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**Denise Berger**

**From:** Keil J. Ritterpusch [kritterpusch@comspacelaw.com]  
**Sent:** Monday, October 24, 2005 4:58 PM  
**To:** IBSecretary  
**Cc:** Kathleen Campbell; Andrea Kelly; 'Mark J. Fiekers'; 'Bettina Eckerle'; 'Jake'  
**Subject:** Pleading re Completion of 3 Milestones related to SAT-MOD-20040728-00151

Received

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Policy Branch  
International Bureau

To whom it may concern:

IBFS will not accept the attached filing regarding the completion of three of the five milestones associated with the above referenced DigitalGlobe satellite authorization.

Accordingly, per the instruction of Ms. Kathleen Campbell of the Satellite Division, please find attached hereto an electronic copy of the pleading: **REQUEST FOR DETERMINATION OF COMPLIANCE WITH SATELLITE IMPLEMENTATION MILESTONES.**

Several documents "associated with" this filing that DigitalGlobe seeks confidential treatment of pursuant to 49 CFR Section 0.459(b) will be submitted in a separate pleading today or tomorrow.

Please do not hesitate to contact me if there should be any problem with the instant filing.

Best regards,  
Pierson & Ritterpusch, LLP

Keil Ritterpusch

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Before The  
**Federal Communications Commission**  
Washington, D.C. 20554

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OCT 24 2005  
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In The Matter of )  
)  
)

**DigitalGlobe, Inc.** )  
)

Modification of Authorization to Construct, )  
Launch and Operate a Remote-Sensing Satellite )  
System )  
)

File No. SAT-MOD-20040728-00151  
Call Sign: S2129

**Received**

NOV 08 2005

To: Chief, International Bureau

Policy Branch  
International Bureau

**REQUEST FOR DETERMINATION OF  
COMPLIANCE WITH SATELLITE IMPLEMENTATION MILESTONES**

DigitalGlobe, Inc. ("DigitalGlobe"), by counsel and pursuant to Section 25.164 of the Commission's rules, hereby notifies the Commission that it has met the first three milestones set forth in the Order and Authorization DA 05-2640 (hereinafter, "Order") issued on September 30, 2005 granting authority to modify DigitalGlobe's Non-Geostationary Satellite Orbit ("NGSO") satellite system. Specifically, within the Order, the Commission authorized DigitalGlobe to construct, launch and operate three (3) new satellites within DigitalGlobe's EESS space system and to operate the three satellites in the entire allocated portion of the X-band (i.e., 8025 MHz to 8400 MHz). That is, the Commission has authorized DigitalGlobe to increase its allocation of 8025 MHz to 8345 MHz by 55 MHz per new satellite, such that the three new DigitalGlobe satellites will be able to operate up to 8400 MHz.

Within the Order, the Commission required DigitalGlobe to fulfill certain milestones for constructing the authorized satellites and modifying its space segment (Order, Paragraph 11). Also, the Commission required that DigitalGlobe post a bond by October 30, 2005 in the amount

required by the Commission's rules for the construction and operation of an NGSO satellite system: five million dollars (\$5,000,000) (Order, Paragraphs 12 & 13). The bond requirement was imposed in order to ensure that DigitalGlobe uses the entire spectrum that the Commission has authorized DigitalGlobe to use. The Commission's stated purpose for the bond was to prevent DigitalGlobe from " 'warehousing' the spectrum to use in the unlikely event that 'best case' demand scenarios materialize or to delay competitors from using it" (Order, Paragraph 13).

In particular, DigitalGlobe demonstrates herein that it: (i) has contracted for construction of the DigitalGlobe next-generation EESS satellite system; (ii) has completed its Critical Design Review; and (iii) has already commenced construction of the spacecraft. As a result of these showings, DigitalGlobe respectfully requests that the International Bureau determine that DigitalGlobe has satisfied the first three milestone requirements set forth in the Order. The determination that DigitalGlobe has satisfied the first three of the required milestones will allow DigitalGlobe to reduce the \$5 million bond that it is required to post by October 30, 2005 pursuant to the Order to \$2 million.

