

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

OCT 1 2009

OFFICE OF  
MANAGING DIRECTOR

**BY FACSIMILE TO (425) 376-8636 AND BY EXPEDITED DELIVERY SERVICE**

Mr. Bruce S. Echigoshima  
Western Region Surety Claims  
Post Office Box 34670  
Seattle, WA 98124

Re: Principal: ATCONTACT Communications, LLC  
Bond Number: 6321647

Dear Mr. Echigoshima:

Thank you for your letter (Letter) dated September 3, 2009,<sup>1</sup> on behalf of Safeco Insurance Company of America (Safeco)<sup>2</sup> acknowledging our demand<sup>3</sup> (Demand) for payment of the amount due on the above referenced bond (Bond). In accordance with paragraph 3 of the Bond,<sup>4</sup> our Demand, which included a copy of the relevant Order,<sup>5</sup> notified Safeco that the Commission issued a Notice of Default of the satellite authorization issued to ATCONTACT Communications, LLC (ATCONTACT).<sup>6</sup> We have complied with all conditions precedent, and we believe that under the ordinary meaning of the terms of the Bond (taking into account subsequent riders to the maximum penal sum), Safeco is obligated to pay three million dollars (\$3,000,000) no later than October 5, 2009, which is “thirty (30) business days of [the] Notice of Default.” Safeco’s Letter, however, requests the Commission “either withdraw its claim or stay any demand until all administrative and/or judicial remedies have been exhausted by

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<sup>1</sup> Letter to Mark Stephens, Federal Communications, Satellite Division, International Bureau (sic), 455 Twelfth Street S.W., Washington, D.C. 20554 (September 3, 2009) (Safeco Letter). We note that Mark Stephens is the Commission’s Chief Financial Officer, and not assigned to the Satellite Division of the International Bureau.

<sup>2</sup> We understand that on September 22, 2008, Liberty Mutual Group, Inc. finalized its acquisition of Safeco, but such acquisition does not alter our contact with Safeco.

<sup>3</sup> Among other things, *see* Letter to Safeco Insurance Company of America, Safeco Plaza, 1001 4<sup>th</sup> Avenue, Seattle, WA 98184 (August 26, 2009). Unless we are advised otherwise, this and future correspondence from us will be to your stated return address.

<sup>4</sup> Paragraph 3 provides in relevant part:

In the event of a Notice of Default (i.e., an order or public notice revoking Principal’s authorization) issued by the FCC to the Principal and the Surety regarding the performance of the milestones specified above during the terms of this bond, the Surety shall be liable only up to the current outstanding maximum penal sum amount after giving effect to applicable milestone reductions.

<sup>5</sup> ATCONTACT Communications, LLC, *Order*, DA 09-1850, (IB, rel. August 21, 2009) (*Authorization Revocation*).

<sup>6</sup> contactMEO Communications, LLC, *Order and Authorization*, DA-06-864, 21 FCC Rcd 4035 (Int’l Bur. 2006) (*ATCONTACT Authorization*). In June 2006, the licensee notified the Commission that it changed its name from contactMEO Communications, LLC to ATCONTACT Communications, LLC. Letter to Marlene H. Dortch, Secretary FCC, from James M. Talens, Counsel to ATCONTACT Communications, LLC (June 5, 2006).

[ATCONTACT].”<sup>7</sup> In regard to that request, Safeco states it had “not yet had an opportunity to hear from [its] principal directly[,] and [Safeco is] unaware if there are any valid defenses to [the Commission’s] claim against the bond.”<sup>8</sup> Furthermore, Safeco stated an impression that ATCONTACT was “evaluating its options,” including “1) pay the amount of the claim; 2) move for reconsideration of the administrative ruling or 3) file an appeal in District Court.” We note, ATCONTACT filed a Petition for Reconsideration and a Motion for Stay, but the filings do not alter Safeco’s obligation.<sup>9</sup>

Safeco’s obligations under the terms of the Bond are clear, and time is of the essence, *i.e.*, the payment date is October 5, 2009. The Bond iterates ATCONTACT’s five milestones,<sup>10</sup> only two of which ATCONTACT met. Indeed, as is evident from the *Authorization Revocation*, ATCONTACT failed to meet its burden of proof to satisfy its third milestone to “[b]egin the physical construction of the first satellite by October 15, 2008,” hence the authorization is null and void. Moreover, ATCONTACT stated it “no longer intended to proceed with its NGSO satellites and two of its GSO satellites.”<sup>11</sup> Finally, we note that ATCONTACT’s authorization contained a fourth milestone, to “[c]omplete construction and launch the first satellite by October 15, 2009.”<sup>12</sup> Hence, we expected Safeco to provide either payment of the amount due or a detailed explanation why Safeco believes it is permitted to defer a timely payment in compliance with its contractual obligation. We now specifically request that Safeco respond whether it has further reviewed the tentative position expressed in the Letter, and that Safeco provide us with a detailed discussion of its current position on the matter.

In summary, Safeco has not to date provided a persuasive argument why payment to the United States should be deferred. Moreover, if such reason does exist, it has not been presented by Safeco or ATCONTACT. Because we invite Safeco to provide us with the results of its discussion with ATCONTACT, and we seek Safeco’s reasoned explanation why it believes payment should be deferred, we will not act in further response to the Bond terms, or otherwise exercise any right thereto without first providing Safeco a courtesy notification of our intent and a period of ten (10) calendar days to comply. Should there be a decision on ATCONTACT’s

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<sup>7</sup> Safeco Letter, ¶ 2.

<sup>8</sup> *Id.*, ¶ 3.

<sup>9</sup> Under 47 C.F.R. § 1.102(b)(1), the *Authorization Revocation* was effective and binding upon its release.

<sup>10</sup> Bond, ¶ #1; *see also* 47 C.F.R. § 25.164; *ATCONTACT Authorization*, ¶ 68; and *Authorization Revocation*, ¶ 3.

<sup>11</sup> *Authorization Revocation*, ¶ 5.

<sup>12</sup> *ATCONTACT Authorization*, ¶ 68.

Petition for Reconsideration and Motion for Stay in the interim, we will notify Safeco of the outcome. Any deferment in this regard is not and should not be construed as a waiver of any right of enforcement of the terms of the Bond.

Sincerely,



Mark Stephens  
Chief Financial Officer

Copies to:

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