BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In re License of	)	
	)	
GLOBALSTAR, L.P.	)	File Nos.
	)	SAT-LOA-19970926-00151/52/53/54/56
To Launch and Operate a Mobile Satellite Service System in the 2 GHz Band	)	SAT-AMD-20001103-00154
	)	SAT-MOD-20020717-00116/17/18/19
	)	SAT-MOD-20020722-00107/08/09/10/12
	)	

To: The Commission

PETITION FOR RECONSIDERATION

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July 26, 2004

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SUMMARY

Globalstar LLC and Globalstar Satellite LP seek reconsideration of the Commission's order affirming the revocation of the 2 GHz MSS license of Globalstar, L.P. ("GLP"). GLP's license included the condition that system implementation "milestones" be met.

The license at issue explicitly 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" by three specified dates. But two years before GLP's deadline to construct the space station, the International Bureau found that GLP's non-contingent satellite manufacturing contract was defective because it conformed to the milestone schedule proposed by GLP in an application for modification of its license. Because GLP allegedly failed to meet the contract requirement in a timely fashion, the Bureau declared GLP's license null and void.

The only process permitted by applicable law for the revocation of a radio station license is the prior notice and hearing procedures required by 312(c) of the Act. Because it operates to revoke a license without prior notice and hearing, the condition of GLP's license that makes its subject to being null and void without further action by the Commission conflicts directly with the ' 312(c) of the Act. Thus, the condition is *ultra vires* and a nullity.

Pre-revocation notice and hearing are required by the clear and mandatory language of § 312(c) of the Act. By virtue of its duty to execute and enforce the provisions of the Act, the Commission must abide by § 312(c) until it is changed by Congress. Since it did not afford GLP either prior notice or a hearing, the Commission must reinstate GLP's license. If its is going to

persist in pursuing the revocation of GLP's license, the Commission must do so in the manner authorized by § 312(c).

The Commission did not reinstate GLP's license because it: (1) was "not convinced" by GLP's statements as to its "intent to proceed;" (2) had "questions" about GLP's financial ability to proceed; and (3) questioned whether GLP "in fact intended" to construct either the system it originally proposed or the modified system. Because it had substantial and material questions of fact that precluded it from finding that the grant of the modification application would serve the public interest, the Commission was required to formally designate the modification application for hearing under § 309(e) of the Act.

Due process precludes the Commission from penalizing a party for violating a rule without first providing advance, full and explicit notice as to the conduct required by a rule. In this case, there was no rule that put GLP on notice that its license was at risk. On July 29, 2002, when GLP submitted its contract to the Bureau, there was no rule that required a 2 GHz MSS licensee to enter into a binding non-contingent contract for the satellite or satellite system within one year of grant. The non-contingent contract milestone was not "codified" until § 25.164 of the Rules was promulgated in May 2003. Absent a rule, the Commission could not disqualify GLP unless some precedent spoke directly to GLP's situation and gave it fair warning that its license might be revoked. No such precedent existed.

Six months after GLP's license was revoked, the Bureau finally issued a decision in which it announced that a construction contract incorporating variations from the space station license that are reflected in a simultaneously-filed modification application cannot meet the construction milestone if the application is denied. To comply with the full and explicit notice requirement of due process, the

Bureau had to publish its policy prior to enforcing it to revoke GLP's license.

The APA provides that the Commission may lawfully revoke a license only after giving (a) notice in writing of the conduct that may warrant revocation and (b) an opportunity to comply with all lawful requirements. The obvious purpose behind this requirement is to provide an opportunity to correct transgressions prior to termination of a license. GLP effectively evoked this doctrine by explicitly requesting 90 days to renegotiate its contract if its request for limited waiver of its milestone deadlines was denied. GLP was never afforded such opportunity. As a result, the revocation of GLP's license was invalid.

Like any administrative agency, the Commission must treat similarly situated parties alike. In this instance, the Commission denied GLP's request for extension for future milestones. The basis for denial was that the extension request was necessitated only by "business decisions" under GLP's control. But just days after the Commission affirmed that denial, the Commission granted TMI Communications a waiver based upon unquestionably voluntary "business decisions". This disparate treatment demonstrates the Commission action in the GLP proceeding to be arbitrary and capricious.

When the Bureau cancelled GLP's license for a GO Stationary Satellite that would serve North America it did so even though GLP requested no milestone extensions for that satellite, and the contract at issue included all milestone dates specified in the licenses for that satellite. The Bureau offered no explanation for that cancellation. In the FCC Order the Commission offered only the post hoc explanation that all five license space stations were treated as an "integrated system" rather than stand alone components. The Commission's decision contravened traditional concepts of due process, as there was no policy on "integrated systems" in place when the Commission adopted

rules for 2 GHz MSS systems. Prior to the FCC Order the Commission had never stated that milestone compliance of a hybrid system would stand or fall on the compliance on each individual component. As such, the Commission failed to give GLP the required fair and prior notice of the rules that it intended to apply.

For all of the above reasons the FCC Order should be reconsidered and reversed.

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PETITION FOR RECONSIDERATION

Globalstar, LLC ("GLLC") and Globalstar Satellite LP ("GSLP"), by their attorneys, and pursuant to § 405(a) of the Communications Act of 1934, as amended ("Act") and § 1.106(b)(1) of the Commission's Rules ("Rules"), hereby petition the Commission to reconsider its *Memorandum Opinion and Order*, FCC 04-126 ("*Order*"), by which it denied the Emergency Application for Review filed by Globalstar, L.P. ("GLP") with respect to the 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*").

