

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

In the matter of)
TerreStar Networks, Inc.) File No. SAT-MOD-20070608-00080 (S2633)

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COMMENTS OF INMARSAT GLOBAL LIMITED

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Inmarsat Global Limited (“Inmarsat”) submits comments opposing the application of TerreStar Networks, Inc. (“TerreStar”) for an extension, from November 2007 to September 2008, of TerreStar’s launch milestone for its 2 GHz mobile satellite service (“MSS”) spacecraft.¹ The Commission should not grant TerreStar’s milestone extension request because the record does not support a conclusion that the delay TerreStar is encountering is beyond its control. If the Commission nevertheless grants the requested milestone extension, the Commission should condition the grant to ensure that TerreStar does not avail itself of any further extensions that could delay the provision of service to the public.²

¹ TerreStar Networks, Inc., Request for Milestone Extension, IB File No. SAT-MOD-20070608-00080 (filed Jun. 8, 2007) (“TerreStar Milestone Extension Request”).

² Inmarsat has standing as a competing provider of MSS. *FCC v. Sanders Brothers Radio Station*, 309 U.S. 470, 471, 476-77 (1940) (current competitor has standing to participate in a proceeding involving application submitted by a potential new competitor). In addition, Inmarsat is a Commission applicant seeking access to the 2 GHz band. See Inmarsat Global Limited, Petition for Declaratory Ruling to Provide MSS to the United States Using the 2 GHz and Extended Ku Bands, SAT-PPL-20050926-00184 (filed Sept. 26, 2005) (“Inmarsat 2 GHz Application”); *Inmarsat Global Limited*, 20 FCC Rcd 19409 (2005) (dismissing the Inmarsat 2 GHz Application when the Commission increased TerreStar’s and ICO’s spectrum assignment); *Inmarsat Ventures Limited and Inmarsat Global Limited, Consolidated Petition for Reconsideration*, IB Docket Nos. 05-220, 05-221, *et al.* (filed Jan. 9, 2006) (currently pending petition for reconsideration of the decision to increase TerreStar’s and ICO’s spectrum assignment and dismiss the Inmarsat 2 GHz Application); see also *Use of Returned Spectrum in the 2 GHz Mobile Satellite Service Frequency Bands*, 20 FCC Rcd 19696 (2005) (“2 GHz Returned Spectrum Order”) (order increasing ICO’s and TerreStar’s spectrum assignment).

I. INTRODUCTION AND SUMMARY

TerreStar holds a reservation of spectrum from the Commission to operate a 2 GHz MSS system, and is required by that authorization to launch its spacecraft by November 2007, and bring its entire MSS system into operation by November 2008.³ On May 25, 2007, TerreStar publicly announced that it would not meet its November 2007 launch milestone.⁴ Four days later, TerreStar filed an almost two-hundred-page application seeking authority to fundamentally change its system design, operate at a new orbital location, and use new feeder link frequencies.⁵ Later still, on June 8, 2007, TerreStar filed for a nearly year-long extension of its launch milestone, the issue under consideration in this proceeding.

The significant technical changes sought in TerreStar's spacecraft modification application, as compared with its FCC-authorized design, include (i) increasing by nearly eight-fold the number of spot beams, (ii) increasing by 33 percent the power of the amplifiers on the spacecraft, (iii) doubling the satellite's peak downlink power (EIRP), (iv) incorporating a technically demanding ground-based-beam-forming technology, (v) increasing overall spacecraft

³ See *TMI Communications and Company, L.P. and TerreStar Networks Inc. Application for Review and Request for Stay*, 19 FCC Rcd 12603 (2004). TerreStar's current authorization requires that it meet the following milestones: (i) November 2004, complete critical design review, (ii) March 2005, begin physical construction of the satellite, (iii) November 2007, launch its 2 GHz satellite, and (iv) November 2008, certify its entire system is operational. *Id.*

⁴ See Motient Corporation, Current Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 on Form 8-K, Securities and Exchange Commission File No. 0-23044 (filed May 25, 2007) (attaching press release announcing new satellite delivery schedule and launch date).

