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Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

MAY 28 2004

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
Policy Branch	)	File Nos. 183/184/185/186-SAT-P/LAS-97,
International Bureau	)	182-SAT-P/LA-97(64)
GLOBALSTAR, L.P.)	
)	
For Modification of License for a	)	File Nos. SAT-LOA-19970926-00151/52/53/54;
Mobile Satellite Service System in	)	SAT-LOA-19970926-00156;
the 2 GHz Band	)	SAT-AMD-20001103-00154;
	)	SAT-MOD-20020717-00116/17/18/19;
For Waiver and Modification of	)	SAT-MOD-20020722-00107/08/09/10/121
Implementation Milestones for)	
2GHz MSS System	)	Call Signs S2320, S2321, S2322, S2323, S2324

To: The Commission

**MOTION FOR LEAVE TO FILE COMMENTS IN
SUPPORT OF EMERGENCY APPLICATION FOR REVIEW**

Global Satellite LP (“Globalstar Satellite”), by its attorney, hereby requests leave to file comments in support of the Emergency Application for Review filed by Globalstar, L.P. (“GLP”) with respect to the revocation of its 2 GHz MSS licenses by the International Bureau. *See Globalstar, L.P.*, 18 FCC Rcd 1249, 1255 (Int’l Bur. 2003). In support thereof, the following is respectfully submitted:

On November 20, 2003, the U.S. Bankruptcy Court for the District of Delaware approved an investment transaction pursuant to which GLP’s assets will be transferred to New Operating Globalstar LLC (“NGLLC”), thereby facilitating the reorganization and emergence of GLP from Chapter 11 bankruptcy. On December 19, 2003, applications were filed seeking Commission approval of the assignment of the licenses and authorization relating to the operation of GLP’s MSS system to NGLLC. *See Public Notice*, DA 04-39 (released Jan. 9, 2004). Those applications were granted, and the contemplated transactions have been closed. If GLP’s request is granted and GLP’s

five 2 GHz MSS licenses are reinstated in this proceeding, those licenses will be assigned to NGLLC. Accordingly, as the majority owner of NGLLC, Globalstar Satellite has a cognizable financial stake in the outcome of this proceeding.¹

There are no statutory time-constraints on the submission of pleadings in response to applications for review. *See* 47 U.S.C. § 155(c)(4)-(7). Consequently, the Commission routinely invites comments on applications for review to be filed well after the 15-day deadline established by § 1.115(d) of the Commission's Rules.² It also considers comments in support of applications for review where no prejudice would result. *See Mobile Communications Holdings, Inc.*, 14 FCC Rcd 18515, 18517 n.4 (1999). Such would be the case here.

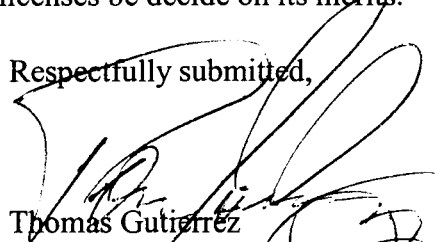
In its comments, Globalstar Satellite challenges the automatic cancellation of GLP's 2GHz MSS licenses on statutory due process grounds. Consideration of Globalstar Satellite's due process arguments should serve the public interest by conducting the proper disposition of GLP's application for review.

¹ Globalstar Satellite only became a party in interest in late November 2003, when the Bankruptcy Court approved the transaction and GLP's assets (except cash and Commission licenses) were contributed to NGLLC. Hence, there was "good reason" why Globalstar Satellite did not participate in the early stages of this proceeding. *See* 47 C.F.R. § 1.115(a).

