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Federal Communications Commission
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REQUEST FOR CONFIDENTIAL TREATMENT

Policy Branch
International Bureau

By Hand Delivery

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W., Room TW-A325
Washington, D.C. 20554

FOR INTERNAL USE ONLY
NON-PUBLIC

Re: ICO Satellite Services G.P.
Application to Modify Letter of Intent Authorization
File No. SAT-MOD-20050110-00004

Dear Ms. Dortch:

Pursuant to Section 25.143(e)(3) of the Commission's rules,¹ ICO Satellite Services G.P. ("ICO") submits a certification (attached hereto as Attachment 1) of completion of the critical design review ("CDR") milestone set forth in its satellite manufacturing contract with Space Systems/Loral, Inc. ("SS/L").² Additionally, in support of its certification, ICO submits a letter from SS/L, certifying completion of CDR for ICO's GSO system and receipt of all payments due under the manufacturing contract as of the date of this letter (attached hereto as Attachment 2). Both certifications by ICO and SS/L (*i.e.*, Attachments 1 and 2) are suitable for public inspection.

Subject to the confidentiality request stated below, ICO is also submitting the following documents ("CDR Documents") to the International Bureau: (1) a chart summarizing

¹ 47 C.F.R. § 25.143(e)(3).

² ICO proposed certain system milestones for the geostationary satellite orbit ("GSO") system it proposes in the above-referenced application to modify its letter of intent authorization. ICO proposed to complete the CDR milestone by May 2005. *See* Application to Modify Letter of Intent Authorization of ICO, File No. SAT-MOD-20050110-00004, at 22 (Jan. 10, 2005).

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Marlene H. Dortch
May 10, 2005
Page Two

payments made under the manufacturing contract (attached hereto as Attachment 3); and (2) a soft copy (provided on CD ROM) of the CDR report and supporting documentation supplied by SS/L (attached hereto as Attachment 4). ICO offers these documents, along with the certifications, as evidence that ICO is proceeding with timely implementation of its 2 GHz mobile satellite service ("MSS") system under the milestone schedule proposed in its modification application.

The CDR Documents ("CDR Documents") contain highly sensitive commercial and financial information. Specifically, they include information regarding amounts due, payment terms, and technical criteria 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 CDR 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 CDR Documents, which contain specific information regarding amounts due, payment terms, and technical criteria.
2. As noted above, the CDR Documents are being submitted as required under Section 25.143(e)(3) of the Commission's rules.
3. The CDR Documents contain information regarding amounts due, payment terms, and technical criteria, which constitutes trade secrets or 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).

Marlene H. Dortch
May 10, 2005
Page Three

4. The CDR 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 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 specifications is 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 CDR 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 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 Commission expressly contemplated that licensees could seek

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).

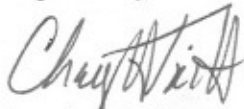
Marlene H. Dortch
May 10, 2005
Page Four

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 CDR 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 CDR 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

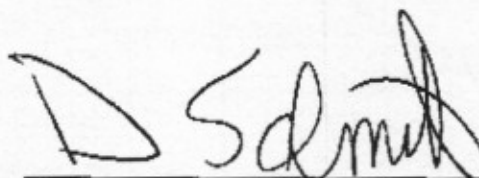
¹⁰ See *Amendment of the Commission’s Rules to Establish Rules and Policies Pertaining to a Mobile Satellite Service in the 1610-1626.5/2483.5-2500 MHz Frequency Bands*, 9 FCC Rcd 5936, 6010 (1994) (emphasis added); see also *The Establishment of Policies and Service Rules for the Mobile Satellite Service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

ATTACHMENT 1

CERTIFICATION

Pursuant to Section 25.121(d)(2) of the Commission's rules, I, Dennis Schmitt, certify under penalty of perjury that:

1. I am the Senior Vice President, Finance 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 completed critical design review of its proposed 2 GHz geostationary satellite orbit ("GSO") mobile satellite service ("MSS") satellite.
3. To the best of my knowledge, information, and belief, ICO has met every milestone and made every payment due under its manufacturing contract with Space Systems/Loral, as of the date hereof.



Dennis Schmitt

Date: May 9, 2005

ATTACHMENT 2



3825 Fabian Way
Palo Alto, CA 94303
Phone: 650-852-4501
Fax: 650-852-6417

C.F. Hoerber
Sr. Vice President,
Sr. VP, Program Management & Systems Engineering

6 May 2005

Dennis Schmitt
President
ICO Satellite Management LLC
2300 Carillon Point
Kirkland, Washington 98033

Dear Mr. Schmitt:

Pursuant to our Satellite manufacturing contract, as executed on January 10, 2005 (the "Contract"), Space Systems/Loral, Inc. is submitting this declaration of completion of the Critical Design Review (CDR) of the ICO satellite for 2-GHz mobile communications. By this letter, SS/L hereby certifies that the CDR was completed on April 29, 2005, in accordance with the requirements contained in the Contract Statement of Work Section 2.2.3, and as approved by ICO.

The Contract was in full force and effect as of the CDR completion date and as of the date hereof. Further, as of the date hereof, the contractor has received from ICO all of the payments due and owing under the Contract. The amount of each payment is specified in Exhibit F to the Contract. The last invoice for the CDR work (designated Milestone #7) was submitted to ICO on May 2, 2005.

In accordance with Section 1.16 of the rules of the Federal Communications Commission, 47 C.F.R. Section 1.16, I, the undersigned, acting on behalf of Space Systems/Loral, Inc., hereby declare under penalty of perjury that to the best of my information and belief, the foregoing is true and correct.

Executed on May 6, 2005.

Sincerely,

A handwritten signature in cursive script that reads "CF Hoerber".

Christopher F. Hoerber
Senior Vice President
Space Systems/Loral, Inc.

**ATTACHMENT 3
(REDACTED)**

**ATTACHMENT 4
(REDACTED)**