

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

In the Matter of Application of)	
)	File Nos. 183/184/185/186-SAT-P/LA-97;
)	182-SAT-P/LA-97(64)
Globalstar, L.P.)	
)	IBFS Nos. SAT-LOA-19970926-00151/52/53/54
)	SAT-LOA-19970926-00156;
For Modification of License for a Mobile-Satellite)	SAT-AMD-20001103-00154;
Service System in the 2 GHz Band)	SAT-MOD-20020717-00116/17/18/19;
)	SAT-MOD-20020722-00107/08/09/10/12
For Waiver and Modification of Implementation)	
Milestones for 2 GHz MSS System)	Call Signs S2320, S2321, S2322, S2323, S2324

MEMORANDUM OPINION AND ORDER

Adopted: January 29, 2003

Released: January 30, 2003

By the Chief, International Bureau:

I. Introduction

1. In this Order, we deny Globalstar, L.P.'s ("Globalstar") request for an extension of milestones for its 2 GHz mobile satellite service ("MSS") system. Because Globalstar's arrangements for construction of its 2 GHz MSS system assume an extension of milestones, we also conclude that those arrangements are inadequate to meet Globalstar's first milestone – entering into a non-contingent satellite construction contract. Consequently, we conclude that Globalstar's license to construct, launch, and operate its proposed satellite system is null and void. We also dismiss, as moot, a petition for reconsideration of Globalstar's underlying 2 GHz MSS license.

II. Background

2. In July 2001, the International Bureau ("Bureau") and the Office of Engineering and Technology ("OET") authorized Globalstar to construct, launch and operate a satellite system comprised of sixty-four non-geostationary-satellite orbit ("NGSO") satellites and four geostationary-satellite orbit ("GSO") satellites capable of operating in the 1990-2025/2165-2200 MHz bands.¹ Consistent with the *2 GHz MSS Order*,² Globalstar's license contained explicit deadlines, or "milestones," for system implementation. The license prescribed the following milestone schedule: enter non-contingent satellite manufacturing contract for GSO and NGSO components by July 17, 2002; complete critical design review by July 17, 2003; begin physical construction of all satellites in the NGSO component by January 2004; begin physical construction of all satellites in the GSO component by July 2004; complete construction and launch of the first two satellites in NGSO component by January 2005; complete

¹ Globalstar, L.P., *Order and Authorization*, 16 FCC Rcd 13739 (Int'l Bur./OET 2001) (*2 GHz MSS License*).

² Establishment of Policies and Service Rules for the Mobile Satellite Service in the 2 GHz Band, *Report and Order*, 15 FCC Rcd 16127, 16177-78 ¶ 106 (2000) (*2 GHz MSS Order*); *2 GHz MSS License*, 16 FCC Rcd at 13753 ¶ 36.

construction of one GSO satellite in constellation and launch it into its assigned orbit location by July 2006; and certify entire system as fully operational by July 2007. In accordance with the Commission's rules,³ Globalstar filed an affidavit on July 17, 2002 which asserted that it had met its first milestone by entering into a non-contingent contract with Space Systems/Loral ("Loral") for construction of its 2 GHz MSS system.⁴

3. On July 18, 2002, the Commission directed counsel for Globalstar to submit "a copy of a signed executed contract that satisfies Globalstar's obligations under the first milestone and verifies that Globalstar's satellites will be built within the time frame specified in Globalstar's license."⁵ In response to that instruction, on July 29, 2002, Globalstar submitted copies of the following documents: (1) a Contract between Globalstar and Loral for the Globalstar 2nd Generation Satellite Program; and (2) a Request for Confidential Treatment.

