

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

In the Matter of)
)
TMI Communications and Company,) File Nos. SAT-MOD-20061206-00144
Limited Partnership)
)
Application for Modification of 2 GHz Mobile)
Satellite Service Authorization)

To: International Bureau

Permit - But - Disclose
1/18/07
end of proceedings
1/18/07
Policy Branch Chief

REQUEST TO MODIFY *EX PARTE* STATUS

TMI Communications and Company, Limited Partnership and TerreStar Networks, Inc. (collectively "TMI/TerreStar"),¹ hereby request that the Bureau modify the *ex parte* status of the above referenced application from "restricted" to "permit-but-disclose" pursuant to Section 1.1200(a) of Commission Rules, 47 C.F.R. § 1.1200(a), so that TMI/TerreStar and other interested parties may directly communicate with the Commission and its staff, subject to appropriate public disclosure.²

Modification of the processing status of this application is warranted because the applicant's request for pre-launch selection of 2 GHz MSS operating frequencies presents issues of first impression and may have implications for other current and prospective satellite operators. Indeed, earlier this week, two other parties holding MSS authorizations, New ICO

¹ TMI holds a Letter of Intent ("LOI") authorization which reserves spectrum in the 2 GHz band for the operation of a Mobile Satellite Service ("MSS") system. TerreStar is the prospective assignee of TMI's authorization. See File No. SAT-ASG-20021211-00238.

² 47 C.F.R. § 1.1200(a): "Where the public interest so requires, the Commission and its staff retain the discretion to modify the applicable *ex parte* rules by order, letter, or public notice. . . .". Because applications to modify satellite authorizations are not contained in the list of exempt and permit-but-disclose proceedings, they are considered to be restricted proceedings. See 47 C.F.R. § 1.1208; *Amendment of 47 C.F.R. § 1.1200 et seq. Concerning Ex Parte Presentations in Commission Proceedings, Report and Order*, 12 FCC Rcd 7348, 7352, ¶ 13 (1997).

Satellite Services G.P. (“ICO”) and Globalstar Inc. (“Globalstar”) notified the Commission of their intent to participate in this docket.³

In view of the foregoing and the other reasons stated below, TMI/TerreStar submit that the public interest would be best served if the Commission has the benefit of *ex parte* presentations so that its staff can discuss and obtain any further information necessary to act promptly on TMI’s request, which is time-sensitive.⁴

A. Background

The docket at issue here involves a December 5, 2006 application by TMI asking the Bureau promptly to approve a Selected Assignment of 2 GHz MSS operating frequencies for the TMI/TerreStar satellite by either (a) modifying the conditions on the current authorization or (b) if necessary, waiving the Commission’s policies to the extent they now preclude grant of a Selected Assignment before the TMI/TerreStar 2 GHz satellite is launched and brought into service.

As explained in the application, the original year 2000 rationale for postponing a 2 GHz licensee’s Selected Assignment has been overtaken by events. Since 2005, the available 40 GHz of 2 GHz MSS spectrum has been allocated to just two entities – TMI and ICO – which will share the spectrum equally. And, given the long lead time required for critical radio-engineering tasks necessary for implementing an MSS system (*e.g.*, manufacture of mobile terminals; clearance of incumbent licensees; coordinating an Ancillary Terrestrial Component (“ATC”)), it

³ See New ICO Satellite Services G.P. “Notice of Intent To Participate,” dated December 18, 2006; and Globalstar Inc. “Notice of Intent To Participate,” dated December 18, 2006, in re File No. SAT-MOD-20061206-00144.

⁴ See *e.g.*, Public Notice, “Comment Sought on Mediacom Communications Corporation’s Emergency Retransmission Consent Complaint; Establishment of ‘Permit–But–Disclose’ *Ex Parte* Procedures,” DA-06-2274, (Media Bureau, November 8, 2006). See also Public Notice, Satellite Policy Branch Information, Rep. No. SAT-00125 (Int’l Bur October 30, 2002) [granting requests to modify various satellite modification applications].

is essential that TMI/TerreStar know the precise frequencies they will primarily use as early as possible. Otherwise, the provision of much needed new service to public safety and other users may be delayed.

Designation of the 2 x 10 MHz bands requested by TMI/TerreStar would, of course, also permit simultaneous designation of the reciprocal 2 x 10 MHz frequency bands for ICO, which is the only other authorized 2 GHz MSS operator.

