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JUN 22 2007

Federal Communications Commission  
Office of the Secretary

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June 22, 2007

**REQUEST FOR CONFIDENTIAL TREATMENT**

**By Hand Delivery**

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

Re: New ICO Satellite Services G.P.  
Call Sign S2651

Dear Ms. Dortch:

Pursuant to Section 25.143(e)(3) of the Commission's rules,<sup>1</sup> New ICO Satellite Services G.P. ("ICO") submits a certification (attached hereto as Attachment 1) of completion of the milestone to "complete thermal vacuum test."<sup>2</sup> The ICO certification is suitable for public inspection.

Subject to the confidentiality request stated below, ICO is also submitting the following documents ("Milestone Documents") to the International Bureau: (1) a letter from its satellite manufacturer, Space Systems/Loral ("SS/L"), certifying completion of the thermal vacuum test for ICO's geostationary satellite (attached hereto as Attachment 2); and (2) a chart summarizing payments made under the manufacturing contract (attached hereto as Attachment 3). ICO offers these documents, along with its own milestone certification, as evidence that ICO is proceeding with timely implementation of its 2 GHz mobile satellite service ("MSS") system under the milestone schedule set forth in its authorization.<sup>3</sup>

<sup>1</sup> 47 C.F.R. § 25.143(e)(3).

<sup>2</sup> See *New ICO Satellite Services, G.P.*, 22 FCC Rcd 2229, ¶ 21 (IB 2007)

<sup>3</sup> *Id.*

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Pursuant to paragraph 39 of the *ICO Modification Order*,<sup>4</sup> ICO hereby notifies the Commission that contract milestone #38 will be completed more than 14 days following the completion date specified in Appendix F of its satellite manufacturing contract.<sup>5</sup>

The Milestone Documents contain highly sensitive commercial and financial information. Specifically, they include information regarding amounts due, payment terms, and technical information 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")<sup>6</sup> and Section 0.457(d) of the Commission's rules.<sup>7</sup> Accordingly, pursuant to Sections 0.457 and 0.459 of the Commission's rules,<sup>8</sup> ICO requests the Commission to withhold from public inspection and accord confidential treatment to the Milestone 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 Milestone Documents, which contains specific information regarding amounts due, payment terms, and technical criteria.

2. As noted above, the Milestone Documents are being submitted to support ICO's milestone certification, filed pursuant to Section 25.143(e)(3) of the Commission's rules.

3. The Milestone 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

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<sup>4</sup> See *ICO Satellite Services, G.P.*, 20 FCC Rcd 9797, ¶ 39 (2005) ("*ICO Modification Order*").

<sup>5</sup> This contract milestone is separate and distinct from the required FCC implementation milestones referenced in paragraph 38 of the *ICO Modification Order*.

<sup>6</sup> 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).

<sup>7</sup> 47 C.F.R. § 0.457(d).

<sup>8</sup> *Id.* §§ 0.457, 0.459.

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competitors,”<sup>9</sup> and is therefore exempted from mandatory disclosure under FOIA Exemption 4 and Section 0.457(d) of the Commission’s rules.<sup>10</sup>

4. The Milestone 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 information likely would result in substantial competitive harm to ICO. For example, disclosure of this information would allow competing 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 comparable 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 Milestone 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.<sup>11</sup> Specifically, the Commission has found that financial and technical data contained in a satellite construction contract constitutes confidential information

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<sup>9</sup> *Id.* § 0.457(d)(2).

<sup>10</sup> 5 U.S.C. § 552(b)(4); 47 C.F.R. § 0.457(d).

<sup>11</sup> *See, e.g., GE American Communications, Inc.*, 16 FCC Red 6731, 6731 (IB 2001).

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because its disclosure would cause substantial harm to the licensee's competitive position.<sup>12</sup> 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 confidential treatment of "any portion of their report, pursuant to Section 0.459 of the Commission's rules."<sup>13</sup>

In order to provide adequate protection from public disclosure, the Commission should strictly limit distribution of the Milestone 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 Milestone 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 New ICO Satellite Services G.P.

Enclosures

cc: Robert Nelson  
Cassandra Thomas  
Karl Kensinger

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<sup>12</sup> See *American Satellite Co.*, 1985 FCC Lexis 3117, at \*19 (1985).

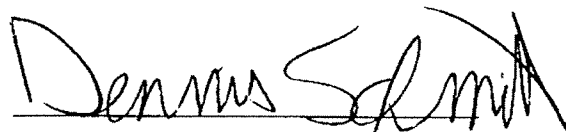
<sup>13</sup> See *Amendment of the Commission's Rules to Establish Rules and Policies Pertaining to a Mobile Satellite Service in the 1610-1626.5/2483.5-2500 MHz Frequency Bands*, 9 FCC Rcd 5936, 6010 (1994) (emphasis added); see also *The Establishment of Policies and Service Rules for the Mobile Satellite Service in the 2 GHz Band*, 15 FCC Rcd 16127, 16181 (2000).

# **ATTACHMENT 1**

## CERTIFICATION

Pursuant to Section 25.143(e)(3) of the Commission's rules, I, Dennis Schmitt, certify under penalty of perjury that:

1. I am a Senior Vice President of ICO Global Communications (Holdings) Limited, the ultimate parent of New ICO Satellite Services G.P. ("ICO").
2. To the best of my knowledge, information, and belief, ICO has completed the thermal vacuum test of its satellite.

A handwritten signature in black ink that reads "Dennis Schmitt". The signature is written in a cursive style with a horizontal line underneath the name.

Dennis Schmitt

Date: June 19, 2007

**REDACTED FOR PUBLIC INSPECTION**

**ATTACHMENT 2**

**REDACTED FOR PUBLIC INSPECTION**

**ATTACHMENT 3**