4. Contemporaneously with entering into its satellite manufacturing contract with Loral, Globalstar requested modifications to its system license to reduce the number of NGSO satellites and antenna beams on the NGSO satellites, and to modify orbital locations and feeder link frequencies that both NGSO and GSO satellites would use.⁶ Globalstar stated that it had decided to modify its NGSO constellation so that it closely resembles the existing Globalstar Big LEO constellation.⁷ Globalstar further added that the proposed modifications to the system would simplify the satellite component of the system and facilitate Globalstar's deployment of a more cost-effective 2 GHz MSS system.⁸

5. Additionally, Globalstar requested that the Commission waive the current milestones set forth in its *2 GHz MSS License* and extend the dates for placing its full system into operation, except for one of the four GSO satellites.⁹ A chart summarizing the current milestones, and Globalstar's requested changes, follows:

Milestone	Commission Deadline	Per Modification
Enter Non-Contingent Construction Contract for GSO and NGSO Components	12 months after authorization 7/17/02	SAME

³ 47 C.F.R. § 25.143 (2002).

⁴ Letter dated July 17, 2002 to Marlene H. Dortch, Secretary, FCC from Mr. William D. Wallace, counsel for Globalstar L.P.

⁵ Letter dated July 18, 2002 to Mr. William D. Wallace, Crowell & Moring, counsel for Globalstar from Cassandra C. Thomas, Deputy Chief of Satellite Division, International Bureau, FCC. Additionally, by letter, dated October 4, 2002, the Chief, Satellite Division, International Bureau, sought additional information from Globalstar, in order to facilitate our milestone review. Specifically, the letter requested further information regarding the "critical design review" ("CDR") and "final design review" ("FDR") stages of its contract, as well as certain terms in its manufacturing contract which provided Globalstar with the ability to change system design. Globalstar responded on October 15, 2002. In light of our determination in this Order, the adequacy of Globalstar's response need not be addressed.

⁶ Globalstar filed an "Application for Modification of License" ("*Modification Request*") and a "Request for Waiver and Modification of Implementation Milestones for 2 GHz MSS System" ("*Request for Extension*"), both dated July 17, 2002. No comments were filed in response to Public Notice of these requests. See Public Notice, File Nos. SAT-00115/16/17/18/19; SAT-MOD-20020722-00107/08/09/10/12 (August 1, 2002).

⁷ *Modification Request* at 3.

⁸ *Id.* at 43.

⁹ *Request for Extension* at 6-16.

Complete Critical Design Review (CDR)	24 months after authorization 7/17/03	SAME
Begin Physical Construction of All Satellites in NGSO Component	30 months after authorization 1/17/04	SAME
Begin Physical Construction of All Satellites in GSO Component	36 months after authorization 7/17/04	SAME
Complete Construction and Launch First Two Satellites in NGSO Component	42 months after authorization 1/17/05	4/17/07 (27-month extension)
Complete Construction and Launch GSO Satellite Into Its Assigned Location	60 months after authorization 7/17/06	SAME (U.S. Coverage)
Certify Entire System Operational	72 months after authorization 7/17/06	GSO 1/17/09 (18-month extension) NGSO 7/17/09 (24-month extension)

Globalstar requests that it be given at least 90 days to negotiate a reformation of its executed satellite manufacturing contract in the event its milestone extension request is denied.¹⁰

III. Discussion

6. It is long-standing Commission policy to include a condition in a satellite authorization that requires the licensee to meet system implementation milestones.¹¹ The Commission does so in order to prevent spectrum and orbital assignments from being “warehoused.” The Commission has strictly enforced system implementation milestones, because it is in the public interest to ensure that licensees proceed expeditiously to complete construction of their full systems and to commence service.¹² To satisfy the construction commencement milestone, the Commission requires the execution of a non-contingent satellite manufacturing construction contract. The Bureau has stated that “the execution of a contract that does not provide for complete construction of the satellites by a specified date consistent with the licensee’s milestone deadline for making its system fully operational cannot satisfy a construction-commencement requirement.”¹³ An extension of a milestone is granted only when delay in

¹⁰ *Request for Extension* at 13 n17.

¹¹ See, e.g., Norris Satellite Communications, Inc., *Memorandum Opinion and Order*, 12 FCC Rcd 22299 (1997) (*Norris*); Morning Star Satellite Company LLC, *Memorandum Opinion and Order*, 15 FCC Rcd 11350 (Int’l Bur. 2000), *aff’d*, 16 FCC Rcd 11550 (2001) (*Morning Star Recon.*).

