

ORIGINAL

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

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Policy Branch
International Bureau

File No. SAT-AMD-20001103-00156

In re Application of)
Iridium 2GHz LLC)
For Modification of Authority for)
Use of the 1990-2025/2185-2200)
MHz and Associated Frequency)
Bands for a Mobile Satellite System)

Int'l Bureau
DEC 18 2003

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To: The Commission

Front Office

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

PETITION TO DISMISS OR DENY

I. INTRODUCTION

Pursuant to Section 25.154 of the Commission's rules,¹ ICO Global Communications (Holdings) Limited ("ICO") petitions the Commission to dismiss or deny the above-captioned application of Iridium 2 GHz LLC ("Iridium"), filed August 28, 2003, to substitute a regional, single-satellite, geostationary ("GSO") mobile satellite service ("MSS") system for its licensed global, 96-satellite, non-geostationary ("NGSO") MSS system in the 2 GHz MSS frequency band ("Iridium Application").² Specifically, the Commission should dismiss the Iridium Application as moot or otherwise deny the application because the underlying 2 GHz MSS license has been rendered automatically null and void as a result of Iridium's failure to comply

¹ 47 C.F.R. § 25.154(a).

² ICO is a party in interest within the meaning of Section 25.154(a)(4) of the Commission's rules and Section 309 of the Communications Act of 1934, as amended. See 47 C.F.R. § 25.154(a)(4); 47 U.S.C. § 309. The Commission has long held that party-in-interest status is imparted when the party demonstrates that it will suffer direct injury from the grant of an application. See, e.g., *Applications of Lawrence N. Brandt and Krisar Inc.*, 3 FCC Rcd 4082 (CCB 1988). ICO holds an authorization to provide 2 GHz MSS in the United States and thus will be a direct economic competitor of Iridium in the MSS market. ICO will be directly harmed if Iridium is allowed to implement an entirely new system and exhaust scarce spectrum that otherwise would be redistributed for use by other MSS systems. Therefore, ICO has standing to file this petition.

with the critical design review (“CDR”) milestone condition set forth in both its license and the 2 GHz MSS Order.³

II. IRIDIUM’S FAILURE TO MEET THE CDR MILESTONE RENDERS ITS 2 GHz MSS LICENSE NULL AND VOID

Despite the milestone condition requiring completion of CDR for its licensed NGSO 2 GHz MSS system by July 17, 2003, Iridium filed a certification of CDR completion for a system that is radically different from its licensed system and for which no acceptable modification application had been filed and accepted at the time of the milestone deadline.⁴ The Commission has defined CDR as “the stage in the spacecraft implementation process at which the design and development phase ends and the manufacturing phase starts.”⁵ The CDR milestone is designed to “aid [the Commission] in assessing that prospective operators are taking immediate, concrete steps toward system implementation after meeting the first milestone, and allows [the Commission] to identify any failure in system progress.” Contrary to the requirements of the CDR milestone, Iridium failed to demonstrate that it has taken “immediate, concrete steps” toward implementation of its licensed NGSO system. Instead, Iridium merely certified completion of CDR for an unlicensed single-satellite GSO system for which no acceptable modification application had been filed until August 28, 2003, more than a month after the CDR milestone deadline. Iridium, of course, had the option of certifying to completion of CDR for its licensed system and then filing an application to modify its license, an approach that would have complied with the Commission’s milestone requirements.

³ See *Iridium LLC*, 16 FCC Rcd 13778, 13791 ¶ 43 (IB 2001); *The Establishment of Policies and Service Rules for the Mobile Satellite Service in the 2 GHz Band*, 15 FCC Rcd 16127, 16177-78 ¶ 106 (2000) (“2 GHz MSS Order”).

⁴ See *Iridium 2 GHz LLC*, Certification of Milestone Completion, File Nos. SAT-LOA-19970926-00147 *et al.* (July 17, 2003) (“Iridium CDR Milestone Certification”).

⁵ 2 GHz MSS Order, 15 FCC Rcd at 16178-79 ¶ 108.

In strictly enforcing its milestone requirements, the Commission has cancelled a number of satellite licenses for any deviation, however slight, from the terms of those milestone requirements. For example, the International Bureau (“Bureau”) cancelled four 2 GHz MSS authorizations for failure to meet the non-contingent contract milestone, even though the licensees arguably had entered into construction contracts by the milestone deadline.⁶ Fairness and consistency require the Commission to strictly enforce the milestone requirements against Iridium.

