

ORIGINAL

Before the
Federal Communications Commission
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Teledesic LLC
Application for Authority to Construct,
Launch, and Operate a Ka-band Satellite
System in the Fixed-Satellite Service

File Nos. 22-DSS-P/LA-94; 43-SAT-AMEND-95; 127-SAT-AMEND-95; 195-SAT-ML-97

Objection of @contact LLC

@contact LLC (“@contact”), by its attorneys and pursuant to Sections 25.154(b) of the Federal Communications Commission (“FCC” or “Commission”) rules, hereby objects to Teledesic LLC’s (“Teledesic”) claim that it has satisfied the January 2002 construction commencement milestone with respect to its above-referenced authorization.¹ @contact has standing to participate in this proceeding because it is an applicant in the second processing round for the Ka-band fixed-satellite service (“FSS”). As explained below, Teledesic submitted to the Commission a construction contract for 2 satellites that will form part of an as yet unauthorized 30 satellite system rather than its licensed 288 low-Earth-orbit (“LEO”) Ka-band constellation.² Accordingly, @contact

¹ See 47 C.F.R. §25.154(b) (classifying as an informal objection any pleading to which the thirty (30) day public notice period of §25.151 does not apply). Should the Commission, in its discretion, determine that this pleading is more appropriately considered a “Petition for Declaratory Ruling” or some other request for relief, @contact respectfully requests consideration as such. See *Morning Star Satellite Company, L.L.C.*, DA 00-1265, 15 FCC Rcd 11350, 11351 (2000) (Memorandum Opinion and Order) (“*Morning Star Order*”) (treating Celsat’s “Petition for Declaratory Ruling” that MorningStar failed to satisfy its construction commencement milestone as an “informal complaint”).

² Moreover, based on the redacted contract filed by Teledesic on February 8, 2002, it appears that Teledesic may have failed to execute a construction contract that contains

respectfully requests that the Commission declare that Teledesic's contract does not satisfy its construction commencement milestone obligation. Under such circumstances, Teledesic's license automatically became null and void on January 31, 2002, and its pending application to modify its license should be dismissed as moot.³

I. BACKGROUND

Teledesic's vague milestone submissions and last-minute modification application attempt to game—rather than comply with—the Commission's rules. In early 1997, Teledesic received a license to construct, launch, and operate 840 LEO FSS satellites in the Ka-band.⁴ In its initial application for this authority, Teledesic requested that the Commission grant it authority to use inter-satellite service links (“ISLs”). Because spectrum needed for these ISLs was not then available, the FCC deferred attaching the typical one-year construction commencement milestone to Teledesic's authority at that time.

no unresolved contingencies. Since Teledesic's failure to execute a contract to construct its authorized system renders its license null and void, there is no reason to address other deficiencies in the contract. Nevertheless, @contact reserves the right to submit additional comments to the Commission on the lack of sufficiency of Teledesic's contract if it becomes necessary or appropriate.

³ *Teledesic Modification Application*, SAT-MOD-20020201-00011 (filed Jan. 31, 2002) (requesting authority to modify the technical parameters of its system and to reduce the number of satellites from 288 to 30). @contact intends to file comments on the serious issues raised in Teledesic's modification application and the effect that application has had on Teledesic's duty to coordinate with the five second round applicants.

⁴ *Teledesic Corp. Application for Authority to Construct, Launch, and Operate a Low Earth Orbit Satellite System in the Domestic and International Fixed Satellite Service*, 12 FCC Rcd 3154 (1997) (Order and Authorization) (“*Teledesic Licensing Order*”) modified by *Teledesic LLC for Minor Modification of License to Construct, Launch, and Operate a Non-Geostationary Fixed Satellite Service System*, 14 FCC Rcd 2261 (1999) (Order and Authorization) (“*Teledesic Modification Order*”), recon. pending.

