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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Before the  
Federal Communications Commission  
Washington, DC 20554

In the Matter of Application of ) DA 03-328  
 )  
**Globalstar, L.P.** ) File Nos.:  
 ) 183/184/185/186-SAT-P/LA-97  
 For Modification of License for a Mobile- ) 182-SAT-P/LA-97(64)  
 Satellite Service System in the 2 GHz Band )  
 ) IBFS Nos.:  
 For Waiver and Modification of ) SAT-LOA-19970926-00151/52/53/54  
 Implementation Milestones for 2 GHz MSS ) SAT-LOA-19970926-00156  
 System ) SAT-AMD-20001103-00154  
 ) SAT-MOD-20020717-00116/17/18/19  
 ) SAT-MOD-20020722-00107/08/09/10/12  
 )  
 ) Call Signs:  
 ) S2320, S2321, S2322, S2323, S2324

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To: The Commission

APR 01 2003

**REPLY TO COMMENTS**

Policy Branch  
International Bureau

Pursuant to Section 1.115(d) of the Commission's Rules, 47 C.F.R. § 1.115(d), AT&T Wireless Services, Inc., Cingular Wireless LLC and Verizon Wireless (jointly, the "Carriers") hereby reply to the "Comments in Support of Emergency Application for Review" submitted by the Official Creditors Committee of Globalstar, L.P. (the "Creditors") on March 18, 2003. In their comments, the Creditors have raised a new substantive argument concerning the applicability of Section 312 of the Communications Act to the license nullification at issue in the *Bureau Order* under review.<sup>1</sup> Because this argument is developed for the first time in the Creditors' supporting comments (submitted during the opposition phase of the pleading cycle), the Carriers submit this limited reply to address the new points raised by the Creditors.

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<sup>1</sup> *Globalstar, L.P., Memorandum Opinion and Order*, 18 F.C.C.R. 1249 (2003) ("Bureau Order"). Section 312 is mentioned only in passing by footnote reference in the underlying application for review. See *Emergency Application for Review* at 4 n.2, 5 n.10.

Specifically, the Creditors claim that the International Bureau was barred from canceling Globalstar's 2 GHz MSS conditioned license without a hearing under Section 312, without indicating what type of hearing (evidentiary or otherwise) Globalstar should receive.<sup>2</sup> As a threshold point, the Creditors' argument that the cancellation of Globalstar's authorization violates Section 312's hearing provisions is a question upon which the Bureau has been afforded no opportunity to pass. This argument, therefore, cannot be raised before the Commission for the first time.<sup>3</sup>

Notwithstanding this procedural error, Section 312 is inapplicable to this case. Section 312 applies to license revocation, but that is not what happened to Globalstar's authorization. The *Bureau Order* held that "consistent with the terms of Globalstar's license, its authorization for a 2 GHz MSS system is null and void" for failure to satisfy the initial implementation milestone set forth in its authorization.<sup>4</sup> Globalstar's authorization was therefore not revoked.<sup>5</sup> Rather, the non-contingent contract milestone was a condition on its authorization, which was

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<sup>2</sup> Comments in Support of Emergency Application for Review at 18-19.

<sup>3</sup> See 47 C.F.R. § 1.115(c) & note; see also *Richard Duncan d/b/a Anderson Communications*, FCC 03-52, at ¶ 7 (rel. Mar. 12, 2003) ("*Duncan*").

<sup>4</sup> *Bureau Order* at ¶ 13.

<sup>5</sup> See, e.g., *Glendale Electronics, Inc.*, 17 F.C.C.R. 22189, 22194 (CWD/WTB 2002); *Revision of Part 21 of the Commission's Rules*, 2 F.C.C.R. 5713, 5718 (1987). The *NextWave* D.C. Circuit decision relied upon by the Creditors is inapposite. See Comments in Support of Emergency Application for Review at 18-19. In *NextWave*, it was undisputed that the case involved revocation of licenses under Section 525 of the Bankruptcy Code. See *NextWave Personal Communications, Inc. v. FCC*, 254 F.3d 130, 149 (D.C. Cir. 2001), *aff'd* 123 S. Ct. 832 (2003); see also, e.g., *United States v. Verdugo-Urquidez*, 494 U.S. 259, 272 (1990) (judicial decisions do not serve as precedent for points that were not raised and analyzed). In fact, the Court expressly ruled that it was unclear whether the FCC's automatic cancellation policy even applied under the facts of that case. 254 F.3d at 142. Finally, the discussion cited to by the Creditors concerning the "effect" of license cancellation occurred in the context of determining whether jurisdiction existed under 47 U.S.C. § 402(a) or (b), see 254 F.3d at 140, and not whether Section 312(c) hearing rights had been triggered.

valid only as long as the condition was satisfied. Its authorization was rendered null and void by operation of law and automatically cancelled when Globalstar failed to satisfy the license condition.<sup>6</sup>

Moreover, under the D.C. Circuit's *Temmer* precedent, Globalstar has no hearing rights because its authorization was never perfected.<sup>7</sup> *Temmer* makes clear that an applicant who accepts a license that is conditioned on future performance accedes to such condition(s), which renders the applicant's rights contingent.<sup>8</sup> Only after satisfaction of the condition(s) do the contingent rights vest. In other words, where an entity fails to satisfy a requirement on which its authorization is conditioned, its rights under the license remain unperfected and it is not entitled to a hearing prior to cancellation for failure to meet that condition.<sup>9</sup> Globalstar's failure to satisfy the initial milestone upon which its license was conditioned meant that its rights under the authorization, including the right to a hearing, never vested. The FCC was fully empowered to declare the license null and void for failure to satisfy the condition.

