

Before the
Federal Communications Commission
Washington, D.C. 20554

	)	File Nos. SAT-LOA-19971222-00222
	)	SAT-LOA-20040322-
	)	00234/35/36/37
In the Matter of	)	SAT-MOD-20060511-
	)	00057/58/59/60
ATCONTACT Communications, LLC	)	SAT-AMD-20031030-00317
	)	SAT-AMD-20040719-00141
	)	SAT-AMD-20040322-00057
	)	SAT-AMD-20051118-00243
	)	SAT-MOD-20070924-00130
	)	SAT-AMD-20071215-00176
For Authority to Launch and Operate	)	SAT-MOD-20070924-00132
a Non-Geostationary Orbit Fixed-Satellite	)	SAT-AMD-20080505-00100
System in the Ka-band Frequencies	)	SAT-AMD-20080505-00096
	)	SAT-AMD-20080505-00099
	)	SAT-MOD-20080813-00155
	)	SAT-AMD-20080930-00195
	)	SAT-AMD-20080930-00194
)	
)	
	)	Call Signs: S2346, S2680, S2681, S2682,
	)	S2683

ORDER

Adopted: August 21, 2009

Released: August 21, 2009

By the Acting Chief, International Bureau:

I. INTRODUCTION

1. By this Order, we declare null and void ATCONTACT Communications, LLC’s (ATCONTACT) authorization for a satellite system intended to provide Fixed-Satellite Service (FSS) consisting of three non-geostationary satellite orbit (NGSO) satellites and four geostationary satellite orbit (GSO) satellites, for failure to meet its milestone requirements. Specifically, ATCONTACT’s failure to commence physical construction of its first NGSO satellite by the required date renders its authorization null and void by its own terms. As a result, ATCONTACT’s requests to modify its NGSO/GSO system and its associated bond waiver and milestone extension requests are rendered moot.

II. BACKGROUND

2. On April 14, 2006, the International Bureau granted ATCONTACT authority for an FSS satellite system consisting of both NGSO and GSO satellites.¹ ATCONTACT was authorized to construct, launch and operate four GSO satellites in the 28.6-29.1 GHz frequency band on a secondary basis, and in the 18.8-19.3 GHz frequency band on a non-conforming basis.² ATCONTACT was also authorized to construct three NGSO satellites capable of operating in the 18.8-19.3 GHz and 28.6-29.1 GHz frequency bands on a primary basis, in the 29.5-30.0 GHz frequency band on a secondary basis and in the 19.7-20.2 GHz frequency band on a non-conforming basis. ATCONTACT was not authorized to launch and operate its NGSO satellites pending the development of additional information concerning its plans for end-of-life disposal plans of its NGSO spacecraft.³ Nevertheless, the Bureau addressed all issues relating to the proposed NGSO FSS operations and imposed conditions governing these operations, so it would be in a position to act expeditiously once ATCONTACT filed its request for launch and operating authority.⁴

3. Consistent with the Commission's rules, the Bureau imposed milestone schedules on ATCONTACT's authorization. Because ATCONTACT's system included both NGSO and GSO components, it was required to comply with the NGSO and GSO milestones in the Commission's rules.⁵ For its NGSO satellites, ATCONTACT had to satisfy five milestones: 1) enter into a binding non-contingent construction contract for the satellites within one year of licensing; 2) complete critical design review of the licensed system within two years of licensing; 3) begin construction of the first satellite within two years, six months of licensing; 4) launch and operate the first satellite within three years, six months; and 5) bring all of the satellites into operations within six years of licensing. For its GSO satellites, ATCONTACT was required to meet four milestones: 1) enter into a binding non-contingent construction contract for the satellites within one year of licensing; 2) complete critical design review within two years of licensing; 3) begin construction of the satellites within three years of licensing; and 4) launch and operate the satellites within five years of licensing. These milestones were incorporated as a

¹ contactMEO Communications, LLC, *Order and Authorization*, 21 FCC Rcd 4035 (Int'l Bur. 2006)(*ATCONTACT Authorization*). In June 2006, the licensee notified the Commission of its name change 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).

² Space stations operating in primary services are protected against interference from stations of secondary services. Stations operating in a secondary service cannot cause harmful interference to or claim protection from harmful interference from stations of a primary service. See 47 C.F.R. §§ 2.104(d) and 2.105(c). Non-conforming services may be provided only on a non-harmful interference basis to any authorized service and may not cause interference protection from those services.

