

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
CyberStar Licensee, LLC)	File Nos. 109-SAT-P/LA
)	102/103-SAT-AMEND-96
Application for Authority to Construct, Launch, and Operate a Ka-band Satellite System in the Fixed Satellite Service)	103/104/105-SAT-ML-98
)	Call Signs: S2198, S2163
)	

ORDER

Adopted: September 26, 2005

Released: September 26, 2005

By the Chief, International Bureau:

I. INTRODUCTION

1. By this Order, we declare null and void CyberStar Licensee LLC's (CyberStar) Ka-band¹ satellite system authorization. Specifically, we find that CyberStar's failure to meet the construction and launch milestones for the satellites in its Ka-band system authorization renders CyberStar's authorization null and void under its own terms. Accordingly, the 93° W.L. and 115° W.L. orbit locations and associated 18.55-18.8 GHz, 19.7-20.2 GHz, 28.35-28.6 GHz and 29.5-30.0 GHz frequencies that had been assigned to CyberStar under its system authorization are available for reassignment.

II. BACKGROUND

2. In May 1997, as part of the first "processing round" of Ka-band systems, the International Bureau (Bureau) authorized CyberStar to construct, launch, and operate a satellite system in the geostationary-satellite orbit (GSO) to provide fixed-satellite service (FSS) in portions of the Ka-band.² In its initial application, CyberStar also sought operating authority for

¹ The term "Ka-band" generally refers to the space-to-earth (downlink) frequencies at 17.7-20.2 GHz and the corresponding earth-to-space (uplink) frequencies at 27.5-30.0 GHz.

² The Ka-band system authorization was originally granted to Loral Space & Communications, Ltd (Loral). See Loral Space & Communications Ltd., Order and Authorization, 13 FCC Rcd 1379 (Int'l Bur. 1997) (*CyberStar Authorization*). On April 22, 1998, pursuant to Commission consent granted March 31, 1998, Loral assigned the authorization to CyberStar Licensee, LLC, a subsidiary of Loral. On July 15, 2003, Loral, and certain of its subsidiaries, including CyberStar, L.P., the parent company of CyberStar Licensee, LLC, filed for Chapter 11 bankruptcy protection. On August 14, 2003, the Commission granted the pro forma transfer of control of the authorizations held by CyberStar Licensee, LLC to CyberStar, L.P. as debtor in possession (DIP). See File No SAT-ASG-20030725-00147 (Grant Stamp, Aug. 14, 2003). On June 28, 2005, CyberStar Licensee, LLC filed an application seeking consent to the assignment of its Ka-band authorizations at 93° W.L. and 115° W.L. to Loral (continued....)

Intersatellite links (ISLs).³

3. In the January 2001 *CyberStar Milestone Order*, the Bureau modified CyberStar's Ka-band license to authorize intersatellite links and to assign implementation milestones for the construction, launch, and operation of CyberStar's satellites.⁴ In the Order, the Bureau also modified CyberStar's license to change the 28° W.L. orbital location to the 93° W.L. orbital location, thus permitting CyberStar to operate its satellites at the 115° W.L., 93° W.L. and 105.5° E.L. orbital locations.⁵ CyberStar was required to commence construction and launch its three satellites by the following dates:

	<u>Construction Commenced</u>	<u>Launch and Operate</u>
First Satellite:	January 2002 115° W.L.	June 25, 2005
Remaining Satellites:	January 2003 93° W.L.	June 25, 2005
	January 2003 105.5° E.L.	July 16, 2005

Under the terms of CyberStar's license, CyberStar's authorization would be rendered null and void, with no further action on the Commission's part, in the event that CyberStar failed to meet its milestone deadlines.⁶

4. In March 2002, CyberStar submitted a copy of a construction contract executed in December 2001 for the satellite to be located at the 115° W.L. orbit location. Upon review of the construction contract, the Bureau determined that CyberStar had satisfied the construction commencement milestone for its first satellite.⁷

5. On June 30, 2003, CyberStar informed the Commission that it had determined not to proceed with the construction of a Ka-band satellite at 105.5° E.L.⁸ and asked the Commission to cancel its authorization at this location. On August 12, 2003, the Bureau cancelled the license

(...continued from previous page)

CyberStar LLC. See File No. SAT-ASG-20050628-00138, see also Public Notice, DA 05-2031, IB Docket No. 05-233 (July 18, 2005).

