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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

FILED/ACCEPTED

APR 23 2008

Federal Communications Commission
Office of the Secretary

In the Matter of)
)
TerreStar Networks Inc.)
Petition for Declaratory Ruling)
Pursuant to Section 310(b)(4) of the)
Communications Act of 1934)

File No. ISP-PDR-20080229-00004

OPPOSITION OF TERRESTAR NETWORKS INC.

On February 29, 2008, TerreStar Networks Inc. ("TerreStar") filed the above-captioned Petition for Declaratory Ruling ("PDR") seeking a Commission determination, pursuant to Section 310(b)(4) of the Communications Act of 1934, as amended, that indirect foreign ownership of TerreStar at specified levels above 25 percent is consistent with the public interest.¹ TerreStar filed its PDR as an amendment to its pending application for a common carrier mobile earth terminal license and a common carrier ancillary terrestrial component authorization.

On April 10, 2008, Sprint Nextel Corporation ("Sprint") filed a Petition to Deny (the "Sprint Petition"). Pursuant to Section 1.45(b) of the Commission's rules,² TerreStar hereby opposes the Sprint Petition.

The Sprint Petition is based on arguments concerning band clearing payment obligations that, as demonstrated below, have nothing to do with the merits of TerreStar's PDR. The International Bureau previously has held that such arguments are

¹ 47 U.S.C. § 310(b)(4).
² 47 C.F.R. § 1.45(b).

not relevant in collateral proceedings. In addition, the Sprint Petition suggests that TerreStar may already have violated the foreign ownership limits specified in Section 310(b)(4). However, as the public record makes clear, TerreStar does not have any licenses that are subject to Section 310(b)(4) and therefore cannot be in violation of its mandate. For all of these reasons, the Sprint Petition should be summarily dismissed or denied.

I. THE SPRINT PETITION DOES NOT ADDRESS THE MERITS OF TERRESTAR'S PDR.

The Commission has well established standards for evaluating indirect foreign ownership of the licensee of a common carrier radio station. As discussed in TerreStar's PDR, the Communications Act authorizes the Commission to permit indirect foreign investment in excess of the 25 percent limit specified in Section 310(b)(4) if the Commission determines that the foreign investment is not inconsistent with the public interest.³ The Commission has adopted a presumption that foreign investment by individuals or entities from WTO Member countries is in the public interest, and it uses a "principal place of business" test to determine whether the nationality or "home market" of a foreign investor is a WTO Member.⁴ In its PDR, TerreStar provided detailed information under these standards as to the nationality of its owners and, in the case of owners that are non-U.S. citizens, whether the owners are citizens of WTO Member countries.

³ See TerreStar's PDR at 2.

⁴ See TerreStar's PDR at 3.

The Sprint Petition is silent on these matters. It does not address the applicable legal standard under Section 310(b)(4). It makes no mention of TerreStar's owners. It raises no objection to the showing that TerreStar has made. In light of Sprint's silence as to the merits of TerreStar's PDR, the Sprint Petition is not relevant to this proceeding and should be dismissed or denied summarily.

The principal argument in the Sprint Petition concerns whether TerreStar is required, under procedures that the Commission established in an unrelated rulemaking, to reimburse Sprint for a *pro rata* portion of the expenses Sprint incurs when it clears a portion of the 2 GHz band that is used by broadcast auxiliary service ("BAS") licensees. The Commission adopted these procedures in response to an unprecedented proposal made by Sprint under which Sprint was given access to additional spectrum in exchange for agreeing to clear incumbent users from spectrum in the 800 MHz band and the 2 GHz BAS band.⁵

TerreStar's PDR is not the first unrelated proceeding in which Sprint has tried to raise the BAS clearance reimbursement issue. In a previous proceeding involving a request by New ICO Satellite Services G.P. ("ICO") for an extension of the milestones for launching its 2 GHz MSS satellite and certifying that its system was operational, Sprint raised similar objections relating to BAS relocation reimbursement.⁶ The

⁵ A portion of the 2 GHz BAS band that Sprint agreed to clear is to be used by 2 GHz mobile satellite service ("MSS") licensees that have an independent obligation to clear that portion of the band. The Commission adopted procedures under which Sprint may be entitled to *pro rata* reimbursement from the MSS licensees for 2 GHz BAS band clearance if certain conditions are met. *See* n. 9, *infra*.

⁶ *See* letter from Lawrence R. Krevor, Vice President - Spectrum, Sprint, to Marlene H. Dortch, Secretary, FCC, File No. SAT-AMD-20071109-00155 (March 18, 2008).

International Bureau dismissed Sprint's filing because it "[did] not ... in any way address the issue of ICO's adherence to satellite milestone requirements,"⁷ noting that "issues related to BAS reimbursement costs have been raised in other Commission proceedings."⁸ The International Bureau's grounds for dismissing Sprint's objections to ICO's milestone extension request apply with equal force to the Sprint Petition and require its dismissal.⁹

In sum, the Sprint Petition does not address the merits of TerreStar's PDR and should be dismissed or denied.

II. TERRESTAR IS IN COMPLIANCE WITH SECTION 310(b).

In its Petition, Sprint suggests that TerreStar may have violated Section 310(b) of the Communications Act because TerreStar's indirect foreign ownership is already above 25 percent.¹⁰ This suggestion is baseless.

The foreign ownership limits of Section 310(b) apply to broadcast, common carrier, aeronautical en route and aeronautical fixed radio licenses.¹¹ As the FCC's public records plainly show, TerreStar holds no radio licenses in any of these categories.¹² Because TerreStar holds no licenses subject to Section 310(b), by definition

⁷ Grant stamp, File No. SAT-AMD-20071109-00155 (Apr. 2, 2008) at n. 3.

⁸ *Id.*

⁹ In any event, Sprint's BAS reimbursement claims are without merit. Under the Commission's BAS reimbursement policies, 2 GHz MSS licensees that "enter the band" after a specified period do not have reimbursement obligations. TerreStar is not scheduled to launch its satellite, much less enter the 2 GHz MSS band, until after the end of that specified period.

¹⁰ See Sprint Petition at 1, 2-3 & n. 10, 5 & n. 19.

¹¹ See 47 U.S.C. § 310(b).

¹² TerreStar holds a non-common carrier authorization for TerreStar-1, three private carrier microwave licenses, and is the lessee under a spectrum lease concerning non-common carrier 1.4 GHz licenses.

there can have been no violation of Section 310(b)'s mandate or the Commission's rules thereunder. TerreStar filed its PDR not because it holds licenses subject to Section 310(b), but because it has applied for such licenses, and the Commission must make a public interest determination under Section 310(b) before it can act on TerreStar's applications.

CONCLUSION

For the reasons stated herein, the Sprint Petition should be summarily dismissed or denied.

Respectfully submitted,

TERRESTAR NETWORKS INC.

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April 23, 2008

CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of April, 2008, a true and correct copy of the foregoing Opposition of TerreStar Networks Inc. was mailed by first class United States mail, postage prepaid, to the following:

Lawrence R. Krevor
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/s/Deborah Wiggins
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