

ORIGINAL

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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JUN - 6 2006

In the Matter of)
)
New ICO Satellite Services G.P.)
)
Application for Modification of Authority for)
Use of the 2 GHz Bands to Provide Mobile)
Satellite Service)

File Nos. SAT-MOD-20050926-00182
SAT-AMD-20050927-00186
SAT-AMD-20060505-00054

Federal Communications Commission
Office of Secretary

Received

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Policy Branch
International Bureau

OPPOSITION TO PETITION TO DENY

Pursuant to Section 25.154(c) of the Commission's rules, 47 C.F.R. § 25.154(c), New ICO Satellite Services G.P. ("ICO") opposes the petition ("Petition") of Intelsat North America LLC ("Intelsat"), to deny the above-captioned application, as amended ("Application"), for modification of ICO's 2 GHz mobile satellite service ("MSS") authorization. Intelsat's Petition makes three basic errors: (1) it ignores the fact that ICO has requested (and Intelsat has not opposed) authorization to use frequencies *other* than C-band frequencies at the 92.85° W.L. orbital location; (2) it claims C-band coordination is impossible before the parties have even completed coordination discussions; and (3) it contends that the Commission should categorically and prematurely forbid the parties from exploring frequency coordination options because ICO "might" build a satellite in the meantime.

First, the Commission can and should approve ICO's Application while deferring the waiver request. In its Petition, Intelsat opposes ICO's request for waiver of Section of 25.202(g) of the Commission's rules to permit use of C-band frequencies for transfer orbit and emergency

telemetry, tracking, and command operations (“TT&C”) and its request to defer action on the waiver request.¹ Intelsat’s Petition does *not*, however, object to ICO’s request to modify its 2 GHz MSS authorization to permit operation of an MSS satellite at 92.85° W.L. in the 2 GHz MSS frequency bands and the Ka-band. Because ICO’s request to operate at 92.85° W.L. in the 2 GHz MSS frequency bands and the Ka-band is uncontested, the Commission should grant the Application while deferring the waiver request.

Second, Intelsat prematurely declares that C-band use cannot be coordinated when the parties have not yet completed frequency coordination. In its Application, ICO expressly contemplated that its proposed use of C-band frequencies for transfer orbit and emergency TT&C operations would be predicated upon “successful coordination” with Intelsat.² ICO reaffirmed this intent by amending its Application to seek deferral of Commission action on the waiver request “pending completion of frequency coordination with other satellite operators.”³ This request is consistent with Intelsat’s own assertion that “until ICO has completed coordination of its C-band frequencies, its waiver request cannot be granted.”⁴ Consequently, until frequency coordination with Intelsat has been completed, any conclusion that ICO’s proposed C-band TT&C operations will cause harmful interference to Intelsat’s IA-6 satellite would be premature and unwarranted.

¹ See Intelsat Petition at 1, 4. Intelsat previously also filed an *ex parte* letter opposing ICO’s request for waiver of Section 25.202(g). See Letter from Jennifer D. Hindin, Counsel for Intelsat, to Marlene H. Dortch, Secretary, FCC, at 1 (Mar. 27, 2006) (“Intelsat Letter”).

² See ICO Application, Attachment A, at 4.

³ ICO Amendment to Application, at 3 (May 5, 2006).

⁴ Intelsat Letter at 2.

Finally, Intelsat and the public will suffer no harm if the Commission defers action on ICO's waiver request. Although Intelsat speculates that ICO "might" proceed to build a satellite that does not comply with the Commission's rules, it fails to offer any evidence that ICO plans to do so or to explain how the mere possibility of the construction of a non-compliant satellite would harm either itself or the public interest.⁵ In any event, ICO's satellite operations will be limited by and conducted in compliance with the terms of its authorization, and in the absence of Commission action on ICO's waiver request, Intelsat's interests will not be affected in any way.


In sum, ICO's waiver request is separate and discrete from the remaining uncontested issues raised in the Application, and thus can be resolved at a later time when both ICO and Intelsat have had sufficient opportunity to complete frequency coordination discussions. Commission deferral of action on ICO's waiver request would allow the Commission to provide regulatory certainty by granting the uncontested portion of the Application without prejudicing Intelsat's interests.

⁵ See Intelsat Petition at 4. As the Commission has acknowledged, "an applicant's decision to proceed with construction and incur expenses associated with construction would be taken at its own risk and not predispose us to grant its future application." See *Streamlining the Commission's Rules and Regulations for Satellite Application and Licensing Procedures*, 11 FCC Rcd 21581, ¶ 6 (1996).

Based upon the foregoing, ICO urges the Commission to grant the Application expeditiously, except with respect to the request for waiver of Section 25.202(g), which should be deferred pending completion of frequency coordination with other satellite operators.

Respectfully submitted,

NEW ICO SATELLITE SERVICES G.P.

By: 
Cheryl A. Tritt
Phuong N. Pham
Morrison & Foerster LLP
2000 Pennsylvania Ave., NW, Suite 5500
Washington, D.C. 20006

Its Counsel

John Flynn
Executive Vice President, General Counsel
& Corporate Secretary
ICO Global Communications (Holdings) Ltd.
11700 Plaza America Drive, Suite 1010
Reston, VA 20190

Suzanne Hutchings Malloy
Senior Regulatory Counsel
815 Connecticut Avenue, N.W., Suite 610
Washington, D.C. 20006

June 6, 2006

CERTIFICATE OF SERVICE

I, Theresa Rollins, hereby certify that on June 6, 2006, a copy of the foregoing **OPPOSITION** was served by electronic mail or, as indicated (*), by U.S. mail upon the following:

Karl Kensinger
Associate Division Chief, Satellite Division
International Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554
Email: Karl.Kensinger@fcc.gov

John Martin
Senior Engineer, Satellite Division
International Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554
Email: John.Martin@fcc.gov

Steven Spaeth
International Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554
Email: Steven.Spaeth@fcc.gov

Andrea Kelly
Chief, Policy Branch
Satellite Division
International Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554
Email: Andrea.Kelly@fcc.gov

Scott Kotler
Chief, System Analysis Branch
Satellite Division
International Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554
Email: Scott.Kotler@fcc.gov


Kathryn Medley
Acting Chief, Engineering Branch
Satellite Division
International Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554
Email: Kathryn.Medley@fcc.gov

Kal Krautkramer
International Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554
Email: Kal.Krautkramer@fcc.gov

Sylvia Lam
International Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554
Email: Sylvia.Lam@fcc.gov

Alyssa Roberts
International Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554
Email: Alyssa.Roberts@fcc.gov

Jennifer D. Hindin*
Wiley, Rein & Fielding
1776 K Street, NW
Washington, DC 20006
Counsel to Intelsat North America LLC


Theresa Rollins