³ ISLs are communication links between in-orbit satellites. ISLs operate in spectrum allocated to the inter-satellite service. International Telecommunications Union ("ITU") Radio Regulation S1.22.

⁴ CyberStar Licensee, LLC, Application for Modification of Authorization to Construct, Launch and Operate a Ka-band Satellite System in the Fixed Satellite Service, *Order and Authorization*, 16 FCC Rcd 2442 (2001) (*CyberStar Milestone Order*). In the same Order, the Bureau also modified CyberStar's license to allow it to change the 28° W.L. orbital location, which was assigned in CyberStar's initial authorization, to the 93° W.L. orbital location.

⁵ *CyberStar Milestone Order*, 16 FCC Rcd at 2451 (para. 20).

⁶ *CyberStar Milestone Order*, 16 FCC Rcd at 2451(para. 29).

⁷ See International Bureau Satellite Division Information: First Round Ka-band Licensee Compliance with Construction Implementation Milestone, *Public Notice*, Report No. SPB-179, DA 02-1432 (June 18, 2002).

⁸ Letter from John Stern, Counsel for Loral Space and Communications Ltd., to Marlene Dortch, Secretary, Federal Communications Commission (June 30, 2003).

and declared the 105.5 E.L. Ka-band location available for reassignment.⁹

III. DISCUSSION

6. The Commission has required satellite licensees to adhere to system implementation milestone schedules for more than two decades.¹⁰ Milestone schedules ensure that licensees are proceeding with construction and will launch their satellites in a timely manner, and that the orbit spectrum resource is not being held by licensees unable or unwilling to proceed with their plans.¹¹ Warehousing this resource could hinder the availability of services to the public by blocking entry by other entities willing and able to proceed immediately with the construction and launch of their satellite systems.¹²

7. *93° W.L. Orbital Location.* On July 14, 2003, CyberStar submitted to the Commission a copy of a construction contract, executed in January 2003, for CyberStar's second satellite - to be located at the 93° W.L. orbital location. Upon review, the Bureau requested additional clarification from CyberStar regarding the payment schedule and Performance Specification cited in the contract.¹³ On August 6, 2004, in response to the Bureau's request, CyberStar submitted a letter¹⁴ stating that CyberStar had not proceeded with construction of the satellite at 93° W.L. due to the circumstances that that led up to and necessitated the Chapter 11 filing of its ultimate parent company, Loral Ltd.¹⁵

8. The Commission has held that a bankruptcy filing does not automatically discharge a

⁹ See Clarification International Bureau Explains Procedure for Ka-band GSO-like Satellite Applications, *Public Notice*, Report No. SPB-190, DA 03-2657 (August 15, 2003).

¹⁰ See, e.g., Inquiry into the Development of Regulatory Policy in Regard to Direct Broadcast Satellites, *Report and Order*, 90 F.C.C.2d 676, 719 (para. 114) (1982) (adopting rule requiring DBS licensees to "begin construction or complete contracting for construction" of satellites within one year after receiving construction permits), and MCI Communications Corp., *Memorandum Opinion and Order*, 2 FCC Rcd 233, 233 (para. 5) (Com. Car. Bur. 1987) (*MCI Order*) (noting that a milestone schedule is included in each domestic space station authorization issued by the Commission); see also Norris Satellite Communications, Inc., *Memorandum Opinion and Order*, 12 FCC Rcd 22299 (1997) (*Norris Review Order*); Morning Star Satellite Company, L.L.C., *Memorandum Opinion and Order*, 15 FCC Rcd 11350 (Int'l Bur. 2000), *aff'd*, 16 FCC Rcd 11550 (2001) (*Morning Star Reconsideration Order*).

