BTOP applicants, with a focus on community anchors and rural healthcare. StimUSAt maximizes taxpayer value with a 100% loan application.

StimUSAt provides an open, non-proprietary “fiber in the sky” to deliver broadband to rural residents that lack access and provide them a choice of last mile providers through wholesaling and non-exclusive distribution arrangements.

The project maximizes US content, creating thousands of jobs not only in satellite construction, but [REDACTED] with thousands of distributors, installers, and maintenance staff based in rural service areas. [REDACTED]

With a StimUSAt loan, RUS will deploy a dedicated satellite to serve those left behind in rural America, with a single-minded business focus on rural communities and institutions, and with an open, non-proprietary set of incentives that ensures the best use of taxpayer resources.

a. Opportunity

While BIP/BTOP funding will go a long way towards delivering rural broadband, it cannot fund service to every underserved census block through wireline and terrestrial wireless alone. Many rural or remote areas will never receive broadband from any provider other than satellite. Providing broadband via satellite to nearly all the lower 48 states is a highly efficient way to fill the gaps remaining after BIP/BTOP program funding.

b. Service areas

This project can provide broadband access to every rural unserved and underserved census block in nearly all the lower 48. It will only deploy equipment to census blocks which do not have new options after allocation of BIP/BTOP funding. [REDACTED]

[REDACTED] in the 47 states we will serve, qualifying service areas before BIP/BTOP funding is allocated encompass over 4.5M households and 675,000 businesses.

c. Households / businesses passed

A majority of census blocks identified above will be served by other BIP/BTOP projects. While the StimUSAt gap filler project will pass all 4.5M underserved households in its coverage area, it has the capacity to connect up to 384,000 households, businesses and institutions. The application is conditioned so it will only hook up in areas not served by other BIP/BTOP-funded providers.

d. Community anchors

StimUSAt expects to link ~5,000 community anchors, public safety entities, and critical community organizations not served by other BIP/BTOP-funded providers. We will especially work with rural healthcare facilities to ensure they can send and receive the records they need to deliver the highest quality of healthcare at the lowest cost.

StimUSAt will also be working closely with schools throughout the coverage area. There are 13,280 schools that fall into the "low technology index" published by [REDACTED]. In just our sample states, OH has 530, MN has 193 and TN has 316 schools on this list.

e. Services

AtContact will offer several service levels, providing a choice of last mile providers and supporting all the applications normally used. The open network platform is scalable because it can provide broadband service of 1.5Mbps x 512kbps for a single user as well as support Emergency Services, community anchor institutions, Local and State Government, fixed and mobile broadband networks

for Telco's providing voice and broadband solutions to their customers at rates >100 Mbps. AtContact will provide these benefits to all last mile providers on attractive terms. A "Quickstart" program using existing satellite capacity will offer service to community anchors in 2010.

f. Non-discrimination and interconnection

AtContact commits to all principles in the FCC's Internet Policy Statement including their application to interconnection with the public Internet and physical interconnection for the exchange of traffic. We will negotiate in good faith with all parties. We will not discriminate against subscribers using third-party devices or applications. We will rely on technically neutral standards as set by the Internet Engineering Task Force. Network management will assess service levels on a per-customer basis in the administration of service-level agreements. No discrimination will be permitted with regard to the use of applications or access of end points on the network, nor will any service provider be permitted to block competitive applications such as file sharing software or services. Except for discounts to certain community anchor institutions, all service offerings will be offered to everyone on the same terms and conditions. All policies will be published on our website and updated regularly, along with contact information and prompt response time.

g. Type of system

The StimUSAt system will be based on best of breed open architecture that enables the most efficient use of bandwidth. [REDACTED]

[REDACTED] The system supports improvements to broadband tool sets and technology platforms. The full access network provides a high-speed connection via a GSO Ka-Band satellite. The network equipment can connect at speeds in excess of 100 MB/sec through a satellite dish and a modem. The infrastructure costs to maintain this satellite system are reasonable compared to terrestrial networks.

h. Qualifications

AtContact was founded in 1997 to create a satellite network and teleport for servicing rural and underserved areas, including public safety in remote and underserved areas of the globe. The team has 150 years of combined satellite and network design, engineering, management, federal regulatory and operations experience. Among the team are people who have started major satellite companies, such as EchoStar and WildBlue, and others who have spent their working lives providing satellite services to Alaska and other rural areas. AtContact currently provides comprehensive data services using fiber, microwave and satellite technologies from its secure satellite earth station in Colorado. AtContact provides affordable VSAT IP services to rural locations, including remote cities and towns in Alaska through its Alaska Internet Hub.

i. Overall cost

The total project cost is \$299.3MM. This includes design, construction, launch, deployment, and the Quickstart phase. It also includes gateway and ground equipment and all required software. A loan of \$286.4MM is requested, with additional debt of \$12.9MM to be provided by AtContact.