In addition, DigitalGlobe notes that it intends to file, prior to October 30, 2005, a Petition for Reconsideration of the Bond Requirement Provided in FCC Order and Authorization DA 05-2640 ("Petition for Reconsideration"). DigitalGlobe contends that the bond requirement imposed in the Order is wholly unnecessary in the instant case because, among other reasons, DigitalGlobe is contractually bound to the U.S. government—specifically, the National Geospatial-Intelligence Agency ("NGA")—to construct the satellites covered by the Order and

to bring the satellites into service using the bandwidth allocated by the Commission in the Order.<sup>1</sup>

The imposition of the bond requirement in the instant case would result in duplicative regulatory requirements being imposed on DigitalGlobe: one from NGA and the other from the Commission. As the Commission has commented in various regulatory proceedings in the past, the imposition of duplicative regulatory requirements is contrary to public policy.<sup>2</sup> Accordingly, DigitalGlobe hereby requests that the Commission, on its own motion pursuant to 47 C.F.R. § 1.108, set aside the bond requirement imposed by the Order.

Despite DigitalGlobe's contention that the bond requirement is duplicative and unnecessary in the instant case, DigitalGlobe is prepared to file a bond as required by Commission rules. In advance of filing this bond, however, DigitalGlobe herein and through attachments provides evidence required to demonstrate DigitalGlobe's **current** fulfillment of three (3) of the five (5) milestones required by Paragraph 30 of the Order.

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<sup>1</sup> In the event that the Commission desires to understand the full nature of DigitalGlobe's contractual commitments to NGA (the "NextView Contract"), we direct you to discuss salient matters with Ms. Cyndi Wright, the NextView Program Manager at NGA, at (301) 227-6645, or [wrightc@nga.mil](mailto:wrightc@nga.mil). Unfortunately, we are not at liberty to submit a copy of the NextView Contract, as there are significant portions of the NextView Contract that are classified.

<sup>2</sup> See, for example, the Commission's statements made in the *Second Report and Order In the Matter of Mitigation of Orbital Debris*, FCC 04-130 ("Second Orbital Debris Mitigation Order"), in relation to the imposition of orbital debris mitigation requirements on operators of remote sensing satellite operators who have already submitted orbital debris mitigation plans to the National Oceanic and Atmospheric Administration ("NOAA") as part of their authorizations to operate remote sensing systems pursuant to the Land Remote Sensing Act, 15 U.S.C. § 5601 *et seq.* Therein, the Commission found that requiring remote sensing operators to submit orbital debris mitigation plans to the Commission would result in duplicative regulatory burdens that are contrary to public policy. See, Second Orbital Debris Mitigation Order, at Paragraphs 102-104.

**Milestone 1: Entry into a Binding, Non-Contingent Construction Contract – Satisfied February 2004**

On February 23, 2004, DigitalGlobe entered into a binding, non-contingent contract with Eastman Kodak Company (“Kodak”) for the construction of the Imaging Sensors for DigitalGlobe’s next-generation EESS satellite system. That contract (“the Kodak/ ITT Contract”) was subsequently assigned to ITT in connection with ITT’s purchase of Kodak’s Space Systems Division. On April 29, 2004, DigitalGlobe entered into a binding, non-contingent contract with Ball Aerospace & Technologies Corp. (“Ball”) for the construction of satellite bus for DigitalGlobe’s next-generation EESS satellite system, including the integration of the Imaging Sensors to be built by Kodak/ ITT (“the Ball Contract”). Because of the unique confidentiality and national security concerns that exist in connection with its next-generation EESS satellite system, DigitalGlobe cannot provide copies of either the Kodak/ITT Contract or the Ball Contract.

The FCC’s intent in generally requesting that licensees submit unredacted copies of the construction contracts for a licensed system appears to be one of ensuring that all preliminary steps have been taken so that each such contract “is one that allows neither significant delays between the execution of the contract and the actual commencement of construction, nor conditions precedent to construction” (Paragraph 184 of the “First Space Station Licensing Reform Order”<sup>3</sup>). As demonstrated below, however, CDR for the system was completed well over a year ago, and satellite construction has begun. There is, therefore, no doubt that either the Kodak/ITT Contract or the Ball Contract permits any significant delays or conditions precedent to construction, because satellite construction is well underway.

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<sup>3</sup> Amendment of the Commission’s Space Station Licensing Rules and Policies, *First Report and Order*, IB Docket No. 02-34, 18 FCC Rcd 10760 (2003).

