

Before the
Federal Communications Commission
Washington, D.C. 20054

<p>In the Matter of</p> <p>NORRIS SATELLITE COMMUNICATIONS, INC.</p> <p>For Authority to Construct, Launch, and Operate a Ka-Band Satellite System</p>	<p>File Nos. 54-DSS-P/LA-90 55-DSS-P-9062-SAT-MP/ML-96 60/61-SAT-MISC-96 62-SAT-MP/MI -96 63-SAT-MP-96</p>
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ORDER

Adopted: March 14, 1996

Released: March 14, 1996

By the Chief, International Bureau:

Introduction

1. In 1992, the Commission authorized Norris to construct a Ka-band satellite system and assigned an orbital slot for that purpose.¹ In return, Norris was obligated (after one extension) to begin satellite construction by June 1994. Almost two years after this deadline, Norris has still not begun construction. As we have now said on numerous occasions, we will not allow licensees to violate their commitments to make timely use of scarce resources assigned to them. Accordingly, Norris's orbital slot will now be made available to those who can make use of it.

Background

2. As noted, in 1992, the Commission authorized Norris to construct a satellite system. In so doing, the Commission waived its financial qualification standards (since no other requests for Ka-band orbital locations were pending), but said it would closely monitor Norris's compliance with its construction milestones. The authorization specified that construction of the first satellite was to begin by July 1993 and to be completed by September 1996. The date for commencement of construction of the first satellite was extended to June 1994, and the deadline for completion of construction to March 1997.

3. On December 11, 1995, we requested that Norris submit within thirty days information concerning its compliance with the satellite construction milestones. At Norris's request, that deadline

¹ Norris Satellite Communications, Inc., 7 F.C.C. Rcd. 4289 (1992).

for responding was subsequently extended to February 16, 1996. Norris submitted information in response to our request and sought a waiver of the milestone schedule.

Discussion

4. Based on the information it has submitted, Norris has not met the construction deadlines on which its authorization depended. Norris has not entered into a non-contingent contract for satellite construction. While Norris signed a construction contract with Harris Corporation, it failed to make the \$3 million down payment necessary to render that contract non-contingent. Instead, Norris modified its agreement so that it could pay Harris \$200,000 for developmental work, with commencement of actual construction to occur only upon payment of an additional \$2,800,000. There is no evidence this additional payment has been made. Indeed, it now appears that Norris intends to use a different satellite manufacturer. Thus, twenty months after construction was to have begun, the record indicates that only preliminary developmental work has commenced. This is not sufficient.

5. Nor is there any reason to grant Norris's request for a waiver of the construction deadline. First, the request is untimely: it should have been filed by June 1994, not February 1996. Second, Norris's alleged reasons for failing to meet the deadline do not withstand scrutiny.

6. Norris notes that there is an ongoing proceeding concerning sharing between satellite and local multi-point distribution services in the Ka-band, and claims that regulatory uncertainty regarding this proceeding prevented it from beginning construction earlier. This argument is without merit. The Commission did not propose modification of Norris's license in the Ka-band proceeding, and grant of a license confers certain statutory rights designed to provide the necessary level of certainty to allow systems to progress. *See, e.g.*, 47 U.S.C. § 316; Norris has enjoyed the benefits of such a grant, including the clear and unambiguous grant of spectrum and orbital locations for more than three and one-half years. Norris also argues that uncertainty about whether it would be allowed to operate in the 29.3-29.5 MHz band delayed construction. However, Norris's request to be licensed to provide service in the 29.3-29.5 MHz band was denied by the Commission in July 1993.² Thus, there is no valid basis for claiming any regulatory uncertainty.

Conclusion

7. By its terms, Norris's authorization became null and void when Norris failed to comply with the construction commencement milestone. Accordingly, IT IS ORDERED that the orbital assignments granted in Norris Satellite Communications, Inc., 7 F.C.C.Rcd. 4289 (1992), ARE AVAILABLE for reassignment.

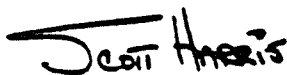
8. IT IS FURTHER ORDERED that Norris's requests for waiver of its milestone schedule. File Nos. 60/61-SAT-MISC-96, ARE DENIED.

² Norris Satellite Communications, Inc., 9 F.C.C. Rcd. 7370, n.10 & ¶ 5 (1993).

9. IT IS FURTHER ORDERED that Norris's applications for extension of time to construct and launch its satellite system, File Nos. 62-SAT-MP/ML-96 and 63-SAT-MP-96, ARE DISMISSED as moot.

10. IT IS FURTHER ORDERED that this order is effective upon adoption.

FEDERAL COMMUNICATIONS COMMISSION



Scott Blake Harris
Chief, International Bureau