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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 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

Received

MAR 19 2002

Satellite Policy Branch
International Bureau

**RESPONSE OF TELEDESIC LLC
TO OBJECTION OF @CONTACT LLC**

Teledesic LLC hereby responds to the Objection of @contact LLC, filed with the Commission on March 5, 2002. Most of the Objection consists of rambling attacks on Teledesic's modification proceeding and desultory references to milestone extension cases, but neither is at all relevant here. @contact's only relevant claim is that Teledesic's January 2002 construction contract does not satisfy its January 2002 construction commencement milestone because the contract is for Teledesic's modified design rather than its currently licensed 288 satellite constellation. @contact's claim is contrary to both law and policy.

Before turning to what is actually at issue, it is important to be clear about what is *not* at issue. First, this is *not* a case about milestone extension requests. Teledesic satisfied its January 2002 milestone, and therefore has no need to seek an extension. Second, this is *not* a case about whether Teledesic intends to replace its 288-satellite design with a 30-satellite design. Teledesic has made that intention a matter of public record. Third, this is *not* a case about the merits of Teledesic's pending modification application. Whatever @contact wishes to say about the proposed modification, there is a separate proceeding in which to say it. The sole question under consideration here is whether Teledesic's current construction contract

satisfies its January 2002 milestone. As demonstrated in more detail below, it unquestionably does.

I. TELEDESIC MET ITS CONSTRUCTION COMMENCEMENT MILESTONE BY ENTERING INTO A CONSTRUCTION CONTRACT WITH ALENIA SPAZIO

At bottom, @contact's one and only legal argument is that Teledesic's obligation to "operate in accordance with the technical parameters and terms and conditions of [its] authorization" was somehow incorporated into Teledesic's *construction* milestone. This strained reading of the text is directly contradicted by the Commission's prior cases.

The Commission has held that a construction contract *does satisfy* the construction commencement milestone even though it conforms to a proposed modification rather than a licensed design. In *Tempo Enterprises, Inc., et al.*, the Commission found that a licensee which sought an extension of its construction commencement milestone had been mistaken in its assumption that it could not fulfill this requirement by entering into a contract with a satellite contractor because its modified design had not yet been approved by the Commission.¹ Rather than advising the licensee to simply enter into a contract based on the terms of its existing authorization, as proposed by @contact in the instant case, ***Commission staff advised the licensee to submit a contract that conformed to the technical parameters of its pending modification application.***

Any permittee which anticipates changes in facilities during the course of construction can provide for those changes in the construction contract, but construction must begin at some point. . . . [A]ny such contingencies involving the final configuration of the spacecraft(s) and the consequent final cost need not prevent the satisfaction of the due diligence requirement. . . . Other present and future permittees are on notice [] that this clarification of this point eliminates this reason for failing to comply.

¹ In re *Applications of Tempo Enterprises, Inc., et al.*, 1 F.C.C. Rcd. 20, 20 (1986).

In *Tempo*, the Commission ultimately found that the *late-filed* contract premised on the *still-unapproved* technical parameters fulfilled the milestone, but the decision refutes @contact's argument even more thoroughly than that. The Commission also observed in *Tempo* that the licensee's willingness to sign the contract in question immediately upon receiving the Commission's informal advice had so dramatically enhanced the licensee's credibility that it was willing to treat this due diligence demonstration as if it had been timely.² The instant case presents a much simpler one for the Commission. Teledesic has submitted a timely and complete construction contract which fulfills its construction commencement milestone. Rather than serving as a reason for doubting Teledesic's commitment to its constellation, Teledesic's decision to assume the risk associated with proceeding with a still-pending modification application demonstrates its confidence in the nature of this new design from both a regulatory and a commercial perspective.

Subsequent decisions likewise repudiate @contact's reading of the construction milestone. Both of the current satellite DARS licensees, Sirius Satellite Radio, Inc. and XM Radio Inc., filed modification applications aimed at changing the technical parameters of their systems during the construction process.³ In the more remarkable of the two stories, Sirius, which had been authorized to construct, launch, and operate two geostationary satellites in October 1997, sought to modify its space station license in December 1998 to use a three-

² *Id.* at 20-21 ¶ 6.