² *See Anne Arundel County, Md.*, 18 FCC Rcd 17714 (2003); *Pleading Cycle Established for Comments on Proceeding Regarding the Definition of the RSAs of Two Rural Telephone Companies in the State of Colorado*, 18 FCC Rcd 53 (2003); *Pleading Cycle Established - Applications for Review*, 16 FCC Rcd 2334 (2001); *Pleading Cycle Established for Comments for Application of Nevadacom for Review*, 15 FCC Rcd 22512 (2000); *Application for Review Filed by Wi-LAN, Inc.*, 15 FCC Rcd 20060 (2000); *Pleading Cycle Established for Comments on Global NAPS, Inc. Application for Review*, 15 FCC Rcd 6215 (2000); *Pleading Cycle Established for Comments on Excell Application for Review*, 15 FCC Rcd 5582 (2000); *Bell South and SBC File Application for Review of RAO Letter 26 Transaction with Affiliates*, 13 FCC Rcd 11245 (1998); *Southwestern Bell Tel. Co. Files Application for Review of Confidentiality Order*, 13 FCC Rcd 5819 (1997); *IT&E Overseas, Inc. files Application for Review*, 12 FCC Rcd 15282 (1997).

WHEREFORE, good cause having been shown, Globalstar Satellite respectfully requests that its Comments on Emergency Application for Review be accepted and that its statutory challenge to the automatic cancellation of GLP's licenses be decide on its merits.

Respectfully submitted,



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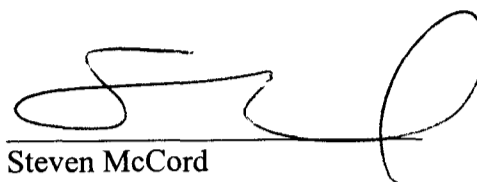
*Attorney for
Global Satellite LP*

May 28, 2004

CERTIFICATE OF SERVICE

I, Steven McCord, do hereby certify that on this 28th day of May, 2003, I caused copies of the "*Motion for Leave to File Comments in Support of Emergency Application for Review*" to be electronically served upon the following:

Joseph A. Godles
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Steven McCord

**Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
GLOBALSTAR, L.P.	)	File Nos. 183/184/185/186-SAT-P/LAS-97; 182-SAT-P/LA-97(64)
)	
For Modification of License for a Mobile Satellite Service System in the 2 GHz Band	)	File Nos. SAT-LOA-19970926-00151/52/53/54; SAT-LOA-19970926-00156; SAT-AMD-20001103-00154; SAT-MOD-20020717-00116/17/18/19;
For Waiver and Modification of Implementation Milestones for 2GHz MSS System	)	SAT-MOD-20020722-00107/08/09/10/121 Call Signs S2320, S2321, S2322, S2323, S2324

To: The Commission

**COMMENTS IN SUPPORT OF
EMERGENCY APPLICATION FOR REVIEW**

Global Star Satellite LP (“Globalstar Satellite”), formerly Thermo Satellite, L.P., by its attorney, hereby submits its comments in support of the Emergency Application for Review (“App.”) filed by Globalstar, L.P. (“GLP”) with respect to the unlawful revocation of its 2 GHz MSS license by the International Bureau (“Bureau”). *See Globalstar, L.P.*, 18 FCC Rcd 1249, 1255 (Int’l Bur. 2003) (“*Revocation Order*”). Globalstar Satellite will show that the revocation of GLP’s license violated § 312(c) of the Communications Act of 1934, as amended (“Act”), 47 U.S.C. § 312(c), § 558(b) of the Administrative Procedure Act (“APA”), 5 U.S.C. § 558(b), and §§ 1.91 and 25.160(d) of the Commission’s Rules (“Rules”), 47 C.F.R. §§ 1.91, 25.160(d).

BACKGROUND

GLP’s 2 GHz MSS license included the condition that specific system implementation deadlines or “milestones” be met. *See Globalstar, L.P.*, 16 FCC Rcd 13739, 13759 (Int’l Bur./OET 2001) (“*Authorization Order*”). The license provided that it would become null and void without

further action by the Commission in the event the system was not “constructed, launched and placed into operation” in accordance with seven milestones. *Authorization Order*, 16 FCC Rcd at 13759.

