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Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 Twelfth Street, SW  
Washington, DC 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Int'l Bureau

DEC 08 2003

Front Office

RE: File Nos: 183/184/185/186-SAT-P/LA-97; 182-SAT-P/LA-97(64)

IBFS Application File Numbers:

- SAT-LOA-19970926-00151-154
- SAT-LOA-19970926-00156
- SAT-AMD-20011103-0154
- SAT-MOD-20020717-00116-119
- SAT-MOD-20020717-00107-110
- SAT-MOD-20020722-00112

EX PARTE

Call Signs S2320/S2321/S2322/S2323/S2324

Dear Ms. Dortch:

On December 4, 2003, William F. Adler, Vice President—Legal and Regulatory Affairs of Globalstar, L.P. (by telephone), and the undersigned (in person) participated in a meeting with Commissioner Kathleen Q. Abernathy to discuss Globalstar, L.P.'s Emergency Application for Review of the International Bureau's Memorandum Opinion and Order, DA 03-328 (released Jan. 30, 2003), regarding the above-referenced applications.<sup>1</sup>

The enclosed outline was distributed at the meeting. The presentation covered Globalstar, L.P.'s arguments in its Emergency Application for Review.

We also discussed in more detail the Bureau's error in not announcing first before applying to these applications the Bureau's new policy of not accepting non-

<sup>1</sup> The International Bureau granted Globalstar, L.P.'s request to change the *ex parte* status of these applications to permit-but-disclose on November 19, 2003.

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December 5, 2003

Page 2 of 2

contingent satellite construction contracts that vary from the terms of a satellite authorization when a contemporaneously-filed modification application is denied. *See The Boeing Company*, DA 03-2073, 18 FCC Rcd 12317, 12328 n.56 (Int'l Bur. June 24, 2003).

We pointed out to Commissioner Abernathy that the actions of the Bureau in the Memorandum Opinion and Order were at variance from the procedure the Bureau followed in Public Notice No. SPB-195, DA 03-3863, "Clarification of 47 C.F.R. § 25.140(b)(2) Space Station Application Interference Analysis" (released Dec. 3, 2003). In this Public Notice, the Bureau announced a more stringent policy concerning the completeness of Fixed-Satellite Service space station applications, and specified that applications filed in the future would be dismissed if not in compliance with the new policy, while those currently on-file would not be dismissed for non-compliance if brought into compliance at the Commission's request. Had the Bureau applied this correct approach in the Memorandum Opinion and Order, it would have granted Globalstar, L.P.'s request for a short period of time to bring its contract into compliance with the milestones set forth in the original authorization, rather than canceling Globalstar, L.P.'s 2 GHz MSS licenses because the contract did not reflect the future milestone dates in the authorization.

Pursuant Section 1.1206(b)(2), an original and one copy of this letter and the enclosure are provided for the public record.

Respectfully submitted,



William D. Wallace

Enclosure

cc: Commissioner Kathleen Q. Abernathy  
Jennifer Manner (by email)  
Howard Griboff (by email)  
Daniel Harrold (by email)

# **GLOBALSTAR, L.P.**

**Emergency Application for Review  
Request for Stay**

**2 GHz MSS Licenses**

(File Nos. SAT-LOA-19970926-00151-154/156 etc.)

## GLP 2 GHz MSS Licenses

- GLP was authorized to construct an NGSO constellation and four GSO satellites.
- GLP entered into a non-contingent satellite construction contract with Space Systems/Loral as of July 17, 2002, as required.
- GLP requested modification of certain future implementation milestones for the NGSO constellation and three GSO satellites.
- GLP explained unforeseeable circumstances arising from the economic climate and its financial restructuring.

## The Bureau's Decisions

- The International Bureau (IB) denied the request for milestone extension, categorizing GLP's reasons as "business decisions."
- Because GLP's non-contingent contract reflected the proposed future milestones, the IB decided that the contract did not satisfy the first milestone.
- The IB refused to give GLP an opportunity to cure the contract to bring the future milestones into compliance.
- The IB decided that all five licenses (NGSO plus four GSOs) were null and void.

## The Bureau Failed to Explain Cancellation of the Domestic GSO Satellite License

- The construction schedule for the domestic GSO satellite was in compliance with original milestone schedule.
  - The domestic GSO satellite would have used MSS frequencies on original timetable.

## GLP Fulfilled the Requirement to Enter into a Non-Contingent Satellite Contract

- GLP had missed no milestone.
  - The Commission permits satellite licensees to submit non-contingent contracts that vary from the terms of license to meet the first milestone. *E.g., Teledesic, LLC (IB 2002)*.
  - The IB cancelled GLP’s licenses because GLP proposed to extend *future* milestones.

# GLP Could Have Reformed Contract and Met All Milestones

- The IB refused to follow precedent that allows satellite licensees to cure contracts found deficient.
  - The Commission has repeatedly allowed licensees to cure contract deficiencies even when they submit no contract at all, as in *Echostar Satellite Co. (1992)* and *NetSat 28 Co. (IB 2001)*.



## The Bureau Applied a New Policy Retroactively in Violation of Due Process

- Well-established principles of due process dictate that the Commission must apply new policies on a prospective basis.
  - The IB applied a policy of not allowing an opportunity to cure a contract found deficient even though it is acceptable to meet the milestone schedule.
  - The IB explained its new policy six months after the GLP Order in *The Boeing Company, DA 03-2073 (June 24, 2003)*.

## The Bureau Failed to Give Meaningful Consideration to GLP's Extension Request

- The IB used the “business decision” label to avoid reviewing the facts and circumstances presented by GLP.
  - GLP was proceeding with construction despite the global telecommunications recession.
  - The IB ignored the Commission’s own statements that satellite milestones should be considered in light of system complexity.

## The Bureau Failed to Apply Relevant Facts to the Standard for Milestone Extensions

- GLP experienced unique circumstances as a result of being in Chapter 11 bankruptcy.
- GLP would have fulfilled purpose of milestones by using the 2 GHz MSS frequencies in the U.S. on the original milestone schedule.
- GLP clearly intended to move forward with its proposed 2 GHz MSS system, a factor that is critical to favorable milestone decisions (e.g., *GE American Communications (IB 2001)*).

## The Automatic Stay Precluded Cancellation

- The automatic stay in Section 362(a) of the U.S. Bankruptcy Code precludes “any act to obtain possession of property of the estate.”
  - The regulatory exemption applies to protect public health and safety, and should be narrowly construed.
  - IB offered no regulatory reason to cancel domestic GSO satellite.

## Grant of GLP's Modification Request Would Serve the Public Interest.

- GLP would serve the U.S. with 2 GHz MSS frequencies on schedule.
- Capabilities of GLP's first-generation system would be fully utilized.
- As one of only three surviving MSS operators, GLP can be expected to continue service, particularly to rural and underserved areas.

## GLP Asks the Commission to:

- Vacate the IB's Order;
- Reinstate GLP's 2 GHz MSS licenses;
- Grant the requested milestone modifications, or grant GLP an opportunity to cure its contract;
- Provide GLP an opportunity to reform its contract to account for time lost by IB's unlawful cancellation.