¹¹ See, e.g., Advanced Communications Corporation, *Memorandum Opinion and Order*, 10 FCC Rcd 13337, 13338 (para. 4) (Int'l Bur. 1995) (*Advanced Order*), *aff'd*, 11 FCC Rcd 3399 (1995) (*Advanced Review Order*), *aff'd*, *Advanced Communications Corporation v. FCC*, 84 F.3d 1452 (D.C. Cir. 1996) (unpublished order available at 1996 WL 250460); National Exchange Satellite, Inc., *Memorandum Opinion and Order*, 7 FCC Rcd 1990 (Com. Car. Bur. 1992) (*Nexsat Order*); AMSC Subsidiary Corp., *Memorandum Opinion and Order*, 8 FCC Rcd 4040, 4042 (para. 13) (1993) (*AMSC Order*); Motorola, Inc. and Teledesic LLC, *Memorandum Opinion and Order*, 17 FCC Rcd 16543 (Int'l Bur. 2002) (*Motorola/Teledesic Order*).

¹² *Space Station Licensing Reform Order*, 18 FCC Rcd at 10827 (para. 173), citing *PanAmSat Ka-Band License Revocation Review Order*, 16 FCC Rcd at 11537-38 (para. 12), citing *Nexsat Order*, 7 FCC Rcd at 1991 (para. 8); *MCI Order*, 2 FCC Rcd at 233 (para. 5); *First Columbia Milestone Order*, 15 FCC Rcd at 15571 (para. 11).

¹³ See Letter from Tom Tycz, Chief Satellite Division, International Bureau, FCC to John Stern, Counsel, CyberStar Licensee, LLC, (July 23, 2004).

¹⁴ See Letter from John Stern, Counsel for Loral Space and Communications Ltd., to Marlene Dortch, Secretary, Federal Communications Commission, (August 6, 2004) (CyberStar Milestone Letter) (stating that "in light of the circumstances that led up to and necessitated Loral's Chapter 11 reorganization filing last year, CyberStar has not been able to make payments under the contract and has not proceeded with the construction of this satellite.").

¹⁵ See note 2.

licensee's obligation to comply with its milestone requirements.¹⁶ Indeed, we expect licensees to consider alternatives or exercise reasonable care to attempt to resolve issues that may impede its ability to meet its milestones.¹⁷ CyberStar has conceded that it has not commenced construction of its satellite at 93° W.L. CyberStar did not seek an extension or waiver of its construction milestone, nor did indicate that it had made any good faith effort to comply with its milestone requirements. Thus, CyberStar's failure to meet its construction milestone renders its Ka-band authorization at the 93° W.L. orbit location null and void by its own terms.

9. *115° W.L. Orbital Location.* In addition, CyberStar failed to meet the June 25, 2005 launch milestone for the satellite at the 115° W.L. orbital location. CyberStar did not seek an extension or waiver of its launch milestone requirements for this satellite. Thus, CyberStar's Ka-band authorization at the 115° W.L. location is null and void by its own terms.

IV. CONCLUSION

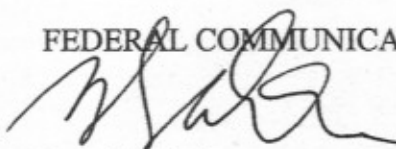
10. We conclude that CyberStar has failed to meet its satellite construction and launch milestones, as required by its Ka-band system authorization, thereby rendering its authorization null and void by its own terms. Accordingly, the 93° W.L. and 115° W.L. orbital locations and associated frequencies assigned to CyberStar are now available for reassignment to other applicants.

V. ORDERING CLAUSES

11. Accordingly, IT IS ORDERED that the Ka-band system authorization held by CyberStar Licensee, LLC is DECLARED NULL and VOID and the 93° W.L. and 115° W.L. orbital locations and associated 18.55-18.8 GHz, 19.7-20.2GHz, 28.35-28.6 GHz and 29.5-30.0 GHz frequencies are available for reassignment.

12. This Order is issued pursuant to delegated authority, 47 C.F.R. § 0.261, and is effective upon release.

FEDERAL COMMUNICATIONS COMMISSION



Donald Abelson
Chief
International Bureau

¹⁶ See Final Analysis Communication Service, Inc., *Memorandum, Opinion and Order*, DA 04-727, 19 FCC Rcd 4768, 4774 (paras. 19-21) (Int'l Bur. 2004) (rejecting involuntary bankruptcy as a justification for a milestone extension).

¹⁷ See WildBlue Holdings 1, LLC, *Memorandum Opinion and Order*, DA 05-1698 (para. 6) (Int'l Bur., released June 20, 2005).