In January 2003, the Bureau found that GLP failed to satisfy its milestone for entering into a satellite manufacturing contract. *See Revocation Order*, 18 FCC Rcd at 1255. Therefore, the Bureau declared GLP’s 2 GHz MSS license to be null and void “consistent with [its] terms.” *Id.* GLP sought Commission review of the *Revocation Order* in March 2003.

ISSUE PRESENTED

As GLP correctly recognized, the Bureau’s action constituted an unlawful revocation without a hearing in violation of § 312 of the Act. *See App.*, at 4 n.2, 5 n.10. We will address a fundamental issue presented by GLP: whether the Commission has the authority to place a condition on a license that abrogates the licensee’s right to pre-revocation notice and hearing under § 312(c) of the Act.

DISCUSSION

I. The Automatic “Cancellation” Of GLP’s License Constituted Its Revocation Under § 312(a) Of The Act

When it first adopted an implementation milestone schedule for 2 GHz MSS systems, the Commission recognized that non-compliance with a milestone could result in the “automatic cancellation” of a 2 GHz MSS license. *Establishment of Policies and Service Rules for the MSS in the 2 GHz Band*, 15 FCC Rcd 16127,16178 (2000) (“2 GHz MSS Order”) Because the words “cancel” and “revoke” are synonymous,^{1/} automatic license “cancellation” is nothing more than the Commission’s euphemism for automatic license “revocation.” Hence, courts treat the “cancellation”

^{1/} The word “revoke” means to “cancel, rescind, repeal, or reverse.” *Black’s Law Dictionary* 1322 (6th ed. 1990). *See also The Random House Dictionary of the English Language* 1648 (2d ed. 1987) (revoke means to “annul, cancel, or reverse”).

of a license as the “revocation” of the license. *See FCC v. NextWave Pers. Communs., Inc.*, 537 U.S. 293, 301 (2003); *In re FCC*, 217 F.3d 125, 140 n.10 (D.C. Cir. 2000); *In re NextWave Pers. Communs., Inc.*, 200 F.3d 43, 59 n.15 (D.C. Cir. 1999).

The enforcement of a condition on a license does not exempt the Commission from the license revocation provisions of § 312 of the Act. Those provisions apply to “any station license.” 47 U.S.C. § 312(a). That includes licenses subject to conditions for the simple reason that *all* licenses issued by the FCC are subject to conditions. *See* 47 U.S.C. § 309(h).^{2/} And failure to satisfy a license condition implicates two of the “seven discrete grounds for revoking a license” listed in § 312(a). *Interactive Control Two, Inc.*, 16 FCC Rcd 18948, 18961 n.103 (WTB 2001).

Subsection 312(a)(2) of the Act specifies that a license may be revoked “because of conditions coming to the attention of the Commission which would warrant it in refusing to grant a license . . . on an original application.” 47 U.S.C. § 312(a)(2). Meeting specific implementation milestones is a condition for obtaining and retaining a 2 GHz MSS system license. Knowledge that a licensee would be unable to meet an implementation milestone would warrant the Commission in refusing to grant an original application. Thus, a licensee’s failure to satisfy a condition that it meet an implementation milestone would be a ground for revocation of a 2 GHz MSS system license under § 301(a)(2).

Subsection 312(a)(3) makes a “willful . . . failure to operate substantially as set forth in the license” a ground for revocation. 47 U.S.C. § 312(a)(3). A “conscious and deliberate” failure to

^{2/} For example, every station license must bear the express condition that the license “not vest in the licensee any right to operate the station nor any right in the use of the frequencies designated in the license . . . in any other manner than authorized therein.” 47 U.S.C. § 309(h)(1).

satisfy a condition of a license could be a “willful” failure to operate substantially in accordance with the license. *Id.* § 312(f)(1). Thus, a licensee’s decision not to place a 2 GHz MSS system into operation in accordance with the conditions imposed by its license would be a ground for revocation under § 312(a)(3). The same is true under the Commission’s satellite rules.

