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This is an unofficial announcement of Commission action. Release of the full text of a Commission order constitutes official action. See MCI v. FCC, 515 F.2d 385 (D.C. Cir. 1974).

Report No. CC-491

COMMON CARRIER ACTION

January 15, 1993

FCC DENIES NEXSAT'S REQUESTS FOR TIME EXTENSIONS TO CONSTRUCT AND LAUNCH ITS "SPOTNET" SATELLITES

The Commission has denied National Exchange Satellite, Inc.'s (Nexsat) Application for Review of the order by the Common Carrier Bureau denying requests for extensions of time to construct and launch its "SpotNet" satellites and revoking the license for the system.

Nexsat's satellite system was authorized in November 1988. That authorization required Nexsat to begin construction of its three hybrid satellites by August 1989, July 1990 and January 1991, respectively. If these deadlines were not met or extended for good cause by the Commission, the authorizations, by their own terms, would become null and void. Nexsat requested and was granted one extension of its milestone deadline to begin construction of its satellites. Subsequently, Nexsat filed three more extension requests. These requests were denied by the Common Carrier Bureau and Nexsat's satellite authorizations were declared null and void. The Bureau based its denial on the fact that Nexsat had failed to demonstrate that a further extension of time would be consistent with well established Commission policies against warehousing scarce orbital locations or that delay in implementation was due to circumstances beyond Nexsat's control.

In affirming the Bureau's findings, the FCC noted that Nexsat failed to demonstrate why the Commission's long-standing policies requiring satellite licensees to comply with milestone deadlines are no longer in the public interest. Despite Nexsat's assertions, it has not submitted any evidence that the demand for transponder capacity has significantly decreased.

Nexsat also disputed the Bureau's finding that delay in implementation of its satellite system was based on factors within Nexsat's control. Two of Nexsat's extension requests were based on assertions that more time was needed to resolve technical and design factors. A third request cited Nexsat's negotiations with the education committee to provide them with transponder capacity. The Bureau noted that neither technical choices nor business or economic judgments constitute circumstances beyond a licensee's control sufficient to justify extension of milestone deadlines.

The Commission pointed out that Nexsat has offered no evidence that its reconsideration of technical design or the contemplation of a possible service contract were the result of circumstances distinguishable from those rejected as inadequate in precedent cited by the Bureau. Nexsat was granted one extension after alleging that it could not begin construction of its satellites before action was taken on its request for reassignment of orbital locations. Its requests for further open-ended extensions did not present any factors that could be considered beyond the control of the licensee and thus the Bureau was correct in denying the extensions.

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Nexsat is free to reapply for authorization to use available orbital locations after it has solidified its business and technical proposals and is ready to implement its system.

Action by the Commission January 13, 1993, by Memorandum Opinion and Order (FCC 93-24). Chairman Sikes, Commissioners Quello, Marshall, Barrett and Duggan.

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