In addition to the foregoing, DigitalGlobe notes that the NextView Contract with NGA also obligates DigitalGlobe to meet certain clearly defined milestones with regard to satellite construction, launch, and operation. For specific information regarding the NextView Contract, please contact Cyndi Wright at NGA.

**Milestone 2: Completion of Critical Design Review – Satisfied July 2004**

Pursuant to Paragraphs 188 to 191 of the First Space Station Licensing Reform Order, and footnotes thereto, licensees bear the burden of demonstrating that they have performed the Critical Design Review (“CDR”), thereby completing Milestone 2.

The Commission has not developed a specific rule or other guidance regarding how much information/ documentation is required to be presented in order to demonstrate compliance with this milestone. Therefore, DigitalGlobe offers as evidence of CDR completion a copy of correspondence from the NGA, together with the applicable supporting milestone checklist, submitted herewith as Enclosure A. The correspondence constitutes formal approval from NGA’s Commercial Imagery Program Manager that in July 2004, DigitalGlobe completed the Satellite CDR and System Summary CDR pursuant to DigitalGlobe’s contractual obligations to NGA. If you require additional information, please contact Cyndi Wright at NGA. The arguments as to why Enclosure A should not be made available for public inspection are provided in Enclosure D.

**Milestone 3: Commencement of Physical Construction – Satisfied December 2004**

Pursuant to the First Space Station Licensing Reform Order, at Paragraphs 192 and 193 and footnotes thereto, licensees bear the burden of demonstrating that the physical construction of the satellite has commenced, thereby completing Milestone 3. There is no specific test for compliance with this milestone. Rather, the Commission requires licensees “to provide

sufficient information to demonstrate to a reasonable person that they have commenced physical construction of their licensed spacecraft” (First Space Station Licensing Reform Order, Paragraph 193).

DigitalGlobe offers, as evidence that the physical construction of the spacecraft has commenced, copies of correspondence from NGA, together with the applicable supporting milestone checklists, submitted herewith as Enclosures B and C. The correspondence constitutes formal approval from NGA’s Commercial Imagery Program Manager that in December 2004, DigitalGlobe completed the “Telescope Assembly Started, Bus Integration Started part 2” and “Telescope Test Readiness review” milestones pursuant to DigitalGlobe’s contractual obligations to NGA. These approvals conclusively demonstrate that construction of the Satellite has begun. If you require additional information, please contact Cyndi Wright at NGA. The arguments as to why Enclosures B and C should not be made available for public inspection are provided in Enclosure D.

**Request for Determination of Milestone Compliance**

Notwithstanding the foregoing, DigitalGlobe is prepared to file a full \$5,000,000 bond as required by the Order. However, as evidenced by this letter and the information contained in enclosures hereto, DigitalGlobe has already completed three (3) of the five (5) milestones set forth in the Order. Accordingly, in accordance with the FCC’s August 6, 2003 Guidance for Filing Bonds (Report No. SPB-187, DA 03-2602) and the First Space Station Licensing Reform Order, DigitalGlobe requests that the Commission: (1) certify that DigitalGlobe has fulfilled Milestones 1-3 and (2) reduce the bond required to be paid by DigitalGlobe.

\* \* \* \* \*

Should you have any questions regarding the enclosed documents, please contact the undersigned at (703) 563-3090, x. 205 or DigitalGlobe's General Counsel, Ms. Bettina Eckerle at (303) 684-4312.

Respectfully submitted,

DIGITALGLOBE, INC.

By:



Kef J. Ritterpusch  
Mark J. Fiekers

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(703) 563-3090, x. 205

COUNSEL TO DIGITALGLOBE, INC.

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General Counsel  
DigitalGlobe, Inc.  
1601 Dry Creek Drive  
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ENCLOSURES

October 24, 2005



**ENCLOSURE A**

**Correspondence from the National Geospatial-Intelligence Agency (“NGA”)  
to DigitalGlobe on July 6, 2004 regarding Completion of CDR**

**and**

**[DigitalGlobe Internal Checklist Regarding Milestone Completion for NGA,  
Pursuant to Request for CONFIDENTIAL Treatment, dated October 24, 2005]**



**NATIONAL GEOSPATIAL-INTELLIGENCE AGENCY**

4800 Sangamore Road  
Bethesda, Maryland 20815-5003

July 6, 2004

Herbert F. Satterlee, III  
DigitalGlobe, Inc.  
1900 Pike Road  
Longmont, Colorado 80501

Dear Mr. Satterlee,

The purpose of this letter is to notify you of the National Geospatial-Intelligence Agency (NGA) Commercial Imagery Program Manager's approval of the NextView Milestone 6: Satellite Critical Design Review (CDR) held June 22-25, 2004, at Ball Aerospace, Boulder, Colorado, and System Summary CDR held on June 28-30, 2004, at DigitalGlobe in Longmont, Colorado.