“A station license may be revoked for any repeated and willful violation of the kind set forth in [§ 25.160(a) of the Rules].” 47 C.F.R. § 25.160(c). Among the kinds of violations that can be sanctioned under § 25.160(a) is the “failure to operate in conformance with . . . any conditions imposed on an authorization.” *Id.* § 25.160(a). It follows that a licensee’s failure to fulfill the condition that the implementation milestones be met is cause for revocation of a 2 GHz MSS license under the Commission’s own rules.

The revocation provisions of § 312 of the Act (and §§ 1.91 and 25.160 of the Rules) were implicated when the Bureau denied GLP’s request for a waiver and modification of its implementation milestones. *See Revocation Order*, 18 FCC Rcd at 1255. If it determined that the resultant failure of GLP to satisfy its milestone for entering into a satellite manufacturing contract should render its license null and void, the Bureau had to proceed in the manner prescribed by law. We turn to that issue next.

II. The Commission Lacks The Statutory Authority To Revoke A License By Declaring It “Null And Void”

Revocation (or cancellation) of a license is unquestionably an “administrative sanction.” 47 U.S.C. § 312; 47 C.F.R. § 25.160. *See* 5 U.S.C. § 551(10)(F). The APA provides that “[a] sanction may not be imposed or a substantive rule . . . issued except within jurisdiction delegated to the agency and as authorized by law.” 5 U.S.C. § 558(b). Moreover, APA § 558(b) requires “express

grants of statutory authority” for agencies to impose sanctions. *American Bus Ass’n v. Slater*, 231 F.3d 1, 6 (D.C. Cir. 2000). Therefore, a license may be revoked only as expressly authorized by statute.

No provision of the Act, or any other statute, expressly authorizes the Commission to revoke a license by declaring it null and void. Only § 312 of the Act expressly empowers the Commission to impose the sanction of license revocation. Therefore, a license may be revoked only in the manner authorized by § 312.

III. GLP’s License Could Be Revoked Only After Providing The Prior Notice And Hearing Required By § 312(c) Of The Act

The actions necessary to revoke, cancel or nullify GLP’s 2 GHz MSS license are prescribed with “crystalline clarity” in § 312. *American Civil Liberties Union v. FCC*, 823 F.2d 1554, 1568 (D.C. Cir. 1987) (“*ACLU*”). Subsection 312(c) mandates:

Before revoking a license . . . the Commission *shall* serve upon the licensee . . . an order to show cause why an order of revocation . . . should not be issued. Any such order . . . *shall* call upon said licensee . . . to appear before the Commission . . . and give evidence upon the matter specified therein If after hearing, or waiver thereof, the Commission determines that an order of revocation . . . should issue, it *shall* issue such order . . . and *shall* cause the same to be served on said licensee.^{3/}

As a prerequisite to the revocation of a license, § 312(c) directs the FCC to afford the licensee notice and a hearing that complies with the procedural requirements of §§ 554 through 557 of the APA.^{4/} Thus, the statute conveys to the licensee a right under the APA to the procedural safeguards

^{3/} 47 U.S.C. § 312(c) (emphasis added). See 47 C.F.R. §§ 1.89, 1.91. See also 5 U.S.C. § 558(c).

^{4/} APA §§ 554 through 557 apply “in every case of adjudication required by statute to be determined on the record after opportunity for an agency hearing.” 5 U.S.C. § 554(a). While the

traditionally provided by a judicial trial in a civil proceeding. *See* 1 Kenneth Culp Davis & Richard J. Pierce, Jr., *Administrative Law Treatise* § 8.2, at 378-79 (3d ed. 1994).