³ See *Application of CD Radio, Inc. to Modify Authorization*, File No. SAT-MOD-19981211-00099, December 11, 1998; *Application of XM Radio Inc. to Modify Authorization*, File No. SAT-MOD-20000131-00051, January 31, 2000.

satellite, non-geostationary orbit system.⁴ Six months prior to submitting this modification application, Sirius amended its 1993 contract with SpaceSystems/Loral and changed the technical specifications for the construction of its satellites to conform to its new system design.⁵ Thus, for nearly three years before its modification application was granted and at the time of its two construction commencement milestones in October 1998 and October 1999, Sirius was building its new three-satellite constellation, which was reflected in this amended contract. Indeed, Sirius *launched* all three of its non-geostationary satellites before its modification application was approved with the full knowledge and consent of the International Bureau pursuant to a series of grants of special temporary authority.⁶ Had @contact's theory on enforcement of the construction commencement milestone been enforced by the Commission, it could not have allowed, much less encouraged Sirius to depart so radically from the technical specifications of its license. Indeed, had @contact's theory that licensees are effectively enjoined from updating their contracts to reflect a pending modification previously prevailed at the Commission, satellite DARS might never have gotten off the ground or would

⁴ *In the Matter of Sirius Satellite Radio, Inc. for Minor Modification of License to Construct, Launch, and Operate a Non-Geostationary Satellite Digital Audio Radio Service System*, Order and Authorization, 16 F.C.C. Rcd. 5419 (Int'l Bur. 2001). Sirius requested authority to make the following system design changes: 1) to increase the number of satellites from two to three, plus a ground spare; (2) to place three satellites into inclined and elliptical (non-geostationary) satellite orbits; and (3) to use the 4/6 GHz frequency band on a non-harmful interfering basis for telemetry, tracking and command (TT&C). Its modified system would thus rely on fewer terrestrial repeaters and offer more channels within the existing spectrum assignment. *Id.* at 5421 ¶ 5.

⁵ *Amended and Restated Contract between C.D. Radio, Inc. and SpaceSystems Loral for On-Orbit Delivery of DARS Satellites*, dated June 30, 1998 included with the 10Q Report submitted by CD Radio, Inc. to the U.S. Securities and Exchange Commission on November 18, 1998.

⁶ All three launches proceeded with the full knowledge and support of the Commission prior to the grant of Sirius's modification application in March of 2001. "Sirius Satellite Radio Announces Successful Launch of Satellite," June 30, 2000 press release regarding launch of Sirius-1 available at www.siriusradio.com; "Sirius Launches Second Satellite," September 5, 2000 press release regarding the launch of Sirius-2 available at www.siriusradio.com; "Sirius Radio Completes Satellite Constellation," November 30, 2000 press release regarding the launch of Sirius-3 available at www.siriusradio.com. See Letters granting special temporary authority to Sirius from Tom Tycz, Chief, Satellite Radiocommunication Division, to Robert Briskman dated December 20, 1999, April 12, 2000, and August 31, 2000.

have been seriously delayed while Sirius awaited resolution of its modification application. Moreover, Sirius would have had to enter into non-contingent contracts by October 1998 and October 1999 for the construction of two geostationary satellites that it had no intention of building.

@contact does not cite a single case in its Objection supporting its contention that Teledesic was required to submit a contract for its 288-satellite design rather than one that conforms to the modified design currently on file with the Commission. For reasons that are unclear, @contact attempts to compare the instant case with the Commission's decision to revoke Mobile Communications Holdings, Inc.'s "Big LEO" license for its failure to "enter into a binding contract for construction of the satellites in question."⁷ This is indeed puzzling given that the cited order involves neither review of compliance with the first construction commencement milestone nor conformity of the satellites with the technical parameters of MCHI's license. The International Bureau was actually reviewing whether MCHI had fulfilled its second construction milestone – to begin construction of all of the remaining satellites in its constellation. The reference to "the satellites in question" was not included as part of an analysis of whether MCHI's satellites were consistent with the technical design approved in its license but in a paragraph analyzing the adequacy of its contractual commitments. In sharp contrast to Teledesic's contract with Alenia, which includes major financial commitments by Teledesic at each stage of the construction process and a very clear schedule requiring adherence to Teledesic's schedule for launch and operation of those satellites, the Commission found that MCHI's contract with Teledyne Brown Engineering, Inc. did not constitute a binding

⁷ @contact Objection at 7-8 citing *MCHI Revocation Order*, 16 F.C.C. Rcd. 11766, ¶ 10 (Int'l Bur. 2001).

construction contract.⁸ Thus, neither the MCHI revocation order nor any other authority cited by @contact supports its legal theory that the Commission requires demonstration of a contract that conforms with all of the technical specifications of the satellite license.