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 explicitly 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" by three specified dates. *Id.* at 13759. But two years before GLP's deadline to construct the space station, the Bureau found that GLP's non-contingent satellite manufacturing contract was deficient in certain respects. *See Revocation Order*, 18 FCC Rcd at 1255. Because GLP allegedly failed to meet the contract requirement in a timely fashion, the Bureau declared GLP's license "to construct, launch, and operate its proposed

satellite system is null and void." *Revocation Order*, 18 FCC Rcd. at 1249. GLP sought Commission review of the Bureau's action.

The Commission affirmed the *Revocation Order*, and reaffirmed its "policies expediting provision of satellite service, by expediting [the] revocation of licenses held by applicants [sic] who have not constructed their satellites in a timely fashion." *Order*, at 1. It clarified that GLP's license had been cancelled "because its construction contract did not show adequate intention to proceed with construction, and to bring its satellite system into service within the milestone deadlines specified in the license." *Id.* at 10.

Five days after upholding the *Revocation Order*, the Commission waived an implementation milestone, allowing another licensee to satisfy its first milestone without even entering into a satellite construction contract.[1]

STANDING

GLLC and GSLP (collectively "Petitioners") were formed after the time for filing comments on GLP's application for review of the *Revocation Order*. GLLC is the successor in interest to GLP with respect to the claims related to the 2 GHz MSS license. It was appointed by the Bankruptcy Court to pursue all claims and causes of action owned by GLP following the effective date of the debtor's plan of reorganization under Chapter 11.[2]

GSLP is an affiliate of Thermo Capital Partners L.L.C. ("Thermo"), which now holds the controlling ownership interest in GLLC.[3] GSLP filed comments in support of GLP's Emergency Application for Review, but its comments were not addressed in the *Order*.[4]

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[1] *See TMI Communications and Company, L.P.*, FCC 04-144, at 7 (June 29, 2004).

[2] *See* Letter from William D. Wallace to Marlene H. Dortch of 7/23/04.

[3] Thermo purchased the assets of GLP in its bankruptcy proceeding, and thereby acquired an interest in reinstatement of the 2 GHz MSS licenses. *See* Letter from William D. Wallace to Marlene H. Dortch of 12/22/03.

Both parties hold interests that are adversely affected by the *Order* within the meaning of § 1.106(b) of the Rules. GLLC is the representative of the interests of GLP, which has been dissolved, and the party that would expect to obtain the 2 GHz MSS license upon its reinstatement. GSLP has an ownership interest in GLLC, and represents the interests of the new owners of the Globalstar system. Both GLLC and GSLP would benefit by the reinstatement of GLP's 2 GHz MSS license under GLLC's control so that the licensed facilities may be put to use for the expansion and second generation of the Globalstar MSS system (which GLLC currently operates in the 1.6/2.4 GHz band).

ARGUMENT

I. THE 2 GHZ MSS LICENSE SHOULD BE REINSTATED NOW THAT THE GLOBALSTAR SYSTEM HAS EMERGED FROM BANKRUPTCY

Although the Bureau did not discuss GLP's bankruptcy in canceling the 2 GHz MSS licenses, it is clear that GLP's bankruptcy was a significant, if not *the* significant, factor in the decision. A year after the *Revocation Order* was released, the Bureau ruled that delay arising from bankruptcy was not sufficient justification for granting an extension of implementation milestones. *See Final Analysis Communication Services, Inc.*, 19 FCC Rcd 4768, 4783 (Int'l Bur. 2004). The Bureau cited the *Revocation Order* as one case in which it had "not been persuaded to extend a milestone deadline because of a bankruptcy proceeding." *Id.* at 4775. It is inconceivable that the Bureau would cite the *Revocation Order* as precedent for such a claim unless it considered this case as one where bankruptcy was the rationale for a milestone extension request.

Moreover, the Commission made its sentiments known in this case by stating: "Given that Globalstar has entered into bankruptcy, we have questions regarding whether Globalstar has

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[4] *See* Motion for Leave to File Comments in Support of Emergency Application for Review (May 28, 2004); Comments in Support of Emergency Application for Review (May 28, 2004).

the financial ability to proceed with its business plan." *Order*, at 14. Obviously, if it equates bankruptcy with an inability to proceed to construct, launch and operate a proposed satellite system, then the Commission used GLP's applications merely as an opportunity to revoke the license after GLP filed for Chapter 11 bankruptcy.

The decisions in this case contravene the federal policy underlying Chapter 11 bankruptcy, which is for the debtor (or its successor company) to *survive*, unburdened by debt, with the financial wherewithal to continue as a going concern.[5] Here, the Bureau and the Commission took the exact opposite view of Chapter 11 reorganization. They used GLP's bankruptcy to conclude that its 2 GHz MSS license should be cancelled because the company would not survive. Both that conclusion and the cancellation of the license are inconsistent with the Bankruptcy Code.

The Bureau's decision in *Final Analysis* and in the Commission's *Order* in this case indicate that the agency violated the automatic stay provisions of § 362(a) of the Bankruptcy Code which preclude "any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate." 11 U.S.C. § 362(a)(3). The Commission defends its actions by relying upon the "police and regulatory power" exception under § 362(b)(4) to justify the revocation of GLP's license while it was in bankruptcy. *See Order*, at 15. But the statements in *Final Analysis* and the *Order* show that the Commission did *in fact* "take action that discriminates against a licensee simply because it is in bankruptcy" under the guise of pursuing regulatory enforcement. *Id.* at 16. Again, the regulatory exception is designed to permit governmental entities to pursue legitimate regulatory requirements, not to impair a debtor-licensee's estate simply because it is in bankruptcy. If governmental entities were free to cancel valuable licenses based on the bankruptcy of the licensee, particularly

[5] *See Brotherhood of Railway v. REA Express, Inc.*, 523 F.2d 164, 167 (2d Cir. 1975).

licenses that go to the heart of the debtor's business, then the ability of those companies to reorganize under Chapter 11, and the very purpose of Chapter 11, would be severely curtailed.[6]

In any event, as Chapter 11 envisions, the Globalstar system recently emerged from bankruptcy as a going concern with sufficient financial resources to move forward on its mission of providing telecommunications services by satellite to rural and underserved populations in the United States and globally. GLP had not missed any milestones when its 2 GHz MSS license was revoked. It still had an opportunity to meet all future milestones and retain the license as an integral part of its reorganization, consistent with the policies underlying the automatic stay and the Bankruptcy Code. The Commission should rectify its erroneous decision contravening the Bankruptcy Code and automatic stay by reinstating GLP's licenses for assignment to GLP's reorganization successor, GLLC.

