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March 26, 2004

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Received  
MAR 31 2004  
Policy Branch  
International Bureau  
RECEIVED

MAR 26 2004

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

RE: *Globalstar, L.P., Memorandum Opinion and Order*, DA 03-328.

File Nos: 183/184/185/186-SAT-P/LA-97; 182-SAT-P/LA-97(64)

IBFS Application File Numbers:

SAT-LOA-19970926-00151-154

SAT-LOA-19970926-00156

SAT-AMD-20011103-0154

SAT-MOD-20020717-00116-119

SAT-MOD-20020717-00107-110

SAT-MOD-20020722-00112

Call Signs S2320/S2321/S2322/S2323/S2324

*Final Analysis Communication Services, Inc.*, Call Sign 2150

*Memorandum Opinion and Order*, DA 04-727

SAT-MOD-20020329-00245, SAT-AMD-2003060600112

Dear Ms. Dortch:

On January 29, 2003, the International Bureau adopted a Memorandum Opinion and Order, in which it denied a request by Globalstar, L.P. (“Globalstar”), for modification of certain implementation milestones associated with its 2 GHz Mobile-Satellite Service (“MSS”) system and canceled all Globalstar’s 2 GHz MSS licenses.<sup>1</sup> Globalstar’s Emergency Application for Review and Request for Stay of that decision are pending.

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<sup>1</sup> *Globalstar, L.P.*, DA 03-328, 18 FCC Rcd 1249 (Int’l Bur. 2003) (“Globalstar Order”).

The International Bureau recently cited the Globalstar Order as precedent for a legal analysis that was not discussed in that decision. Accordingly, Globalstar is submitting this letter to point out the significant distinctions between the Globalstar circumstances and those described by the International Bureau in a March 17, 2004 Memorandum Opinion and Order, DA 04-727 (“Final Analysis Order”), canceling the non-voice, non-geostationary (“NVNG”) satellite system license of Final Analysis Communication Services, Inc. (“Final Analysis”).

Final Analysis requested an extension of its implementation milestones based on delays associated, in part, with its corporate parent’s federal bankruptcy proceeding.<sup>2</sup> In the Final Analysis Order, the Bureau decided that delay arising from bankruptcy was not sufficient justification for granting an extension of Final Analysis’s milestones. Because Final Analysis had missed its March 2002 and September 2002 milestones, the Bureau canceled the NVNG satellite license. Curiously, the Bureau cited the Globalstar 2 GHz MSS decision as one case in which “the Bureau has not been persuaded to extend a milestone deadline because of a bankruptcy proceeding.”<sup>3</sup>

But, unlike Final Analysis, Globalstar did not seek an extension of milestones because it was unable to achieve substantial progress on its 2 GHz MSS system while the company was in bankruptcy.<sup>4</sup> Nor did the Bureau explain its decision on Globalstar’s 2 GHz MSS licenses with the rationale that bankruptcy was not a justification for failure to meet milestones.

Based on several factors, Globalstar requested modifications of certain future milestones for its 2 GHz MSS system at the same time that it entered into a non-

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<sup>2</sup> See Final Analysis Order, ¶ 19 (“Shortly before the March 2002 milestone deadline, a petition for involuntary bankruptcy was filed against FAI, Final Analysis’s parent company. Final Analysis argues that this eleventh hour occurrence prevented it from meeting its milestone deadlines.”)

<sup>3</sup> Final Analysis Order, ¶ 20 (“The International Bureau, under delegated authority, has similarly grappled with various issues arising from the bankruptcy filings of a number of satellite licensees and the relevance of bankruptcy on a licensee’s obligations to meet milestone deadlines. In each case, the Bureau has not been persuaded to extend a milestone deadline because of a bankruptcy proceeding.”) The discussion of the Globalstar Order follows in Paragraph 21.

<sup>4</sup> See Globalstar Order, ¶ 7. Globalstar filed a petition under Chapter 11 of the U.S. Bankruptcy Code in the U.S. Bankruptcy Court for the District of Delaware on February 15, 2002.

contingent satellite construction contract as of July 17, 2002, to meet its first milestone. The Bureau described Globalstar's reasons for the proposed changes to the future milestones as a "reevaluation of its business plan and the financial condition of the MSS market," which the Bureau deemed "business decisions" within Globalstar's control. (Globalstar Order, ¶ 8.) With that explanation, the Bureau denied the milestone extension requests.

