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Federal Communications Commission  
Office of Secretary

July 14, 2003

*Satellite Division*

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

**Int'l Bureau**

JUL 15 2003

**Front Office**

RE: 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  
Call Signs S2320/S2321/S2322/S2323/S2324

**Received**

JUL 15 2003

Policy Branch  
International Bureau

Dear Ms. Dortch:

On January 29, 2003, the International Bureau adopted a Memorandum Opinion and Order ("MO&O"), DA 03-328, 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.

The Bureau's denial of GLP's request for extension of certain milestones was founded on a policy used in the MO&O, but not previously made known to the public. In canceling the 2 GHz MSS licenses, the Bureau reasoned that, since the satellite construction contract between GLP and Space Systems/Loral, Inc., incorporated the milestones as proposed for modification rather than the milestones in GLP's original licensing order, the contract could not meet the Commission's requirement that a satellite licensee 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 with Space Systems to conform with the original milestone schedule, the Bureau simply canceled the licenses for failure to conform to the original milestone schedule.

On March 3, 2003, GLP filed an “Emergency Application for Review” and “Request for Stay” of the Bureau’s decision. Both remain pending.

Among other points made in its Emergency Application for Review, GLP explained that the Bureau’s policy under which it canceled GLP’s licenses and refused to provide an opportunity to cure was a new policy, one which GLP could not have known or anticipated. Indeed, the Bureau felt obligated to overturn an earlier decision to bring its precedent into line with the new policy. (MO&O, ¶ 12.) However, the Bureau erred by applying its new policy retroactively to cancel GLP’s licenses.<sup>1</sup> GLP outlined the relevant law thus:

It is well settled that “[t]raditional concepts of due process incorporated into administrative law preclude an agency from penalizing a private party for violating a rule without first providing adequate notice of the substance of the rule.” Indeed, when announcing policies affecting milestone enforcement in prior decisions, the Commission has made the policy prospective only. By revising long-standing policy and precedent without prior notice, the MO&O violated GLP’s right to due process.<sup>2</sup>

In a recent order, the Bureau has “explained” the new policy under which it cancelled GLP’s license five months ago.<sup>3</sup> Specifically, in granting an application for modification of The Boeing Company’s 2 GHz MSS license, the Bureau ruled that Boeing’s satellite construction contract complied with the milestone requirement even though the contract reflected the proposed rather than originally-licensed system. In a footnote, the Bureau stated:

That Boeing arranged for construction of the [modified system] proposed in its license-modification application,

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<sup>1</sup> Emergency Application for Review, at 18-19 (filed Mar. 3, 2003) (citing Satellite Broadcasting Co. v. FCC, 824 F.2d 1, 3 (D.C. Cir. 1987); Eastern Carolinas Broadcasting Co. v. FCC, 762 F.2d 95, 101 (D.C. Cir. 1985); Trinity Broadcasting of Florida, Inc. v. FCC, 211 F.3d 618, 632 (D.C. Cir. 2000)).

<sup>2</sup> Emergency Application for Review, at 19 (footnotes omitted) (quoting Satellite Broadcasting Co. v. FCC, 824 F.2d at 3).

<sup>3</sup> See The Boeing Company, Order and Authorization, DA 03-2073 (released June 24, 2003).

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rather than the [system] for which it had license authority as of the milestone deadline date, is not a material deficiency, given our favorable disposition of the application for modification. Had we denied the request for license modification, on the other hand, we could not have found that Boeing's arrangements for construction of a [modified] system satisfied the first milestone requirement.<sup>4</sup>

It is appropriate for the Bureau to articulate its policy clearly. However, its explanation comes too late. The Bureau cannot cure its failure in the MO&O to follow the law with respect to GLP by publishing *post hoc* explanations and policy pronouncements.

Now that the Bureau has essentially conceded that its action with respect in the MO&O was unlawful, there is no reason to delay acting on GLP's Emergency Application for Review. The MO&O clearly and undeniably violates the due process requirements as set forth in Satellite Broadcasting and other cases. Accordingly, GLP's Emergency Application for Review must be granted and GLP's 2 GHz MSS licenses reinstated.

Respectfully submitted,

GLOBALSTAR, L.P.

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<sup>4</sup> Id., at 12 n.56 (citations omitted).

## CERTIFICATE OF SERVICE

I, William D. Wallace, hereby certify that I have on this 14th day of July, 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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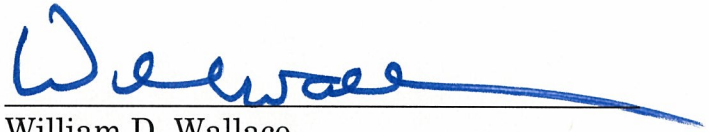
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