II. THE REVOCATION OF GLP'S LICENSE WAS UNLAWFUL

The Commission candidly disclosed its policy of expediting the "revocation of licenses" held by licensees who allegedly have not constructed their satellites in a timely fashion. *Order*, at 1. Thus, the Commission admitted that it revoked GLP's license.[7] Consequently, this case squarely raises the issue of whether a license can be revoked without affording the licensee prior notice and the opportunity for a hearing under § 312 of the Act, *see* 47 U.S.C. § 312(c), and §§ 1.91 and 25.160 of the Rules. *See* 47 C.F.R. §§ 1.91(a)-(c), 25.160(c)-(d).

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[6] *See FCC v. Nextwave Personal Communications, Inc.*, 537 U.S. 293, 302 (2003) (expressing skepticism of any expansive interpretation of governmental power to impair debtors' estates, and noting that "where Congress has intended to provide regulatory exceptions to provisions of the Bankruptcy Code, it has done so clearly and expressly").

[7] When it 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 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, *see Black's Law Dictionary* 1322 (6th ed. 1990), automatic license "cancellation" is nothing more than a euphemism for automatic license "revocation." Hence, courts treat the "cancellation" of a license as the "revocation" of the license. *See FCC*, 537 U.S. at 301; *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).

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

Revocation of a license is an "administrative sanction." 47 U.S.C. § 312; 47 C.F.R. § 25.160. *See* 5 U.S.C. §551(10)(F). Indeed, it is the "ultimate sanction."[8] Under the Administrative Procedure Act ("APA"), "[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, nor any other statute, expressly authorizes the Commission to revoke a license merely by declaring it null and void. When its authority to automatically cancel or revoke a license has been challenged, the Commission has been unable to point to any express, statutory delegation of such authority. *See Glendale Electronics, Inc.*, 19 FCC Rcd 2540, 2543-45 ((2004). *See also Northstar Technology, LLC*, 19 FCC Rcd 3015, 3022-23 (WTB 2004). Instead, the Commission has turned to its authority to issue conditional licenses, which it somehow finds "firmly granted" in § 301 of the Act. *Glendale Electronics*, 19 FCC Rcd at 2543. However, § 301 does not authorize the Commission to impose conditions on licenses.[9] That authority arguably arises from § 303(r),[10] but that provision does not empower the Commission to condition licenses to make them subject to automatic revocation, cancellation or nullification.

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[8] *T-Com, Inc.*, 5 FCC Rcd 6691, 6693 (1990).

[9] Section 301 only provides that "[i]t is the purpose of this Act . . . to provide for the use of such channels, but not ownership thereof . . . under licenses granted by [the Commission], and no such license shall be construed to create any right, beyond the terms, conditions, and periods of the license." 47 U.S.C. § 301; *Glendale Electronics*, 19 FCC Rcd at 2543.

[10] *See Amendment of the Commission's Space Station Licensing Rules and Policies*, FCC 04-147, at 8-9 (July 6, 2004).

Section 303(r) only empowers the Commission to "prescribe such restrictions and conditions, not inconsistent with law, as may be necessary to carry out the provisions of [the ect]." 47 U.S.C. § 303(r).[11] That provision does not constitute an express grant of authority to place conditions on licenses, much less conditions making licenses automatically revocable. Regardless, a condition that makes a license subject to revocation without prior notice and hearing would be flatly inconsistent with § 312, as well as unnecessary to carry out the Commission's statutory functions. Hence, the imposition of a license condition that allows a license to be expeditiously revoked without Commission action is not authorized by § 303(r).

Only § 312 of the Act expressly empowers the Commission to impose the sanction of license revocation. Because it must execute and enforce the provisions of § 312, *see* 47 U.S.C. § 151, the Commission may revoke a license only in the manner authorized by § 312(c).

B. The Commission Cannot Revoke A License For A Reason Not Expressly Enumerated In § 312(a)

The Commission claimed that GLP's right to a pre-revocation notice and hearing was not "triggered," simply because the alleged failure to timely construct facilities is not one of the "enumerated reasons" for which a license may be revoked pursuant to § 312(a) of the Act. *Order*, at 17. But GLP did not fail to timely construct. It was found to have entered into a construction contract that "did not show adequate intention to proceed with construction." *Id.* at 9-10. Moreover, the Commission's interpretation of § 312(a) is contrary to its plain meaning.

According to the Commission, when Congress authorized it to revoke licenses after a hearing for the seven "specified grounds or reasons" enumerated in § 312(a),[12] Congress left it free to revoke a license without a hearing for any non-enumerated ground or reason. That

[11] *See* 47 U.S.C. § 154(i) (Commission may take any actions "not inconsistent with [the Act], as may be necessary in the execution of its functions").

[12] H.R. Rep. No. 1750 (1952), *reprinted in* 1952 U.S.C.C.A.N. 2234, 2262.

interpretation "transgresses both common sense and two traditional rules of statutory interpretation: the presumption against surplusage and *expressio unius est exclusio alterius*." *Independent Insurance Agents of America, Inc. v. Hawke*, 211 F.3d 638, 643 (D.C. Cir. 2000).

