

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

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Federal Communication Commission
Bureau / Office

In the matter of)
)
Verestar, Inc.) SES-T/C-20030918-01300
American Tower Corporation)
SkyTerra Communications, Inc.)

To: Chief, International Bureau

JOINT OPPOSITION TO PETITION TO DENY

Verestar, Inc. (“Verestar”) and American Tower Corporation (“ATC”), by their attorneys and pursuant to Section 25.154(c) of the Commission’s rules,¹ hereby submit their joint opposition to the Petition to Deny (“Petition”) filed by Intelsat Global Sales and Marketing, Ltd. (“Intelsat”) on October 31, 2003, regarding the captioned application (“Transfer Application”) to transfer control of Verestar from ATC to SkyTerra Communications, Inc. (“SkyTerra”).² The Petition asks the Commission to either deny the Transfer Application or, at a minimum, to “defer action on the application until such time as Verestar reaches agreements with its suppliers”³, including Intelsat.

¹ All references to the Commission’s rules are cited at 47 C.F.R. §§ 0.1 *et seq.*

² By letter to the Commission, dated October 23, 2003, Rare Medium Group, Inc. (the name of the transferee on the Transfer Application when filed) changed its name to SkyTerra.

³ *Petition* at 2.

I. INTELSAT LACKS STANDING; THE COMMISSION DOES NOT CONSIDER PRIVATE CONTRACTUAL DISPUTES WHEN RULING ON TRANSFER OF CONTROL APPLICATIONS

In its Opposition to Petition to Deny (“Opposition”) which is also being filed today, SkyTerra explains that Intelsat never provided any basis for its standing and could not anyway, because it fails to satisfy the three prongs of the Commission’s standing test. Specifically, Intelsat is incapable of demonstrating “(1) personal injury, (2) that is ‘fairly traceable’ to the challenged action, and (3) a substantial likelihood that the relief requested will redress the injury claimed.”⁴ In its petition, Intelsat raises a private contractual dispute that it is having with Verestar and SkyTerra, and Intelsat is attempting to use the Commission’s review of the Transfer Application as a forum to ask the Commission to resolve the dispute. However, the Commission has a longstanding policy of refusing to adjudicate such private contractual disputes because such disputes have no bearing on the merits of a transfer or assignment application.⁵ The issues of standing and private contractual disputes are more fully addressed in SkyTerra’s Opposition.⁶

⁴ *In re Application of MCI Communications Corp., Transferor, and Southern Pacific Telecommunications Company, Transferee, for Consent to Transfer Control of Qwest Communications, Inc.*, Memorandum Opinion and Order, 12 FCC Rcd 7790, 7793 (1997) (citation omitted).

⁵ *See, e.g., In re Application of MCI Telecommunications Corporation, Assignor and EchoStar 110 Corporation, Assignee*, Order and Authorization, 16 FCC Rcd 21608, ¶ 29 (1999) (citing *Listeners' Guild, Inc. v. FCC*, 813 F.2d 465, 469 (D.C. Cir. 1987); *Stockholders of Renaissance Communications Corp.*, 12 FCC Rcd 11866, 11869 (1997); *Northwest Broadcasting, Inc.*, 12 FCC Rcd 3289, 3293 (1997); *WHOA-TV, Inc.*, 11 FCC Rcd 20041, 20043 (1996)).

⁶ In its Petition, Intelsat questions SkyTerra’s qualifications to acquire control of Verestar. Those issues are also addressed by SkyTerra in its Opposition.

II. THE MATTERS RAISED BY INTELSAT REGARDING VERESTAR'S TECHNICAL QUALIFICATIONS ARE EITHER UNSUBSTANTIATED, INACCURATE, OR FRIVOLOUS

In its Petition, Intelsat engages in a series of allegations regarding Verestar's technical qualifications. As shown below, each of the allegations made by Intelsat are either unsubstantiated, inaccurate or frivolous. Even if true, the allegations concern minor licensing errors that do not affect Verestar's qualifications to be a Commission licensee.

Intelsat notes in its Petition that Verestar included station WM43 in its Transfer Application even though the license was surrendered in July of 2003. Verestar admits that inclusion of the call sign was an oversight. The transfer application listed 78 call signs, and WM43 was inadvertently included. However, contrary to the claims of Intelsat, the inadvertent inclusion of a cancelled call sign in the Transfer Application is not a violation of the Communications Act or the Commission's rules. But even if it were, it does not call into question the qualifications of a Verestar to continue to hold Commission authorizations. Rather, the Commission has always treated this type of mistake as a minor error that can be corrected by amendment. Verestar is simultaneously submitting an amendment to correct the error.

Intelsat also mentions that Station WPYN943 was not included in the application for transfer of control of Verestar's point-to-point microwave and other wireless authorizations from ATC to SkyTerra. FCC File No. 0001449794. All this allegation proves is that even Intelsat can make a mistake. Verestar did not include WPYN943 in its original application because the license for the station was not granted until after the application was filed. Intelsat is critical of the general language that Verestar included in

its exhibit asking that the Commission consent to the transaction also include authorizations that were not included in the application. This general language was put in the application specifically to deal with the very situation that is the basis of Intelsat's unfounded attack on Verestar. Verestar had wireless applications pending with the Commission at the time it filed its transfer of control application, and it put the language into the exhibit to cover later-granted stations. In addition to not noticing that WPYN943 did not exist at the time the wireless transfer of control application was filed, Intelsat did not notice that Verestar amended its wireless application on October 29, 2003, to include WPYN943. So Intelsat actually made two mistakes.

