

COPY

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December 6, 2004

Hand Delivered

Marlene H. Dortch
Secretary
Federal Communications Commission
236 Massachusetts Avenue, N.E.
Suite 110
Washington, DC 20002

RECEIVED

DEC - 6 2004

Federal Communications Commission
Office of Secretary

Received

DEC 15 2004

Policy Branch
International Bureau

Re: TMI Communications and Company Limited Partnership

File Nos. SAT-LOI-19970926-00161;
SAT-AMD-20001103-60158;
SAT-MOD-20021114-00237

Dear Ms. Dortch:

Transmitted herewith, on behalf of TMI Communications and Company Limited Partnership (TMI), pursuant to Section 25.143(e)(3) of the Commission's rules, is a Certification stating that TMI has met the November 2004 Critical Design Review (CDR) milestone contained in its 2 GHz Mobile Satellite Service (MSS) authorization, as amended, (see *Memorandum Opinion and Order*, FCC 04-144, released June 29, 2004, ¶59).

In addition, as evidence of its compliance with the CDR milestone, TMI is submitting copies of sworn statements from Space Systems/Loral Inc. (Loral), the manufacturer of TMI's 2 GHz MSS system, and TMI's affiliate, TerreStar Networks, Inc., the signatory to the satellite contract. These statements confirm that: (a) Loral has timely completed the CDR milestone work specified in said manufacturing contract, as amended; and (b) TerreStar has paid and Loral has received all of the monies due and owing under the manufacturing contract at the CDR date for the 2 GHz MSS satellite. Subject to the confidentiality request stated below, TMI is also transmitting one soft copy (on a CD ROM) of the CDR Report and supporting documentation supplied by Loral.

Orbital Debris Mitigation

TMI's original FCC authorization required it to supplement its orbital debris mitigation plan six months in advance of the CDR milestone, then July 17, 2003. (See *Order*, 16 FCC Rcd 13808 (Int'l. Bur. 2001) ¶ 18). TMI did so by letter, dated January 14, 2003, that provided a "supplemental narrative" regarding the mitigation of orbital debris.

Since January 2003, however, the FCC has adopted new rules concerning the mitigation of orbital debris. See *In the Matter of Mitigation of Orbital Debris, Second Report and Order*, FCC 04-130, released June 21, 2004. These new rules became effective on October 12, 2004. See 69 *Fed. Reg.* 54,581 (September 9, 2004).

In view of the foregoing and to ensure that its orbital debris plan is in full compliance with the FCC's new rules, TMI is simultaneously submitting a second "supplemental narrative" regarding orbital debris mitigation. Given that the FCC's new rules on orbital debris came into effect but one month before TMI's revised CDR milestone date, TMI submits that its second supplemental submission is timely and, to the extent necessary, hereby requests waiver of the six month pre-CDR condition stated in TMI's original satellite authorization. Good cause exists for such a waiver because TMI could not update its prior orbital debris plan until the agency's new rules went into force and the public interest will not be harmed by the fact that its supplemental showing is being made concurrently with TMI's CDR certification. The substance of TMI's orbital mitigation plan remains the same; the current supplement only provides clarifying information and a supporting calculation. In addition, TMI's satellite has not been constructed yet and is still three years away from launch. Hence, TMI has had adequate time to incorporate the terms of the Commission's new orbital debris rules, as well as the debris mitigation requirement in TMI's original authorization, into its satellite design.

Confidentiality Request

Pursuant to the Freedom of Information Act (FOIA),¹ and Sections 0.457 and 0.459 of the Commission's Rules,² TMI requests that all of Loral's CDR Report and supporting documentation (submitted on CD ROM) be withheld from public inspection and be treated confidentially because they contain sensitive proprietary financial or technical information.

To facilitate public access to the non-confidential portions of this filing, a second redacted cover letter is enclosed and marked "FCC Public Inspection Copy"; the confidential CD ROM is not attached to that copy.)

In support of its request for confidential treatment and pursuant to the requirements under Section 0.459(b) of the Commission's Rules, TMI states the following:

¹ 5 U.S.C. §552(b)(4).