³ ATCONTACT's authorization was conditioned on its filing a modification application in May 2008 detailing its end-of-life disposal plans for its NGSO satellites. ATCONTACT filed for extension of time to file its plan. While the extension request was pending, ATCONTACT filed a modification application changing its end-of-life plans from controlled re-entry to a disposal orbit. See File No. SAT-MOD-20080813-00155. Upon review, the Satellite Division (Division) determined that it needed greater detail before it could address ATCONTACT's revised end-of-life disposal plan. The Division stated it would defer action on ATCONTACT's modification application and asked ATCONTACT to file the additional information before April 30, 2009. See Letter to James M. Talens, Counsel for ATCONTACT Communications, LLC from Robert G. Nelson, Chief, Satellite Division (January 9, 2009) (*Division Letter*). ATCONTACT did not respond to this request but noted that it "would now appear to be moot" in light of subsequent changes to its NGSO authorization. See Letter to Marlene H. Dortch, Secretary, FCC, from James M. Talens, Counsel for ATCONTACT Communications LLC (February 6, 2009) at 2, n.3. (*ATCONTACT February Letter*).

⁴ *ATCONTACT Authorization*, 21 FCC Rcd at 4035.

⁵ 47 C.F.R. § 25.164(a), (b).

condition of ATCONTACT's license, which also provided that failure to comply with a milestone would result in automatic cancellation of ATCONTACT's authorization.⁶ In addition, ATCONTACT was required to file a bond for \$5 million within 30 days of grant.

4. On July 6, 2007, the Bureau's Satellite Division (Division) determined that ATCONTACT had met the contract execution milestone by submitting a copy of its satellite construction contract with Space Systems/Loral, Inc. (Loral), its spacecraft manufacturer for both its NGSO and GSO satellites.⁷ On September 5, 2008, the Bureau determined that ATCONTACT had met the Critical Design Review milestone requirement for its NGSO and GSO satellites.⁸ ATCONTACT's next milestone, to commence physical construction of its first NGSO satellite, was October 15, 2008. On that date, ATCONTACT filed information that it claimed demonstrated that it had satisfied this milestone.⁹ The information included a certification from David M. Drucker, Manager of ATCONTACT, stating that ATCONTACT had commenced construction of its first NGSO satellite to the "best of my knowledge, information, and belief." ATCONTACT also included an asset sales agreement it had entered into with a third party (not its satellite manufacturer) for the purchase of traveling wave tube amplifiers (TWTAs). The first payment under the sales agreement was due January 15, 2009 and the first delivery due around February 15, 2009. In January 2009, the Division sent ATCONTACT a letter stating that the showing did not demonstrate compliance with the beginning construction milestone and requested additional information regarding construction of the satellite, including details regarding production, payment and photographs of production.¹⁰

5. In a February 6, 2009 response to the Bureau's letter, ATCONTACT maintained that its showing was sufficient. It also submitted several unlabeled photographs of TWTAs in boxes.¹¹ ATCONTACT further indicated that it no longer intended to proceed with its NGSO satellites and two of its GSO satellites, requested a three year extension of the remaining milestones for the two remaining GSO satellites and asked the Bureau to act expeditiously on several pending modification applications relating to the remaining GSO space stations. ATCONTACT also requested the release of its bond. ATCONTACT maintained that these revisions are necessitated by its inability to obtain financing for its system as a result of the current economic climate.¹² ATCONTACT's response did not address the Division's other information requests.

6. On May 1, 2009, Intelsat North America LLC (Intelsat) filed a letter stating that granting such a broad waiver of the bond and milestone requirements could undermine the purpose of these obligations. Intelsat contends that ATCONTACT failed to provide specific factual information to support a waiver, and disagrees with ATCONTACT's claim that current economic conditions justify a waiver.¹³ In response, ATCONTACT maintains that Intelsat's submission should be rejected because Intelsat has

⁶ *ATCONTACT Authorization*, 21 FCC Rcd at 4053.

⁷ Policy Branch Information, *Public Notice*, 22 FCC Rcd 11961(2007).

⁸ Policy Branch Information, *Public Notice*, 23 FCC Rcd 13293 (2008).

⁹ Letter to Marlene H. Dortch, Secretary, FCC, from James M. Talens, Counsel for ATCONTACT Communications, LLC (October 15, 2008) (*ATCONTACT Milestone Filing*).

¹⁰ *Division Letter*.

