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6017 Woodley Road  
McLean, VA 22101  
October 15, 2008

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
The Portals, Room TW-A325  
455 12<sup>th</sup> Street, S.W.  
Washington, DC 20554

FILED/ACCEPTED

OCT 15 2008

Federal Communications Commission  
Office of the Secretary

**REQUEST FOR CONFIDENTIAL TREATMENT**  
**ROUTE DIRECTLY TO INTERNATIONAL BUREAU**

**Re: AtContact Communications, LLC's Demonstration of Compliance With the Third Milestone for its Ka-Band FSS NGSO Satellite System; File Nos. SAT-MOD-20060511-00056, SAT-MOD-20080813-00155 (NGSO) (Callsign S2346)**

Dear Ms. Dortch:

AtContact Communications, LLC ("AtContact"), by its counsel, hereby requests that the identified portions of the documents submitted herewith demonstrating compliance with the commencement of construction milestone ("Construction Demonstration") contained in AtContact's Ka-band license<sup>1</sup> and required by Section 25.164(e) of the Commission's rules<sup>2</sup> and the Commission's First Space Station Licensing Reform Order,<sup>3</sup> be held in confidence and not made available for public inspection, pursuant to Section 0.459 of the Commission's rules.<sup>4</sup> Confidential treatment in this circumstance is fully consistent with the Administrative Procedure Act and past Commission practice.

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<sup>1</sup> *Order and Authorization, in the Matter of contactMEO Communications, LLC, For Authority to Launch and Operate a Non-Geostationary Orbit Fixed-Satellite System in the Ka-band Frequencies*, 21 FCC Rcd 4035 (2006) at ¶68.

<sup>2</sup> 47 C.F.R. § 25.164(e) (requiring demonstration of commencement of construction).

<sup>3</sup> *In the Matter of Amendment of the Commission's Space Station Licensing Rules and Policies; Mitigation of Orbital Debris, First Report and Order and Further Notice of Proposed Rulemaking in IB Docket No. 02-34, and First Report and Order in IB Docket No. 02-54*, 18 FCC Rcd 10760 at ¶192 (2003) ("*First Space Station Licensing Reform Order*") (requiring that a licensee demonstrate compliance with the commencement of construction milestone).

<sup>4</sup> 47 C.F.R. § 0.459; *see also First Space Station Licensing Reform Order, id.*, ¶187.

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AtContact has filed through IBFS a public redacted version of the Construction Demonstration for the above-referenced NGSO satellite system.

AtContact is submitting under cover of this request an unredacted copy of the Construction Demonstration, with exhibits, between Space Systems/Loral (“Loral”) and AtContact and Northrop Grumman Corp. (“Northrop”). This showing covers the NGSO component of the AtContact system, S2346. Space Systems/Loral remains the prime contractor and the components listed in the Asset Sales Agreement will be delivered as instructed by AtContact. Also, in furtherance of this request, only one copy of this document is being filed with the Commission. The contents of the Construction Demonstration and all the exhibits are considered redacted and the subject of this request.

AtContact hereby requests that the contents of the Construction Demonstration and all its exhibits be treated as confidential and not routinely available for public inspection pursuant to 47 C.F.R. §§ 0.457 and 0.459, and 5 U.S.C. § 552(b)(4). These components contain highly sensitive information that qualifies as “commercial, financial, or technical information that “would customarily be guarded from competitors” regardless of whether or not such materials are protected from disclosure by a privilege. *See* 47 C.F.R. § 0.457(d); *see also Critical Mass Energy Project v. NRC*, 975 F.2d 871, 879 (D.C. Cir. 1992) (“*Critical Mass Energy*”) (concluding that financial or commercial information provided to the Government voluntarily is “confidential” for purposes of Exemption 4 of the Freedom of Information Act, which applies to information constituting “trade secrets and commercial or financial information” that “would not customarily be released to the public”). Revealing the information in the Construction Demonstration if disclosed could place AtContact, Loral and Northrop at a competitive disadvantage.

In support of this request and pursuant to 47 C.F.R. § 0.459(d) of the Commission’s rules, AtContact provides the following information:

1. **Specific Information For Which Confidential Treatment is Sought - § 0.459(b)(1):** AtContact seeks confidential treatment for those parts of the Construction Demonstration, including all exhibits, between it and Loral that relate to specific technical characteristics, financial terms, payment plans and construction schedules and similar matters. As noted, AtContact has also filed a public version of the attached materials, which reflects redaction of these parts of the Construction Demonstration.
2. **Circumstances Giving Rise to the Submission - § 0.459(b)(2):** The information is being submitted pursuant to 47 C.F.R. § 25.164(c) to demonstrate compliance with the Construction Demonstration contained at paragraph 68 of AtContact’s Ka-band license.

