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December 12, 2003

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

RE: *Globalstar, L.P., Memorandum Opinion and Order*, DA 03-328.

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

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Policy Branch
International Bureau

Call Signs S2320/S2321/S2322/S2323/S2324

Dear Ms. Dortch:

On January 29, 2003, the International Bureau adopted a Memorandum Opinion and Order, in which it denied a request by Globalstar, L.P. ("GLP"), for modification of certain implementation milestones associated with its 2 GHz Mobile-Satellite Service ("MSS") system and canceled all GLP's 2 GHz MSS licenses.[1] GLP's Emergency Application for Review and Request for Stay of that decision are pending.

In canceling the 2 GHz MSS licenses, the Bureau applied a previously unannounced policy for assessment of milestone compliance. The Bureau decided that a satellite construction contract incorporating variations from the space station

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[1] *Globalstar, L.P.*, DA 03-328, 18 FCC Rcd 1249 (Int'l Bur. 2003) ("*MO&O*").

authorization that are reflected in a simultaneously filed modification application cannot meet the satellite construction milestone if the Commission denies the modification application. Accordingly, in this case, since the non-contingent satellite construction contract submitted by GLP in compliance with its first implementation milestone reflected construction milestones as proposed in GLP's modification applications on file, rather than the milestones in GLP's original licensing order, the contract was deemed not to meet the Commission's requirement that a satellite licensee must enter into a non-contingent construction contract within one year of the date of licensing. Rather than giving GLP an opportunity to cure its contract to conform with the original milestone schedule, the Bureau simply canceled the licenses for failure of the contract to conform to the original milestone schedule.

In a letter filed on July 14, 2003, GLP noted that, six months after the release of the *MO&O*, the Bureau formally announced the policy that it had applied to GLP's 2 GHz MSS licenses in an order granting a modification application for the 2 GHz MSS system of The Boeing Company.[2] It is obvious why the International Bureau articulated its policy in the *Boeing* decision: satellite licensees were simply unaware of this policy when GLP negotiated its satellite construction contract in 2002. Announcing the new policy was a necessary step, but applying this policy retroactively to GLP was clear error.

Case law involving Commission procedures establish the basic principle of due process that "the *quid pro quo* for stringent acceptability criteria is explicit notice of all application requirements."[3]

In stark contrast to the circumstances of the *MO&O*, the International Bureau recently demonstrated that it is fully aware of this principle of due process and its obligation not to apply new policies retroactively, as it did in the *MO&O*. 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), the Bureau announced a more stringent policy concerning the completeness of Fixed-Satellite Service applications to be applied prospectively only. The Bureau stated that applications filed in the future would be dismissed if not in compliance, while those currently on file would not be dismissed for non-compliance if brought into

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[2] *The Boeing Company,* 18 FCC Rcd 12317, 12328 n.56 (Int'l Bur. 2003).

[3] *Salzer v. FCC,* 778 F.2d 869, 875 (D.C. Cir. 1985); *see also, e.g., Trinity Broadcasting of Florida, Inc. v. FCC,* 211 F.3d 618, 628 (D.C. Cir. 2000).

compliance at the Commission's request. Had the Bureau applied this correct approach for implementation of a new policy to GLP and its satellite construction contract, it would have granted GLP's request for a reasonable period of time consistent with past practice, taking all circumstances into consideration, to bring its contract into compliance with the milestones set forth in GLP's 2 GHz MSS authorization, rather than canceling GLP's 2 GHz MSS licenses.

"Explicit notice" of the Bureau's policy on milestones applied in the *MO&O* equivalent to the announcement in the recent Public Notice was not given until the *Boeing* decision – one year after GLP had entered into its satellite construction contract and filed its milestone modification applications. Prior to that time, not only was there no indication that the Commission had adopted such a policy, but there was significant evidence to the contrary.

For example, in the 2 GHz MSS service rules order, there were references to the general need for compliance with implementation milestones.[4] However, the Commission did not elaborate on what that policy entailed, nor how it differed from a consistent line of prior decisions on milestone compliance. Mere use of the term "strict enforcement" to describe that discussion in the *MO&O* (¶ 12) does not suffice for prior "explicit notice" that specific rules and policies, not inconsistent with strict enforcement, have been changed.