In any event, no purpose would be served in holding an evidentiary hearing because there is no factual dispute as to the terms of Globalstar's contract and its arrangements for construction of its 2 GHz MSS system. There is only a pure question of law as to whether those arrangements

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<sup>6</sup> See, e.g., *Richard Duncan d/b/a Anderson Communications*, 16 F.C.C.R. 4312, 4312-13 (2001), *aff'd in part, Morris Communications, Inc. v. FCC*, No. 01-1123 (D.C. Cir. Apr. 17, 2002), *on remand*, FCC 03-52, at ¶ 6 (rel. Mar. 12, 2003).

<sup>7</sup> *P & R Temmer v. FCC*, 743 F.2d 918 (D.C. Cir. 1984) ("*Temmer*").

<sup>8</sup> See *id.* at 928.

<sup>9</sup> See *id.* Although *Temmer* arose in the context of Section 316 hearing rights, the case has been applied in the context of Section 312. See *Peninsula Communications, Inc.*, 17 F.C.C.R. 2838, ¶ 4 (2002) (citing *Temmer*, 743 F.2d at 928); *Revision of Part 21 of the Commission's Rules*, 2 F.C.C.R. at 5718 (citing *Temmer*; *Music Broadcasting Co. v. FCC*, 217 F.2d 339, 342 (D.C. Cir. 1954)). The term revocation is loosely used in *Temmer* in all probability because failure to meet the condition did not result in automatic cancellation. See 743 F.2d at 925-26. Nevertheless, the Court recognized no hearing rights were triggered.

satisfied the initial milestone. Where there are no material questions of fact to be resolved, only questions of law, the FCC is not required to hold a purposeless evidentiary hearing.<sup>10</sup> The Bureau's finding that the Globalstar contract failed to satisfy the initial non-contingent contract milestone as a matter of law was fully justified given the clear notice the milestones would be strictly enforced and precedent that the contract must provide for construction and launch of the satellites under the terms of the license.<sup>11</sup>

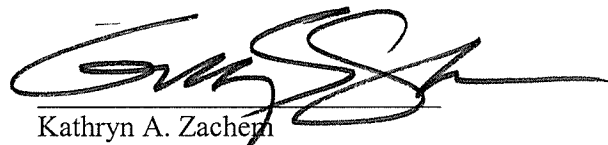
Accordingly, for the reasons stated herein and in the Carriers' Opposition to Application for Review, Globalstar's Emergency Application for Review should be denied and the *Bureau Order* affirmed.

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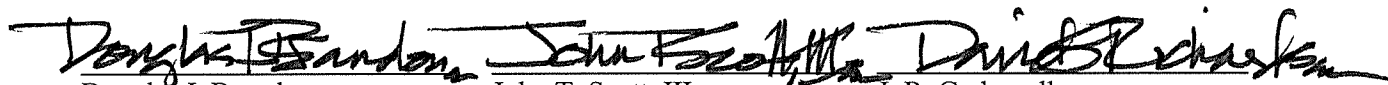
<sup>10</sup> See, e.g., *U.S. v. Storer Broadcasting Co.*, 351 U.S. 192, 2002-05 (1956); *Alabama Power Company v. FCC*, 311 F.3d 1357, 1372 (11<sup>th</sup> Cir. 2002) ("APCo must therefore identify a material question of fact that warrants a hearing. But its dispute is only over . . . a legal issue that hardly warrants an evidentiary hearing since no material facts are disputed."); *RKO General, Inc. v. FCC*, 670 F.2d 215, 231 (D.C. Cir. 1981) ("*RKO*") (where the Commission needs only to "draw legal conclusions from 'facts already known,'" it is "not required to . . . reopen the proceeding for an evidentiary hearing that would have served no purpose") (quoting *Lakewood Broadcasting Service, Inc. v. FCC*, 478 F.2d 919, 924 (D.C. Cir. 1973)); *Network Project v. FCC*, 511 F.2d 786, 796 (D.C. Cir. 1975) (a hearing is not necessary where the Commission's decision is based on "inferences and conclusions drawn from undisputed facts"); *Citizens for Allegan County, Inc. v. Fed. Power Comm'n*, 414 F.2d 1125, 1128 & n.5 (D.C. Cir. 1969) ("The right of opportunity for hearing does not require a procedure that will be empty sound and show, signifying nothing."); *Anti-Defamation League of B'nai B'rith v. FCC*, 403 F.2d 169, 171 (D.C. Cir. 1968) ("inferences to be drawn from facts already known and the legal conclusions to be derived from those facts" may be made by the Commission without an evidentiary hearing); *TelePrompTer Cable Systems, Inc.*, 52 F.C.C.2d 1263, 1264 & n.2 (1975) ("[E]ven if Section 312 were applicable, it is difficult to see what there would be to hear, given our view of the case. . . . It seems to us beyond question that 'once evidentiary facts are undisputed, a hearing serves no purpose.'") (quoting Gellhorn & Robinson, Summary Judgment in Administrative Adjudication, 84 Harv. L. Rev. 612, 630 (1971)), *remanded on other grounds*, 543 F.2d 1379 (D.C. Cir. 1976).

<sup>11</sup> See *Bureau Order* at ¶ 6 & nn.12-13 (citing cases); Opposition to Application for Review at 5-8.

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