⁵ TerreStar Networks Inc., Application for Modification of Letter of Intent Authorization, File No. SAT-MOD-20070529-00075 (filed May 29, 2007) ("TerreStar System Modification Application").

power requirements by 50 percent, (vi) doubling the antenna gain of the spot beams, and (vii) increasing the mass of the communications payload by about 50 percent.⁶

Seeking these fundamental changes to TerreStar's authorized system a mere *six months* prior to its current launch milestone is inconsistent with Commission policy, which provides that these types of changes should have been proposed *almost three years earlier*, at the pre-manufacturing, critical design review (CDR) stage. More fundamentally, it raises serious questions about the relationship between the timing of these *voluntary* design choices and TerreStar's inability to meet its upcoming November 2007 launch milestone. In fact, it was just two weeks after submitting a significant system redesign for Commission approval that TerreStar also sought this extension of its November 2007 launch milestone, blaming its manufacturer for delays in the construction and delivery of three elements of the spacecraft: (1) amplifiers, (2) oscillators, and (3) the feed array for the 2 GHz communications antenna.

TerreStar's modification application, filed on the heels of TerreStar's announcement that it would not meet its launch milestone, raises serious questions as to whether a voluntary satellite redesign is, at least in part, the cause of the manufacturing delay, and thus the failure to meet the November 2007 launch milestone. Commission policy does not permit a company to continually revise its system design, cause a manufacturing delay, and then seek a milestone extension. Ultimately, the responsibility lies with the authorized entity to settle on a spacecraft design and to seek Commission consent for modified authority to implement that design on a timely basis. A request filed six months prior to launch, and long after TerreStar's CDR and construction commencement milestones have passed, is not "timely."

⁶ See discussion, *infra*, page 9.

For these reasons, the Commission should require TerreStar to provide documentation demonstrating that the delays described by TerreStar truly are outside TerreStar's control, and are not the product of TerreStar-initiated changes to its system design. If TerreStar cannot demonstrate that the delays are beyond its control, the Commission should deny TerreStar's request for a milestone extension. If the Commission grants TerreStar's request to extend its launch milestone until September 2008, the Commission should ensure that service to the public is not delayed, closely examine TerreStar's continued progress in resolving its asserted technical difficulties, and caution TerreStar that it will face an even higher burden, and the potential loss of its spectrum reservation, if it comes back for a further milestone extension.

II. THERE ARE UNANSWERED QUESTIONS ABOUT THE CAUSE OF TERRESTAR'S DELAY

The significant system modifications for which TerreStar seeks authority raise serious questions whether TerreStar's voluntary system redesign is the actual cause of the manufacturing delay of which it now complains. In particular, there are unanswered questions whether the delays in manufacturing certain parts (*e.g.*, amplifiers, oscillators, and antenna feed array) actually have their genesis in the different parts that were needed to support its revised system design, such as the ground-based-beam-forming capabilities, or the eight-fold increase in spot beams. Moreover, the tardiness of TerreStar's recent modification filing is not consistent with Commission policy and precedent.

A. TerreStar Has Not Timely Sought Modified Authority

Commission policy is clear that TerreStar⁷ was obligated to seek approval for its proposed system design change *almost three years ago*—before its November 2004 CDR deadline. In establishing policies and rules for 2 GHz MSS systems, the Commission made clear that it would “require prospective operators to identify any system modifications needing prior FCC approval well in advance of the CDR milestone.”⁸ The Commission assessed compliance with this timeliness policy in considering Boeing’s request to modify its 2 GHz authorization in 2003.⁹ Thus, Commission precedent and policy for the 2 GHz band required TerreStar to settle on a satellite design, and seek Commission authority for any modifications to its authorized design, “well in advance” of the November 2004 CDR deadline. TerreStar does not address its failure to seek Commission approval prior to the CDR milestone, nor does it seek a waiver of this requirement.

The Commission reaffirmed the principles underlying this requirement in its May 2003 *Satellite Licensing Reform Order*, where the Commission cautioned companies not to construct a system different from that authorized without first seeking Commission consent: “In

⁷ TerreStar’s 2 GHz letter of intent authorization was originally held by TerreStar’s affiliate, TMI Communications and Company, L.P. (“TMI”), and the authorization was assigned to TerreStar in May 2007. *See TMI Communications and Company, L.P., and TerreStar Networks, LLC*, DA 07-2028 (rel. May 10, 2007). For purposes of convenience, this pleading refers to “TerreStar” when discussing matters involving its predecessor in interest, TMI.

⁸ *Establishment of Policies and Service Rules for the Mobile Satellite Service in the 2 GHz Band*, 15 FCC Rcd 16127, 16179, ¶ 108 (2000) (“*2 GHz Service Rules Order*”). The Commission confirmed in its *2 GHz Service Rules Order* that non-U.S.-licensed satellite operators are subject to the same requirements as U.S. licensees. *See id.* at 16197, ¶ 164 (“We apply the [2 GHz] system service rules equally to U.S.-licensed and non-U.S.-licensed systems, with strict milestones for implementing service to ensure that spectrum is not warehoused.”).