Two years later in 1999, Teledesic applied for and received authority from the Commission to restructure radically and to reduce its fleet by 66%, from 840 to 288 satellites.⁵ Then, on January 31, 2001, the International Bureau modified Teledesic’s license to include ISLs and imposed milestones for the construction, launch, and operation of Teledesic’s authorized satellite system. The first milestone required Teledesic to commence construction of the first two of 288 licensed satellites no later than January 2002.⁶ In this order, the FCC clearly stated that Teledesic’s failure to begin construction of satellites “in accordance with the technical parameters” of its license by that date would render the authorization null and void.⁷

By letter dated January 31, 2002—the expiration date of the milestone to commence construction—Teledesic claimed that it had entered into a construction contract with Alenia Spazio for an unspecified satellite system design.⁸ Simultaneously, Teledesic submitted an application for Commission approval to modify its system from 288 to 30 satellites (810 fewer than originally authorized), to increase the orbital altitude of each satellite and to employ steerable spot beams having limited service cells—all of which are major changes presented to the Commission for consideration only after expiration of the contract milestone deadline. Teledesic’s modification application also reveals that the company no longer intends to incorporate ISLs or to use the frequencies

⁵ See *Teledesic Modification Order*, 14 FCC Rcd at 2272.

⁶ *Teledesic LLC Application for Authority to Construct, Launch, and Operate a Ka-band Satellite System in the Fixed-Satellite Service*, 16 FCC Rcd 2501 (2001) (“*Teledesic ISL Order*”).

⁷ *Teledesic ISL Order*, 16 FCC Rcd at 2506.

⁸ *Letter to Mr. William F. Caton, Secretary, Federal Communications Commission from Mark A. Grannis and Kelly S. McGinn, Harris, Wiltshire & Grannis LLP, Counsel for Teledesic LLC* (Jan. 31, 2002) (“*Teledesic Compliance Letter*.”)

the Commission made available for this purpose.⁹ On February 8, 2002, in response to a request from the Commission, Teledesic submitted a copy of a redacted satellite construction contract, effective January 30, 2002, with a request to keep the contract's financial terms proprietary.¹⁰ The FCC is currently determining whether Teledesic's contract satisfies its milestone obligation.¹¹

II. TELEDESIC'S CONSTRUCTION CONTRACT DOES NOT SATISFY ITS CONSTRUCTION COMMENCEMENT MILESTONE OBLIGATION; THUS, TELEDESIC'S LICENSE IS NULL AND VOID

Teledesic's license is null and void for failure to satisfy the construction commencement condition of its existing license. The Commission imposes mandatory construction commencement milestones to ensure that licensees proceed with construction and achieve launch in a timely manner. In fact, the Commission imposed a "strict milestone schedule" on Teledesic and stated that it would "rigorously enforce the system milestone schedule to ensure that Teledesic proceeds in a timely manner and does not tie up valuable spectrum to the exclusion of qualified applicants."¹² Accordingly, the

⁹ *Teledesic Modification Application*, at A-16 ("Teledesic no longer intends to incorporate radio frequency inter-satellite links into its network, so those frequency assignments can be canceled and reassigned by the Commission"). The Commission no longer tolls milestones pending assignment of ISL spectrum. *See Amendment of the Commission's Space Station Licensing Rules and Policies and 2000 Biennial Regulatory Review - Streamlining and Other Revisions of Part 25 of the Commission's Rules Governing the Licensing of, and Spectrum Usage by, Satellite Network Earth Stations and Space Stations*, FCC 02-45, ¶ 38 (rel. Feb. 28, 2002) (Notice of Proposed Rulemaking and First Report and Order).

¹⁰ *Letter from Tom Tycz to Mark Grannis* (dated January 28, 2002); *Letter from Mark Grannis to William F. Caton, Secretary* (dated February 8, 2002).

¹¹ *Letter from Tom Tycz to Mark Grannis* (dated Mar. 1, 2002).

¹² *Teledesic ISL Order*, 16 FCC Rcd at 2505; *see Teledesic Licensing Order*, 12 FCC Rcd at 3160. *See also, Morning Star Order*, 15 FCC Rcd at 11352 (citations omitted) (prevents licensees from warehousing orbital spectrum "to the exclusion of other qualified entities that are prepared to implement systems immediately").