II. PUBLIC POLICY CONSIDERATIONS REQUIRE REJECTION OF @CONTACT'S THEORY OF MILESTONE ENFORCEMENT

Even if the precedent refuting @contact's theory did not exist or could be ignored, @contact's proposed application of the commencement milestone would quite simply lead to disastrous public policy. First, such a narrow reading of the construction commencement milestone would divorce enforcement of the milestones from the larger public policy purposes for which they are imposed. Milestones are included in satellite licenses to ensure that licensees move forward with system deployment in a timely fashion rather than warehousing their spectrum.⁹ This is their only point. Specifically, there is no basis for arguing that milestones are intended to ensure that licensees construct their system without any deviation from the technical specifications included in their licenses. Indeed, distorting the milestones in this manner would largely undo what the Commission rightly did when it eliminated the construction permit requirement.¹⁰

⁸ *Id.* at 11768.

⁹ See, e.g., *Morning Star Satellite Company, LLC*, 16 F.C.C. Rcd. 11550 (2001); see also *In the Matter of Amendment of the Commission's Space Station Licensing Rules and Policies*, FCC 02-45 ¶101, 2002 FCC LEXIS 1033 (February 28, 2002).

¹⁰ See *In the Matter of Streamlining the Commission's Rules and Regulations for Satellite and Licensing Procedures*, 11 F.C.C. Rcd. 21581 (1996). The Commission's decision to eliminate the construction permit requirement was explicitly premised on providing space station applicants with "increased flexibility in long-term planning and delivery of services." *Id.* at 21583 ¶ 6. Noting that "the process of constructing and obtaining a license for a new satellite often takes years," the Commission determined that eliminating this obligation would allow new services to be delivered to the public as quickly as possible upon completion of the licensing process. *Id.*

Second, @contact's proposed construction would appear to require licensees to waste precious capital on project designs that have clearly been superseded as a matter of public record. @contact apparently wants Teledesic to keep spending money on a 288-satellite design that neither Teledesic nor anyone else intends to build. Although @contact may be comfortable urging a policy that effectively requires operators seeking to improve their designs to build two constellations at the same time – one that makes sense and one that doesn't – it is difficult to imagine that other licensees would agree. No rational prospective satellite operator that has any chance of succeeding in this highly competitive industry is going to begin to build its business by throwing money away in this fashion.

Finally, were the Commission to adopt @contact's interpretation of the construction commencement milestone, it would mean the end not just of Teledesic's modification (at which it is aimed) but the majority of satellite modifications. Given the Commission's frequent affirmations that licensees should be free to incorporate the latest technical innovations by way of system modifications,¹¹ it would be irrational for the Commission to construe its milestones in such a way as to make modifications essentially impossible. @contact's reading of this milestone would thus eviscerate the Commission's embrace of flexibility in system development and design by preventing licensees from fully committing their time and resources to moving forward with the construction process.

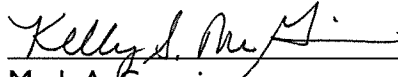
¹¹ See e.g., *Sirius Modification Order*, 16 F.C.C. Rcd. at 5429 ¶ 28; *In the Matter of XM Radio Inc. for Minor Modification of License to Construct, Launch, and Operate a Non-Geostationary Satellite Digital Audio Radio Service System*, Order and Authorization, 16 F.C.C. Rcd. 5603, 5606 ¶ 8 (Int'l Bur. 2001); *Earthwatch Incorporated*, 16 F.C.C. Rcd. 15985, 15985 ¶ 1 (Int'l Bur. 2001); *Loral Space & Communications, Ltd.*, 15 F.C.C. Rcd. 6868, 6870 ¶ 6 (Int'l Bur. 1999).

III. CONCLUSION

Teledesic's license required the company to sign a non-contingent construction contract for two satellites by the end of January, 2002. As evidenced by its submission to the International Bureau on February 8, 2002, Teledesic fulfilled this obligation by signing a contract with Alenia Spazio S.p.A on January 18, 2002 that became effective on January 30, 2002. Teledesic therefore respectfully requests the Commission to deny the Objection filed by @contact and to acknowledge that Teledesic has satisfied its January 2002 construction commencement milestone.

Respectfully submitted,

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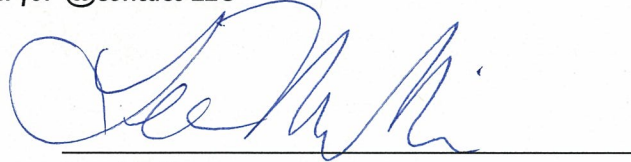
Its Attorneys

Dated: March 15, 2002

CERTIFICATE OF SERVICE

I, Lee Mullins, hereby certify that the foregoing "Response of Teledesic LLC to @contact's Objection" was served on the following by first-class U.S. mail postage prepaid on this 15th day of March, 2002:

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