

ORIGINAL

Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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MAR 28 2003

In the Matter of)
)
GLOBALSTAR, L.P.)
)
For Modification of License for a Mobile)
Satellite Service System in the 2 GHz Band)
)
For Waiver and Modification of)
Implementation Milestones for)
2 GHz MSS System)
)
_____)

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

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REPLY OF GLOBALSTAR, L.P.

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March 28, 2003

REPLY OF GLOBALSTAR, L.P.

Globalstar, L.P. (“GLP”), hereby replies to the Opposition of AT&T Wireless Services, Inc., Cingular Wireless LLC, and Cellco Partnership d/b/a Verizon Wireless (“Carriers”) to GLP’s Emergency Application for Review of the Memorandum Opinion and Order, DA 03-328 (rel. Jan. 30, 2003) (“MO&O”).¹

The Carriers Lack Standing. Section 309(d)(1) of the Communications Act of 1934, as amended, requires a party objecting to the grant of a radio license to allege sufficient facts to demonstrate standing, specifically, that grant of the license would cause injury in fact to that party.² The party must also demonstrate a causal link between the claimed injury and the challenged action by establishing that the injury can be fairly traced to the grant of the license and that the injury would be prevented or redressed by the relief requested.

The Carriers have not demonstrated a legally sufficient injury that they would suffer if GLP’s 2 GHz MSS licenses are reinstated. They are not competing MSS applicants; nor is GLP a competitor in the cellular/PCS markets.³ The Carriers have no right of access to any 2 GHz

¹ To the extent any argument in the Emergency Application for Review might be deemed a “new” argument, as the Carriers claim, the Commission has the authority to review such argument and correct legal errors in the Bureau’s decision. See 47 U.S.C. § 155(c)(4).

² See, e.g., PCS 2000, L.P., 12 FCC Rcd 1681, 1685 (1997); Brian L. O’Neill, 6 FCC Rcd 2572, 2574 (1991).

³ See Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993: Seventh Report, FCC 02-179, § II(A)(1) (rel. July 3, 2002) (defining “mobile telephony” as cellular, broadband PCS and SMR). Moreover, MSS and cellular/PCS phones are not interchangeable, and differ substantially in terms of uses, airtime prices, and price and type of equipment. The Commission considers MSS a complement to rather than a competitor of cellular/PCS. See, e.g., Amendment of Section 2.106 of the Commission’s Rules to Allocate Spectrum For Use by the Mobile Satellite Service, 12 FCC Rcd 7388, 7394-95 (1997). Therefore, the Carriers cannot claim standing as competitors to GLP.

MSS spectrum that could be assigned to GLP, and they did not oppose GLP's milestone modification request when it was placed on Public Notice.

The Carriers claim that reinstatement of GLP's 2 GHz MSS licenses would impede their access to 30 MHz of spectrum reallocated from 2 GHz MSS to terrestrial use.⁴ But, this allegation also fails to establish standing. Obviously, the AWS Spectrum Rulemaking cannot be nullified or modified without completely independent action by the Commission outside this proceeding. Moreover, the Commission has not yet even adopted service rules for AWS spectrum, and so, it is still speculation whether these Carriers will be eligible to be licensed in that spectrum, or if eligible, that they would apply for it. And, even if GLP's 2 GHz MSS licenses are reinstated, GLP is only entitled to some portion of the spectrum available for MSS at 2 GHz, and the Commission has decided that at least 40 MHz of spectrum at 2 GHz must be preserved for MSS.⁵ Reinstatement of GLP's 2 GHz MSS license would not cause any injury to the Carriers. The Commission should dismiss the Opposition for lack of standing.

GLP's Contract Met the Milestone Standard. The Carriers argue the Bureau properly canceled GLP's authorization because its satellite construction contract failed to comply with the milestones set forth in GLP's 2 GHz MSS authorization. (Opp., at 5-7.) But, the Commission has no such standard for *per se* disqualification. The satellite construction milestone requires that the licensee enter into a non-contingent contract which obligates the licensee to pay for construction and the contractor to build the satellites. GLP executed such a contract. The

⁴ See Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, FCC 03-16 (rel. Feb. 10, 2003) ("AWS Spectrum Rulemaking").

⁵ See id., ¶ 31.

contract terms varied from the original milestone schedule, but even the Carriers must concede that the Commission has adopted a policy that a contract that does not exactly reflect the authorization, accompanied by a modification request, is not automatically deemed non-compliant with the satellite construction milestone.⁶

The Carriers have offered no defense for the Bureau's *ad hoc* modification of that policy such that contracts which reflect milestone variations as opposed to technical variations result in automatic cancellation of the licenses. The Commission views both milestones and technical parameters as integral conditions of licenses, and allows licensees to *propose* modifications to both. The Commission has not previously adopted the policy applied by the Bureau in the MO&O or articulated by the Carriers to distinguish such proposals. The Commission cannot penalize licensees on the basis of retroactive interpretation of its rules and policies.⁷ That is what the Bureau did in this case, and so, GLP's licenses must be reinstated.