Commission does not “extend milestones merely to allow a licensee to incorporate a new technology into its satellite design. Otherwise, [it] . . . would create a loophole . . . allowing licensees to extend their milestones indefinitely by filing modification applications.”¹³ Instead, the Commission renders licenses automatically null and void at the first milestone violation.¹⁴

Teledesic’s existing license requires it to commence construction of the first 2 of 288 LEO satellites by January 31, 2002. This construction commencement deadline is subject to the obligation to contract and build satellites with the technical parameters authorized in the 1999 license. The Commission imposed the following condition with respect to all of Teledesic’s milestones:

Teledesic LLC’s authorization shall become NULL and VOID with no further action on the Commission’s part in the event its space stations are not constructed, launched, and placed into operation *in accordance with the technical parameters and terms and conditions of the authorization by* [the dates set forth in the order].¹⁵

¹³ *PanAmSat Licensee Corp. Application for Authority to Construct, Launch, and Operate a Ka-Band Communications Satellite System in the Fixed-Satellite Service at Orbital Locations at 58° W.L. and 125° W.L.*, 16 FCC Rcd 11534, 11540-541 (2001) (Memorandum Opinion and Order) (“*PanAmSat Order*”) (“[T]he [International] Bureau has considered and rejected a proposal to interpret milestone requirements flexibly.”) (citation omitted).

¹⁴ *Morning Star Order*, 15 FCC Rcd at 11350 (“In this Order, we cancel Morning Star[‘s] . . . authorization to construct, launch, and operate Ka-band satellites in the fixed-satellite service. Morning Star has failed to satisfy the initial, mandatory implementation milestone explicitly set forth in its authorization requiring it to begin construction of *this satellite system* by May 1998. Consequently, we render Morning Star’s authorization null and void, and the orbit locations that had been assigned to Morning Star are available for reassignment to a qualified application in the second Ka-band “processing round” (emphasis added); *Mobile Communications Holdings, Inc.*, 16 FCC Rcd 11766 (2001) (Memorandum Opinion and Order) (voiding Mobile Communications Holdings, Inc.’s license for failure to meet milestone requirements) (“*MCHI Revocation Order*”).

¹⁵ *Teledesic ISL Order*, 16 FCC Rcd at 2506 (emphasis added).

Thus, Teledesic's duty is not just to sign a contract for any satellites of its choosing but to commence construction by entering into a contract for satellites with the same technical specifications *as licensed*.

Teledesic has failed to meet this unequivocal milestone. All available information shows that Teledesic has not contracted to build its authorized system of 288 LEO satellites. In a February 1, 2002 press release, Teledesic states that it has contracted with Alenia Spazio for the first two satellites for its new proposed constellation design of 30 medium-Earth-orbit satellites.¹⁶ This constellation is proposed in Teledesic's recent application to modify its authorized system.¹⁷ Moreover, nowhere in its January 31, 2002 letter or February 8, 2002 correspondence submitting the construction contract does Teledesic claim to be building satellites with technical parameters conforming to its authorized system.¹⁸ Indeed, Teledesic apparently has not even submitted with the contract the technical specifications of the satellites provided in Annex B to the agreement—the portion of the application that would be expected to contain this critical information.¹⁹

¹⁶ See *Teledesic Reaches Satellite Construction Agreement for Broadband Internet-in-the-Sky Network* (Feb. 1, 2002) <<http://www.teledesic.com/newsroom/articles/02-01-2002.html>> (last visited March 4, 2002).

¹⁷ Furthermore, Teledesic's contract does not even commence construction of the type of satellite that will provide the majority of capacity in its proposed 30 satellite constellation. Based on the power table on p. A-25, it appears that Teledesic's contract is for the first 2 of 12 4-beam satellites whose combined capacity is much less than that of the final 18 much bigger multi-beam satellites (*i.e.*, from the power table on p. A-25 the first 2 satellites represent less than 2% of the communication capacity of the eventual 30 satellite constellation ($2 \times 1200 / (12 \times 1200 + 18 \times 6000)$)).

¹⁸ *Teledesic Compliance Letter*.