⁹ *The Boeing Co.*, 18 FCC Rcd 12317, 12320, ¶ 8 (2003) (“*Boeing*”) (seeking authority to deploy a GSO rather than an NGSO system).

cases where a licensee chooses not to construct the satellite system as licensed, we expect the licensee to file a modification application prior to the date of the construction commencement milestone, rather than simply submitting a contract to construct a different satellite system.”¹⁰

By all accounts, it appears that TerreStar may have done exactly what the Commission warned companies *not* to do. TerreStar’s construction commencement milestone was March 2005. TerreStar did not file a modification application at that time. Rather, TerreStar indicated to the Commission in April 2005 that it had amended its satellite construction contract,¹¹ and three months later described a major system redesign.¹² TerreStar is first seeking approval of its system redesign over two years later, just six months before its launch date, and without any explanation for its tardiness.

TerreStar’s last-minute modification filing places the Commission in precisely the position where it should not be—pressured to approve a space station design that TerreStar appears to have been constructing for some time at significant expense, but that is fundamentally different from the system the Commission originally had authorized and on which TerreStar’s milestones were based. Moreover, TerreStar’s attempt to justify its milestone extension based on progress made and sums spent building this unauthorized system is inconsistent with

¹⁰ *Amendment of the Commission’s Space Station Licensing Rules and Policies; Mitigation of Orbital Debris*, 18 FCC Rcd 10760, 10831, n.434 (2003) (“*Satellite Licensing Reform Order*”); *see id.* at 10878-10879, ¶ 320 (“[W]e will revise Section 25.137 to require non-U.S.-licensed satellite operators modifying their operations to provide the same information as required in a new space station application . . .”).

¹¹ Letter from Counsel for TMI to FCC, File Nos. SAT-LOI-199709926-00161 (filed Apr. 11, 2005) (“TMI is also transmitting a copy of the most recent January 25, 2005 amendment to the SSL-TerreStar satellite manufacturing contract.”).

¹² *See* Comments of TerreStar Networks, Inc., IB Docket No. 05-221 (filed Jul. 29, 2005). TerreStar conceded that the spacecraft design described in its comments was inconsistent with its letter of intent authorization, and that it would need Commission consent for the redesigned spacecraft. Letter from Counsel for TMI and TerreStar to FCC, IB Docket No. 05-221, at 4 n.13 (filed Sep. 14, 2005).

Commission precedent that unauthorized construction will not be taken into account in considering action with respect to such system changes.¹³

B. The Record Does Not Demonstrate that the Delay Was Outside TerreStar's Control

TerreStar's failure to comply with the Commission requirement to timely seek consent for a system modification takes on even greater significance now that TerreStar is seeking an extension of the critical launch milestone, and relying on a manufacturing delay as the basis for that request. Under Commission precedent, milestone extensions are granted only in cases of unforeseeable circumstances beyond the licensee's control.¹⁴ In particular, the Commission has repeatedly found that technological choices made by a licensee after issuance of its authorization are within the licensee's control and that such choices do not justify a milestone extension.¹⁵ Moreover, the Commission has *denied* milestone extension requests where the resulting delay is due to such choices.¹⁶ The policy rationale underlying those decisions is clear:

We do not extend milestones merely to allow a licensee to incorporate a new technology into its satellite design. Otherwise, we would create

¹³ *Streamlining the Commission's Rules and Regulations for Satellite Application and Licensing Procedures*, 11 FCC Rcd 21581, 21585, ¶ 9 (1996) (“[C]onstruction will be at the applicant's own risk, and we will not in any way consider the status of construction or expenditures made when acting on the underlying application.”).

¹⁴ *See, e.g., Satellite Licensing Reform Order*, 18 FCC Rcd at 10826, ¶ 170 (“By making the bond payable upon failure to meet any milestone based on circumstances within the licensee's control, we require licensees to commit to construct and launch its satellite system, and so we further strengthen our protections against speculation and warehousing.”); *id.* at 10882, ¶ 333 (“In the *First Report and Order* in this proceeding, the Commission required satellite licensees to post a bond, payable upon failure to meet a milestone, and without facing circumstances outside the licensee's control that warrant extension of the milestone.”).

¹⁵ *NetSat 28 Co. L.L.C.*, 19 FCC Rcd 17722, 17726, ¶ 10 (2004) (“*NetSat 28*”); *PanAmSat Licensee Corp.*, 16 FCC Rcd 11534, 11541, ¶ 21 (2001) (“*PanAmSat*”); *Loral Space & Communications Corp.*, 16 FCC Rcd 11044, 11047 ¶ 7 (2001).