¹¹ Letter to Marlene H. Dortch, Secretary, FCC, from James M. Talens, Counsel for ATCONTACT Communications LLC (February 6, 2009) (*ATCONTACT February Letter*).

¹² *ATCONTACT February Letter*, at 3.

¹³ Letter to Marlene H. Dortch, Secretary, FCC, from Kalpak S. Gude, Vice President and Deputy General Counsel, Intelsat North America LLC (May 1, 2009).

no standing in this matter. ATCONTACT also states that it previously provided “explanation, precedent, and justification” to the Commission to support its request.¹⁴

III. DISCUSSION

7. In the 2003 *Space Station Reform Order*, the Commission adopted a first-come, first-served licensing process for space station applications.¹⁵ As part of the new framework, the Commission adopted a package of market-driven safeguards designed to discourage speculative applications. Those safeguards also help to ensure that licensees remain committed and able to proceed with timely implementation of licensed space stations, which generally cost several hundred million dollars each to launch and operate.¹⁶ The safeguards include: (1) a requirement that licensees post a bond with the Commission within 30 days of license grant; and (2) a requirement to construct and launch the satellite(s) consistent with the milestone schedule specified in Section 25.164 of the Commission’s rules.¹⁷ The milestones track the three-to-five year period needed to construct and launch a satellite. The amount of the bond may be reduced as milestones are met.¹⁸ If the licensee fails to meet a milestone, and an extension is not granted for good cause shown, the license becomes null and void and the outstanding balance of the bond is paid to the U.S. Treasury.¹⁹

8. Before we consider the pending modifications to ATCONTACT’s authorization for three NGSO and four GSO space stations, we must first determine whether ATCONTACT has met the October 15, 2008 milestone for beginning physical construction of its first NGSO satellite. If it has not, the authorization for its hybrid NGSO/GSO satellite system is, by its own terms, null and void.²⁰

9. To satisfy the commencement of physical construction milestone, licensees must provide sufficient information to demonstrate to a reasonable person that they have commenced physical construction of the licensed spacecraft.²¹ The Commission emphasized that the burden of proof for this showing is on the licensee.²² Showings that have been found sufficient to meet this milestone have included photographs of various satellite components that have been delivered to or made by the manufacturer, and are clearly identified for use with the licensed satellite. In addition to photographs, licensees typically provide evidence that they have made milestone payments under the manufacturing

¹⁴ Letter to Marlene H. Dortch, Secretary, FCC, from James M. Talens, Counsel for ATCONTACT Communications, LLC (May 8, 2009)(*ATCONTACT Response Letter*) at 2.

¹⁵ Amendment of the Commission’s Space Station Licensing Rules and Policies, Mitigation of Orbital Debris, *First Report and Order and Further Notice of Proposed Rulemaking in IB Docket No. 02-34, and First Report and Order in IB Docket No. 02-54*, 18 FCC Rcd 10760 (2003) (*Space Station Licensing Reform Order*).

¹⁶ *Space Station Licensing Reform Order*, 18 FCC Rcd at 10823; NetSat 28 Company, LLC, *Memorandum Opinion and Order*, 19 FCC Rcd 17722 (Int’l Bur. 2004).

¹⁷ The required bond is \$3 million for a geostationary-orbit (GSO) satellite and \$5 million for a constellation of non-geostationary-orbit (NGSO) satellites. Because ATCONTACT’s GSO space stations were to operate in the same frequency bands as its NGSO space stations, Commission rules require ATCONTACT to post only one \$5 million bond. See 47 C.F.R. § 25.165(a)(3).

¹⁸ 47 C.F.R. § 25.165(d).

¹⁹ 47 C.F.R. § 25.165(c), and *Space Station Licensing Reform Order*, 18 FCC Rcd at 10824.

²⁰ See *New ICO Satellite Services, GP, Memorandum Opinion and Order*, 21 FCC Rcd 14612, 14615 (Int’l Bur. 2006). In addition, we note that ATCONTACT failed to file a modification application for an extension of its remaining milestones, as required by Section 25.117(c) of the Commission’s rules, 47 C.F.R. § 25.117(c).

²¹ *Space Station Licensing Reform Order*, 18 FCC Rcd at 10834.

²² *Space Station Licensing Reform Order*, 18 FCC Rcd at 10833.

contracts that are associated with the construction and delivery of these components.²³ Based on our experience in reviewing milestone compliance, at this point in the construction process licensees have generally paid 25-50 percent of the total price in the manufacturing contract due to the cost of procuring parts.