² 47 C.F.R. §§ 0.457, 0.459.

1. TMI seeks confidential treatment of the Loral CDR Report and supporting documentation.

2. These documents are being submitted voluntarily by TMI to demonstrate its compliance with the second construction milestone adopted in the Commission's Order reinstating TMI's 2 GHz MSS authorization.³ In the event that the Commission denies TMI's request for confidential treatment, TMI hereby requests that the Commission return said documents without consideration pursuant to Section 0.459(e) of the Commission's Rules.

3. The documents contain information regarding technical specifications, construction schedules, and unique commercial terms and conditions. This information constitutes trade secrets or sensitive commercial and financial information that "would customarily be safeguarded from competitors,"⁴ and is therefore exempted from disclosure under FOIA Exemption 4 and Section 0.457 of the Commission's Rules.⁵

4. The documentation concerns TMI's implementation of a 2 GHz MSS system that will be subject to competition from other MSS systems. The Commission has previously acknowledged that there are a number of other companies that offer MSS in North America.⁶ Disclosure of the information will seriously inhibit TMI's ability to remain competitive in the MSS industry.

5. The technical specifications and performance criteria for its proposed satellite are commercially sensitive and ordinarily would not be disclosed to third parties. If disclosed, this information would allow competing 2 GHz MSS licenses to use this information to their competitive advantage. For example, knowledge of unique technical specifications could allow competitors to obtain more favorable terms from other manufacturers. Further, disclosure would harm TMI in future negotiations with satellite construction firms by allowing them to extract more favorable terms.

6. The manufacturing contract between Loral and TerreStar requires all parties to maintain confidentiality, and the contract itself as well as the CDR Report are marked proprietary to the parties and TMI, and may not be further disclosed without the written permission of the parties.

7. Information regarding the CDR Report and supporting documentation are not available to the public, and there has been no prior disclosure of such information to third parties.

8. TMI requests confidential treatment of all documents for an indefinite period. As previously discussed, release of this information at any time in the future would cause substantial competitive harm to TMI.

³ See *Memorandum Opinion and Order*. FCC 04-144, *supra*

⁴ 47 C.F.R. § 0.459(d)(2).

⁵ 5 U.S.C. §552(b)(4); 47 C.F.R. § 0.457(d).

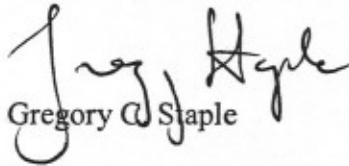
⁶ See *Motient Services, Inc. and TMI Communications and Company, LP*, 16 FCC Rcd 20469, ¶ 24 (Int'l. Bur. 2001).

9. Other parties holding a 2 GHz MSS authorization have recently filed analogous documents (e.g., CDR Reports and payload system CDR) to demonstrate compliance with a CDR milestone and have also requested confidential treatment.⁷ To TMI's knowledge, all of these requests have been granted.

For the foregoing reasons, TMI submits that the law requires confidential treatment of the portions of the Amendments TMI has identified above.

Please direct any questions regarding this filing to the undersigned.

Very truly yours,



Gregory A. Staple

Enclosures

cc: Roderick Porter
Steven Spaeth
Cassandra C. Thomas
William Bell

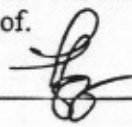
⁷ See e.g., Letter from Joseph P. Markoski and Bruce A. Olcott, Counsel for The Boeing Company to Marlene H. Dortch, FCC Secretary, dated April 5, 2004 (File Nos. 179-SAT-P/LA-97(16), 90-SAT-AMEND-98(20)); Letter from Peter D. Shields, Counsel to Iridium 2GHz, LLC to Marlene H. Dortch, FCC Secretary, dated December 18, 2003 (File Nos. 187-SAT-P/LA-97(96), SAT-LOA-1997092600147, et. al.); Letter from Brian D. Weimer, Counsel to Celsat, to Marlene H. Dortch, FCC Secretary, dated December 18, 2003 (File Nos. 26/27/28-DSS-P-94 et. al).

