



December 31, 2002

Ms. Marlene Dortch  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., TW-A325  
Washington, D.C. 20554

Re: **EX PARTE**

ET Docket No. 95-18; IB Docket 01-185  
SAT-MOD-20020719-00103; SAT-MOD-20020719-00105; SAT-T/C  
-20020718-00114; SAT-T/C-20020719-00104

Dear Ms. Dortch:

On December 19, 2002, Mobile Communications Holdings, Inc. (MCHI), Constellation Communications Holdings, Inc. (CCHI), and ICO Global Communications Holdings, Ltd. (ICO) met with the Office of General Counsel, including Deputy General Counsel Michelle Ellison, Dan Harrold, Neil Dellar, James Bird and Karen Onyeije, to discuss Commission precedent on satellite infrastructure sharing arrangements and milestone compliance. Suzanne Hutchings and ICO Counsel Cheryl Tritt attended on behalf of ICO, MCHI counsel Tom Davidson attended on behalf of MCHI, and CCHI counsel Robert Mazer attended on behalf of CCHI.

In response to questions from OGC regarding any possible contingencies in the Sharing Agreements executed between ICO and MCHI and between ICO and CCHI, MCHI and CCHI noted that neither ICO's obligation to construct and deliver the system, nor MCHI's or CCHI's obligation to purchase system capacity, is contingent. Each Sharing Agreement expressly requires ICO to deliver system channel capacity in accordance with the milestones imposed by the FCC. CCHI and MCHI pointed out that this obligation has been binding on ICO since the parties executed the Sharing Agreements, and that ICO continues to be obligated to perform today. They stated that the current and ongoing performance obligations of each of the three parties under the Sharing Agreements are unqualified and unconditional.

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CCHI and MCHI emphasized that at the time of completion of the satellite system, ICO is obligated to transfer title to system channel capacity, and MCHI and CCHI each must make final payments under the contract. CCHI and MCHI stated that this requirement mirrors how transfer of title is delivered in-orbit, from a satellite manufacturer to a satellite operator, following launch of a satellite system. Although certain administrative actions must be performed prior to title transfer, but they are not conditions precedent to any party's commitment to fulfill its obligations under the Sharing Agreements. Specifically, these actions include the execution of an Operation and Management Agreement that conforms to the terms specified in the Sharing Agreement, and to deliver a bill of sale and officers' certificates. The parties noted that each is contractually obligated to take these actions by the Sharing Agreements. Failure to do so would result in a breach of the Sharing Agreements and would enable the non-breaching party to initiate appropriate legal action to enforce the obligations.

The situation here is dramatically different from *Norris Satellite Communications, Inc.*, 12 FCC Rcd 22299 (1997). There, the satellite manufacturer's obligation to commence construction was not binding until a specific payment was made by the licensee. The licensee failed to make the required payment. Thus, the licensee failed to fulfill a condition of its contract, and as a result, the satellite manufacturer was not obligated to commence construction of the licensee's satellite system. In the instant Sharing Agreements, however, the obligations imposed upon all of the parties are unqualified and unconditional, and the contract is binding and effective. ICO is obligated to provide system channel capacity, and CCHI and MCHI are obligated to pay for that capacity as specified in the Sharing Agreements.

The parties otherwise relied upon the attached matrices in discussing other issues.

In accordance with section 1.1206(b) of the Commission's rules, we are submitting an electronic copy of this letter. If you have any questions concerning this matter, please do not hesitate to contact us.

Very truly yours,

/s/ Tom W. Davidson  
Tom W. Davidson  
Akin Gump Strauss Hauer & Feld, LLP

/s/ Robert A. Mazer  
Robert A. Mazer  
Vinson & Elkins, LLP

/s/ Cheryl A. Tritt  
Cheryl A. Tritt  
Morrison & Forester, LLP

Attachments

cc: Michelle Ellison  
Daniel Harrold  
James Bird  
Neil Dellar  
Karen Onyeije