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Policy Branch  
International Bureau

September 3, 2003

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

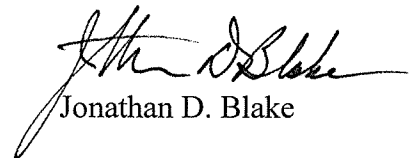
Re: Ex Parte Notice  
File No : 189-SAT-LOI-97  
IBFS Nos. SAT-LOI-19970926-00161  
SAT-AMD-20001103-60158

Dear Ms. Dortch:

On September 2, 2003, Wharton B. (Zie) Rivers, Jr., President and Chief Executive Officer of TerreStar Networks, Inc., Jonathan D. Blake, TerreStar's counsel, Gregory C. Staple, counsel for TMI Communications and Company, Limited Partnership, and Laurence D. Atlas, Vice President of Government Relations, Loral Space & Communications, Ltd., met with Bryan Tramont, Chief of Staff to Chairman Michael K. Powell, John Rogovin, General Counsel, Donald Abelson, Jacquelynn Ruff, and Karl Kensinger of the International Bureau to discuss TerreStar and TMI's Application for Review in the above matter. The discussion addressed the issues raised in that Application and in subsequent submissions to the Commission. We also distributed the attached "TMI/MSV/TerreStar Business Development/Regulatory Chronology: January 2001 - January 2003" and an earlier version of the attached "Satellite Milestone Orders." (The attached version of Satellite Milestone Orders contains every item of information that was contained in the earlier version plus some additional information.)

Any questions about this matter should be directed to the undersigned.

Respectfully submitted,

  
Jonathan D. Blake

Counsel for TerreStar  
Networks, Inc.

Enclosures

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cc: Mr. Bryan Tramont  
Mr. John Rogovin  
Mr. Donald Abelson  
Ms. Jacquelynn Ruff  
Mr. Karl Kensinger

## **TMI/ MSV/TerreStar Business Development/Regulatory Chronology: January 2001 – January 2003**

January 2001--TMI filed application with FCC to assign U.S. L-band assets to Mobile Satellite Ventures (MSV). The application notes: "TMI may also assign to License Co its pending application for a Canadian license to construct and operate a new mobile satellite system in the 2 GHz band. In that event, appropriate applications will be filed with the FCC (to transfer TMI's current Letter of Intent submission, see FCC File No. SAT-LOI-199970926-00161) and with Industry Canada."

March 2001--Motient and MSV filed application with the FCC to assign Motient's L-band licenses to MSV, and MSV applied to launch a next-generation L-band system. "The system is designed to operate its service links in the MSS L-band. A component that uses 2 GHz may be added in a future proposal, contingent on the outcome of necessary design review."

July 2001--International Bureau released Order granting LOI authorization to TMI, establishing several milestones, including "enter non-contingent satellite construction contract" by July 17, 2002.

November 2001--International Bureau released Order and Authorization approving assignment of TMI and Motient L-band MSS authorization and assets to MSV. The joint venture agreement included a Description of Subject Assets which specified: "subject to regulatory approval, all of TMI's rights in any pending applications for telecommunication and/or satellite licenses filed by TMI with any regulatory body including, without limitation, TMI's rights in the application made by it to the FCC relating to the 2 GHz frequency band (the Applications)."

February 2002--TerreStar Networks Inc. incorporated as a wholly owned subsidiary of MSV to develop 2 GHz business opportunity.

May 2002--Industry Canada grants approval-in-principle for TMI's 2 GHz MSS system, establishing several milestones, including "submission of final design specifications" by June 15, 2002 and "signature of contract for the first of two satellites" by July 15, 2002.

July 8, 2002--Industry Canada approves final satellite design specifications.

July 12, 2002--TMI contracts with TerreStar to deliver 2 GHz MSS satellite meeting U.S. and Canadian authorizations and "TMI shall retain control over the content of the satellite specifications and the design, construction and delivery of the satellite so long as it holds the Canadian Authorizations and the FCC Authorization, and TerreStar's contract with Loral shall be wholly consistent with said regulatory authorizations".

July 14, 2002--TerreStar enters into non-contingent satellite construction contract with Space Systems/Loral Inc. (Loral)

December 11, 2002--TMI files application to assign LOI to TerreStar.

December 27, 2002--FCC Public Notice starts pleading cycle regarding TMI's assignment application.

January 29, 2003--FCC adopts decisions on Ancillary Terrestrial Component. In that order, the FCC notes that during the pendency of the proceedings, TMI and Motient combined their MSS systems: "Due to the substantial commonality of interest among Motient, TMI and MSV, we will refer to these three parties collectively as MSV in this Order..." paragraph 6, n.13. In addition, when discussing

2GHz, the Order states: "TMI operates a geostationary orbit satellite system license in Canada and through a subsidiary, holds a letter of intent authorization from the Commission." Paragraph 106.