The Act explicitly guarantees a licensee the right to a pre-revocation evidentiary hearing in which the Commission's staff carries the burden of proof. *See* 47 U.S.C. § 312. *See also* 47 C.F.R. § 1.91(d)(1). Thus, before a license can be revoked, the staff must carry its burden of proving the existence of one of the grounds for revocation enumerated in § 312(a). Moreover, the staff must prove that the nature of the licensee's violation warrants the exercise of the Commission's discretion to revoke the license. As the Commission stated in *T-Com, Inc.*, 5 FCC Rcd 6691, 6693 (1990) (citations omitted):

[T]he Communications Act does not require the imposition of the ultimate sanction of revocation in every case of wilful violation of a rule. * * * Rather Congress left to the Commission the discretion in each particular case to decide appropriate sanctions, weighing the nature of the violations and surrounding circumstances to determine whether the ultimate sanction of revocation should be invoked. * * * As a general proposition, the wrongdoing or misconduct must be sufficiently egregious to disqualify a licensee or permittee.

The Commission has the legal duty to afford the licensee a hearing in which to "show cause why an order of revocation . . . should not be issued." 47 U.S.C. § 312(c); 47 C.F.R. § 1.91(b). In effect, the statute affords the licensee a right to show cause by giving evidence of "mitigating circumstances" to show that the revocation of its license would not serve the public interest. *See*

exact phrase "on the record" does not appear in § 312(c), Congress described the nature of the required revocation hearing with language that can only refer to a trial-type evidentiary hearing. Not only does § 312(c) require the FCC to call upon the licensee to "appear" before it and "give evidence," but § 312(d) places "the burden of proceeding with the introduction of evidence and the burden of proof" upon the FCC in any hearing held to revoke a license. 47 U.S.C. § 312(d). Inasmuch as the FCC is required to prove violations enumerated in § 312(a)(1)-(7), a revocation hearing is "precisely the type of proceeding for which the APA's adjudicatory procedures were intended." *Steadman v. SEC*, 450 U.S. 91, 96 n.13 (1981).

Donald Hammond, 61 FCC 2d 368, 373 (Rev. Bd. 1976).

Even in a case where the licensee “admitted to many of the facts at issue,” the Commission recognized that “license revocation cannot proceed *as a matter of law* without a hearing on all the relevant facts.” *MobileMedia Corp.*, 12 F.C.C.R. 14896, 14901 (1997) (emphasis added). And the relevant facts include mitigating circumstances, which the licensee is entitled to proffer. See 47 C.F.R. § 1.91(e) (“Corrections or promises to correct the conditions or matters complained of, and the past record of the licensee, may . . . be considered in determining whether a revocation . . . order should be issued”). Thus, a licensee already convicted of twelve felony counts of sexual abuse of children, and sentenced to 84 years in prison, was afforded a pre-revocation evidentiary hearing in which to show “mitigating factors.” See *Contemporary Media, Inc. v. FCC*, 214 F.3d 187, 191-96 (D.C. Cir. 2000).^{5/}

Surely, if a convicted felon was entitled to a pre-revocation hearing, GLP was entitled to a hearing to show that the circumstances that led it to file for Chapter 11 reorganization constituted “strong mitigating factors.” *Hammond*, 61 FCC 2d at 372. An administrative law judge could be expected to find such factors to be more compelling than the Bureau which administers the satellite system implementation milestones. Indeed, the Bureau took no notice of GLP’s status as a Chapter 11 debtor. See *Revocation Order*, 18 FCC Rcd at 1251-55.

Because of the condition that it meet implementation milestones, GLP was denied its right to an evidentiary hearing. Instead, GLP was subjected to, at best, an informal adjudication in which

^{5/} See also *New South Broadcasting, Inc.*, 6 F.C.C.R. 5047, 5048-49 (1991) (licensee convicted of a felony for laundering money from illegal drug-related activity given § 312(c) evidentiary hearing); *South Carolina Radio Fellowship*, 6 F.C.C.R. 4823, 4823-24 (1991) (license of convicted drug trafficker revoked after evidentiary hearing).

it faced the “high hurdle” of persuading the Bureau to extend or waive its construction commencement milestone. *WAIT Radio v. FCC*, 459 F.2d 1203, 1207 (D.C. Cir. 1972). If its right to a pre-revocation hearing had been honored, GLP would have been a party to a hearing in which the Bureau faced the burden of proceeding with the introduction of evidence to prove that GLP willfully failed to meet its milestone. *See* 47 U.S.C. § 312(d); 47 C.F.R. § 1.91(d)(1). Moreover, the initial decision on whether the milestone was missed would have been made by an administrative law judge, not the Bureau charged with enforcing the milestone. Obviously, GLP was deprived of its hearing rights under § 312(c) of the Act.