In its Petition, Intelsat attacks Verestar for modifications made to Earth Station KA330 in July of 2003. KA330 was lawfully operating in the extended C-Band. The Commission asked Verestar to reduce the power to avoid a potential future interference problem, and Verestar complied. Contrary to the claims of Intelsat, Verestar was simply being a good citizen. The change of emission designators was to correct a licensing error. Commission licensees correct licensing errors all the time, and such minor errors are never treated by the Commission as major infractions bearing on a licensee's qualifications. It is even possible that Intelsat may have corrected a licensing error from time to time. The change of points of communications and of satellite arc were effected to make communication with a particular Intelsat satellite possible, hardly something Intelsat should be raising as a criticism of Verestar.

Contrary to the claims of Intelsat, the Commission did not seek additional information regarding Earth Stations KA20 and E910548. Rather, when Verestar conducted an internal audit of its facilities, it discovered that these two earth stations

were legacy earth stations that preceded the Commission's current two-degree spacing requirements. In order to bring the earth stations into compliance, Verestar, on its own motion, solicited consent letters from the satellite operators adjacent to the satellites that the earth stations were communicating with. Since Verestar has been operating these earth stations for many years without causing any interference, Intelsat gave its consent. How this matter worked its way into a petition to deny defies logic.

Lastly, Intelsat attacks ATC for having received a Notice of Apparent Liability for Forfeiture ("NALF")⁷ in January of 2001 regarding compliance with the Commission's antenna structure rules. ATC resolved with the Commission the matters raised in the NALF. The Commission's order adopting a Consent Decree specifically concluded that "no substantial or material questions of fact exist as to whether ATC possesses the basic qualifications, including those related to character, to hold or obtain any FCC license or authorization."⁸ The Consent Decree stipulated that the underlying violations were to be "expunged from ATC's record for all purposes including, but not limited to, any future qualifications issue, future licensing proceeding or future transfer of control or assignment of license or permit involving ATC."⁹ Therefore, Intelsat and the Commission are precluded from considering those violations in this Transfer Application proceeding.

Intelsat cites the above minor issues in the context of claiming that Verestar is not technically qualified to be a Commission licensee. As discussed above, these matters,

⁷ *American Tower Corporation*, Notice of Apparent Liability for Forfeiture, 16 FCC Rcd 1282 (2001).

⁸ *American Tower Corporation*, Order, 16 FCC Rcd 14937 at ¶ 4 (2001).

⁹ *Id.* at 14941 at ¶ 8(b).


whether individually or collectively, are insufficient to demonstrate any lack of technical competence on the part of Verestar. Verestar continues to employ a competent technical staff that oversees its operations and continues to employ attorneys and other senior staff who oversee regulatory compliance. To the extent mistakes are made they are corrected. In any event, none of the issues raised by Intelsat, either individually or collectively, form the basis of any legitimate petition to deny.

III. CONCLUSION

For the reasons discussed above, Verestar, Inc. and American Tower Corporation respectfully request that the Commission find that none of the issues raised by Intelsat form any legitimate basis to deny or to delay the Transfer Application and further request that the Commission grant the Transfer Application forthwith.

Respectfully submitted,

VERESTAR, INC.
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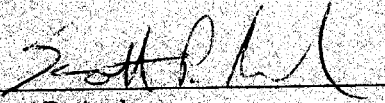
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Their Attorneys

Dated: November 14, 2003

CERTIFICATION

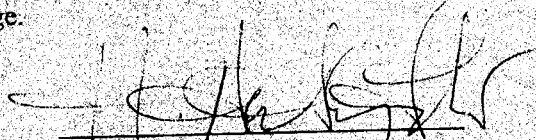
I, Scott P. Anderson, Director, Legal and Regulatory Affairs, of Verestar, Inc., hereby certify under penalty of perjury that the information in this Joint Opposition to Petition to Deny as it pertains to Verestar, Inc. is true and accurate to the best of my knowledge.


Scott P. Anderson

Executed on: November 14, 2003

CERTIFICATION

I, H. Anthony Lehv, Vice President and Chief Compliance Officer of American Tower Corporation, hereby certify under penalty of perjury that the information in this Joint Opposition to Petition to Deny as it pertains to American Tower Corporation is true and accurate to the best of my knowledge.



H. Anthony Lehv

Executed on: November 14, 2003

CERTIFICATE OF SERVICE

I, Valerie M. Steen, a Legal Secretary with the law firm Swidler Berlin Shereff Friedman, LLP, hereby certify on this 14th day of November, 2003, a true and correct copy of the foregoing Joint Opposition to Petition to Deny was sent by courier (*), or first class mail to the following:

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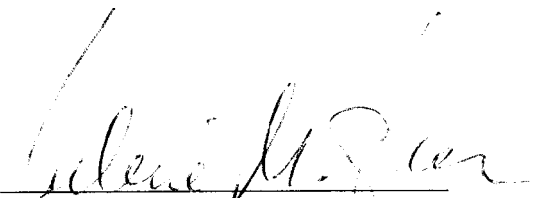
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