¹² See, e.g., Advanced Communications Corporation, *Memorandum Opinion and Order*, 10 FCC Rcd 13337, 13338 ¶ 4 (Int’l Bur. 1995) (*Advanced Order*).

¹³ Mobile Communications Holdings, Inc., *Memorandum Opinion and Order*, 17 FCC Rcd 11898, 11901 ¶ 11 (Int’l Bur. 2002) (citing EchoStar Satellite Corporation, *Memorandum Opinion and Order*, 7 FCC Rcd 1765, 1767 ¶ 11 (1992) and Tempo Enterprises, Inc., *Memorandum Opinion and Order*, 1 FCC Rcd 20, 21 ¶ 7 (1986) (*Tempo Order*) (a contract must, *inter alia*, specify dates for the start and completion of satellite construction for its execution to satisfy a DBS permittee’s “due diligence” requirement to either commence actual satellite construction or “complete contracting for satellite construction” within one year after receiving a construction permit). See also *Morning Star Recon.*, 16 FCC Rcd at 11552 ¶ 5.

implementation is due to unforeseeable circumstances beyond the licensee's control,¹⁴ or if the applicant demonstrates "unique and overriding public interest concerns that justify an extension"¹⁵

7. The reasons given by Globalstar for extending the dates for launch and deployment are as follows: (1) Globalstar does not anticipate a need for additional MSS capacity, given the currently depressed MSS business and the longer than anticipated life of the first generation Globalstar satellite system; (2) Globalstar can meet its immediate coverage needs with GSO satellites alone; (3) Globalstar's business plan relies on the first generation satellite system to generate the bulk of revenues to fund the second-generation system and those revenues will not be available in the near future; (4) Globalstar expects to achieve lower rates for current subscribers through the extended milestone schedule (by delaying the cost of construction and launch of the second-generation satellites until revenues from the first generation satellite system are available); and (5) Globalstar must balance the financial demands of the new system and claims of its creditors.¹⁶ In summary, Globalstar seeks an extension because, in evaluating the lower than expected subscriber levels and MSS business generally, it has modified its business plan in an effort to avoid a "substantial premature expansion of the capacity [that] would be uneconomic and wasteful of resources."¹⁷

8. Each of the reasons Globalstar provides in support of an extension concerns a business decision that Globalstar has made. We have held that "business decisions" based on economic considerations are not circumstances outside the control of the licensee, and therefore, do not warrant an extension of milestones.¹⁸ In *Columbia Communications Corporation*, for example, the Bureau explicitly stated that a desire to avoid increased costs is a business decision within the control of the licensee, which did not justify a milestone extension.¹⁹ Additionally, the Commission has previously concluded that an extension request motivated primarily by economic considerations does not present a sufficient basis for grant of an extension.²⁰ Globalstar's reevaluation of its business plan and the financial condition of the MSS market are business decisions within its control motivated primarily by economic conditions. Globalstar, therefore, has not demonstrated that an extension is warranted.

¹⁴ 47 C.F.R. § 25.117(e)(1) (2002).

¹⁵ 47 C.F.R. § 25.117(e)(2) (2002).

¹⁶ *Modification Request* at 7-11.

¹⁷ *Id.* at 8.

¹⁸ See *Panamsat License Corp, Memorandum Opinion and Order*, 15 FCC Rcd 18720, 18723 ¶ 10 (Int'l Bur. 2000). We have determined on several occasions that business transactions are within the control of the licensee, and so cannot justify a milestone extension. For example, we have observed that mergers cannot justify a milestone extension request. *MCI Communications Corporation, Memorandum Opinion and Order*, 2 FCC Rcd 233, 234 ¶ 7 (Com. Car. Bur. 1987) (*MCI Order*); *Columbia Communications Corporation, Memorandum Opinion and Order*, 15 FCC Rcd 15566, 15571 n.35 (Int'l Bur. 2000) (*First Columbia Order*). We have also determined that construction contract negotiations cannot justify a milestone extension request. *Advanced Communications Corporation, Memorandum Opinion and Order*, 11 FCC Rcd 3399, 3417 ¶ 45 (1995); *First Columbia Order*, 15 FCC Rcd at 15571 n.35.