Congress would not have specified the "seven discrete grounds for revoking a license" in § 312(a),[13] if the Commission could also revoke a license for any reason not listed in § 312(a). To interpret 312(a) to authorize the revocation of licenses for non-enumerated reasons would reduce the enumeration to surplusage. Moreover, the *expressio unius* maxim can be applied in cases such as this where "the draftsmen's mention of one thing, like a grant of authority, does really necessarily, or at least reasonably imply the preclusion of alternatives." *Shook v. District of Columbia Financial Responsibility and Management Assistance Authority*, 132 F.3d 775, 782 (D.C. Cir. 1998). The fact that Congress authorized the Commission to revoke a license for seven reasons necessarily implies that it is not authorized to revoke a license for other reasons.

The Commission's interpretation of § 312(a) conflicts with its legislative history that shows the carefully crafted grounds for revocation were intended to be exclusive. Congress recognized in 1952 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."[14] It amended § 312 to give the Commission new powers to "be able to adjust the penalty to fit the seriousness of the offense."[15] 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."[16]

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[13] *Interactive Control Two, Inc.*, 16 FCC Rcd 18948, 18961 n.103 (WTB 2001).

[14] H.R. Rep. No. 1750, *reprinted in* 1952 U.S.C.C.A.N. 2234, 2236.

[15] *Id.*

[16] *Id.* at 2262.

Congress clearly intended the Commission impose the severe penalty of license revocation only for the reasons specified in § 312(a), and not for less serious violations. It 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 on all other, less serious grounds. That would stand justice on its head.[17]

C. Section 312(c) Of The Act Was Triggered By The Allegation That GLP Failed To Timely Construct

To expedite the revocation of GLP's license, the Commission took a particularly narrow view of its authority to revoke licenses under § 312(a)(2) and (3). Those subsections empower the Commission to revoke a license for conditions which would warrant refusal to grant an original license, *see* 47 U.S.C. § 312(a)(2), and "for willful or repeated failure to operate substantially as set forth in the license." *Id.* § 312(a)(3). The Commission has long construed its authority under subsections (a)(2) and (3) broadly to encompass a wide range of conduct.[18]

The scope of the Commission's authority to revoke a license under § 312(a)(2) and (3) was demonstrated most recently in the case of one Roger Thomas Scaggs. Mr. Scaggs was convicted of murder for beating his wife to death with a lead pipe and then stabbing her repeatedly. *See Roger Thomas Scaggs*, 18 FCC Rcd 24367, 24367 (Enf. Bur. 2003). It is safe to say that the murder of Mrs. Scaggs is a matter seemingly beyond the Commission's jurisdiction. Nevertheless, the Enforcement Bureau held that Mr. Scaggs' murder conviction constituted a

[17]The common sense interpretation of § 312(a) leads to the conclusion that the Commission is not authorized to revoke a license for a reason that is not enumerated in § 312(a). That interpretation comports with the requirement of APA § 558(b) that there be an "express grant of statutory authority" to impose a sanction. *American Bus*, 231 F.3d at 6. Under § 558(b), if a failure to timely construct is not among the seven reasons for which the Commission is expressly authorized to revoke a license, then the Commission cannot revoke a license on such grounds.

[18] *See Thomas H. Bowen*, 40 F.C.C. 2d 665, 668-89 (1973) (participation in a conspiracy to cause interference was ground to revoke license under § 312(a)(2) and (3) even though licensee violated no law or rule); *KWK Radio, Inc.*, 34 F.C.C. 1039, 1041 (1963), *aff'd, KWK Radio Inc. v. FCC*, 337 F.2d 540 (D.C. Cir. 1964), *cert. denied*, 380 U.S. 910 (1965) (conducting fraudulent treasure hunts was ground to revoke license under § 312(a)(2) and (3) because such conduct is patently contrary to the public interest).

ground to revoke his license under § 312(a)(2), since the conviction qualified as a "condition" coming to the Commission's attention that would warrant refusing to grant the license on his original application. Consequently, Mr. Scaggs was afforded notice and the opportunity to show in a hearing that the murder of his wife was not cause to revoke his license. *See id.* at 24368-69.

If it were willing to attempt to revoke GLP's license lawfully in accordance with § 312, the Commission could find its authority to proceed under subsections (a)(2) and (3). Indeed, in *Pass Word, Inc.*,[19] the Commission specifically rejected the notion that a "lack of diligence in construction is not a ground for revocation" under § 312(a)(2) and (3):

> Had we been apprised that the 454 MHz channels had not been constructed and ready to operate by the expiration date of the construction permits *and why*, we would have been warranted in refusing to grant a license to cover those channels and in revoking the construction permit. Bacon did not in fact construct the channels in a timely manner and demonstrated no diligence in attempting to do so. Bacon willfully failed to construct and provide service and thus to operate as set forth in the licenses.[20]

In light of *Pass Word*, the Commission clearly erred when it found that the requirements of § 312(c) were not triggered in this case. 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. Moreover, a "conscious and deliberate" decision not to timely construct the 2 GHz MSS system in accordance with a condition of a license would be a "willful" failure to operate substantially in accordance with the license. *See* 47 U.S.C. § 312(f)(1). Such a failure to timely construct could be a reason to initiate a revocation case under both § 312(a)(2) and (3). The same is true under the Commission's satellite rules.

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[19] *Pass Word, Inc.*, 76 F.C.C. 2d 462, 519 (1980), *reconsideration denied*, 86 F.C.C. 2d 437 (1981), *aff'd, Pass Word, Inc. v. FCC*, 673 F.2d 1363 (D.C. Cir.), *cert. denied*, 459 U.S. 840 (1982).