3. **Degree to Which The Information is Commercial or Financial, or Contains a Trade Secret or is Privileged - § 0.459(b)(3):** The Construction Demonstration materials for which AtContact requests confidential treatment contain sensitive commercial, financial and technical information that would customarily be kept from competitors. This information includes confidential terms associated with technical information and characteristics, and operational and financial details. AtContact would be severely prejudiced in its ability to compete were such information released to become available to a competitor. It could also adversely impact future negotiations between AtContact and Loral, as well as between Loral and their potential contractors or customers. Disclosure of these terms would therefore be damaging to both companies.
4. **Degree to Which The Information Concerns a Service That is Subject to Competition - § 0.459(b)(4):** The commercial provision of Ka-band FSS is relatively new in the industry, and there are numerous AtContact applicants and competitors who would stand to benefit competitively from any knowledge of the materials for which AtContact requests confidential treatment.
5. **How Disclosure of The Information Could Result in Substantial Competitive Harm - § 0.459(5):** Disclosure of the information for which confidentiality treatment is requested could result in substantial harm to AtContact, Northrop and Loral by revealing to their competitors the satellite construction industry and the public information that would be useful in negotiating contracts to develop competing service offerings. "Buyers receive a clear competitive advantage if they know the prices that other buyers have been charged as a result of individual negotiations." *See In re Application of Mobile Communications Holdings, Inc. for Authority to Construct the ELLIPSO Elliptical Orbit Mobile Satellite System*, 10 FCC Rcd 1547, 1548 (Int'l Bur. 1994). In addition, AtContact would be adversely affected in any future negotiations for satellite construction if this information were available to other satellite manufacturers.
6. **Measures Taken by AtContact to Prevent Unauthorized Disclosure - § 0.459(b)(6):** By the terms of the contract and through non-disclosure agreements, AtContact and Loral go to great lengths to prevent unauthorized persons from having access to the sensitive technical and financial information for which confidential treatment is requested.

7. **The Information Submitted is Not Available to the Public and Has Not Previously Been Disclosed to Third Parties, Except for Appropriately Limited Circumstances - § 0.459(b)(7):** No part of the materials for which confidential treatment is requested has been or is available to the public or any third party without direct “need to know” involvement.
8. **Period During Which the Submitted Material Should Not be Available for Public Disclosure – § 0.459(b)(8):** AtContact requests that the materials for which confidential treatment have been requested remain withheld from public disclosure indefinitely.
9. **Other Information Supporting Request for Confidential Treatment – § 0.459(b)(9):** Denying AtContact’s request for confidential treatment would impair the Commission’s ability to obtain voluntarily this kind of information in the future. The Commission has long recognized the need for respecting confidentiality of certain materials, as shown by its discussion in its *First Space Station Licensing Reform Order* at paragraphs 186-87, by §§ 0.457 and 0.459 of its rules, and by its and U.S Court of Appeals decisions.<sup>5</sup> These policies and practices apply fully to the enclosed materials.

For the foregoing reasons, AtContact asks that the Commission

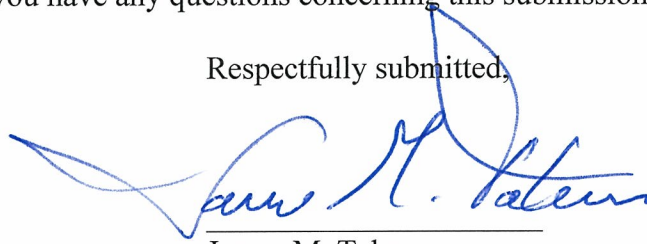
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<sup>5</sup> See *Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission*, 13 FCC Rcd 24816, ¶ 8 (1998) (declining to disclose competitively sensitive contracts “on the mere chance” that such disclosure might be helpful to a third party in some fashion). See also *Critical Mass Energy*, supra, at 878 (“Where, however, the information is provided to the Government voluntarily, the presumption is that [the Government’s] interest will be threatened by disclosure as the persons whose confidences have been betrayed will, in all likelihood, refuse further cooperation.”)

extend confidential treatment to the attached information as requested herein.

Please contact me if you have any questions concerning this submission.

Respectfully submitted,



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Enclosures