10. As evidence that ATCONTACT met its October 15, 2008 milestone for beginning construction, it submitted an asset sales agreement with a third party dated October 14, 2008. The agreement involves the purchase of TWTAs, with ATCONTACT's first payment due January 15, 2009 – three months after the beginning construction milestone – and the first delivery of TWTAs due around February 15, 2009. Ordering “long lead” items needed to begin physical construction of a space station, such as TWTAs, does not provide evidence that a licensee has met the beginning construction milestone. Rather, ordering such items provides evidence that a licensee has met the critical design review (CDR) milestone.²⁴ The CDR milestone occurs one full year before the beginning construction milestone.

11. Further, there is no documentation in the asset sales agreement that links the TWTAs to the manufacturing contract with Loral. It is highly unusual for a licensee to enter into individual purchase contracts for TWTAs outside of the satellite manufacturing contract, unless this fact is specifically referenced in the construction contract. In meeting its contract execution milestone for its NGSO satellites, ATCONTACT submitted a satellite construction contract entered into with Loral on April 12, 2007.²⁵ The contract with Loral is for “all design, manufacture, test, and delivery” of its NGSO satellites. The technical characteristics of TWTAs have a direct impact on the satellite manufacturer's ability to build the satellite to the technical specifications in the contract. Nothing in the Loral manufacturing contract, however, indicates that TWTAs were to be a “purchaser-furnished” item. ATCONTACT does not explain why it subsequently contracted with a third party for the purchase of TWTAs for its satellites, whether the third party was an approved subcontractor and whether Loral had approved or was even aware of the purchase.

12. As a result, the Division informed ATCONTACT, by letter, that the asset sales agreement was inadequate to demonstrate it had met the beginning construction milestone. In the letter, the Division requested ATCONTACT to “describe with specificity” the types of hardware in production, a description of the production that had taken place to date and photographic evidence of the current production of hardware.²⁶ The Division also asked ATCONTACT to explain what payments had been made under the payment plan provided in the Loral construction contract – the contract that ATCONTACT submitted as certification that it had met its contract execution milestone.

13. In its February 2009 response, ATCONTACT did not provide a description of the manufactured hardware or the production activities that had taken place, as the Division requested.

²³ See, e.g., Policy Branch Information, *Public Notice*, Report No. 07-00476, 22 FCC Rcd 18392 (2007) (finding that Loral Skynet Corporation has commenced physical construction based on declarations from the spacecraft manufacturer summarizing the status of satellite construction, certifying that the manufacturing contract remains in effect, that payments due to date have been made, and that 70 percent of the flight equipment is constructed, and providing electronic photographs showing propulsion equipment integrated with the satellite structure); and Policy Branch Information, *Public Notice*, Report No. SAT-07-00469, 22 FCC Rcd 16284 (2007) (finding compliance with commencement of physical construction milestone based on declarations from Star One SA's Director of Engineering with knowledge of construction that 80 percent of payments due under the contract have been made, and photographs clearly showing the satellite payload integrated into the satellite bus).

²⁴ *Space Station Licensing Reform Order*, 18 FCC Rcd at 10833. In addition to TWTAs, long lead items typically include power systems (including solar panels and batteries) and propulsion systems.

²⁵ Contract between ATCONTACT Communications, LLC, and Space Systems/Loral for NGSO satellites, filed April 13, 2007 (confidential treatment requested).

²⁶ *Division Letter* (emphasis added).

Rather, ATCONTACT stated that the sales agreement for the TWTAs was a sufficient showing to demonstrate that it had met its construction milestone obligation. In addition, ATCONTACT did not respond to the Division's request to provide evidence of payments made to Loral under the construction contract. ATCONTACT made only the unsupported assertion that it had expended "millions of dollars on long lead items such as [TWTAs]" and submitted four photographs that purport to be the TWTAs purchased in the third-party asset agreement.²⁷ Without evidence such as cancelled checks, paid invoices or purchase orders or an affidavit from the satellite manufacturer stating that all payments due under the contract have been made, there is no basis for the Bureau to conclude that ATCONTACT has made any scheduled payments to Loral or that it has, in fact, made any progress toward constructing its licensed satellite. Thus, we cannot conclude that ATCONTACT's undocumented claim that it has expended "millions of dollars" supports its assertion that it has met the milestone for beginning construction of its first NGSO space station.