[20] *Pass Word*, 76 F.C.C. 2d at 519 (emphasis in original).

"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, as it is under § 312(a)(2) and (3).

D. The Condition On GLP's License That Made It Subject To Expedited Revocation Is Unlawful And Unenforceable

Pre-revocation notice and hearing are required by the clear, unequivocal and mandatory language of § 312(c). By virtue of its duty to execute and enforce the provisions of the Act, 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).[21] 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).

The Commission's "power is no greater than that delegated to it by Congress." *Railway Labor Executives' Ass'n v. National Mediation Bd.*, 29 F.3d 655, 670 (D.C. Cir. 1994) (*en banc*). Delegated no authority by Congress to revoke licenses without the notice and hearing required by § 312(c), the Commission was without power to adopt a policy of expediting the revocation

[21] 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).

of licenses by denying licensees their rights under § 312(c). But that is exactly what the Commission admits to have done.

To be clear, Petitioners do not contend that the Commission lacked authority to establish implementation milestones. Nor do they contend that the Commission was powerless to issue licenses conditioned on satisfying such milestones. All licenses issued by the Commission under Title III of the Act are conditional. *See* 47 U.S.C. § 309(h). Petitioners challenge the Commission's authority to impose a condition that works to make a license subject to being declared "null and void" without compliance with § 312. Because it conflicts with § 312(c), the portion of the condition on GLP's license that made it subject to nullification "with no further action required on the Commission's part" is *ultra vires*.[22] Trumped by the statute,[23] the condition is itself a "mere nullity." *Pacific Gas & Elect. Co. v. United States*, 664 F.2d 1133, 1136 (9th Cir. 1981).

III. THE REVOCATION OF GLP'S LICENSE WITHOUT A HEARING VIOLATED §§ 309(e) AND 312(c) Of THE ACT

This is far from a case where a licensee has abandoned operations, reducing the license to a "mere nullity," and license cancellation becomes a "ministerial act" not subject to the notice and hearing provisions of § 312(c).[24] Nor is this a case where a license became null and void "with no further action required on the Commission's part." *Authorization Order*, 16 FCC Rcd at 13759. After considering GLP's modification application and its waiver request for more than six months, the Bureau found it necessary to author an eight page decision explaining its

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[22] *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").

[23] 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").

[24] *Roanoke Telecasting Corp.*, 62 F.C.C. 2d 899, 900 (1976). *See E. Al Robinson*, 52 F.C.C. 2d 588, 590 (1975).

conclusion that GLP's license was null and void. The Bureau did not reach that conclusion merely by applying "detailed rules requiring or prohibiting certain contract provisions or types of arrangements" to the terms of GLP's construction contract with SSL. *Order*, at 6. The decision-making process included inferring facts adverse to GLP.

As the Commission disclosed, the Bureau cancelled GLP's license "because its construction contract did not show adequate *intention* to proceed with construction, and to bring its satellite system into service within the milestone deadlines specified in the license." *Order*, at 9 (emphasis added). On appeal, the Commission drew adverse inferences as to GLP's intentions from unresolved questions of fact:

> . . .[W]e are not convinced by Globalstar's claims that a milestone waiver was warranted to provide service to public, or by its statements of its intent to proceed. Given that Globalstar has entered into bankruptcy, we have questions regarding whether Globalstar has the financial ability to proceed with its business plan. Moreover, based on Globalstar's stated difficulties in constructing its entire system, and its lack of any statement that it was willing to proceed with a system modified to a single satellite, we also question whether Globalstar in fact intended to construct the entire 2 GHz MSS system it proposed in its original license application or its 2002 modification application. These questions preclude us from basing a milestone waiver on Globalstar's assertions of its intent to proceed with its satellite system and to provide service.[25]

Under the APA, an adjudicatory process has been employed to revoke GLB's license.[26] But it was not the process due GLP under § 309(e) of the Act, as well as § 312(c).

A. GLP Had A Statutory Right To A Show Cause Hearing Under § 312(c)

[25] *Order*, at 14-15 (footnotes omitted).

[26] An "adjudication" is defined as an "agency process for the formulation of an order." 5 U.S.C. § 551(7). An "agency proceeding" is defined to include an agency process of "adjudication." *Id.* § 551(12).

As a prerequisite to the revocation of a license, § 312(c) directs the Commission to afford the licensee notice and a hearing that complies with the procedural requirements of §§ 554 through 557 of the APA.[27] Thus, the statute conveys to the licensee a right to the procedural safeguards 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 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). 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). 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). *See* 47 U.S.C. § 312(d). *See also* 47 C.F.R. § 1.91(d)(1). The staff also must prove that the nature of the licensee's violation is "sufficiently egregious" to warrant the exercise of the Commission's discretion to revoke the license. *See T-Com,* 5 FCC Rcd at 6693.

At a minimum, the statute affords the licensee a right to present evidence of mitigating circumstances to show cause that the revocation of its license would not serve the public interest. *See Donald Hammond*, 61 FCC 2d 368, 373 (Rev. Bd. 1976).[28] Thus, a licensee already

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[27] 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 exact phrase "on the record" is not in § 312(c), Congress described the nature of the required hearing with language that can only refer to a trial-type evidentiary hearing. Not only does § 312(c) require the Commission 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 Commission in any hearing held to revoke a license. 47 U.S.C. § 312(d). Since the Commission must 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).

[28] *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").

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). Surely, then, GLP was entitled to present evidence showing that the circumstances that led it to file for Chapter 11 reorganization constituted "strong mitigating factors." *Hammond*, 61 FCC 2d at 372. As it turns out, GLP had much more to prove than mitigating circumstances.