¹⁹ *Letter to William F. Caton, Secretary, Federal Communications Commission from Mark A. Grannis and Kelly S. McGinn, Harris, Wiltshire & Grannis LLP, Counsel for Teledesic LLC* (Feb. 8, 2002) and *Redacted Version of Satellite Contract Between Teledesic LLC and Alenia Spazio S.p.A. dated Jan. 18, 2002* (redacted in a manner that

In addition, Teledesic has no intent to build its licensed system of 288 LEO satellites in the future. At most, Teledesic has proposed to construct a speculative system of 30 higher earth orbit space stations employing steerable spot beams having limited service cells, which is subject to the contingency of FCC approval. Although Teledesic notified its shareholders of planned major “modifications to its network” more than one year ago,²⁰ Teledesic waited to the very last minute to file its request for approval with the FCC.²¹

Commission precedent confirms that to satisfy the construction commencement milestone the licensee is obligated to execute a binding, non-contingent contract for its authorized system. Thus, the Commission revoked Mobile Communications Holdings, Inc’s “Big LEO” license for its failure to “enter into a binding contract *for construction of*

disguises the technical parameters of the system). Teledesic did not request confidential treatment of Annex B.

²⁰ See ICO Teledesic Global Ltd., SEC S-4 Registration Statement at 122 (filed Sept. 20, 2000) (available at www.freeedgar.com) (“many aspects of the final design will differ from the system parameters set forth in Teledesic’s FCC license and International Telecommunication Union registration. . . . In order to obtain FCC approval for any major design modifications, Teledesic may be required to make certain concessions to other nongeostationary fixed satellite system applicants, which could potentially reduce the capacity or performance of the Teledesic system”).

²¹ *Teledesic Modification Application. See also Loral Space & Communications Corporation; Request for Extension of Time to Construct, Launch, and Operate a Ka-band Satellite System in the Fixed-Satellite Service*, 16 FCC Rcd 11044, 11047 (2001) (Order) (“*Loral SpaceCom Order*”) (denying Loral’s request to extend construction completion and launch milestones stating: “Loral Corp. made a business decision to merge with Orion in 1998, aware that the *Orion Licenses*’ milestones began to run in May 1997. Yet, Loral Corp. waited until January 2000 – nearly two years after consummating the merger with Orion – to request ISLs and milestone extensions for the Orion satellites”) (citation omitted); *PanAmSat Licensee Corp. Application for Authorization to Construct, Launch, and Operate a Ka-Band Communications Satellite System in the Fixed-Satellite Service at Orbital Locations 58° W.L. and 125° W.L.*, 15 FCC Rcd 18720, 18723 (2000) (Memorandum Opinion and Order) (denying PanAmSat’s request for an extension of its milestone deadline where PanAmSat filed its extension request “just days before the expiration of its initial milestone.”).

the satellites in question.”²² In that case, MCHI certified that it had entered into a construction contract for satellites with the “*technical specifications set forth in MCHI’s [license order]*” but the Commission concluded that the contract was contingent and subsequently abrogated.²³ In this case, Teledesic has not even attempted to demonstrate that it seeks to build satellites in accordance with approved technical parameters. Since Teledesic has failed to meet the first milestone and has demonstrated a complete lack of intent to build its five-year-old licensed system in clear contradiction of the FCC’s rules, its license should be declared null and void.

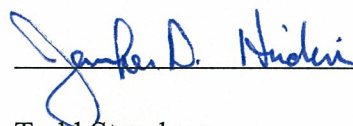
III. CONCLUSION

@contact respectfully requests that the Commission declare that Teledesic has failed to meet the construction commencement milestone for its authorized satellite system. Under such circumstances, Teledesic’s license is null and void and the Commission must dismiss the modification application as moot.

Respectfully submitted,

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March 5, 2002

²² *MCHI Revocation Order*, 16 FCC Rcd 11766, ¶ 10 (emphasis added).

²³ *Id.*, ¶ 4 (emphasis added).

CERTIFICATE OF SERVICE

I, Christopher E. Ryan, a legal assistant in the law firm of Wiley Rein & Fielding LLP do hereby certify that I have on this 5th day of March, 2002 caused a copy of the foregoing "Objection of @contact LLC" to be served by hand delivery upon the following:

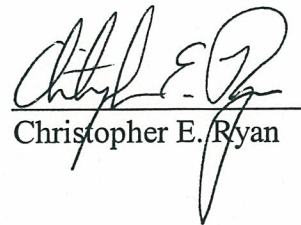
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