¹⁹ *Columbia Communications Corporation, Memorandum Opinion and Order*, 15 FCC Rcd 16496, 16499 ¶ 10 (Int'l Bur. 2000).

²⁰ *American Telephone and Telegraph Company and Ford Aerospace Satellite Services Corporation, Memorandum Opinion and Order*, 2 FCC Rcd 4431, 4434 ¶ 26 (1987) (AT&T could not justify a milestone extension by asserting that delay might clarify certain launch and insurance issues and lower satellite construction costs). See also *MCI Order*, 2 FCC Rcd at 234 ¶ 7 (citing *Rock City Broadcasting, Inc.*, 52 FCC 2d 1246, 1250 (1975); *Community Broadcasters of Cleveland, Inc.*, 58 FCC 2d 1296, 1300 (1976)).

9. Globalstar also argues that special circumstances surrounding its 2 GHz MSS system are more compelling than other cases in which the Commission extended milestones.²¹ Globalstar relies on three cases in support of its request, but this reliance is misplaced.²² First, Globalstar relies on the *GE Americom Ka-band Order*, in which the Bureau extended milestones for completion of construction and satellite launch simultaneously with granting the licensee's request to modify its Ka-band system to include inter-satellite links ("ISLs").²³ The revised milestone schedule conformed GE American Communications, Inc.'s ("GE Americom") schedule to the schedule for other Ka-band licensees with ISLs.²⁴ The Commission noted that GE Americom requested its technical modification immediately following action by the 1997 World Radiocommunication Conference making frequencies available for ISLs. In contrast, Globalstar's requested extension would delay completion of its system well past the dates of other similarly situated 2 GHz MSS systems. In fact, Globalstar's request to extend its system completion date to July 2009, particularly at this early stage of system construction, would appear to be unreasonable. In the 2 GHz MSS service rules proceeding, the Commission rejected commenters' suggestions that we relax milestone requirements for space stations.²⁵ The Commission stated if we were to adopt such proposals, systems might not be required to begin operation before year 2010, and "[t]his is an unreasonably long period of time to preclude spectrum from potential use by other parties"²⁶ Globalstar's requested extension would delay its system becoming operational to a date a mere six months before this date. Furthermore, many of the numerous technical changes that Globalstar proposes appear to be purely discretionary, unlike the changes triggered by international regulatory decisions that prompted GE Americom's modification. Instead, Globalstar explains its modification as a proposal to simplify its 2 GHz MSS system and reduce overall costs,²⁷ but does not explain why simplification of the system requires additional time to make the system operational.

10. Globalstar also attempts to rely on the *Dominion Order*, in which we granted a milestone extension, arguing that Globalstar's case is at least as compelling.²⁸ To the contrary, the *Dominion Order* involved a spectrum sharing agreement in the Direct Broadcast Service, and the agreement permitted immediate commencement of service using a satellite already in orbit.²⁹ Thus, the extension in that case involved no delay in use of the spectrum, unlike the substantial delay that Globalstar is proposing. Globalstar also relies on a 1992 decision in which GE Americom was permitted to modify the orbital location of a GSO satellite so that it coincided with the location of another GE Americom satellite scheduled to reach its end-of-life in the near future.³⁰ GE was also permitted to extend the new satellite's construction completion date to coincide with the scheduled end-of-life. However, the Commission

²¹ *Request for Extension* at 12-13.

²² *Id.* (citing GE American Communications, Inc., *Order and Authorization*, 16 FCC Rcd 11038 (Int'l Bur. 2001) (*GE Americom Ka-band Order*); Dominion Video Satellite, Inc., *Order and Authorization*, 14 FCC Rcd 8182 (Int'l Bur. 1999) (*Dominion Order*); GE American Communications, Inc., *Memorandum Opinion and Order*, 7 FCC Rcd 5169 (Com. Car. Bur. 1992) (*GE Americom Satcom H-1 Order*).

²³ *Id.* (citing *GE Americom Ka-band Order*, 16 FCC Rcd 11038).