The Commission has revealed that the revocation of GLP's license rested initially on the Bureau's inability to determine whether GLP in fact intended to proceed with construction. *See Order*, at 9-10. By its own admission, the Commission did not reinstate the license because it: (1) was "not convinced" by GLP's statements as to its "intent to proceed;" (2) had "questions" about GLP's financial ability to proceed; and (3) questioned whether GLP "in fact intended" to construct either the system it originally proposed or the modified system it proposed in 2002. *Id.* at 14-15. It is clear that the Commission ultimately gave no weight to GLP's "claims" that a waiver would enable it to provide service, or to its "statements" that it intended to proceed. *Order*, at 14. The Commission brushed aside GLP's claims and drew adverse inferences without allowing GLP to defend itself in a show cause hearing. That was unlawful. *See RKO General*, 670 F.2d at 225.

GLP lost its license in an informal adjudication in which it faced the "high hurdle" of persuading the Bureau to extend or waive its construction 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). 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. GLP obviously was prejudiced by the deprivation of its § 312(c) rights.

B. An Evidentiary Hearing Was Required Under § 309(e) To Resolve Substantial And Material Questions Of Fact

The Bureau's denial of GLP's modification application took on decisional significance with the Commission's disclosure that a grant of GLP's waiver request was precluded by questions concerning its intent and financial ability to proceed. *See Order*, at 14-15. The Bureau denied GLP's modification application simply because it was premised on an extension of the milestones. However, since the modification application proposed a major change in GLP's licensed 2 GHz MSS facilities, the Commission's disposition of the application was governed by § 309(e) of the Act. Accordingly, the Commission was required to formally designate the modification application for hearing to resolve the substantial and material questions of fact that precluded it from finding that the grant of the application would serve the public interest. *See* 47 U.S.C. § 309(e).

IV. GLP WAS NOT AFFORDED THE FAIR NOTICE OF THE COMMISSION'S STANDARDS REQUIRED BY DUE PROCESS

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). Thus, due process precludes the Commission 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). As the Commission concedes, the revocation of GLP's license was a sufficiently severe penalty to trigger due process protection, *see Trinity Broadcasting of Florida, Inc. v. FCC*,, 211 F.3d 618, 628 (D.C. Cir. 2000), including

the safeguard that it be afforded "full and explicit" notice of the standards with which the SSL contract was expected to conform. *See Order*, at 11.[29] Such notice was never given GLP.

A. GLP Could Not Have Received Full And Explicit Notice By Reading The Regulations

The Commission relies heavily on *Lakeshore Broadcasting, Inc. v. FCC*, 199 F.3d 468 (D.C. Cir. 1999) to support its claim that it need not adopt "detailed rules" in order to put licensees on notice of how they must "meet the requirements of the contract execution milestone." *Order*, at 6 & n.37. Quoting *Lakeshore*, 199 F.3d at 475, the Commission claims that it is "enough if, based on a 'fair reading" of the rule, applicants knew or should have known what . . . [was] expected of them ." *Order*, at 11. But the rub is that GLP could not have received notice of what the Commission expected of it by reading the Rules.

On July 29, 2002, when GLP submitted the SSL contract to the Bureau, there was no rule that required a 2 GHz MSS licensee "to enter into a binding non-contingent contract for the satellite or satellite system within one year of grant." *Order*, at 4. As the Commission recognized, the non-contingent contract milestone was not "codified" until § 25.164 of the Rules was promulgated in May 2003. *See id.* at 4; *Amendment of the Commission's Space Station Licensing Rules and Policies,* 18 FCC Rcd 10760, 10900-01 (2003). That rule did not go into effect until August 27, 2003, and applied only to licenses issued on or after that date. *See* 47 C.F.R. § 25.164. That was more than a year after GLP allegedly violated the non-contingent contract milestone.

[29] 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). The less forgiving the Commission's standard, "the more precise its requirements must be." *Salzer v. FCC*, 778 F.2d 869, 875 (D.C. Cir. 1985). 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.

Before a licensee can be sanctioned for its failure to comply with a regulatory requirement, the Commission must either have put the requirement in the regulation itself, or at least referenced the requirement in the regulation. *See Trinity*, 211 F.3d at 631. Not only was there no non-contingent contract milestone rule when GLP submitted its contract, there was no rule that referenced the non-contingent contract milestone. That being the case, no "fair reading" of the Rules could have afforded GLP the "fair notice" of the milestone requirements that due process requires. *See Trinity*, 211 F.3d at 631.[30]

B. The Express Terms Of The License Condition Did Not Provide Full And Explicit Notice.

A "fair reading" of the condition on its license would not have given GLP full and explicit notice of what the Commission expected of it with regard to its construction contract or what it could expect if it missed the contract milestone. The condition provided as follows:

> . . . this authorization shall become NULL and VOID with no further action required on the Commission's part in the event the space station is not *constructed, launched and placed into operation* in accordance with the technical parameters and terms and conditions of the authorization by the following dates . . . .[31]

There were seven dates on GLP's license, but only three concerned construction, launch and operation: (1) the first two NGSO satellites had to be constructed and launched by January 17, 2005; (2) one GSO satellite had to be constructed and launched into orbit by July 17, 2005; and (3) the entire system had to be certified as operational by July 17, 2007. GLP did not miss those three milestones. It allegedly missed the July 17, 2002 deadline for entering into a non-contingent contract. But under the explicit terms of the condition, missing that deadline would

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[30] Since the Commission was not bound by any rule, GLP could not know with "ascertainable certainty" that the Commission would adhere to any previously articulated standard for enforcing the contract execution milestone. *Trinity*, 211 F.3d at 628. Absent a rule codifying that milestone, GLP was not on notice that the SSL contract put its license at risk of revocation.