IV. The Conditions Placed On GLP’s License Are Unlawful And Unenforceable

Pre-revocation notice and hearing are required by the clear, unequivocal and mandatory language of § 312(c) of the Act. *See supra* p. 5. Because it has the duty to “execute and enforce the provisions” of the Act, *see* 47 U.S.C. § 151, the Commission must abide by § 312(c) until it is changed by Congress. *See Southwestern Bell Corp. v. FCC*, 43 F.3d 1515, 1524 (D.C. Cir. 1995).^{6/} The Commission has no choice in the matter for “[w]hen a statute dictates that parties receive notice and hearing . . . the provision of those basic procedural rights is not left to be decided by administrative ‘flexibility’ or ‘discretion.’” *RKO General, Inc. v. FCC*, 670 F.2d 215, 233 (D.C. Cir. 1981). It simply cannot “substantially nullify” a statutory right to a hearing. *Ashbacker Radio Corp. v. FCC*, 326 U.S. 327, 334 (1945). *See ABC v. FCC*, 191 F.2d 492, 501 (D.C. Cir. 1951).

“[I]t is beyond cavil that ‘an agency’s power is no greater than that delegated to it by

^{6/} Moreover, pre-revocation notice and hearing are required by § 1.91 of the Rules. *See* 47 C.F.R. § 1.91. Thus, the Commission must provide such notice and hearing under the principle that it “must adhere to its own rules and regulations.” *Reuters Ltd. v. FCC*, 781 F.2d 946, 950 (D.C. Cir. 1986).

Congress.”” *Railway Labor Executives’ Ass’n v. National Mediation Bd.*, 29 F.3d 655, 670 (D.C. Cir. 1994) (*en banc*) (quoting *Lyng v. Payne*, 476 U.S. 926, 937 (1986)). Delegated no authority by Congress to deny licensees their rights under § 312(c), the Commission was without power to promulgate a regulation, or adopt a policy, that works to revoke licenses without prior notice and hearing. Yet, it did just that by incorporating implementation milestones as conditions of licensing. *See 2 GHz MSS Order*, 15 FCC Rcd at 16177-78. Flatly at odds with § 312(c), the Commission’s implementation milestones cannot be enforced to render a license “null and void.” *See Heckler v. Chaney*, 470 U.S. 821, 833 (1985) (agencies are not “free to disregard legislative direction in the statutory scheme that the agency administers”); *United States v. Larionoff*, 431 U.S. 864, 873 (1977) (“regulations, in order to be valid, must be consistent with the statute under which they are promulgated”). Trumped by the statute,⁷ the milestones are themselves a “mere nullity.” *Pacific Gas & Elect. Co. v. United States*, 664 F.2d 1133, 1136 (9th Cir. 1981).

The Commission’s authority to impose conditions on licenses does not authorize it to repeal procedural rights guaranteed licensees by § 312(c). The Commission is only empowered to “prescribe such . . . conditions, not inconsistent with law, as may be necessary to carry out the provisions” of the Act. 47 U.S.C. § 303(r). *See id.* § 154(i) (Commission may take any actions “not inconsistent with [the Act], as may be necessary in the execution of its functions”). By making licenses automatically revocable without prior notice and hearing, the Commission’s implementation milestones are inconsistent with § 312(c).