j. Subscriber projections

AtContact conservatively estimates its middle mile service will result in service to 245,000 underserved households across the lower 48 states. It estimates that it will provide higher speed service to 5,000 businesses and 5,000 community anchor institutions, plus 400 in the Quickstart phase.

k. Number of jobs

The project will create over 4,000 jobs. The requirement for field technicians to service user equipment will create hundreds of rural jobs. Trainers will be required to assist community institutions. Satellite design, construction and launch will create jobs that would not otherwise have existed without funding. These are skilled positions in the currently slack aerospace industry. Most importantly, access will create a new cadre of Internet-based jobs fostered by entrepreneurship programs and business incubators. As broadband impacts accrue, new opportunities among all levels of business will flourish. These new positions are permanent and will grow in number.

Attachment 3 – Northwest Arctic Borough Resolution 09-28

**NORTHWEST ARCTIC BOROUGH
RESOLUTION 09-28**

**A RESOLUTION OF THE NORTHWEST
ARCTIC BOROUGH APPROVING NEGOTIATION
AND EXECUTION OF MEMORANDA OF
AGREEMENT WITH AtContact IN SUPPORT OF A
BOROUGH BROADBAND GRANT APPLICATION
AND FOR RELATED PURPOSES**

WHEREAS: the Northwest Arctic Borough is submitting a grant application under the American Recovery and Reinvestment Act ("ARRA") to the National Telecommunications and Information Administration ("NTIA") for funding under the Broadband Technology Opportunities Program ("BTOP"), and

WHEREAS: the borough's BTOP application is intended to support development and usage of increased broadband internet capacity to promote borough educational, cultural, marketing and economic development goals, including an Entrepreneurial Business Incubator ("EBI") project, and

WHEREAS: telecommunication providers may also apply for ARRA funding from the Rural Utilities Service ("RUS") to fund construction and development of broadband infrastructure under the Broadband Infrastructure Program ("BIP") as well as NTIA BTOP projects, and

WHEREAS: grant funding for BIP/BTOP has the potential to support and enhance the borough's proposed BTOP grant application, and

WHEREAS: the borough published a Request for Proposals ("RFP") on July 9, 2009 that invited telecommunication providers to submit proposed Memoranda of Agreements to support the borough's BTOP grant proposal, and


WHEREAS: AtContact responded to the RFP and provided a complimentary proposal that would support the borough's BTOP grant proposal, EBI and related economic development goals, and

WHEREAS: the borough has retained independent counsel to review the AtContact proposal and proposed MOA, and

WHEREAS: the borough assembly has also reviewed the AtContact proposed MOA accompanying this resolution and finds that it is in the borough's best interest to endorse and support it.

NOW THEREFORE BE IT RESOLVED by the Northwest Arctic Borough Assembly that the Mayor, with such advice and assistance as she deems necessary, is authorized to negotiate and execute an MOA with AtContact in substantially similar terms as accompany this resolution.

PASSED AND ADOPTED THIS 5th DAY OF AUGUST 2009.



Walter G. Sampson, Assembly President

PASSED AND APPROVED THIS 5TH DAY OF AUGUST 2009.

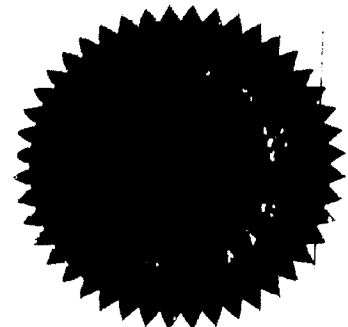


Siikauraq Martha Whiting, Mayor

SIGNED AND ATTESTED TO THIS 5TH DAY OF AUGUST 2009.



Helena Hildreth, Borough Clerk



MEMORANDUM OF AGREEMENT

This Memorandum of Agreement is entered into this 5th day of August, 2009 between the Northwest Arctic Borough (Borough) and AtContact Communications, LLC (AtContact), collectively the parties.

BACKGROUND:

The agreement results from AtContact's consideration of the Borough's Request for Proposals No. 09-01 (the RFP) that asks that the parties ultimately agree on a document that defines the duties and rights of the parties in applying for BIP/NTIA¹ funds and then, if successful, the budgeting of funds to accomplish deployment of broadband capability in a manner that will meet Borough goals.

