

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

RECEIVED

MAR 29 2005

Received

MAR 30 2005

Federal Communications Commission  
Office of Secretary

In the Matter of )  
)  
ICO Satellite Services, G.P. )  
)  
Application for Modification of Authority )  
For Use of the 2 GHz Bands to Provide )  
Mobile Satellite System )  
)  
Petition for Declaratory Ruling, or )  
Alternatively, for a Waiver )

Policy Branch  
International Bureau

File No. SAT-MOD-20050110-00004

File No. SAT-PDR-20050110-00024

REPLY OF  
THE BOEING COMPANY

The Boeing Company ("Boeing"), by its attorneys, pursuant to Section 25.154(d) of the Commission's rules, 47 C.F.R. § 25.154(d), hereby replies to the response filed by ICO Satellite Services, G.P. ("ICO") in the above-captioned proceeding on March 22, 2005.<sup>1</sup>

In its response, ICO does not refute that it made factual misrepresentations to the Commission in its January 10, 2005 modification application<sup>2</sup> and petition for declaratory ruling.<sup>3</sup> For example, ICO failed to disclose to the Commission that it terminated its satellite manufacturing contract with Boeing Satellite Systems International, Inc. ("BSS") nearly a year before filing its modification application and petition. ICO also misled the Commission by

<sup>1</sup> See *Response of ICO Satellite Services, G.P.*, FCC File Nos. SAT-MOD-20050110-00004 and SAT-PDR-20050110-00024 (March 22, 2005) ("*ICO Response*").

<sup>2</sup> See *ICO Satellite Services, G.P., Application for Modification of Authority For Use of the 2 GHz Bands to Provide Mobile Satellite System*, FCC File No. SAT-MOD-20050110-00004 (Jan. 10, 2005) ("*ICO Application*").

<sup>3</sup> See *ICO Satellite Services, G.P., Petition for Declaratory Ruling, or Alternatively, for a Waiver*, FCC File No. SAT-PDR-20050110-00024 (Jan. 10, 2005) ("*ICO Petition*").

repeatedly claiming that the contract was “suspended” rather than terminated for ICO’s convenience.<sup>4</sup>

Rather than focus on the facts, ICO claims in its response that its misleading statements and omissions to the Commission involve “unnecessary details” that “are not material or relevant to the Commission’s ultimate decision to grant or to deny ICO’s modification and waiver requests.”<sup>5</sup>

ICO’s response also dwells on issues that are relevant primarily to the civil litigation that exists between ICO and Boeing in California Superior Court. Specifically, ICO claims that “unresolved disputes” existed between ICO and BSS, which ICO “repeatedly attempted to resolve” with BSS prior to ICO’s termination of the contract for its convenience.<sup>6</sup>

As BSS acknowledged in its comments, numerous disputes did arise between ICO and BSS during the eight-year life of the manufacturing contract.<sup>7</sup> The last of those disputes, however, was resolved on July 25, 2003, when the parties signed Amendment 25 to the contract.

Subsequent to that date, and prior to January 29, 2004, the day on which ICO issued a notice to BSS terminating the manufacturing contract for ICO’s convenience, there were no

---

<sup>4</sup> *ICO Application* at 3 (claiming that “additional work under the manufacturing contract has been suspended”); *see also id.* at 1 (stating that “ICO seeks this modification because of events giving rise to a dispute with its satellite manufacturer have forced the suspension of work”); *ICO Petition* at 1 n.3 (claiming “further work on the ICO NGSO system has been suspended”); *id.* at 3 (stating that “events giving rise to an unresolved dispute between ICO and its NGSO system manufacturer have resulted in a temporary suspension of further work”); *id.* at 8 (“ICO could not reasonably avoid suspension of further work”).

<sup>5</sup> *ICO Response* at 4.

<sup>6</sup> *Id.* at 2.

<sup>7</sup> *See Comments of The Boeing Company*, FCC File Nos. SAT-MOD-20050110-00004 and SAT-PDR-20050110-00024 (March 7, 2005). As Boeing noted in its comments, ICO first entered into a satellite manufacturing contract with Hughes Space and Communications International, Inc., the parent company of which was subsequently purchased by Boeing and renamed BSS. *See id.* at 4 n.9.

disputes between the parties. If any disputes had existed, ICO was required by the manufacturing contract to give written notice of the dispute to BSS so that the parties could attempt to resolve the matter. BSS had not received any such notice and was proceeding with the construction of ICO's satellites. ICO's termination of the manufacturing contract was therefore unilateral and entirely within its control.

ICO's response further dwells on whether ICO's termination of the contract for its convenience extinguished ICO's right to recover for any disputes that predated the signing of Amendment 25, despite the clear contract language.<sup>8</sup> This contested issue is being addressed by the California Superior Court and is not relevant to this proceeding.

As Boeing has previously stated, Boeing filed comments in this proceeding for the sole purpose of correcting misstatements by ICO regarding ICO's prior contractual relationship with BSS. Boeing remains of the view that the Commission should take into account ICO's misstatements and omissions when considering the merits of ICO's application and petition.

Respectfully submitted,

**THE BOEING COMPANY**

By:



Marylou Cahir, Esq.  
Counsel  
The Boeing Company  
2260 East Imperial Highway  
El Segundo, CA 90245

Joseph P. Markoski  
Bruce A. Olcott  
Squire, Sanders & Dempsey L.L.P.  
1201 Pennsylvania Avenue, N.W.  
P.O. Box 407  
Washington, D.C. 20044-0407  
(202) 626-6600

Its Attorneys

March 29, 2005

---

<sup>8</sup> See *ICO Response* at 2-3.

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Reply of the Boeing Company with respect to FCC File Numbers SAT-MOD-20050110-00004 and SAT-PDR-20050110-00024, was mailed this 29th day of March, 2005 by U.S. mail to the following:

Cheryl A. Tritt  
Phuong N. Pham  
Morrison and Foerster LLP  
2000 Pennsylvania Avenue, NW  
Suite 5500  
Washington, DC 20006

Suzanne Hutchings Malloy  
Senior Regulatory Counsel  
ICO Satellite Services, G.P.  
2000 Pennsylvania Avenue, NW  
Suite 5500  
Washington, DC 20006

  
Liz Ramos