14. Further, the four photographs submitted do not support ATCONTACT's assertion that it satisfied the milestone. Three of the four photographs show TWTAs in plastic cartons. The TWTAs are stamped with the word "Astrolink." We note that Astrolink was a GSO satellite licensee that relinquished its license in 2003. ATCONTACT states the TWTAs were designed for GSO satellites but were "adaptable for use" with its NGSO satellites. ATCONTACT does not, however, describe the link between the Astrolink TWTAs and the ATCONTACT licensed space station in the Loral construction contract.²⁸ The fourth photograph depicts several stacked cardboard boxes with old tape marks and worn labels that are illegible. ATCONTACT does not explain the contents of these boxes or link them in any way to the Loral construction contract. Without further evidence that the photographs reflect components being integrated into the licensed NGSO space station being built by Loral, including evidence that Loral had approved the purchase of these integral components from a third-party, we cannot conclude that the photographs provide evidence that ATCONTACT has begun constructing its first NGSO space station.

IV. CONCLUSION

15. Based on the lack of evidence provided by ATCONTACT, including its failure to respond to the Division's request for specific additional information, we find that ATCONTACT has failed to meet its burden of proof that it has satisfied its third milestone, to commence physical construction of its first NGSO satellite. Therefore, by its terms, ATCONTACT's satellite authorization is null and void. As a result, we need not address ATCONTACT's request to "revise" its authorization by reducing the number of satellites in its system, extending the milestones for its remaining satellites and releasing the bond.²⁹ Further, for the same reason, ATCONTACT's pending modification applications relating to two GSO satellites are dismissed as moot. Consequently, the outstanding balance on the bond, \$3 million, is now due to the U.S. Treasury.

²⁷ *ATCONTACT February Letter*, at 2. Further, assuming that ATCONTACT is referring to the TWTAs referenced in its October Asset Sales Agreement, the first payment due in January does not represent "millions of dollars." ATCONTACT fails to state what other, if any, long lead items it had purchased. In any case, by the October 2008 beginning construction milestone, ATCONTACT's payments under the terms of the Loral contract would have likely totaled several *hundreds* of millions of dollars.

²⁸ *ATCONTACT February Letter*, at 2, n.2.

²⁹ Because ATCONTACT's authorization is null and void for failure to meet its milestone requirements, we do not address ATCONTACT's failure to submit its modification request in accordance with Section 25.117 of the Commission's rules. 47 C.F.R. § 25.117.

V. ORDERING CLAUSES

16. Accordingly, IT IS ORDERED that ATCONTACT Communications, LLC's authorization to operate a NGSO/GSO Ka-band system, File Nos. SAT-LOA-19971222-00222, SAT-LOA-20040322-00234/35/36/37, SAT-AMD-20051118-00243, SAT-AMD-20040719-00141, SAT-AMD-20040322-00057, SAT-AMD-20031030-00317, and SAT-MOD-20060511-00057/58/59/60 (Call Signs: S2346, S2680, S2881, S2682, and S2683) is null and void.

17. IT IS FURTHER ORDERED that ATCONTACT Communications, LLC's pending modification applications to relocate a GSO satellite from the 83° W.L. orbital location to 87.2° W.L., and to add GSO Ka-band frequencies for use at 87.2° W.L. (Call Sign S2680), IBFS File Nos. SAT-MOD-20070924-00130, SAT-AMD-20071215-00176, SAT-AMD-20080505-00100, SAT-AMD-20080505-00096; and SAT-AMD-20080930-00195, are DISMISSED as moot.

18. IT IS FURTHER ORDERED that ATCONTACT Communications, LLC's pending modification applications to relocate a GSO satellite from the 34° E.L. orbital location to 77.2° W.L. (Call Sign: S2682), IBFS File Nos. SAT-MOD-20070924-00132, SAT-AMD-20080930-00194, and SAT-AMD-20080505-00099, are DISMISSED as moot.

19. IT IS FURTHER ORDERED that ATCONTACT Communications, LLC's bond is now due and payable to the U.S. Treasury.

20. IT IS FURTHER ORDERED that ATCONTACT Communications, LLC's pending modification application specifying the end-of-life disposal plans for its NGSO constellation (Call Sign: S2346), IBFS File No. SAT-MOD-20080813-00155, is DISMISSED as moot.

FEDERAL COMMUNICATIONS COMMISSION

John V. Giusti
Acting Chief
International Bureau