

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

FILED/ACCEPTED

APR - 4 2008

Federal Communications Commission
Office of the Secretary

In the matter of)
New ICO Satellite Services G.P.) File No. SES-LIC-20071203-01646
) File No. SES-AMD-20080118-00075
) File No. SES-AMD-20080219-00172

PETITION TO DENY

Inmarsat Global Limited (“Inmarsat”) petitions the Commission to deny the application of New ICO Satellite Services G.P. (“ICO”) for an Ancillary Terrestrial Component (“ATC”) license.¹

ICO currently holds a reservation of spectrum from the Commission for a geostationary MSS spacecraft in the 2 GHz band. ICO has not yet launched that spacecraft, and has two pending requests to further extend the deadline to bring that MSS system into operation.² In this application, ICO seeks authority to add an ATC component to its MSS authorization.

ICO’s ATC application is premature because ICO has not satisfied one of the ATC gating criteria that must be met before the Commission will issue an ATC license. In particular, ICO fails to demonstrate that it will have a ground spare satellite available within one year of commencing ATC operations.

¹ Inmarsat has standing as a competing provider of MSS. *FCC v. Sanders Brothers Radio Station*, 309 U.S. 470, 471, 476-77 (1940) (current competitor has standing to participate in a proceeding involving application submitted by a potential new competitor).

² See File Nos. SAT-MOD-20070806-00110, SAT-AMD-20071109-00155. When the Commission last granted ICO a milestone extension, the Commission warned ICO that “any further delays [with respect to ICO’s 2 GHz MSS system] would be a cause for concern, and any further extension requests would face a substantial burden of persuasion.” *New ICO Satellite Service G.P.*, 22 FCC Rcd 2229, 2235 at ¶ 19 (rel. Feb. 2, 2007).

The Commission's rules include a number of "gating criteria" that an ATC applicant must meet prior to receiving ATC authority.³ Those gating criteria include requirements to: (1) satisfy geographic and temporal MSS service requirements; (2) maintain a replacement satellite at the ready within one year of commencing commercial ATC operations; (3) have commercial MSS service available; (4) offer an integrated MSS/ATC service; and (5) operate ATC in the same band as the applicant's MSS operations.⁴ The Commission will consider granting ATC authority *before* an applicant actually satisfies each of the ATC gating criteria only in "limited circumstances,"⁵ and only where the applicant makes a "satisfactory, prospective and substantial showing that [it] will soon meet the gating criteria."⁶ The Commission requires a "detailed showing" that the applicant is "near to meeting the gating criteria,"⁷ and any applicant that has not actually satisfied a given gating criterion must "show substantial progress toward meeting that gating criterion before receiving a grant of ATC authority."⁸

The Commission's policy not to grant ATC authority until an applicant makes a substantial, detailed showing that it has met, or will soon meet, each ATC gating criterion serves important public interest goals. The Commission considered and rejected the concept of granting

³ 47 C.F.R. § 25.149; see *Flexibility for Delivery of Communications by Mobile Satellite Service Providers in the 2 GHz Band, the L-Band, and the 1.6/2.4 GHz Bands*, 18 FCC Rcd 1962 (2003) ("ATC Order"), modified, *Order on Reconsideration*, 18 FCC Rcd 13590 (2003) ("First ATC Reconsideration Order"), further modified, *Memorandum Opinion and Order and Second Order on Reconsideration*, 20 FCC Rcd 4616 (2005) ("Second ATC Reconsideration Order").

⁴ 47 C.F.R. § 25.149(b)(1)-(5).

⁵ *Second ATC Reconsideration Order*, 20 FCC Rcd at 4648-49, ¶ 87.

⁶ *Id.* at 4649, ¶ 89.

⁷ *Id.* at 4650, ¶ 90.

⁸ *Id.* at 4648-49, ¶ 87.

a “conditional” ATC license based on an applicant’s mere promise to actually meet the gating criteria before commencing commercial ATC service.⁹ Requiring that the gating criteria be satisfied in advance “reduce[s] the likelihood that Commission staff will be faced with processing speculative, prematurely filed ATC applications.”¹⁰ More fundamentally, requiring that an applicant satisfy each of the gating criteria in advance of ATC licensing avoids the undesirable situation where an ATC operator commences commercial ATC service based on its own assessment that it has satisfied the gating criteria, when that assessment might fall short of the Commission’s standards. As the Commission recognized, “customers could be deprived of service for which they had contracted if we found that the gating criteria had not been met and required the MSS/ATC operator to cease operations pending satisfaction of the gating criteria.”¹¹