B. Discussion

Under Section 1.1200(a) of its Rules, the Commission is authorized to modify the *ex parte* status of a proceeding “[w]here the public interest so requires.”⁵ This standard is met here for several reasons. First, as noted, the application raises novel issues which were not fully anticipated by the FCC’s original 2 GHz MSS service rules. Given that those rules and the frequency selection timetable were the product of an open public rulemaking process,⁶ it is appropriate that any request to modify or vary application of that regime also be subject to similar *ex parte* rules.

Second, Bureau action on TMI’s request for a Selected Assignment raises public interest issues beyond the immediate application. In particular, the practical rationale that TMI has advanced for pre-selection of MSS operating frequencies may have implications for future MSS and satellite dockets where frequency sharing is involved. Bureau action on this application will also unavoidably impact ICO.

Third, as detailed therein, the application raises a variety of detailed engineering issues. These include the scope of and timetable for band clearance facing 2 GHz MSS licensees; the

⁵ 47 C.F.R. § 1.1200(a).

⁶ See *The Establishment of Policies and Service Rules for the Mobile Satellite Service in the 2 GHz Band*, IB Docket No. 98-81, 14 FCC Rcd 4843 (1999).

need for efficient planning and advance coordination of ATC facilities; and the advance specification of mobile earth terminal chip sets for MSS vendors. *Ex parte* submissions on these and related technical matters can be expected to clarify the merits of the application as well as providing the Commission's staff with a full opportunity to expeditiously discuss and resolve any questions they may have.

Finally, there is ample precedent for de-restricting satellite modification applications. In fact, the Bureau itself has done so frequently in order to develop a complete record and better understand the detailed engineering issues typically involved in such applications.⁷ Moreover, so far as the 2 GHz MSS is concerned, the Bureau elected to process the original application of TMI and those of all other applicants on a "permit-but-disclose" basis.⁸ More recently, in 2005, the Bureau also applied a "permit-but-disclose" *ex parte* regime in considering the TMI/TerreStar request to finalize the 2 GHz MSS band plan.⁹ It is only logical, therefore, for the Bureau to follow a like *ex parte* course with respect to the instant application.

⁷ See e.g., Public Notice, "Satellite Communications Services" Rep. No. SES-00590, March 25, 2004 [modifying *ex parte* status of DIRECTV Enterprises LLC blanket earth station application]. Public Notice, Rep. No. SAT-00125 (Oct. 30, 2002) [modifying *ex parte* status for ICO and Lockheed Martin Satellite application proceedings]; Public Notice, "International Bureau Satellite Policy Branch Information: Echo Star Satellite Company Application for Authority to Make Minor Modifications to Direct Broadcast Satellite Authorization, Launch and Operational Authority," Rep. No. SPB-159, DA 00-1630, (July 21, 2000).

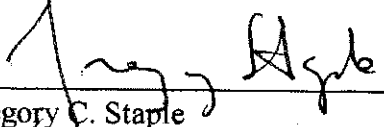
⁸ Public Notice, "Applications and Letters of Intent Filed By Nine Parties to Launch and Operate Systems to Provide Mobile Satellite Service in the 2 GHz Band," Rep. No. SPB-132 (Int'l Bur., July 28, 1998).

⁹ Public Notice, "Commission Invites Comments Concerning Use of Portions Of Returned 2 GHz Mobile Satellite Service Frequencies," IB Dok. No. 05-220, FCC 05-133 (June 29, 2000).

C. Conclusion


For all of the reasons stated above, the Bureau should promptly change the *ex parte* status of TMI's application to "permit-but-disclose" so as to facilitate the full, efficient and timely consideration of any issues the application may present. The undersigned are authorized to state that ICO does not object to grant of this Request; Globalstar has advised TMI/TerreStar that it consents to the requested modification of the application's *ex parte* status.

Respectfully Submitted,



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December 20, 2006

CERTIFICATE OF SERVICE

I, Patricia A. Gibson, hereby certify that on this 20th day of December, 2006, copies of the foregoing "**Request**" were hand served on the following unless other wise noted:

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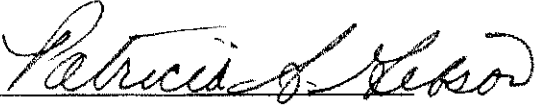
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