The criteria identified in the Statement of Work, Appendix C were met, so you are authorized to proceed as planned. This letter serves as your authorization to submit an invoice for payment for Milestone 6.

Sincerely,

Sandra S. Jacks  
NGA Commercial Imagery Program Manager

**ENCLOSURE B**

**Correspondence from the National Geospatial-Intelligence Agency (“NGA”)  
to DigitalGlobe on December 6, 2004 regarding  
Commencement of Telescope Construction and Bus Integration**

**and**

**[DigitalGlobe Internal Checklist Regarding Milestone Completion for NGA,  
Pursuant to Request for CONFIDENTIAL Treatment, dated October 24, 2005]**



NATIONAL GEOSPATIAL-INTELLIGENCE AGENCY

December 6, 2004 <sup>6 59</sup>

Herbert F. Satterlee, III  
DigitalGlobe, Inc.  
1601 Dry Creek Road, Suite 260  
Longmont, Colorado 80503

Dear Mr. Satterlee,

The purpose of this letter is to notify you of the National Geospatial-Intelligence Agency (NGA) Commercial Imagery Program Manager's approval of the NextView Milestone 7b: WV60 Telescope Assembly Started, Bus Integration Started part 2.

The criteria identified in the Statement of Work, Appendix C were met, so you are authorized to proceed as planned. This letter serves as your authorization to submit an invoice for payment for Milestone 7b.

*Sandra S. Jacks*

Sandra S. Jacks  
NGA Commercial Remote Sensing  
Management Authority

4600 SANGAMORE ROAD  
BETHESDA, MARYLAND 20816-5003

3838 VOGEL ROAD  
ARNOLD, MISSOURI 63010-6238

REPLY TO THE  
FOLLOWING:

12310 SUNRISE VALLEY DRIVE  
RESTON, VIRGINIA 20191-3448

1200 FIRST STREET, SE  
WASHINGTON, DC 20303-0001

**ENCLOSURE C**

**Correspondence from the National Geospatial-Intelligence Agency ("NGA")  
to DigitalGlobe on July 6, 2004 regarding Telescope Test Readiness Review**

**and**

**[DigitalGlobe Internal Checklist Regarding Milestone Completion for NGA,  
Pursuant to Request for CONFIDENTIAL Treatment, dated October 24, 2005]**



NATIONAL GEOSPATIAL-INTELLIGENCE AGENCY

*6 December* *sg*  
~~30 November 2004~~

Herbert F. Satterlee, III  
DigitalGlobe, Inc.  
1601 Dry Creek Road, Suite 260  
Longmont, Colorado 80503

Dear Mr. Satterlee,

The purpose of this letter is to notify you of the National Geospatial-Intelligence Agency (NGA) Commercial Imagery Program Manager's approval of the NextView Milestone 8: WV60 Telescope Test Readiness Review.

The criteria identified in the Statement of Work, Appendix C were met, so you are authorized to proceed as planned. This letter serves as your authorization to submit an invoice for payment for Milestone 8.

*Sandra S. Jacks*

**Sandra S. Jacks**  
NGA Commercial Remote Sensing  
Management Authority

4600 SANGAMORE ROAD  
BETHESDA, MARYLAND 20816-5003

3638 VOGEL ROAD  
ARNOLD, MISSOURI 63010-6236

REPLY TO THE  
FOLLOWING

12310 SUNRISE VALLEY DRIVE  
RESTON, VIRGINIA 20191-3449

1200 FIRST STREET, SE  
WASHINGTON, DC 20303-0001

**ENCLOSURE D**

**[DigitalGlobe Request for CONFIDENTIAL Treatment of  
DigitalGlobe Internal Checklists within Enclosures A, B, and C of  
Request for Determination of Compliance with Satellite Implementation Milestones,  
dated October 24, 2005]**