The Commission rarely has found a satellite licensee to have met its milestone requirements if its system does not conform to the terms of its license.⁷ In those few cases, however, the Bureau found the licensee’s milestone compliance efforts with respect to a non-conforming system to be sufficient only when the licensee filed an appropriate modification application on or prior to the relevant milestone deadline. For example, in the *Boeing Modification Order*, in order to meet the non-contingent contract milestone requirement, Boeing entered into a contract for the construction of a GSO 2 GHz MSS satellite that was not covered under its then-existing license.⁸ At the time of its contract milestone deadline, Boeing also filed a modification application to change from an NGSO to GSO system, which the Bureau and Office of Engineering and Technology (“OET”) subsequently approved. Under those limited circumstances, the Bureau and OET concluded that the construction contract was not materially deficient for milestone purposes.⁹ Similarly, in the *Teledesic Milestone Order*, the Bureau found

⁶ See *TMI Communications and Company, Limited Partnership*, 18 FCC Rcd 1725 (IB 2003); *Mobile Communications Holdings, Inc.*; *Constellation Communications Holdings, Inc.*, 18 FCC Rcd 1094 (IB 2003); *Globalstar, L.P.*, 18 FCC Rcd 1249 (IB 2003).

⁷ See *The Boeing Co.*, 18 FCC Rcd 12317 (IB/OET 2003), *application for review pending* (“*Boeing Modification Order*”); *Teledesic LLC*, 17 FCC Rcd 11263 (IB 2002) (“*Teledesic Milestone Order*”). On July 24, 2003, ICO filed an application for review of the *Boeing Modification Order*; the application for review is pending before the Commission.

⁸ See *Boeing Modification Order*, 18 FCC Rcd at 12318, 12319 ¶¶ 3, 6.

⁹ *Id.* at 12327-28 ¶ 28 n. 56.

that a contract for construction of a proposed satellite system satisfied the non-contingent contract milestone, where the licensee filed a modification application for the proposed system by the milestone deadline.¹⁰ Thus, in view of the *Boeing Modification Order* and the *Teledesic Milestone Order*, Iridium cannot satisfy the CDR milestone by certifying completion of CDR for a system that does not conform to the terms of its license and at the same time failing to have at least a pending modification application on file with the Commission on or before the milestone deadline.

III. WAIVER OR EXTENSION OF IRIDIUM'S CDR MILESTONE IS UNWARRANTED

Iridium has offered no support for waiving or extending the CDR milestone. Contrary to its claim, Iridium's failure to complete CDR for its licensed system was not caused by any circumstance beyond its control.¹¹ Iridium's argument that the Commission's satellite application freeze, which commenced on April 23, 2003, prevented it from filing its modification application prior to the CDR milestone deadline is untenable. Neither the application freeze nor any other circumstance prevented Iridium from filing its modification application well in advance of the CDR milestone deadline. Moreover, notwithstanding the application freeze, Iridium at all times had the option of completing CDR review for its licensed NGSO system and then filing its modification application after the Commission lifted the freeze. Its decision not to complete CDR review for its licensed NGSO system is "a business decision that is wholly within the discretion and control of the licensee, and is thus not beyond the licensee's control."¹²

Furthermore, Iridium has failed to cite any other extenuating circumstance or good cause that would warrant a milestone waiver or extension for itself, but not for the other four 2 GHz

¹⁰ See *Teledesic Milestone Order*, 17 FCC Rcd at 11264, 11265 ¶¶ 5, 8-9.

¹¹ See Iridium CDR Milestone Certification at 8, 11.

¹² *Loral SpaceCom Corp. and Loral Space & Communications Corp.*, 18 FCC Rcd 6301, 6310 ¶ 17 (IB 2003).

MSS licensees whose licenses the Commission previously cancelled. Accordingly, consistent with the Commission's strict milestone enforcement policy, the Commission should declare Iridium's 2 GHz MSS license null and void, and dismiss as moot the Iridium Application.

IV. CONCLUSION

Based on the foregoing, ICO urges the Commission to cancel Iridium's 2 GHz MSS license for failure to meet the CDR milestone, and accordingly dismiss as moot or otherwise deny the Iridium Application.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Caitlin Coyle, hereby certify that a copy of the foregoing **Petition to Dismiss or Deny** has been served this 17th day of December 2003 via electronic mail or First Class U.S. Mail (*) on the following:

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