## SATELLITE MILESTONE ORDERS

## A. Revocation Cases Involving First Milestone

Grantee	First Milestone: Non-Contingent Construction Contract in Compliance with Authorization	Reasons for Revocation
TMI (GHz License, Feb. 10, 2003) DA 03-385	YES	TMI, as the authorization holder, "did not enter into a satellite manufacturing agreement," though it contracted with TerreStar to do so and it did. In addition, TMI did not "demonstrat[e] an investment and commitment."
<b>Commission Decisions</b>		
PanAmSat (Ka-band License, June 26, 2000) FCC 01-178	No	PanAmSat did not enter into a non-contingent construction contract and failed to provide adequate justification for seeking to extend its construction commencement milestone.
Morning Star Satellite Company (Ka-band License, June 26, 2000) FCC 01-179	No	Morning Star's contract (lacking any construction or payment schedules) failed to meet the Commission's minimum requirements for a non-contingent contract.
Norris Satellite Communications (Ka-band License, March 14, 1996) FCC 97-377	No	Norris failed to make a critical installment payment to make its contract non-contingent. Norris's failure to make this payment prevented satellite construction from commencing by the extended authorization deadline.
<b>Bureau Decisions</b>		
Globalstar (2 GHz License, Jan. 30, 2003) DA 03-328	No	Globalstar's manufacturing contract provided for construction pursuant to an implementation schedule at variance with the milestones in its license grant.
Motorola (Ka-band License, Sept. 4, 2002) DA 02-416	No	Motorola did not enter into a non-contingent contract and did not commence construction of its Ka-band satellite system by the first milestone deadline.
Columbia Communications Corporation (C-band license, April 5, 2000) DA 00-702	No	Despite grant of a seven month extension of the first milestone, Columbia failed to sign a manufacturing contract because of the pendency of a merger with GE Americom.

Constellation Communications Holdings, Inc. (2 GHz License, Jan. 30, 2003) DA 03-285	No	The “sharing agreement” that CCHI entered into with ICO was not a satellite manufacturing contract. It was merely a contract for purchase of capacity if and when the satellites have been constructed, launched, and made ready for operation pursuant to a separate contract over which CCHI has no control.
Mobile Communications Holdings, Inc. (2 GHz License, Jan. 30, 2003) DA 03-285	No	The “sharing agreement” MCHI entered into with ICO was not a satellite manufacturing contract. It was merely a contract for purchase of capacity if and when the satellites have been constructed, launched, and made ready for operation pursuant to a separate contract over which MCHI has no control.

**B. Reinstatement and Waiver Cases Involving First Milestone (selective)**

<b>Bureau Orders</b>		
<b>Grantee</b>	<b>First Milestone: Non-Contingent Construction Contract in Compliance with Authorization</b>	<b>Reasons For Action</b>
The Boeing Company (2 GHz MSS License, June 24, 2003) DA 03-2073	No	The Bureau held that, Inter-organizational Work Authorization (IWA) between Boeing IDS, a division of licensee, and Boeing Satellite System met the first milestone. Bureau also found there was compliance although the IWA was for a GSO system rather than a NGSO system, as originally authorized.
EchoStar Satellite Corporation (Ka-band license, November 8, 2002) DA 02-3085	No	License reinstated, on reconsideration, based on additional evidence, as of the milestone date, as to the payload and power budget for the hybrid Ku/C/Ka band satellites. Thus, Bureau finds that construction contract did in fact cover the authorized system.
Volunteers In Technical Assistance (“Little LEO” License, March 7, 1997) DA 97-501	No	Licensee was permitted to rely upon construction of a third party’s satellite to meet milestone applicable to replacement satellite.

<b>Bureau Orders</b>		
<b>Grantee</b>	<b>First Milestone: Non-Contingent Construction Contract in Compliance with Authorization</b>	<b>Reasons For Action</b>
NetSat 28 Company LLC (Ka-band License, May 25, 2001) DA 01-1284	No	Bureau waived construction milestone granted and reinstated license even though construction contract post-dated milestone by approximately 18 months because contract provided for timely completion of satellite and launch and licensee had expended over \$10 million on system development.
United States Satellite Broadcasting Company, Inc. (DBS License, October 22, 1992) [Mass Media Bureau] DA 92-1462	No	Construction contract milestone was held to be satisfied by licensee's having entered contract to purchase for 5 transponder payload on third party's satellite ( <i>i.e.</i> , without a separate manufacturing contract) because the licensee had met payment schedule to date under purchase contract.

**C. Bureau Orders Canceling Licenses after the First Milestone**

<b>Grantee</b>	<b>First Milestone: Non-Contingent Construction Contract in Compliance with Authorization</b>	<b>Reasons for Revocation</b>
Mobile Communications Holdings, Inc. (Big LEO License, May 31, 2001) DA 01-1315	Not Applicable	The Bureau concluded that MCHI failed to contract for all of its May 31, 2001 authorized satellites by the milestone deadline and thus violated its second milestone requirement.
Constellation Communications Holdings, Inc. (Big LEO License, Nov. 8, 2002) DA 02-3086	Not Applicable	Constellation did not certify completion of its second and third construction milestones. The Bureau found that Constellation did not provide sufficient grounds to justify an extension of those milestone deadlines.
E-SAT, Inc. (Little LEO License, April 23, 2003) DA 03-1113	Not Applicable	The Bureau concluded that E-SAT had not demonstrated that it faced unforeseeable circumstances beyond its control requiring an extension; nor were there unique and overriding public interest concerns.
Loral (Ka-band License, April 1, 2003) DA 03-1045	Not Applicable	Loral did not complete construction of its Orion satellites by the requisite milestone and the Bureau found no reason to extend Loral's milestone schedule.

**D. Waiver Case after the First Milestone**

<b>Grantee</b>	<b>First Milestone: Non-Contingent Construction Contract in Compliance with Authorization</b>	<b>Reasons for Revocation</b>
GE American Communications (Ka-band License, May 25, 2001) DA 01-1286	Not Applicable	Bureau waived milestones on its own motion based on facts showing licensee's "intent to proceed," noting that milestone waivers have been denied and licenses cancelled only "where construction of the satellite either had not begun or was not continuing . . ."