[31] *Authorization Order*, 16 FCC Rcd at 13759 (emphasis added).

not cause the license to become null and void. Nullification would result only if the station is not "constructed, launched and placed into operation" by the dates specified on the license.

C. Full And Explicit Notice Was Not Available From A Fair Reading Of Commission Precedent

The Commission claims that GLP "knew or should have known" that its construction contract would not meet the so-called *Tempo Order* standards[32] if it did not provide for completing construction of the entire Globalstar system within the milestones set forth in GLP's license. *Order*, at 11. However, under *Lakeshore* and *Trinity*, GLP was not required to pour over eighteen years of post-*Tempo Order* precedent in an attempt to obtain full and explicit notice of the standards that would apply to the SSL contract. Principles of due process pressed the duty on the Commission to publish regulations that provide notice. Even assuming that GLP was obliged to foretell how the Commission would apply its ever-evolving and admittedly "general," *Tempo Order* standards,[33] the Commission could not disqualify GLP unless some precedent "spoke directly" to GLP's situation and gave it "fair warning" that its license might be revoked. *Biltmore Forest Broadcasting FM, Inc. v. FCC*, 321 F.3d 155, 161 (D.C. Cir. 2003). *See High Plains Wireless, L.P. v. FCC*, 276 F.3d 599, 607 (D.C. Cir. 2002).

As was the case with the Bureau, the Commission was unable to point to any published decision that explicitly held that a 2 GHz MSS licensee could not enter into a non-contingent construction contract that provided for completing construction within the milestone schedule proposed in an application for a modification of license. Nor could it cite precedent that explicitly held that the licensee would be afforded no opportunity to cure the defect in its

[32] *See Tempo Enterprises, Inc.*, 1 FCC Rcd 20, 21 (1986).

[33] *See Order*, at 6.

contract if its 2 GHz MSS license was not modified as contemplated. The Commission produced no such precedent because none existed until after GLP submitted its contract.

Six months after it released its *Revocation Order*, the Bureau finally published a decision that clearly articulated the policy it had applied without notice against GLP. In the margin of a decision granting an application to modify a 2 GHz MSS license, the Bureau announced that a construction contract incorporating variations from the space station license that are reflected in a simultaneously-filed modification application cannot meet the construction milestone if the application is denied. *See The Boeing Company*, 18 FCC Rcd 12317, 12328 n.56 (Int'l Bur. & OET 2003). That announcement provided fair warning to licensees considering the option of seeking a modification of their milestones in concert with a modification of their licenses. But the warning came a year too late for GLP.

The Commission cannot formulate a new standard in an adjudicatory proceeding and apply it retroactively to sanction a party for failing to conform to it. S*ee RKO General*, 670 F.2d at 222 (Commission cannot judge conduct by standards not "clearly enunciated" when the conduct occurred). Because the SSL contract was judged by a standard that had not been adopted when the contract was signed, the revocation of GLP's license must be rescinded and the license reinstated.

V. THE COMMISSION UNLAWFULLY DENIED GLP AN OPPORTUNITY TO REFORM THE SSL CONTRACT

A. The Revocation Of GLP's License Violated The "Second Chance" Doctrine Of APA § 558(c)

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). GLP effectively invoked the "second chance" doctrine of APA § 558(c) by explicitly requesting 90 days to renegotiate its contract if its request for a limited waiver of its milestone deadlines was denied.

At no time during the six months that its application for a modification of its license was pending did GLP receive written notice that the Bureau's disposition of its application may warrant the revocation of its license. Moreover, the Bureau afforded GLP no opportunity to renegotiate its contract to come into compliance with the Commission's standards. 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 at1254-55. In short, the Bureau never gave GLP the "second chance" required by APA § 558(c). As a result, the revocation of GLP's license was invalid. *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).

B. Fairness Dictated That GLP Be Given An Opportunity To Cure The Disqualifying Defect

The Bureau recently recognized that some of the satellite rules could be reasonably misinterpreted engendering uncertainty as to the information required. To clarify those rules and to provide guidance to applicants, the Bureau issued public notices spelling out what was required of applicants.[34] Those not in compliance with the rules as clarified were given the

[34] *See, e.g., Clarification of 47 C.F.R. § 25.140(b)(2) Space Station Application Interference Analysis*, 18 FCC Rcd 25099 (Int'l Bur. 2003).

opportunity to bring their applications into compliance.[35] On its own motion, the Bureau also reversed the dismissal of applications on the grounds that the satellite rules involved were "subject to conflicting, but reasonable, interpretations regarding the specific information required" and may not have provided "sufficient information for some applicants in formulating their [applications]."[36] The reinstated applicants were given 30 days to come into compliance. In effect, the Bureau held that an applicant cannot be disqualified without an opportunity to cure in cases of regulatory uncertainty caused by a rule that is susceptible to conflicting, but reasonable, interpretations. Yet, GLP was denied an opportunity to cure having relied, in the absence of a detailed rule, on a reasonable interpretation of precedent involving the Commission's admittedly general standards.

The month before GLP's construction contract milestone, the Bureau rejected an argument that the licensee missed the milestone because its non-contingent contract conformed to its pending application to modify its license, not to the license. *See Teledesic, LLC*, 17 FCC Rcd 11263, 11265 (Int'l Bur. 2002). The Bureau noted that licensees are generally allowed to modify their satellite systems. *See id.* It held that the modification application would be decided "on its own merits" and would not "factor into" the determination of whether the licensee had met its initial, construction contract milestone. *Id.* A reasonable interpretation of *Teledesic* is that GLP would not be disqualified simply because the SSL contract conformed to its application to modify its license. At that time no precedent spoke directly to the contrary.

