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SEP 23 1993  
DOMESTIC FACILITIES DIVISION  
COMMON CARRIER BUREAU

September 23, 1993

Ms. Cicily C. Holiday  
Chief, Satellite Radio Branch  
Domestic Facilities Division  
Common Carrier Bureau  
Federal Communications Commission  
Washington, D.C. 20554

Hand Delivered.

Re: Norris Satellite Communications, Inc. ("NorSat").  
Your reference: 1600B3

Dear Ms. Holiday:

I am responding to your letter requesting supplemental information regarding the NorSat construction agreement. NorSat submitted its construction contract with Harris Corporation, Contract Number 930701 to the Commission in July 1993. That contract provided pursuant to Article 32 for an initial payment and a construction timetable of 27 months.

Enclosed herewith is a copy of the agreement between the parties with a modification of Article 32 of the construction contract for the initial payment which implements the construction contract. (Should you require an executed original, please let me know and I will forward it to you immediately). NorSat hereby certifies and confirms that NorSat has made the requisite initial payment for construction. Accordingly, the construction contract is irrevocable and in full force and effect. NorSat has paid Harris Corporation \$200,000 in cash. In addition, NorSat has agreed to a subsequent periodic payment to Harris Corporation of \$2.8 million payable in 45 days. Thereafter, periodic payments pursuant to the contract are required. In order to eliminate any concern at the Commission that the structured payment meets the contractual requirement to implement the construction contract, the parties have modified the terms of Article 32 to define the

acceptable structured payment. The net result is that the initial payment in cash of \$200,000 effectively implements the construction contract. Construction has begun.

NorSat is contractually obligated to make periodic payments pursuant to the contract, and this restructured initial payment firmly commits NorSat to the payment structure. Failure to make any of the periodic payments, whether it is the periodic payment of \$2.8 million due in 45 days or any subsequent periodic payment due at any 90 day time period, would constitute a breach of the contract, and thus this contract is irrevocable.

NorSat has not requested a modification of the milestone requirements because there is no need to do so. The 27 month construction timetable as established in the irrevocable construction contract filed with the Commission in July 1993 remains intact. There is no change in the 27 month construction time frame. The construction contract fully meets the timetable required under the Commission's Order. The FCC Order requires construction completion by September 1996, and the payload construction contract provides for completion well within the time frame. The additional integration time of the payload with the bus and other subsystems does not pose a problem. The critical element of construction is the payload, and that construction period is contained in the contract with Harris Corporation.

As the Commission files reflect, NorSat filed a Petition for Reconsideration of the authorized frequency bands in which the authorized satellites are to operate. There had been negotiations involving the utilization of the communication beams, and the time taken by the Commission to review and decide the issue of the additional bandwidth caused some delay to NorSat which was not within its control. Construction interfaces could be affected by the Commission's action. While the Commission has denied that Petition for Reconsideration, that denial is without prejudice. Thus it remains an open question whether the additional bandwidth will or will not be authorized for use by NorStar I. NorSat could have used this circumstance as a justification for requesting an extension of time for construction of the satellite, but instead, NorSat is proceeding to meet the milestones in accordance with the Order of the Commission. The construction contract for the payload has been entered into, filed with the Commission timely, and with a now-modified implementation payment schedule that makes no change in the 27 month construction period. At this time, NorSat can confirm to the Commission that it has made the required cash payment of \$200,000, and that the filed construction contract with Harris Corporation has been implemented, and is an irrevocable contract of construction.

There has been some discussion about the fact that NorSat has the contractual right to insist on an adequately designed payload. The construction contract requires a payload that is to be

constructed which meets the design parameters. The construction that is obligated is the construction of a payload that meets the design requirements to comply with the FCC Order. Obviously, if during the course of construction the payload or satellite does not meet design parameters that permit operations as authorized by the FCC, then NorSat must retain the contractual right to insist upon the proper design features. NorSat has been licensed to construct, launch and operate a satellite which requires compliance with certain minimum design features to operate in the KA band, and if the actual construction should deviate from the necessary design, NorSat must be able to mandate compliance from its contractors. This insistence upon specific design features does not compromise in any way the irrevocable nature of the construction contract. The contract as submitted to the FCC, has become irrevocable by the payment of the initial \$200,000.00 cash payment. If there is a breach of the contract, such as improper design for the intended purpose, the retention by NorSat of the right to insist on design compliance is a proper contract term and can in no way be construed as affecting the irrevocable nature of the construction commitment.

One technical correction needs to be made from the previous submission. The construction contract with Harris Corporation is with an entity named "Norstar I Corporation." We had previously stated that Norstar I Corporation was a subsidiary of the license holder, Norris Satellite Communications, Inc. (herein referred to as "NorSat"). In fact, it is not a subsidiary, but holds a contract with NorSat to enter into the construction contract with Harris Corporation. In addition, the technical name of the company is "NorStar I Satellite Communications, Inc." which is a Delaware corporation, and that company is "doing business as" NorStar I Corporation. The construction contract with Harris Corporation is for the benefit of NorSat, the license holder, and there is no ownership change resulting from this arrangement. The utilization of this process is an administrative convenience to NorSat. In addition to the contractual relationship for the entry into the construction contract for the satellite payload, NorSat will be leasing the communication beams to NorStar I Satellite Communications, Inc. (or its "doing business as" name of NorStar I Company). If you need further clarification or information in this regard, please let me know.