⁷ Legislative statutes take precedence over conflicting administrative rules. *See Caldera v. J.S. Alberici Const. Co.*, 153 F.3d 1381, 1383 n.** (Fed. Cir. 1998) (“Statutes trump conflicting regulations”); *Wolf Creek Collieries v. Robinson*, 872 F.2d 1264, 1267 (6th Cir. 1989) (“statutory language . . . prevail[s] over inconsistent regulatory language”); *United States v. Gordon*, 638 F.2d 886, 888 (5th Cir. 1981) (agency regulation “cannot supercede a statute”).

The legislative history of § 312 refutes the notion that the Commission can issue licenses bearing conditions that make them subject to automatic cancellation. Congress recognized in 1952 that the only enforcement power the Commission had was “the power to revoke licenses, which is too severe a penalty in the case of many violations.”^{8/} It amended § 312 to give the agency new powers with which it would “be able to adjust the penalty to fit the seriousness of the offense.”^{9/} Section 312 was modified to change the “specified grounds” for revocation “somewhat” and to provide that in most cases “revocation would be permissible only for acts willfully, knowingly, or repeatedly committed.”^{10/}

Congress clearly intended that the Commission impose the severe penalty of license revocation only for the reasons specified in § 312(a), and not for less serious violations. Congress surely could not have intended to limit the Commission to revoking licenses after hearing only on the most serious grounds listed in § 312(a), but permit it to revoke licenses without the safeguard of a hearing for less serious reasons. That would stand justice on its head.

The Bureau violated § 312(c) when it enforced its construction commencement milestone to revoke GLP’s license without affording it prior notice and the opportunity for an evidentiary hearing. The Commission should reverse the Bureau and reinstate GLP’s license unencumbered by the unlawful condition that it meet implementation milestones.

V. The Bureau Violated The “Second Chance” Doctrine Of APA § 558(c)

^{8/} H.R. Rep. No. 1750 (1952), *reprinted in*, 1952 U.S.C.C.A.N. 2234, 2236.

^{9/} *Id.*

^{10/} *Id.* at 2262.

The procedural safeguards of APA § 558(c) also are available when the Commission seeks to revoke or annul a license. *See* 47 U.S.C. § 312(e). Thus, absent a finding of willfulness, the Commission may lawfully revoke a license only if, before the institution of the revocation proceeding, the licensee was given: (1) notice by the Commission in writing of the “facts or conduct which may warrant the action” and (2) an “opportunity to demonstrate or achieve compliance with all lawful requirements.” 5 U.S.C. § 558(c).

The obvious purpose of § 558(c) is “to provide individuals with an opportunity to correct their transgressions before the termination or suspension of their licenses.” *Air North America v. Dep’t of Transp.*, 937 F.2d 1427, 1438 (9th Cir. 1991). The Bureau failed to afford GLP the requisite opportunity to come into compliance with the Commission’s implementation milestones.^{11/}

GLP contends, with good reason, that it satisfied its construction contract milestone. *See App.*, at 5-6, 17. It ran afoul of the milestone simply because its non-contingent contract apparently assumed extensions of its January 17, 2005 and July 17, 2007 milestones. *See Revocation Order*, 18 FCC Rcd at 1250-51. It requested 90 days to reform its contract in the event the Commission did not extend its 2005 and 2007 milestones. *See id.* at 1251. GLP also had good reason to believe that it would be afforded a fair opportunity to reform its contract. *See Assignment of Orbital Locations to Space Stations in the Domestic Fixed-Satellite Service*, 13 FCC Rcd 1383, 13866 (Int’l Bur. 1998) (licensee given 60 days “in the interests of fairness” to enter into a construction contract after extension of milestones was denied). Overruling the one precedent on point, the Bureau refused to

^{11/} GLP’s conduct was not willful so as to come within the “willfulness” exception to the requirements of the “second chance” doctrine of APA § 558(c). *See, e.g., Lawrence v. CFTC*, 759 F.2d 767, 773 n.13 (9th Cir. 1985). Willfulness for the purposes of § 558(c) means “an intentional misdeed or such gross neglect of a known duty as to be the equivalent thereof.” *Capital Produce Co., Inc. v. United States*, 990 F.2d 1077, 1079 (4th Cir. 1991).

give GLP even a “short window of time” to renegotiate its contract into compliance with its upcoming milestones. *See Revocation Order*, 18 FCC Rcd at 1254-55. Instead, it declared GLP’s license null and void, an action that clearly violated the APA’s second chance doctrine.