AGREEMENT:

1. The parties are agreed to collaborate in the application for BIP/NTIA funds to accomplish the following purposes.
 - a. To address the Borough's goal: to achieve economic advantage for the residents of the Borough and enterprises operating within the borough in whole or part through the expanded capacity, capabilities and reliability of broadband services.
 - b. To address the Borough's goal, beginning with broadband services, of increasing economic development through the use of advanced technologies.
2. AtContact will provide capacity on a competitively neutral, non-discriminatory basis to telecommunication providers.
3. AtContact will price its wholesale services significantly lower than what rural telecom providers typically pay today.
4. AtContact will include in its operations and maintenance manual, the requirement that a person be retained to live and work in Kotzebue in order to provide support for local operations and for the implementation of this agreement.
5. AtContact will utilize an open network design, supporting development of applications using video, voice and data transmission through high-speed, broadband technology. Among the technological advances to be addressed, and for which AtContact will provide support are satellite-based adult education, enhanced elementary education, e-commerce training and stimulation, telemedicine, virtual psychiatry and other quality-of-life supporting services.
6. AtContact shall enter a collaborative arrangement with OTZ Telephone Cooperative, Inc., the local telephone service with the purpose of advancing the

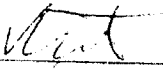
¹ BIP: Broadband Infrastructure Program; NTIA: National Telecommunications and Information Administration, (US Department of Commerce)

- agreed goals and will include in its budget \$89,800 to help fund the local equipment budget for the Borough's EBI and will reimburse the Borough directly for this expense.
7. AtContact will cooperate in supporting the development of a technological curriculum that will develop excellence in academics, encourage higher order thinking skills, enlarge, enrich and enhance job function, heighten cultural awareness and enhance community involvement and cohesiveness.
 - a. To the ends outlined, AtContact will make a meaningful investment in assessment and identification of best practices utilizing broadband content and applications, drawing on its knowledge of related successes.
 - b. AtContact will provide speeds of up to 15 Mbps download and up to 3 Mbps upload to each of the Borough villages and commence deployment immediately upon award of funding.
 8. The Borough will endorse and cooperate with AtContact's applications for federal funding for its expanded services. This agreement does not prevent the Borough from endorsing other applications for funding by any provider of services.
 9. AtContact will support Borough applications for funding for services to implement the opportunities offered by AtContact's expansion of broadband transmission.
 10. The parties agree to establish a standing committee consisting of at least one member appointed by AtContact and at least one appointed by the Borough with appointments by the borough of other stakeholders which committee shall meet on a frequency of not less than once a quarter with the functions of exploring community defined needs necessary to expand adoption of broadband digital technology services and products. AtContact will participate for a five year period with the Borough: the two year duration of the EBI project, if funded by NTIA under BTOP, followed by an additional three years that the Borough anticipates will be needed to fully discover the community defined needs necessary to expand adoption of broadband digital technology services and products.
 11. The standing committee created under paragraph 10 shall assess the progress being made towards the goals defined in this agreement, discuss additional opportunities for implementing the objectives of the agreement and the sharing of resources to that end.
 12. The parties will from time to time discuss additional collaborative opportunities created by federal broadband funding and in furthering the borough's goals in supporting broadband based development in the community.

13. The parties will agree on procedures for marking and retaining as confidential any trade secrets or other proprietary data disclosed to one another in the course of their performance of this MOA.
14. The parties agree to develop and negotiate in good faith regarding any additions or amendments required by circumstances unforeseen at this time, modifying the terms of this MOA.
15. This agreement is entered in the State of Alaska and is governed by the law of this state.
16. This agreement contains the entire agreement of the parties with respect to the subject matter herein stated and supersedes all prior and contemporaneous agreements and understandings, express or implied, oral or written.
17. The parties shall be mindful of concern for preservation of local heritage. AtContact shall rely as much as possible on local residents to make informed decisions and to participate in the implementation of plans and programs.

AtContact Communications, LLC

By

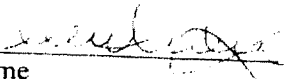


Name: AtContact LLC

Title: Development Director, AtContact

Northwest Arctic Borough

By



Name

Title: Mayor

Attachment 4 – Redacted

Exhibit B – Redacted

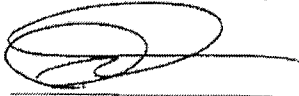
Exhibit C – Declaration of Satellite Alaska

REDACTED
For Public Inspection

Affidavit of Satellite Alaska

1. My name is John Macpherson and I live in Anchorage, Alaska. Since 2005 I have been a reseller of AtContact's current Internet service to Alaska.
2. AtContact provides the best Internet service available to me and my customers and I have become reliant on it for my business and its continuing expansion. While the service is generally adequate, it is often not nearly as fast as I would prefer. Sometimes it just takes too long to download or upload large multimedia files. My customers complain about that all the time. Some of the customers are located in areas where alternative services are non-existent.
3. I understand that the next-generation satellite system planned by AtContact will cure these problems and allow me to provide my customers with robust, higher quality, and more bandwidth-intensive, and hence faster, Internet service. More than that, the higher speeds are required to derive benefits from the richer, multimedia applications that customers increasingly demand. We need more bandwidth at lower cost.
4. If AtContact's project cannot move forward, it is doubtful that any comparable service will become available in my location in the foreseeable future from another supplier.

I declare under penalty of perjury that the foregoing is true and correct.



John Macpherson

Executed on September 16, 2009

Exhibit D –Redacted

Attachment 1 – Redacted