

May 1, 2009

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554



Re: AtContact Communications, LLC, Request for Waiver of Milestones
and Bond Requirement

File Nos. SAT-MOD-20080813-00155 (S2346); SAT-AMD-
20080930-00195 (S2680); SAT-AMD-20080505-00098 (S2381); SAT-
AMD-20080930-00194 (S2682); SAT-MOD-20060511-00057 (S2683)

Dear Ms. Dortch:

Intelsat North America LLC ("Intelsat") files this letter in response to AtContact Communications, LLC's ("AtContact") above-referenced request for waivers of the Federal Communications Commission's ("FCC" or "Commission") milestone and bond requirements. Due to the expansive and unprecedented relief requested, Intelsat urges the Commission to issue a public notice seeking comment on AtContact's request.¹ In addition, the Commission should require AtContact to provide detailed factual information supporting its request.²

On February 6, 2009, AtContact submitted a letter requesting waiver of bond and milestone requirements for AtContact's proposed Ka-band satellite system.³ Specifically, AtContact asks the Commission to grant a waiver that would allow a 36-month extension of AtContact's milestones and asks the Commission to withdraw and unconditionally release AtContact from any bond requirements. AtContact does not provide specific factual justifications for this broad waiver request, but instead claims that waiver is appropriate because of current financial conditions.

¹ According to the Commission's rules, public notices are issued for significant Commission actions regarding applications and for information which the Commission in its discretion believes to be of public significance. 47 C.F.R. § 25.151(a)(6) and (7).

² 47 C.F.R. § 25.111 ("The Commission may request from any party at any time additional information concerning any application, or any other submission or pleading, regarding an application, filed under this part").

³ *Letter from James M. Talens, Counsel to AtContact Communications, LLC to Marlene H. Dortch, Federal Communications Commission*, File Nos. SAT-MOD-20080813-00155 (S2346); SAT-AMD-20080930-00195 (S2680); SAT-AMD-20080505-00098 (S2381); SAT-AMD-20080930-00194 (S2682); SAT-MOD-20060511-00057 (S2683), filed Feb. 6, 2009 ("AtContact Waiver Request").

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In 2004, AtContact proposed to build a Ka-band satellite system comprised of one non-geostationary (“NGSO”) constellation and four geostationary (“GSO”) satellites. Years later, AtContact is now surrendering licenses for the NGSO satellite constellation and for two of the four GSO satellites. AtContact seeks a waiver to extend the milestones for the remaining GSO satellites for three years. Moreover, AtContact argues that the Commission should grant a waiver releasing AtContact from all bond obligations.

According to long-standing Commission precedent, the FCC grants a waiver only if the relief requested serves the public interest and does not otherwise undermine the purpose of the rule in question.⁴ The Commission has clearly stated that the milestone and bond requirements are necessary to deter speculation and the warehousing of satellite spectrum.⁵ To ensure that a waiver does not undermine these purposes, the Commission only grants narrowly tailored waivers that permit licensees to depart from the rules as warranted by specific factual circumstances.

AtContact provides no specific factual information to support its request for waiver. The principal justification AtContact provides for its extraordinary request for relief is the current world financial market situation.⁶ AtContact claims that current financial conditions make deployment of the proposed Ka-band system unreasonable, not only for AtContact, but for any satellite operator. Yet AtContact appears to undercut its own argument by asserting that it has established cooperation agreements with WildBlue Communications and EchoStar, Inc. “in furtherance of satellite construction and launch,” suggesting that these three companies are making Ka-band deployment plans.⁷ Moreover, the financial reports of other satellite operators undercut

⁴ *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969).

⁵ Milestones are “intended to ensure that licensees provide service to the public in a timely manner, to prevent warehousing of scarce orbit and spectrum resources.” *Amendment of the Commission’s Space Station Licensing Rules and Policies*, First Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 10760, 10827 (2003). The Commission adopted the bond requirement “to help deter speculative satellite applications, and help expedite provision of service to the public.” *Id.* at 10825.

⁶ According to AtContact, waiver is required because there is “no precedent in our lifetime for the current state of the world credit and capital markets.” AtContact Waiver Request at 3.

⁷ *Letter from James M. Talens, Counsel to AtContact Communications, LLC to Marlene H. Dortch, Federal Communications Commission*, File Nos. SAT-MOD-20080813-00155 (S2346); SAT-AMD-20080930-00195 (S2680); SAT-AMD-20080505-00098 (S2381); SAT-AMD-20080930-00194 (S2682); SAT-MOD-20060511-00057 (S2683) at 2, filed Apr. 22, 2009. AtContact provides no documentation or details of these alleged agreements.