December 03, 2004

CERTIFICATION

TMI Communications and Company Limited Partnership (TMI) hereby certifies that on November 29, 2004, TMI satisfied the Critical Design Review (CDR) milestone established for TMI's 2 GHz Mobile Satellite Service (MSS) system in the FCC's authorization, as amended. See *Memorandum Opinion and Order*, FCC 04-144, released June 29, 2004.

The 2 GHz MSS system is being constructed on TMI's behalf by TMI's affiliate, TerreStar Networks, Inc. (TerreStar), pursuant to a satellite manufacturing contract with Space Systems/Loral Inc. (Loral). On July 29, 2004, TMI executed a contract with Loral guaranteeing TerreStar's payments under the aforementioned contract, subject to certain terms and conditions. TMI further certifies that said payment-guarantee contract with Loral was in effect as of November 29, 2004, and remains in effect as of the date hereof.



Ted H. Ignacy
Vice President, Finance
TMI Communications, Inc.,
General Partner of TMI Communications
and Company Limited Partnership

I, Wisa Nickerson, a Notary Public for the Province of Ontario, hereby certify that Ted H. Ignacy signed this letter before me on the 3rd day of December 2004.

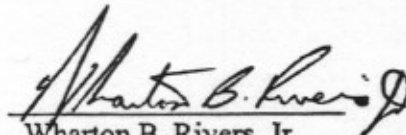


November 30, 2004

CERTIFICATION

TerreStar Networks Inc. (TerreStar) hereby certifies that:

1. On November 29, 2004, Space Systems/Loral Inc. (Loral) completed the Critical Design Review (CDR) milestone work for the 2 GHz Mobile Satellite System (MSS) stated in the satellite manufacturing contract between TerreStar and Loral dated July 14, 2002, as amended, most recently, on July 26, 2004;
2. The aforesaid contract between TerreStar and Loral was in full force and effect as of November 29, 2004 and as of the date hereof, and TerreStar has made all of the payments due and owing thereunder to Loral; and
3. Based on the contractual performance of Loral and TerreStar, the CDR milestone construction requirements established for the aforescribed 2 GHz MSS system by the Federal Communications Commission (See *Memorandum Opinion and Order*, FCC 04-144, released June 29, 2004) and Industry Canada (See Letter of Jan Skora, Director General, Radiocommunications and Broadcasting Regulatory Branch, Industry Canada to Ted H. Ignacy, Vice President, Finance, TMI Communications Inc. dated May 6, 2002) have been met.


Wharton B. Rivers, Jr.
President and CEO
TerreStar Networks Inc.

Sworn to me this 30th day of November 2004


Typed name: Marilyn T. Harrington

Notary Public My Commission Expires December 31, 2008

SPACE SYSTEMS
LORAL

3825 Fabian Way M/S
Palo Alto, California 94303-4604

November 29, 2004

Wharton B. Rivers
President and CEO
TerreStar Networks, Inc.
7925 Jones Branch Drive
McLean, VA 22102

Dear Mr. Rivers:

Pursuant to our Satellite manufacturing contract, as last amended on July 26, 2004 (the "Contract"), Space Systems/Loral, Inc. is submitting this declaration of completion of the Critical Design Review (CDR) of TerreStar's satellite for 2-GHz mobile communications. By this letter, SS/L hereby certifies that the CDR was completed on November 29, 2004, in accordance with the requirements contained in the Contract Statement of Work Section 2.4.3, and as approved by TerreStar.

The Contract was in full force and effect as of the CDR completion date and as of the date hereof. Further, as of the date hereof, the contractor has received from TerreStar all of the payments due and owing under the Contract. The amount of each payment is specified in amended Schedule F to the Contract. The last payment for the CDR work (designated Payment 4b) was received on July 29, 2004.

In accordance with Section 1.16 of the rules of the Federal Communications Commission, 47 C.F.R. Section 1.16, 1, the undersigned, acting on behalf of Space Systems/Loral, Inc., hereby declare under penalty of perjury that to the best of my information and belief, the foregoing is true and correct.

Executed on November 29, 2004

Sincerely,



Chris F. Hoeber
Senior Vice President
Space Systems/Loral, Inc.