The construction contract with Harris Corporation is for the payload, and I have not addressed the issue of the bus, since it is my understanding that your inquiry deals with the payload. The construction of the bus would take only a short period of approximately six months. The construction process of the bus occurs during the course of the payload construction after the interfaces are defined. The integration process requires identification of the interfaces between the payload and the bus and other subsystems. The contractor for the bus has been selected, but the contract has not yet been awarded because the

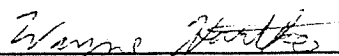
interfaces have not been completely defined. The contract for the bus will be awarded at the appropriate time in the construction process. The satellite construction process remains on track, timely, and we do not need to have any extension of time to comply with the construction completion milestone. Should you desire additional information regarding the bus, I will be pleased to provide it to you. I do not believe this is an issue.

In the alternative, and in order to protect the interests of the license holder, if the Commission should consider the current status of the satellite construction to require the request for an extension of time to meet the milestone in spite of our contention that the milestone has been met, licensee Norris Satellite Communications, Inc. hereby requests a six (6) month extension to meet the construction commencement milestone. This extension request is made to perfect the record that timely application has been made, should it be construed as being required. We note that NorSat is the only commercial licensee in this bandwidth, and that this license is unique, with NorSat engaged in the promotion of the KA band. Accordingly, the Commission's normal concerns that extensions of timetables could adversely affect other entities from utilization of the bandwidth does not apply in this case. Further, as noted earlier herein, NorSat's application requested additional bandwidth beyond that which was authorized, and there remains a question of whether NorSat will obtain the additional bandwidth. The continued uncertainty about the utilization of the KA band is a matter beyond the control of licensee. (See MCI Communications Corporation, 2 FCC Rcd 233; Hughes Communications Galaxy, Inc. 5 FCC Rcd 3423, 3424). NorSat is engaged in the orderly construction process and it believes it has met the construction milestone. If for any reason the Commission feels otherwise, NorSat has hereby requested a six month extension, and would request the additional opportunity to supplement its arguments in support of an extension should such extension be deemed to be required.

If I have not addressed any issues of concern to you, please let me know. No copies of this letter are being forwarded to the parties of record unless I receive instructions to do so.

Sincerely,

NORRIS SATELLITE COMMUNICATIONS, INC.  
BY COUNSEL

  
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Wayne Hartke  
Hartke & Hartke

Enclosure

**AMENDMENT NO. 01  
TO  
PURCHASE CONTRACT NUMBER 930701  
NORSTAR SATELLITE COMMUNICATION PAYLOAD**

This Amendment No. 01 is made as of the 23<sup>rd</sup> day of SEPTEMBER, 1993, by and between Norstar I Corporation and Harris Corporation, Electronic Systems Sector, Aerospace Systems Division.

WHEREAS, Norstar I Corporation desires to change the terms of effective date and advance payment as proposed by Hartke & Hartke, Counsel in letter dated September 22, 1993.

NOW THEREFORE, the Parties hereto agree to the following modifications to Purchase Contract Number 930701:

**ARTICLE 1 - DEFINITIONS**

Delete number 5, page 3, in its entirety and replace with the following:

" 5. ARO - After Receipt of Order. The receipt of order date of this contract is the \$2,800,000 cash payment date in accordance with Article 9."

**ARTICLE 9 - CONDITION OF PAYMENT**

Add the following to the beginning of the first paragraph of Article 9, page 6:

"The Buyer shall make a cash payment to the Seller, in the amount of \$2,800,000, forty-five (45) days after making the advance payment required by Article 32 herein. Subsequent to this payment,"

**ARTICLE 32 - EFFECTIVE DATE AND ADVANCE PAYMENT**

Delete Article 32, page 16, in its entirety and replace with the following:

"The effective date of this contract shall be the last date of the following to occur: (a) signatures by authorized representatives of both parties; (b) Seller receipt of an advance cash payment in the amount of \$200,000. Seller shall not commence work until the above conditions have been met."

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IN WITNESS WHEREOF, the Parties hereto have caused their duly authorized representatives to execute this Amendment No. 01 in duplicate, each party acknowledging receipt of an original hereof, as of the day and year first above written.

**FOR BUYER**

**NORSTAR I  
CORPORATION**

By: \_\_\_\_\_

Typed  
Name: S.G. Davis  
Title: President

Date: \_\_\_\_\_

By: Edward Slaughter, Jr.

Typed  
Name: Edward Slaughter, Jr.  
Title: Secretary/Treasurer  
Date: 9/23/93

**FOR SELLER**

**HARRIS CORPORATION  
AEROSPACE SYSTEMS DIVISION**

By: Ronald J. Etzel

Typed  
Name: Ronald J. Etzel  
Title: Senior Manager,  
Contracts

Date: 7/23/93