The Bureau Unlawfully Failed to Justify Cancellation of the Domestic GSO Satellite.

The Carriers argue that the fact that GLP's construction contract for the geostationary satellite serving the United States met the original milestones is irrelevant because GLP's "authorization" was not for a single GSO satellite, and GLP did not ask to "downsize" its system. (Opp., at 3-5.) This argument ignores the Bureau's error. The Bureau canceled all GLP's licenses solely because the contract did not reflect the original milestones specified for each of the system components. Yet, the Bureau did not explain the basis for canceling the license for the domestic

⁶ See Teledesic LLC, 17 FCC Rcd 11263 (Int'l Bur. 2002). The cases cited by the Carriers for other procedures, Morning Star Satellite Co., 16 FCC Rcd 11550 (2001), and Motorola, Inc., 17 FCC Rcd 16543 (Int'l Bur. 2002), are distinguishable because those licensees had not executed non-contingent construction contracts by the required date.

⁷ See Trinity Broadcasting of Florida, Inc. v. FCC, 211 F.3d 618, 628-32 (D.C. Cir. 2000).

GSO satellite which was scheduled for construction to meet the milestones. And, the Carriers have not cited any precedent or law for their bald assertion that, in these circumstances, the Commission must determine milestone compliance on a system-wide basis.

GLP did not ask and is not asking to downsize its system. The Bureau's error was failing to articulate the rationale for canceling the license for the GSO satellite serving the domestic arc, since the rationale for canceling the rest of the licenses did not apply. The Bureau allows 2 GHz MSS licensees to launch single-GSO systems.⁸ Therefore, it must articulate a sufficient rationale to cancel GLP's domestic GSO satellite license, or reinstate it.⁹

The Carriers Cannot Justify the Bureau's Critical Errors. The Carriers attempt to reframe Commission precedent and policy to fit the MO&O. (Opp., at 7-16.) Ultimately, they fail to deal with several of the Bureau's critical errors:

- ◆ The Carriers claim that "strict enforcement" of 2 GHz MSS milestones requires cancellation. But, the Commission's rules allow the filing of requests for waivers and extensions of milestones. Indeed, the Commission has repeatedly granted extensions of the first milestone when licensees executed no construction contracts at all. A policy of strict enforcement does not preclude meaningful consideration of GLP's modification request and waiver request.

- ◆ The Bureau canceled GLP's licenses solely because the construction schedule in the contract did not comply with the original construction schedule. It ignored the facts that GLP signed a non-contingent contract, commenced payment for construction, and committed to use the spectrum on the milestone schedule, which are sufficient to demonstrate its intent to proceed

⁸ See Celsat America, Inc., 16 FCC Rcd 13712 (Int'l Bur. 2001).

⁹ See Fresno Mobile Radio, Inc. v. FCC, 165 F.3d 965, 968-70 (D.C. Cir. 1999) (finding decision arbitrary and capricious that did not articulate rational reason for action taken).

toward implementation of the 2 GHz MSS system and not to warehouse spectrum. The failure of the Bureau to make findings on this critical point requires reversal of the MO&O.

◆ GLP has missed no milestones. It is being penalized for *proposing* to extend future milestones, not missing them. There was no basis for denying GLP an opportunity to reform its construction contract and thereby achieve the Commission's goals for the milestones without modifying or extending the dates of the original milestones.

◆ GLP has been operating as a debtor-in-possession under Chapter 11 of the U.S. Bankruptcy Code since February 2002. The Bureau was fully aware of that fact, yet failed to consider the impact on GLP's waiver request, and whether cancellation of the 2 GHz licenses was consistent with the policies of the Code generally and the automatic stay in Section 362 specifically. That failing alone is reversible error.

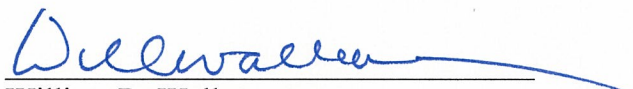
Conclusion. None of the Carriers' *ad hoc* and *post hoc* rationalizations provides a justification under Commission law and policy for the erroneous actions of the Bureau in the MO&O. Accordingly, GLP's Emergency Application for Review should be granted, and the 2 GHz MSS authorization reinstated.

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CERTIFICATE OF SERVICE

I, William D. Wallace, hereby certify that I have on this 28th day of March, 2003, caused to be served true and correct copies of the foregoing "Reply of Globalstar, L.P." upon the following persons via hand delivery (marked with an asterisk (*)) or first-class United States mail, postage prepaid:

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