AtContact's claim that the satellite industry is critically harmed by the current financial situation. SES, Eutelsat, and Intelsat all reported strong financial 2008 results.⁸ Additionally, ViaSat and Eutelsat are currently building new Ka-band spacecraft⁹ and Hughes Network Systems has announced plans to build another Ka-band satellite in the near future.¹⁰ O3b Networks Ltd. also recently announced plans to build a high-speed, low-cost Ka-band satellite system.¹¹

Moreover, the Commission has explicitly found that changing market conditions do not justify waiver of these requirements.¹² Granting the broad relief sought by AtContact based solely on market conditions that affect all satellite operators would appear to undermine entirely the purpose of the milestone and bond obligations by setting a precedent for other satellite operators to cite the global recession as the basis for avoiding their own bond obligations.¹³

Intelsat urges the Commission to consider carefully, and with public input, AtContact's unprecedented request for waiver. Because of the public interest concerns associated with granting a broad waiver that could undermine the

⁸ "SES Delivers Another Year of Solid Growth in 2008," Feb. 13, 2009, available at http://www.ses.com/ses/PDFs/Investor_Relations/Results/Results_2008/FY_2008/FY2008_e.pdf; "Eutelsat Communications Reports 2007-2008 Results Exceeding Objectives," July 31, 2008, available at <http://www.eutelsat.com/news/compress/en/2008/pdf/PR2508-Annual-Results-2007-2008.pdf>; "Intelsat Reports Record Full Year 2008 Revenue, Growing 8% Over Full Year 2007," Mar. 18, 2009, available at <http://www.intelsat.com/files/investors/financial/2009/2009-09.pdf>.

⁹ "ViaSat Awarded Broadband Gateway Contract for New Eutelsat Ka-band KA-SAT Satellite," Mar. 31, 2009, available at <http://www.reuters.com/article/pressRelease/idUS127922+31-Mar-2009+BW20090331>.

¹⁰ Hughes Network Systems, LLC, Letter of Intent to Access the U.S. Market Using a Non-U.S. Licensed Ka-Band Geostationary Fixed-Satellite Service Satellite at the 107.1° W.L. Orbital Location, File No. SAT-LOI-20080603-00118 (filed June 3, 2008).

¹¹ "O3b Networks, with support from Google, Liberty Global and HSBC, to deploy world's first high-speed, low-cost satellite system to transform communications access for billions worldwide," Sept. 9, 2008, available at http://www.o3bnetworks.com/press_o3blaunch.html.

¹² "To the extent petitioners are asserting that satellite entrepreneurs should be free to apply for and obtain satellite licenses and later abandon their licenses because of economic changes in the marketplace, we believe such practices are inconsistent with the public interest." *Amendment of the Commission's Space Station Licensing Rules and Policies*, First Order on Reconsideration and Fifth Report and Order, 19 FCC Rcd 12637, 12652 (2004).

¹³ AtContact claims the economy acts as a "force majeure" that should excuse its bond obligations. AtContact Waiver Request at 7.

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purpose of the milestone and bond requirements, and the precedent that would become available to all other satellite operators, Intelsat urges the Commission to place AtContact's pending request on public notice and seek comment prior to taking any action. Additionally, the Commission should require AtContact to provide additional factual information in support of its request.

Sincerely,

/s/ Kalpak S. Gude

Kalpak S. Gude
Vice President and Deputy General Counsel

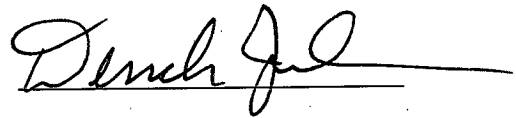
cc: Attached Certificate of Service
John Giusti
Robert Nelson
Stephen Duall

CERTIFICATE OF SERVICE

I, Derrick Johnson, do hereby certify that on May 1, 2009, I served a copy of the foregoing letter upon the following parties by U.S. first-class mail, postage pre-paid:

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Attorney-at-Law
6017 Woodley Road
McLean, VA 22101

David M. Drucker
AtContact Communications LLC
2539 North Highway 67
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Sedalia, Colorado 80135

A handwritten signature in cursive script, appearing to read "Derrick Johnson", with a horizontal line extending to the right from the end of the signature.