GLP's 2 GHz MSS authorization states that the licenses will become null and void if the system were not constructed, launched and placed into operation in accordance with the milestone dates.[5] But, GLP had missed no milestones when its licenses were cancelled, and still had the ability to meet all required milestones. GLP's authorization gives no warning that a non-contingent contract will not be acceptable to meet the first milestone simply because the licensee requested modification of certain *future* milestone dates several years *before* those milestones came due.

Moreover, none of the precedent relied upon by the Bureau in canceling GLP's licenses was decided based on similar circumstances regarding the effect of

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[4] *See Establishment of Policies and Service Rules for the Mobile Satellite Service in the 2 GHz Band*, 15 FCC Rcd 16127, 16177-78 (2000).

[5] *See Globalstar, L.P.*, 16 FCC Rcd 13739, ¶ 60 (Int'l Bur. 2001).

pending modification applications on non-contingent contracts.[6] On the one hand, reliance upon these prior decisions suggests that the Commission's policies had not changed at the time GLP's modification applications were filed in July 2002, and that these precedents do not support the decision in GLP's case.

But, more importantly, none of these cases applied or identified the *Boeing* policy that was applied to GLP. While the prior cases discussed generally the need for a non-contingent construction contract to include dates for construction milestones, none indicated that the licenses at issue would be cancelled if the contract contained milestone dates that were under review in modification applications and subsequently denied. Again, there was no "explicit notice" such as the Bureau provided in the Public Notice regarding Fixed-Satellite Service applications.

The Bureau's application of the *Boeing* policy to GLP was also explicitly contrary to existing law. The Commission's rules in place when GLP filed the modification applications (July 17, 2002) specifically excused space station licensees from entering into any construction contract if they had filed, as of the construction contract milestone, a request for modification of that milestone date.[7] It is clearly inconsistent for a licensee that enters into a non-contingent contract by the required milestone to have its licenses cancelled, while a licensee that signed no contract has an opportunity to negotiate a contract after missing the milestone date.[8]

Furthermore, at the time that GLP filed its modification applications, the Commission had specifically sanctioned the filing of a satellite construction contract that varied from the terms of the license as meeting the construction milestone – exactly the procedure followed by GLP.[9] Given that none of the Commission's

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[6] *See MO&O,* 18 FCC Rcd at 1251 n.13, *citing Mobile Communications Holdings, Inc.*, 17 FCC Rcd 11898, 11901, ¶ 11 (Int'l Bur. 2002); *Morning Star Satellite Co.*, 16 FCC Rcd 11550, 11553, ¶ 9 (2001); *Echostar Satellite Corp.*, 7 FCC Rcd 1765, 1767, ¶ 11 (1992); *Tempo Enterprises, Inc.*, 1 FCC Rcd 20, 21, ¶ 7 (1986).

[7] 47 C.F.R. § 25.161(a) (2002).

[8] *See NetSat 28 Co.*, 16 FCC Rcd 11025 (Int'l Bur. 2001) (granting waiver of milestone deadline for contract filed 18 months after contract deadline passed); *Echostar Satellite Corp.*, 7 FCC Rcd at 1771, ¶ 29 (giving licensee three months to file construction contract after one-year deadline passed with no contract in place).

[9] *See Teledesic LLC*, 17 FCC Rcd 11263 (Int'l Bur. 2002).

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precedent would lead to the conclusion that the Commission had reversed course, and adopted the policy applied to GLP (prior to announcement of the policy six months later), it was plain error for the Bureau to subject GLP to the unannounced policy and cancel GLP's 2 GHz MSS licenses.

The *MO&O* clearly and undeniably violates the due process requirements applicable to the Commission's decisions. Accordingly, for this reason as well as the other reasons set forth therein, GLP's Emergency Application for Review must be granted and GLP's 2 GHz MSS licenses reinstated.

Respectfully submitted,

GLOBALSTAR, L.P.

William D. Wallace

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CERTIFICATE OF SERVICE

I, William D. Wallace, hereby certify that I have on this 12th day of December, 2003, caused to be served true and correct copies of the foregoing "Letter" upon the following persons via hand delivery (marked with an asterisk (*)) or first-class United States mail, postage prepaid:

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