In then canceling Globalstar's licenses, the Bureau relied on a previously-unannounced policy that a satellite construction contract incorporating variations from the space station authorization that are reflected in a simultaneously-filed modification application cannot meet the satellite construction milestone if the Commission denies the modification application. Accordingly, in Globalstar's case, since the non-contingent satellite construction contract submitted by Globalstar in compliance with its first implementation milestone reflected construction milestones as proposed in Globalstar's modification applications on file, rather than the milestones in GLP's original licensing order, the contract was deemed not to meet the milestone for entering into a non-contingent construction contract within one year of the date of licensing. (Globalstar Order, ¶ 13.) Globalstar has explained in detail how this decision violates administrative due process in a supplemental letter filed on December 12, 2003.<sup>5</sup>

In the Final Analysis Order (¶ 21 (footnotes omitted)), the Bureau describes its decision regarding Globalstar thus:

On February 15, 2002, Globalstar sought Chapter 11 bankruptcy protection. On its July 17, 2002 milestone deadline, Globalstar filed a request for waiver and modification of its implementation milestones. Despite the fact that Globalstar's first milestone passed during its bankruptcy proceeding, the International Bureau found that the extension request did not present special circumstances justifying a waiver, and thus Globalstar did not meet its burden of demonstrating that it qualified for a milestone extension.

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<sup>5</sup> Letter to Marlene H. Dortch, FCC Secretary, from William D. Wallace, Counsel to Globalstar, L.P. (filed Dec. 12, 2003). The Commission recently confirmed that it is obligated not to apply newly-announced policies retroactively. See Complaints Against Various Broadcast Licensees Regarding Their Airing of the "Golden Globe Awards" Program, FCC 04-43, ¶ 15 (released Mar. 18, 2004).

The Bureau casts the Globalstar Order as one decided in light of the bankruptcy analysis in the Final Analysis Order, but, in fact, the impact of Globalstar's bankruptcy on whether its extension requests should be granted or whether it had met its July 17, 2002 milestone was not discussed in the Globalstar Order.<sup>6</sup>

In addition to these significant differences in the rationales for the Globalstar Order and the Final Analysis Order, there are several important differences in the facts which dictate that Globalstar should retain its 2 GHz MSS licenses:

First, *Globalstar had not missed any milestones when the Bureau decided to cancel its 2 GHz MSS licenses*. Globalstar met the July 17, 2002, milestone by entering into a non-contingent satellite construction contract with Space Systems/Loral, Inc. In other cases, entering into a non-contingent construction contract has been found to demonstrate intent to proceed with implementation of the satellite system.<sup>7</sup>

Second, *Globalstar did not seek a waiver or extension of the immediately upcoming milestone*. Final Analysis filed a request for extension of its March 31, 2002 milestone (which it was unable to meet) on March 29, 2002. On the other hand, Globalstar had entered into a non-contingent satellite construction contract as of the required date of July 17, 2002, and contemporaneously filed with the Commission a request for extension of certain *future* milestones, the first of which was three years after July 17, 2002.<sup>8</sup>

Third, *Globalstar did not claim that its bankruptcy had forced it to halt progress toward construction of its system*. Despite being in bankruptcy, Globalstar

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<sup>6</sup> As the Bureau notes (Final Analysis Order, ¶ 21), in its Emergency Application for Review of the Globalstar Order (at 11-12, filed Mar. 3, 2003), Globalstar has argued that the Commission must consider its bankruptcy as one factor in reviewing whether the circumstances warrant a waiver of the milestone requirement in its request for extension of future milestones. There is no question that the Commission is obligated to consider all relevant factors in making its decisions. See, e.g., Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 43 (1983).

<sup>7</sup> See GE American Communications, Inc., 16 FCC Rcd 11038, 11041-42 (Int'l Bur. 2001); GE American Communications, Inc., 7 FCC Rcd 5169, 5170 (CCB 1992).

<sup>8</sup> This procedure was sanctioned by the International Bureau in Teledesic LLC, 17 FCC Rcd 11263, 11265 (Int'l Bur. 2002).

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intended to use the assigned frequencies in the time frame required by the 2 GHz MSS license.<sup>9</sup>

In summary, the International Bureau did not cancel Globalstar's 2 GHz MSS licenses because the Bureau rejected the use of bankruptcy as a justification for delaying progress on construction of an authorized satellite system. Therefore, squeezing the Globalstar Order into a line of Commission bankruptcy precedent must fail. The Bureau's decision on Globalstar "must be measured by what [the Bureau] did, not by what it might have done."<sup>10</sup>

The Bureau's attempt to impose a *post hoc* rationalization on the Globalstar Order demonstrates once again that the Bureau's decision canceling Globalstar's licenses cannot be justified on the facts or the applicable precedent.

Accordingly, we ask that you immediately grant Globalstar's Emergency Application for Review and vacate the Bureau's decision canceling Globalstar's 2 GHz MSS licenses.

Respectfully submitted,

GLOBALSTAR, L.P.

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<sup>9</sup> See Globalstar, L.P., "Request for Waiver and Modification of Implementation Milestones for 2 GHz MSS System," at 13-14 (filed July 17, 2002).

<sup>10</sup> SEC v. Chenery, 318 U.S. 80, 93-94 (1943).

## CERTIFICATE OF SERVICE

I, William D. Wallace, hereby certify that I have on this 26th day of March 2004, caused to be served true and correct copies of the foregoing "Letter" upon the following persons via hand delivery (marked with an asterisk (\*)) or first-class United States mail, postage prepaid:

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