²⁴ *GE Americom Ka-band Order*, 16 FCC Rcd at 11041-42 ¶¶ 10-11.

²⁵ *2 GHz MSS Order*, 15 FCC Rcd at 16179 ¶ 110.

²⁶ *Id.*

²⁷ *Modification Request* at 43.

²⁸ *Request for Extension* at 12-13 (citing the *Dominion Order*, 14 FCC Rcd 8182).

²⁹ *Dominion Order*, 14 FCC Rcd at 8183 ¶¶ 2-4.

³⁰ *Request for Extension* at 12-13 (citing *GE Americom Satcom H-1 Order*, 7 FCC Rcd 5169).

specifically noted that the net effect of its action was to make available immediately a GSO location for other potential users, and did not constitute warehousing.³¹ In contrast, Globalstar's extension request would prolong the period for which the spectrum lies fallow rather than expediting service to the public. As the Bureau pointed out in the *GE Americom Ka-band Order*, extending milestones on the basis of business decisions wholly within the discretion and control of the licensee would allow a licensee to "extend indefinitely their nonperformance by repeated modifications of their proposals, [and] this in turn could facilitate warehousing of scarce orbital resources or, at a minimum, delay service to the public."³²

11. Regarding Globalstar's waiver request, rules may be waived if there is good cause to do so.³³ A waiver, however, is appropriate only if: (1) special circumstances warrant a deviation from the general rule, and (2) such deviation would better serve the public interest than would strict adherence to the general rule.³⁴ Generally, the Commission may grant a waiver of its rules in a particular case if the relief requested would not undermine the policy objective of the rule in question and would otherwise serve the public interest.³⁵ Globalstar, however, has not presented special circumstances justifying a waiver, and thus has not met its burden of demonstrating that it qualifies for a milestone extension.³⁶ For the Bureau to hold otherwise would undermine our requirement that all licensees enter into non-contingent construction contracts and our ultimate policy objective of allowing scarce orbit spectrum resources to be held only by those licensees fully committed to providing prompt service to the public.

12. We also find that it would not be in the public interest to grant Globalstar's request that it be given at least 90 days to negotiate a reformation of its executed satellite manufacturing contract in the event the Commission does not grant its request for an extension of milestones. Granting this request would be tantamount to granting any licensee that seeks a milestone extension an interim extension until 90 days after the Commission acts on its extension request. We do not believe the public interest would be served by such a policy. As discussed above, extending milestones as a result of business decisions made by the licensee could extend non-performance through repeated modifications of the licensee's proposal. For milestones to be meaningful, they must set more than simply a deadline for a first proposal to the Commission. Furthermore, a prior case in which we afforded a licensee additional time to comply with a milestone following denial of a request to modify an authorization is inapposite. *GE Americom* initially filed a petition for reconsideration of an orbital position it received in a 1996 Order.³⁷ With the petition for reconsideration pending, *GE Americom* filed a milestone extension request with regard to the satellite assigned to that orbit location. In connection with the 1998 Order resolving *GE Americom*'s reconsideration request, the Bureau stated that a pending petition for reconsideration does not justify a milestone extension, but given the specific facts of that case, granted *GE Americom* 60 days "in the interest of fairness" to enter into a satellite construction contract, "if it [had] not done so already."³⁸ The same circumstances are not present in this case. The Commission has made it abundantly clear, in

³¹ *GE Americom Satcom H-1 Order*, 7 FCC Rcd at 5170 ¶ 9-10.

³² *GE Americom Ka-band Order*, 16 FCC Rcd at 11041 ¶ 8 (citing *Advanced Order*, 10 FCC Rcd at ¶ 14 (quoting *Tempo Order*, 1 FCC Rcd 20)).

³³ 47 C.F.R. § 1.3 (2002).

³⁴ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

³⁵ *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972).

³⁶ *Modification Request* at 43.

³⁷ Assignment of Orbital Locations to Space Stations in the Domestic Fixed-Satellite Service, *Order and Authorization*, 11 FCC Rcd 13788 (Int'l Bur. 1996).

