



November 17th, 2005

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, N.W.
Washington, DC 20554

Subject: Comments of ManSat Regarding the Application for Modification of Authority
by ICO Satellite Services G.P., SAT-MOD-20050926-00182

Dear Ms. Dortch,

On behalf of ManSat, I would like to notify the FCC of our concerns with respect to the application of ICO Satellite Services G.P. ("ICO") to modify the orbital location of its GSO 2GHz satellite from 91° WL to 93° WL. In a previous application, ICO sought to add Ka-band feeder links to its planned satellite¹. Reassignment of the ICO reservation to 93° WL will have a direct impact on ManSat's ITU filing for this same orbital position: IOMSAT-8. ManSat's concerns are limited to ICO's choice of orbital positions and its proposed use of Ka-band spectrum at the 93°WL orbital position.

ManSat Ltd has made a series of satellite filings at the ITU with its partner via the United Kingdom Administration, namely the Office of Communications (OFCOM).

We are bringing this matter to your attention to ensure that the Commission is aware of the existence of ManSat's IOMSAT-8 filing and that this filing enjoys an earlier ITU priority date than the ICO filing.

ManSat acknowledges the Commission's long-standing policy not to withhold U.S. market access pending coordination between non-U.S.-licensed satellite networks. We seek recognition from the Commission that, should ICO deploy a satellite to this orbital position prior to ManSat's deployment of a satellite (meeting FCC requirements for US Market access), that the Commission, following its established practice and recognizing the ITU Date Priority require ICO to enter into a coordination agreement with ManSat and to comply with the provisions of such coordination agreement. At the present time no such coordination agreement has been made between ManSat and ICO with respect to the 93° WL orbital position.

¹ See: Memorandum Opinion and Order, ICO Satellite Services G.P. Application for Modification of 2GHz LOI Authorization, Petition for Declaratory Ruling or Waiver, 20 FCC Rcd 9797, DA 05-1504, Rel. May 24, 2005.

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Directors: Mr. R.V. Bernstein (USA), Mr. C. Hall, Mr. I. Jarritt,

Dr. Don Jayasuriya, Mr. C. Stott, Mr. W.L.B. Stott



In its filing, ICO explains that it has chosen the requested orbital location because it believes there is greater probability of concluding a coordination agreement at 93° WL than at the original 91° WL slot because there are fewer ITU filings there. ICO fails to mention, however, that there are existing ITU filings at 93° WL that have date priority ahead of ICO.

On March 27, 2002, ManSat filed a Coordination Request at the ITU for IOMSAT-8 at 93° WL through the UK Administration's Radiocommunications Agency, predecessor to OFCOM. That Coordination Request was subsequently published by the ITU on July 15, 2003 as CR/C/1047 in IFIC 2498. Later, on January 6, 2005 OFCOM submitted to the ITU the Advance Publication filing for ICO-G at 91° WL. That filing was subsequently relocated to 93° WL on June 29, 2005. Its corresponding Coordination Request for 93° WL was physically received at the ITU on June 29, 2005.

We also wish to bring to your attention the procedures established by the UK administration, OFCOM. In early 2005, OFCOM held a public consultation concerning Procedures for Authorisation of Satellite Networks, to determine, *inter alia*, whether to submit to the ITU filings that are technically incompatible with other UK filings. On March 24th, 2005 (and please note this precedes the submission of 93° WL ICO-G filing to the ITU on behalf of ICO) OFCOM published its conclusions from the public consultation² stating, in part, that they had decided to submit all valid filings to the ITU, even where there is a technical conflict with existing UK filings and emphasized that OFCOM will strictly enforce the filing date priority of the earlier UK filings. OFCOM went on to state that UK filings that conflicted with an earlier filing would not be able to proceed unless either it was possible to secure the agreement of the earlier operator or the earlier filing failed to proceed. OFCOM also wrote that later-filed conflicting filings would, in that sense, be provisional and would have to be regarded as such by the operators concerned and their financial backers.

ManSat has all intentions of bringing its IOMSAT-8 satellite network into service and has undertaken rigorous commercial measures to that end. Therefore, according to OFCOM's stated guidelines, the ICO-G filing at 93° WL should be regarded as provisional in the absence of an agreement with ManSat.

In similar circumstances with respect to priority dates, the Commission has conditioned authorizations to serve the U.S. market in a manner that acknowledged the priorities established by the ITU process, ensuring the ability to serve the U.S. market from satellite networks launched later but having earlier ITU date priority.

² *Procedures for Authorisation of Satellite Networks, Statement of 24 March 2005*
http://ofcom.org.uk/consult/condocs/satellite_networks/statement/satellite.pdf



In a 2000 decision³, the Commission imposed conditions when it granted market access to the ANIK F1 satellite to be located at 107.3° WL:

- 21(b) Telesat Canada's operation of ANIK F1 must comply with its applicable current and future operational requirements as a result of coordination agreements with other satellite systems.

Further, in the 2003 Space Station Licensing Reform Report and Order⁴, the Commission clarified its practice of imposing conditions when granting market access to satellite networks having lower priority dates than other satellite networks not yet launched:

- In the event that a non-U.S.-licensed satellite operator is authorized to provide service in the United States, and that network is "affected," within the meaning of the ITU's international Radio Regulations, by a satellite network with lower priority seeking access to the U.S. market, we would permit the lower priority network to access the U.S. market if the higher priority satellite has not been launched. In that case the lower priority satellite would be authorized to access the U.S. market subject to proof of coordination with the higher priority satellite. Absent such a demonstration, the lower priority satellite would be required to cease service to the U.S. market immediately upon launch of the higher priority satellite, or be subject to further conditions designed to address potential harmful interference to a satellite with higher ITU date precedence.

ManSat respectfully requests the Commission, in respect of the Application for Modification of Authority by ICO Satellite Services G.P., SAT-MOD-20050926-00182, that the Commission should subject the authorization to ICO to the condition of a coordination agreement between ICO and ManSat, recognizing that ManSat has a satellite filing at 93° WL predating that of ICO.

Yours sincerely,

Christopher Stott
President and C.E.O.

³ See *In the Matter of Telesat Canada Petition for Declaratory Ruling For Inclusion of ANIK F1 on the Permitted Space Station List*, DA 00-2835, ¶ 21

⁴ *Space Station Licensing Reform Order*, 18 FCC Rcd at 10870 ¶ 296

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