The Bureau ultimately confirmed that GLP's interpretation of *Teledesic* was reasonable. In *Boeing*, the Bureau cited *Teledesic* to find that a construction contract that incorporates the

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[35] *See id.* at 25100 (applicants not in compliance subject to a Commission request for supplemental information).

[36] *Northrop Grumman Space & Mission Systems Corp.*, DA 04-1725, at 1 (June 16, 2004); *contactMEO Communications, LLC*, DA 04-1722, at 1 (June 16, 2004).

milestone schedule proposed in an application to modify the license, rather than the licensed schedule, did not present a "material deficiency" since the application was being granted. 18 FCC Rcd at 12328 n.56. Because *Teledesic* could be reasonably be interpreted to permit GLP to proceed as it did, the Commission should recognize that this case "arose out of regulatory uncertainity" sufficient to warrant giving GLP an opportunity to reform the SSL contract. Thus, GLP is entitled to a "second chance" under both Commission precedent and APA § 558(c).

VI. THE COMMISSION HAS ENFORCED ITS CONTRACT MILESTONE ARBITRARILY

The Commission must treat similarly situated parties alike or provide an adequate justification for the disparate treatment. *McElroy Electronics Corp. v. FCC*, 990 F.2d 1351, 1365 (D.C. Cir. 1993). There appears to be no principled justification for the disparate treatment doled out by the Commission in this case and *TMI Communications*.

The Bureau denied GLP's request for extension of certain future milestones based on its view that the reasons offered by GLP represented voluntary "business decisions" within GLP's control. *Revocation Order*, 18 FCC Rcd at 1253. On appeal, the Commission rejected GLP's arguments that its reasons for seeking extensions of the milestones were beyond its control. *See Order*, at 14-15. Just days later, the Commission forged new ground on what constitutes a "business decision" justifying a waiver of the milestone requirements.

In *TMI Communications*, the Commission waived an implementation milestone based on the licensee's efforts to comply with *known* regulatory requirements of Industry Canada, and its entirely *voluntary* business decision concerning which affiliate hold the 2 GHz MSS LOI. *See* FCC 04-144, at 16. Moreover, the Commission allowed the licensee to satisfy the first milestone *without even entering into a satellite construction contract*. *Id.* at 7.

The Commission cannot sustain a policy which allows it to deem GLP's actions to be "business decisions" not supporting a milestone waiver, while the obvious voluntary business decisions of TMI justify a waiver of the same milestone. Moreover, it cannot find that GLP's non-contingent contract cannot satisfy the milestone requirement, while it allows TMI *not* to sign a contract and still fulfill the same milestone. Thus, under the *Tempo Order* standards, voluntary business decisions may or may not justify an applicant's request for milestone extensions. A signed contract may or may not fulfill a milestone requirement. This demonstrates that the Commission's policy on meeting milestone requirements is unprincipled and arbitrarily enforced. Indeed, there is no appropriate general standard for granting a waiver of the milestone rules, only the whims of the Commission as to what constitutes a business decision.

VII. THE COMMISSION'S MILESTONE ENFORCEMENT POLICIES RESULT IN CANCELLATION OF LICENSES THAT MEET THE MILESTONES.

The Bureau cancelled without explanation GLP's license for the geostationary satellite (S2321) that would serve North America even though GLP had requested no milestone extensions for that satellite, and the contract with SSL included all the milestone dates specified in the licenses for that satellite. The Commission's *post hoc* explanation is that GLP's construction contract treated the five licensed space stations as an "integrated system" rather than stand-alone components. *See Order*, at 12. Therefore, the Commission claims the Bureau correctly cancelled the licenses for the entire system rather than acting on individual components because the contract did not reflect completion of the entire system within the time frames specified for all the licensed space stations. *See id.*

There was no policy on "integrated systems" in place when the Commission adopted service rules for 2 GHz MSS systems or when the Bureau granted GLP's 2 GHz MSS licenses. When it adopted rules for 2 GHz MSS, the Commission stated that hybrid systems "(containing NGSO and GSO components) must follow the non-geostationary milestones for the non-

geostationary portion of the system and comply with the geostationary milestones for the geostationary portion of the proposed system." *2 GHz MSS Order,* 15 FCC Rcd at 16177. GLP's S2321 satellite was complying with the geostationary milestone rules.

Prior to this case, the Commission had never stated that milestone compliance of a hybrid system would stand or fall on the compliance of each individual component. For example, if GLP had signed five construction contracts with SSL, one for each space station component, with the milestones specified in the actual SSL contract for each component. Under the Commission's "integrated system" theory, all the licenses could have been cancelled although the contract for S2321 was fully compliant the license milestones. That is not the result that would be predicted from the Commission's statement when it adopted the policy for milestone compliance for hybrid systems.

The Commission did not give fair notice to GLP with respect to the S2321 geostationary satellite. Accordingly, the cancellation of the license for S2321 was an abuse of discretion.

For all the foregoing reasons, GLLC and GSLP respectfully request the Commission to reconsider its *Order*, reverse the *Revocation Order*, and reinstate GLP's license.

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July 26, 2004

CERTIFICATE OF SERVICE

I, Steven A. McCord, hereby certify that I have on this 26th day of July 2004, caused to be served true and correct copies of the foregoing "Petition for Reconsideration" upon the following persons via hand delivery (marked with an asterisk (*)) or first-class United States mail, postage prepaid:

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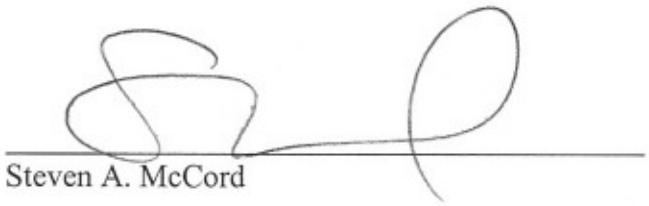

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