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October 31, 2003

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

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: **EX PARTE**
Constellation Communications Holdings, Inc., File Nos. SAT-MOD-20020719-00103, SAT-T/C-20020718-00114, 181-SAT-LOA-97(46) *et al.*;
Mobile Communications Holdings, Inc., File Nos. SAT-MOD-20020719-00105, SAT-T/C-20020719-00104, 180-SAT-P/L097(26) *et al.*

Dear Ms. Dortch:

In an *ex parte* letter filed earlier this week, ICO Global Communications (Holdings) Limited ("ICO") urged the Commission to resolve the pending applications for review of the cancellation of several 2 GHz mobile satellite service ("MSS") licenses, including those held by Constellation Communications Holdings, Inc. ("CCHI"), Mobile Communications Holdings, Inc. ("MCHI"), and TMI Communications and Company, Limited Partnership, in a fair and balanced manner consistent with its own precedent.¹ Also this week, the International Bureau ("Bureau") issued an order finding that KaStarCom. World Satellite LLC ("KaStarCom"), a fixed satellite service ("FSS") licensee in the Ka-band, satisfied the first milestone requiring commencement of construction of its satellite.² This decision, as contrasted with the Bureau's peremptory cancellation of CCHI's and MCHI's 2 GHz MSS licenses, highlights the inconsistencies in the Bureau's enforcement of the milestone policy and heightens the need for the Commission to articulate clear milestone standards and apply them even-handedly to similarly situated licensees.

¹ See Letter from Suzanne Hutchings, ICO, to Marlene Dortch, Secretary, FCC, File Nos. SAT-MOD-20020719-00103 *et al.* (Oct. 28, 2003).

² See *KaStarCom. World Satellite, LLC*, Memorandum Opinion & Order, File Nos. 102-SAT-P/LA-98 *et al.*, DA 03-3428 (IB Oct. 27, 2003) ("*KaStarCom Order*").

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Given the similarities between the milestone compliance efforts of KaStarCom, on the one hand, and CCHI and MCHI, on the other, ICO urges the Commission to treat both cases equally and allow CCHI and MCHI the same latitude given to KaStarCom.

Notably, like CCHI and MCHI, KaStarCom entered into both a satellite sharing agreement and a transfer of control transaction with another satellite licensee or its affiliate. At the time of its first milestone deadline in November 2002, KaStarCom had executed a satellite sharing agreement with WB Holdings, another Ka-band licensee.³ In addition, WB Holdings, through its parent company, Wildblue Communications, Inc. ("WB"), had executed a satellite manufacturing contract with Space Systems/Loral, Inc. ("Loral").⁴ At the time of KaStarCom's first milestone deadline in November 2002, KaStarCom was neither a party to the satellite manufacturing contract nor affiliated with any of the parties to that contract. Subsequently, in March 2003, the Commission approved the transfer of control of KaStarCom to WB.⁵

Although neither KaStarCom nor its affiliate was a party to the manufacturing contract between Loral and WB at the time of its first milestone deadline, the Bureau found that the manufacturing contract satisfied KaStarCom's first milestone requirement by virtue of WB's acquisition of control of KaStarCom after the first milestone deadline.⁶ As a result, the Bureau declined to address whether KaStarCom's satellite sharing agreement with WB Holdings met the first milestone requirement.⁷ The Bureau thus avoided addressing the merits of the satellite sharing agreement by first approving the transfer of control of KaStarCom to WB and then granting milestone credit to KaStarCom for WB's manufacturing contract by virtue of their current common ownership.

CCHI's and MCHI's transfer of control applications presented the Commission with the same set of facts found in KaStarCom's case, yet CCHI and MCHI obtained radically different results. Specifically, like KaStarCom, CCHI and MCHI sought Commission consent to transfer control of their 2 GHz MSS licenses to the parent company of another licensee. Through its affiliate, ICO executed a satellite manufacturing contract, which the Commission earlier this year

³ *Id.* ¶¶ 2-3.

⁴ *Id.* ¶ 3.

⁵ *Id.* ¶ 1 n.1.

⁶ *Id.* ¶ 6 n.16.

⁷ *Id.*

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found to be consistent with the first milestone requirement.⁸ Like KaStarCom, CCHI and MCHI also executed separate satellite sharing agreements with the same company to which they proposed to transfer control of their licenses. However, rather than adopt the same approach used for KaStarCom, the Bureau chose first to address the merits of CCHI's and MCHI's sharing agreements and then dismissed as moot their transfer applications after finding that the sharing agreements did not meet the first milestone requirement. Fairness and consistency require that the Commission extend to CCHI and MCHI the same treatment given to KaStarCom. Thus, consistent with the *KaStarCom Order*, the Commission should permit CCHI and MCHI to transfer control of their licenses to ICO and then grant CCHI and MCHI milestone credit for ICO's manufacturing contract by virtue of their common ownership.⁹

In view of the similarities between CCHI's and MCHI's case and other milestone cases, including the recent *KaStarCom Order* and the pending applications for review of the cancellation of other 2 GHz MSS licenses, it is critical that the Commission avoid enforcing its milestone policy in a haphazard and piecemeal manner. Accordingly, ICO urges the Commission to address the pending 2 GHz MSS applications for review in a nondiscriminatory manner and consistent with Commission precedent.

⁸ See FCC Public Notice, *Satellite Division Information: 2 GHz MSS Systems in Compliance with First Milestone Requirement*, 18 FCC Rcd 1732 (2003).

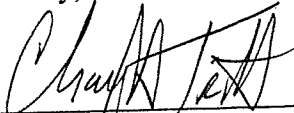
⁹ Alternatively, the Commission should reverse the Bureau's finding that CCHI's and MCHI's sharing agreements do not qualify as manufacturing contracts for milestone purposes. As the parties have demonstrated, these sharing agreements are fully consistent with the Commission's milestone precedent. See, e.g., CCHI, MCHI & ICO Joint Application for Review at 7-8, File Nos. SAT-MOD-20020719-00103 (Mar. 3, 2003).

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Twelve copies of this letter are being filed with the Secretary for inclusion in the public record, as required by Section 1.1206(b)(1) of the Commission's rules.

Sincerely,



Cheryl A. Tritt
Counsel to ICO Global Communications (Holdings) Ltd.

cc: Bryan Tramont
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