The Bureau was unable to point to one published decision or policy statement that provided full and explicit notice that it would enforce a strict “no cure” policy with respect to non-contingent, but non-conforming, construction contracts. As GLP correctly argues, the retroactive enforcement of that policy to effect a revocation of a license offends due process. *See App.*, at 18-19.^{12/} And it also patently violates the prior written notice requirement of § 558(c)(1) of the APA.

As far as we can tell, the Bureau never provided written notice to GLP that afforded it the opportunity to correct the deficiencies in its construction contract. To the contrary, the Bureau notified GLP that would have *no opportunity* to reform its contract so as to achieve compliance with the Commission’s implementation milestones. *See Revocation Order*, 18 FCC Rcd at 1254-55. Because the Bureau failed to provide GLP with a written warning that its contract was deficient and an opportunity to correct the deficiency, the revocation, cancellation or annulment of its license was

^{12/} Due process traditionally requires prior notice so that parties can conform their conduct to the law. *See International Union, UMWA v. Bagwell*, 512 U.S. 821, 836-37 (1994). The Commission understands that due process precludes it from penalizing a party “for violating a rule without first providing advance, clear and adequate notice as to the conduct required . . . by the rule.” *Mercury PCS II, LLC*, 13 F.C.C.R. 23755, 23759 n.17 (1998). Needless to say, the loss of a license is a sufficiently severe penalty to trigger the due process requirement that the licensee “receive fair notice before being deprived of property.” *Trinity Broadcasting of Florida, Inc. v. FCC*, 211 F.3d 618, 628 (D.C. Cir. 2000) (quoting *General Electric Co. v. EPA*, 53 F.3d 1324, 1328 (D.C. Cir. 1995)). The Commission may enforce a rule strictly to impose such a drastic sanction, but only “so long as ‘the *quid pro quo* . . . is explicit notice of all applicable requirements.’” *Florida Institute of Technology v. FCC*, 952 F.2d 549, 550 (D.C. Cir. 1992) (quoting *Salzer v. FCC*, 778 F.2d 869, 875 (D.C. Cir. 1985)). *See State of Oregon v. FCC*, 102 F.3d 583, 585 (D.C. Cir. 1996). The less forgiving the Commission’s standard, “the more precise its requirements must be.” *Salzer*, 778 F.2d at 875. Thus, an exacting standard, enforced by a severe sanction, must be accompanied by “full and explicit notice” of all the Commission’s requirements. *See id.* at 871-72.

not valid. *See Anchustegui v. Dep't of Agriculture*, 257 F.3d 1124, 1129 (9th Cir. 2001) (reversing the cancellation of a permit for the permittee's failure to comply with the terms and conditions of the permit).

CONCLUSION

Globalstar Satellite urges the Commission to review and reverse the *Revocation Order*, reinstate GLP's license, and direct the Bureau to afford GLP adequate time to reform its construction contract.

Respectfully submitted,



Thomas Gutierrez

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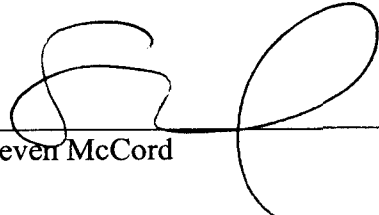
*Attorney for
Globalstar Satellite LP*

May 28, 2004

CERTIFICATE OF SERVICE

I, Steven McCord, do hereby certify that on this 28th day of May, 2003, I caused copies of the "*Comments in Support of Emergency Application for Review*" to be electronically served upon the following:

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Steven McCord