ICO does not currently satisfy the ground spare satellite requirement, and also fails to demonstrate how it will satisfy that requirement in the near future.¹² Commission rules require that ICO “maintain a spare satellite on the ground within one year of commencing operations” that is ready for launch in the event of failure of its authorized satellite.¹³ In adopting the ground spare requirement, the Commission found that it is critical to ensuring (i) that an MSS operator maintains technical redundancy to facilitate the continuous provision of

⁹ *Id.* at 4648, ¶ 86 (citing *First ATC Reconsideration Order*, 18 FCC Rcd at 13594-95, ¶ 10).

¹⁰ *First ATC Reconsideration Order*, 18 FCC Rcd at 13594-95, ¶ 10.

¹¹ *Second ATC Reconsideration Order*, 20 FCC Rcd at 4648, ¶ 86.

¹² Although ICO does not currently satisfy the MSS service availability criterion either, that criterion presumably will be satisfied after the successful launch and bringing into operation of ICO’s spacecraft in the next few months. ICO’s ATC application is unlikely to be processed before that time.

¹³ 47 C.F.R. § 25.149(b)(2)(ii).

MSS in the event of a satellite failure, and (ii) that ATC operations remain ancillary to the operator's MSS service.¹⁴

ICO concedes that it has neither a ground spare under construction, nor a binding contract for the construction of a ground spare. Rather, ICO vaguely states only that it is still undergoing an "investigation into the most favorable second satellite for its MSS/ATC system" and that it is deciding whether to exercise an option for a spare satellite with the manufacturer of its primary satellite or to contract with another manufacturer.¹⁵ An unexercised option to construct a spacecraft that will be years away from completion if and when the option is exercised by no means constitutes a "substantial showing that [ICO] will soon meet"¹⁶ the ground spare criterion.¹⁷

In sum, ICO does not satisfy the condition precedent to receiving ATC authority because it does not meet each of the five ATC gating criteria. ICO's mere statement that it will have a ground spare in place at some undefined point in time is precisely the type of promise that the Commission has indicated is insufficient. Granting ATC authority when ICO has not complied with the ground spare requirement would undermine the fundamental policy rationale for this requirement, providing for redundancy to ensure continuous service to the public, and

¹⁴ *ATC Order*, 18 FCC Rcd at 2005-06, ¶¶ 78-84.

¹⁵ *New ICO Satellite Services G.P.*, IB File No. SES-LIC-20071203-01646, Exhibit 1 at 7-8 (filed Dec. 3, 2007).

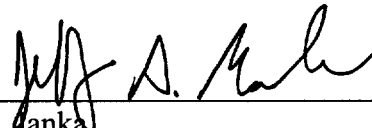
¹⁶ *Second ATC Reconsideration Order*, 20 FCC Rcd at 4649, ¶ 89.

¹⁷ Even if ICO uses the same manufacturer and the same satellite design for its spare, and therefore is able to shorten the construction time for the spare satellite, it is completely unrealistic to assume that ICO will be able to complete construction of a ground spare within a year of commencing commercial ATC operations based on the showing in its application. Typically, construction of a spare satellite that is similar to the primary satellite takes a minimum of three years from the time a binding construction contract has been signed. Moreover, in its application, ICO acknowledges the possibility of switching satellite manufacturers and presumably design, which could extend the time even further.

would call into question whether ICO's planned ATC operations are in fact ancillary to its planned MSS service.

For the foregoing reasons the Commission should deny ICO's ATC Application, and should not grant ICO ATC authority unless and until ICO is able to provide a substantial showing that it has satisfied the ground spare requirement.

Respectfully submitted,



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April 4, 2008

VERIFICATION

I, Diane J. Cornell, hereby certify under penalty of perjury that I am Vice President, Government Affairs of Inmarsat, Inc., and that the facts presented in the foregoing Petition to Deny that are not a matter of public record are true and correct to the best of my knowledge, information and belief.

By: *Diane Cornell*
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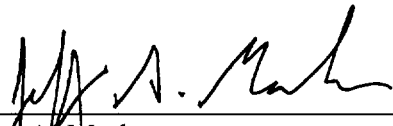
Executed on April 4, 2008.

CERTIFICATE OF SERVICE

I, Jeffrey A. Marks, hereby certify that on this 4th day of April, 2008, I caused to be served a true copy of the foregoing Petition to Deny by first class mail, postage prepaid, upon the following:

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