

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FILED/ACCEPTED

DEC 18 2006

Federal Communications Commission
Office of the Secretary

In the Matter of)	
)	
Application of)	SAT-MOD-20061109-00137
New ICO Satellite Services G.P.)	
To Modify Space Station Authorization for)	
Geostationary Orbit Satellite ICO G1)	

COMMENTS OF TERRESTAR NETWORKS, INC.

TerreStar Networks, Inc. ("TerreStar"), which is the proposed assignee of a Letter of Intent ("LOI") authorization for a 2 GHz Mobile Satellite Service ("MSS") satellite system,¹ hereby comments on the above-captioned request filed by New ICO Satellite Services G.P. ("ICO").² ICO seeks an extension of the four remaining milestone dates for its 2 GHz MSS system. The Commission modified the milestones for ICO's system last year. It established twelve deadlines with which ICO has to comply, culminating with a July 1, 2007, deadline for launching ICO's satellite and a July 17, 2007, deadline for certifying to the Commission that ICO's satellite is operational.³

ICO has requested an extension of its four remaining milestones: (1) completion of reference performance test; (2) completion of thermal vacuum test; (3) launch of

¹ See File No. SAT-ASG-20021211-00238.
² See Public Notice, Report No. SAT-00402 (Nov. 17, 2006).
³ ICO Modification Order, 20 FCC Rcd. 9797, ¶ 38 (2005).

satellite; and (4) certification to the FCC that the entire system is operational.⁴ ICO states that milestone extensions are necessary because its satellite manufacturer has encountered performance anomalies and manufacturing problems with the precision oscillators on ICO's satellite.⁵ ICO anticipates that these problems likely will delay delivery of the satellite.⁶ TerreStar takes the position that the Commission should grant ICO's request, while assessing all relevant factors, including those discussed below.

The Commission has a longstanding policy requiring satellite licensees to meet milestones for system implementation.⁷ The FCC's purpose in requiring milestones is to assure that a licensee is not warehousing spectrum but actually is building a system that will make productive use of the spectrum assigned.⁸ Thus, the milestones are not an end in themselves. Rather, they serve as a means for ensuring that the Commission's anti-warehousing policies are satisfied.

The proof of a licensee's intentions is in its actions. Each step that a licensee takes to implement its system raises the cost to the licensee of warehousing its

⁴ File No. SAT-MOD-20061020-00124 at Exhibit 1 p. 4. Additionally, ICO recently notified the Commission that its contract milestone #31, which was to be completed by November 1, 2006, instead was completed on November 21, 2006. Letter to Marlene H. Dortch, Secretary, Federal Communications Commission from Suzanne Hutchins Malloy, Senior Regulatory Counsel, ICO (Nov. 22, 2006).

⁵ *Id.* at Exhibit 1, p. 3.

⁶ *Id.* at Exhibit 1, p. 3.

⁷ See *In re Applications of Mobile Communications Holdings, Inc. and ICO Global Communications (Holdings) Limited for Transfer of Control; Constellation Communications Holdings, Inc. and ICO Global Communications (Holdings) Limited for Transfer of Control; Mobile Communications Holdings, Inc. for Modification of 2 GHz MSS License; Constellation Communications Holdings, Inc. for Modification of 2 GHz MSS License*, Memorandum Opinion and Order, 18 FCC Rcd 1094, 1099 (2003).

⁸ *Id.* See also *The Establishment of Policies and Service Rules for the Mobile Satellite Service in the 2 GHz Band*, Report and Order, 15 FCC Rcd 16127, ¶ 106 (2000).

spectrum. Once a licensee has made substantial progress in implementing its system, denying a request for a milestone extension based on matters beyond the control of the licensee is more likely to deprive the public of service from a licensee that wishes to go forward than it is to thwart the efforts of a licensee that is attempting to warehouse spectrum.

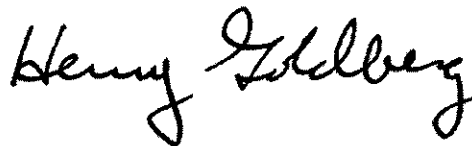
There are various indicia for determining whether a satellite licensee has made substantial progress. These may include: (1) whether, and the extent to which, the licensee's business plan is taking shape; (2) progress made on financing the licensee's system; (3) the extent to which the licensee's non-satellite part of its system, such as terrestrial facilities, earth stations and handsets, is being planned and implemented; and (4) the licensee's demonstrated commitment to relocate other spectrum users, as necessary.

As the Commission knows well, systems such as TerreStar's and ICO's are complex and the timetable for incorporating many system elements, including new technologies, can slip through no fault of the licensee.⁹ The Commission, therefore, should use as its guide the purpose of the milestone process when assessing a milestone extension request, giving leeway to satellite licensees whose efforts are substantially

⁹ Given the Commission's and the Congress' policy of "encourag[ing] the provision of new technologies and services to the public" (47 U.S.C. § 157(a)) the Commission should not penalize a licensee for incorporating new technologies into their systems, even though that may lead to delays in implementation.

underway - particularly in cases involving new technologies and services - where such flexibility would support rather than undermine the Commission's goals.

Respectfully submitted,



TERRESTAR NETWORKS, INC.

OF COUNSEL:

Alexandra M. Field
Senior VP for Regulatory Affairs
TerreStar Networks, Inc.
11720 Sunrise Valley Drive, Fifth Floor
Reston, VA 20191
(571) 748-3485

By: /s/Henry Goldberg
Henry Goldberg
Joseph A. Godles
Laura A. Stefani
GOLDBERG, GODLES, WIENER
& WRIGHT
1229 Nineteenth Street, N.W.
Washington, DC 20036
(202) 429-4900
Counsel for TerreStar Networks, Inc.

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