

July 28, 2005

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NON-PUBLIC

REQUEST FOR CONFIDENTIAL TREATMENT**By Hand Delivery**Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W., Room TW-A325
Washington, D.C. 20554**RECEIVED**

JUL 28 2005

Federal Communications Commission
Office of SecretaryRe: ICO Satellite Services G.P.
File No. SAT-LOI-19970926-00163

Dear Ms. Dortch:

Pursuant to Sections 25.164 and 25.165 of the Commission's rules,¹ ICO Satellite Services G.P. ("ICO") submits a certification (attached hereto as Attachment 1) that it has begun physical construction of its geostationary satellite, consistent with the bond requirement set forth in ICO's authorization for provision of 2 GHz Mobile Satellite Service ("MSS") in the United States.² The certification by ICO (*i.e.*, Attachment 1) is suitable for public inspection.

Subject to the confidentiality request stated below, ICO is also submitting the following documents ("Confidential Documents") to the International Bureau in support of ICO's certification: 1) a letter from its satellite manufacturer, Space Systems/Loral ("SS/L letter"), certifying that physical construction of the satellite has begun and that SS/L has received all payments due under the manufacturing contract as of the date of SS/L's

¹ 47 C.F.R. §§ 25.164 and 25.165.

² See *ICO Satellite Services G.P.*, DA 05-1504, ¶ 40 (May 24, 2005). Although the milestone schedule required by the Commission does not specifically mandate commencement of physical construction, ICO is submitting the attached certification, along with supporting documentation, in order to reduce the amount of the bond required by the Commission.

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letter (attached hereto as Attachment 2); and 2) a chart summarizing payments made under the manufacturing contract (attached hereto as Attachment 3).

The Confidential Documents contain highly sensitive financial information. Specifically, they include amounts due, payment terms, and technical criteria as specified in ICO's manufacturing contract. The disclosure of this information likely would cause substantial competitive and financial harm to ICO, and is therefore exempted from mandatory disclosure under Exemption 4 of the Freedom of Information Act ("FOIA Exemption 4")³ and Section 0.457(d) of the Commission's rules.⁴ Accordingly, pursuant to Sections 0.457 and 0.459 of the Commission's rules,⁵ ICO requests the Commission to withhold from public inspection and accord confidential treatment to the Contract Documents.

In support of its request for confidential treatment and pursuant to the requirements under Section 0.459(b) of the Commission's rules, ICO states the following:

1. ICO seeks confidential treatment of the Contract Documents, which contain specific information regarding amounts due, payment terms, and technical criteria.
2. As noted above, the Confidential Documents are being submitted as required under Sections 25.164 and 25.165 of the Commission's rules.
3. The Confidential Documents contain information regarding amounts due, payment terms, and technical criteria on its satellite manufacturing contract, which constitutes sensitive commercial and financial information that "would customarily be guarded from competitors,"⁶ and is therefore exempted from mandatory disclosure under FOIA Exemption 4 and Section 0.457(d) of the Commission's rules.⁷

³ 5 U.S.C. § 552(b)(4). See *Public Citizen Health Research Group v. FDA*, 704 F.2d 1280, 1290-91 (D.C. Cir. 1983).

⁴ 47 C.F.R. § 0.457(d).

⁵ *Id.* §§ 0.457, 0.459.

⁶ *Id.* § 0.457(d)(2).

⁷ 5 U.S.C. § 552(b)(4); 47 C.F.R. § 0.457(d).

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4. The Confidential Documents are related to the implementation of a 2 GHz MSS system, which will be subject to competition from a number of other MSS systems.

5. Disclosure of information regarding amounts due, payment terms, and technical criteria contract likely would result in substantial competitive harm to ICO. For example, disclosure of this information would allow competing 2 GHz MSS licensees to use this information to their competitive advantage. Specifically, knowledge of financial terms and conditions under ICO's manufacturing contract could allow competitors to obtain equally or more favorable terms from other manufacturers. Furthermore, disclosure could harm ICO in future negotiations regarding satellite construction by allowing manufacturers to extract more favorable terms.

6. Article 31 of ICO's manufacturing contract contains specific provisions requiring both parties to the Contract to maintain confidentiality of information furnished in connection with the Contract or the transactions contemplated under the Contract.

7. Information regarding amounts due, payment terms, and technical criteria are not available to the public. Consistent with and except as provided under the confidentiality provisions of ICO's manufacturing contract, there has been no disclosure of such information to any third parties.

8. ICO requests confidential treatment of the Confidential Documents for an indefinite period. During the operational life of the ICO system, satellite manufacturers and 2 GHz MSS competitors could use the otherwise confidential information to their competitive advantage and to ICO's detriment.

9. The Commission has acknowledged that satellite construction contracts and construction-related documents contain competitively sensitive information requiring protection from public disclosure.⁸ Specifically, the Commission has found that financial and technical data contained in a satellite construction contract constitutes confidential information because its disclosure would cause substantial harm to the licensee's competitive position.⁹ Moreover, in requiring Big LEO and 2 GHz MSS licensees to submit annual reports and any requested additional contract and construction information to demonstrate compliance with the milestones, the

⁸ See, e.g., *GE American Communications, Inc.*, 16 FCC Rcd 6731, 6731 (IB 2001).

⁹ See *American Satellite Co.*, 1985 FCC Lexis 3117, at *19 (1985).

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Commission expressly contemplated that licensees could seek confidential treatment of “any portion of their report, pursuant to Section 0.459 of the Commission’s rules.”¹⁰

In order to provide adequate protection from public disclosure, the Commission should strictly limit distribution of the Confidential Documents within the Commission on a “need to know” basis. In the event that any person or entity outside the Commission requests disclosure of the Confidential Documents, ICO requests that it be so notified immediately so that it can oppose such request or take other action to safeguard its interests as it deems necessary.

Please direct any questions regarding this submission to the undersigned.

Respectfully submitted,



Cheryl A. Tritt
Counsel for ICO Satellite Services G.P.

Enclosures

cc: Cassandra Thomas
Karl Kensinger

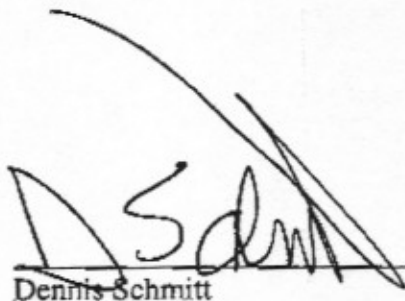
¹⁰ See *Amendment of the Commission’s Rules to Establish Rules and Policies Pertaining to a Mobile Satellite Service in the 1610-1626.5/2483.5-2500 MHz Frequency Bands*, 9 FCC Rcd 5936, 6010 (1994) (emphasis added); see also *The Establishment of Policies and Service Rules for the Mobile Satellite Service in the 2 GHz Band*, 15 FCC Rcd 16127, 16181 (2000).

ATTACHMENT 1

CERTIFICATION

Pursuant to Sections 25.164 and 25.165 of the Commission's rules, I, Dennis Schmitt, certify under penalty of perjury that:

1. I am a Senior Vice President of ICO Global Communications (Holdings) Limited, the ultimate parent company of Satellite Services G.P. ("ICO").
2. To the best of my knowledge, information, and belief, ICO has begun physical construction of its 2 GHz geostationary satellite orbit ("GSO") mobile satellite service ("MSS") satellite.



Dennis Schmitt

Date: July 27, 2005

ATTACHMENT 2

REDACTED

ATTACHMENT 3

REDACTED