³⁸ Assignment of Orbital Locations to Space Stations in the Domestic Fixed-Satellite Service, *Memorandum Opinion and Order*, 13 FCC Rcd 13863, 13866 ¶ 7 (Int'l Bur. 1998).

particular with respect to the 2 GHz MSS licenses, that milestones will be strictly enforced,³⁹ and to the extent that the Bureau's giving GE Americom a short window of time to establish milestone compliance under that unique set of facts is viewed as a more general proposition that unresolved regulatory issues will excuse non-compliance with milestones, we hereby overrule that interpretation.

13. Globalstar's contract with Loral provides for construction consistent with the revised implementation schedule it proposed in its request to extend its milestones. Because we find that grant of the requested extension would not serve the public interest, the contract is inadequate to satisfy Globalstar's milestone for entering into a satellite manufacturing contract. Accordingly, consistent with the terms of Globalstar's license, its authorization for a 2 GHz MSS system is null and void.

14. PanAmSat Corporation ("PanAmSat") filed a Petition for Reconsideration of Globalstar's 2 GHz MSS License, limited solely to the issue of Globalstar's potential use of extended Ku-band frequencies (10.7-10.95 or 11.2-11.45 GHz and 12.75-13.25 GHz) for feeder links at 101° W.L.⁴⁰ In its *Modification Request*, Globalstar requests feeder links at 13.795-13.995 and 11.5-11.7 GHz for the 99° W.L. orbit location, replacing the extended Ku-band frequencies at the 101° W.L. orbit location.⁴¹ Therefore, even had we granted Globalstar's requested applications today, since Globalstar's revised feeder links and orbit location are different from those for which PanAmSat has sought reconsideration, PanAmSat's Petition for Reconsideration is nonetheless moot.

IV. Conclusion

15. We conclude that Globalstar has not shown that it faces any circumstances beyond its control that would warrant an extension of its construction commencement milestone. We further conclude that Globalstar has not shown that it faces any special circumstances that would justify a waiver of its implementation milestones under the Commission's rules.

IV. Ordering Clauses

16. Accordingly, IT IS ORDERED that the 2 GHz MSS license granted to Globalstar L.P., 16 FCC Rcd 13739 (Int'l Bur./OET 2001), File Nos. 183/184/185/186-SAT-P/LA-97;182-SAT-P/LA-97(64); SAT-LOA-19970926-00151/52/53/54; SAT-LOA-19970926-00156; SAT-AMD-20001103-00154 IS DECLARED NULL AND VOID.

17. IT IS FURTHER ORDERED that Globalstar's "Application for Modification of License" and its "Request for Waiver and Modification of Implementation Milestones for 2 GHz MSS System," both dated July 17, 2002, File Nos. SAT-MOD-20020717-00116/17/18/19; SAT-MOD-20020722-00107/08/09/10/12, ARE DENIED.

³⁹ See *2 GHz MSS Order*, 15 FCC Rcd at 16177 ¶ 106, noting that "milestone requirements are especially important because we are declining to adopt financial qualifications as an entry criterion for 2 GHz MSS systems."

⁴⁰ Petition for Reconsideration of PanAmSat Corporation, File Nos. 183/184/185/186-SAT-P/LA-97; 82-SAT-P/LA-97(64); IBFS Nos. SAT-LOA-19970926-00151/52/53/54; SAT-LOA-19970926-00156; SAT-AMD-20001103-00154 (August 16, 2001). Globalstar filed an opposition to PanAmSat's Petition, to which PanAmSat responded. See *Opposition to Petition for Reconsideration of Globalstar L.P.* (August 29, 2001); *Reply to Opposition of PanAmSat Corporation* (September 10, 2001).

⁴¹ *Modification Request* at 3.

18. IT IS FURTHER ORDERED that the “Petition for Reconsideration of PanAmSat Corporation” in File Nos. 183/184/185/186-SAT-P/LA-97;182-SAT-P/LA-97(64); SAT-LOA-19970926-00151/52/53/54; SAT-LOA-19970926-00156; SAT-AMD-20001103-00154 is DISMISSED as MOOT.

FEDERAL COMMUNICATIONS COMMISSION

Donald Abelson
Chief, International Bureau