¹⁶ *See cases cited, supra*, note 15.

a loophole in our milestone policy, allowing licensees to extend their milestones indefinitely by filing modification applications.¹⁷

In its 2001 *2 GHz Service Rules Order*, the Commission further stated that, in the 2 GHz context, “milestone requirements are especially important because we are declining to adopt financial qualifications as an entry criterion for 2 GHz MSS systems.”¹⁸ The Commission’s milestone policy is of particular import here, because, while TerreStar’s 20 MHz of spectrum goes unused, other ready, willing and able operators, such as Inmarsat, are foreclosed from proceeding with their own 2 GHz MSS systems, the entire 2 GHz band remains unused for MSS, and service to the public continues to be delayed.¹⁹

The record is clear that the satellite TerreStar is building has different technical parameters—and arguably more technically demanding requirements—than the system the Commission originally authorized. To be sure, and as a general matter, Commission policy supports the deployment of the latest technology on spacecraft, and Inmarsat itself strives to do

¹⁷ *PanAmSat*, 16 FCC Rcd at 11541, ¶ 21; *NetSat* 28, 19 FCC Rcd at 17726, ¶ 10 (“Extending milestones on this basis would allow licensees to extend indefinitely their nonperformance by repeated modification of their proposals, which could in turn facilitate warehousing of scarce orbital resources or, at a minimum, delay service to the public.”).

¹⁸ *2 GHz Service Rules Order*, 15 FCC Rcd at 16176, ¶ 106. If the Commission grants TerreStar an extension and also considers TerreStar’s request for new feeder link frequencies and a new orbital location, that request is properly considered under the “first come” rules and policies, including the requirement that TerreStar post a suitable bond to ensure performance. *Satellite Licensing Reform Order*, 18 FCC Rcd at 10875, ¶ 309 (applying the bond requirement to non-U.S.-licensed satellite operators seeking reservations of spectrum for a satellite that is not in orbit and operating); see also *ICO Satellite Services G.P.*, 20 FCC Rcd 9797, 9808, ¶ 40 (2005) (“*ICO*”) (requiring ICO to post a bond after consenting to a modification of ICO’s letter of intent authorization to reflect a new system design, new orbital location and new feeder-link spectrum). TerreStar thus is mistaken that the bond requirement does not apply because it was originally authorized before the *Satellite Licensing Reform Order* was adopted, and because it simply seeks a modification of that authority. The Boeing order that TerreStar cites is not on point, as it was issued before the *Satellite Licensing Reform Order* became effective. *Boeing*, 18 FCC Rcd at 12317, ¶ 1.

¹⁹ As noted above, Inmarsat’s request for access to the 2 GHz band has not been finally resolved.

so on every new spacecraft that it launches. However, Commission policy also is clear that a company cannot make technology changes, engender manufacturing delay, delay compliance with its milestones, and tie up valuable spectrum, all while competitors are forced to sit on the sidelines.²⁰ Any other policy would simply provide an incentive for companies with spectrum authorizations to continually modify their system designs and prevent competitors from gaining access to spectrum in the meantime.

A comparison of TerreStar's 2001 authorized design²¹ with its May 2007 modification application yields several significant differences. For example, the modification application proposes to:

- increase by nearly eight fold the number of spot beams (from 72 spot beams to 550 spot beams);
- increase by 33 percent the power of the travelling wave tube amplifiers (TWTAs) on the spacecraft (from 1,500 Watts to 2,000 Watts);
- double the satellite's peak EIRP (from 76.8 dBW to 80 dBW);
- incorporate a technically demanding ground-based-beam-forming technology;
- increase overall spacecraft power requirements by 50 percent (from 8,000 Watts to 12,000 Watts);
- double the antenna gain of the spot beams (from 45 dBi to 48 dBi); and
- increase the mass of the communications payload by approximately 50 percent (from 1,200 kg to approximately 1,745 kg).²²

²⁰ *2 GHz Service Rules Order*, 15 FCC Rcd at 16176-16177, ¶ 106 (“We continue to believe that milestone requirements promote efficient use of limited spectrum resources Non-compliance with implementation milestones will result in cancellation of the authorization.”).

²¹ Application of TMI Communication and Company, L.P., for Letter of Intent Authorization to Provide MSS in the 2 GHz Band (as amended, modified and assigned to TerreStar) FCC File Nos. SAT-LOI-19970926-00161, SAT-AMD-20001103-00158, SAT-MOD-20021114-00237, SAT-ASG-20021211-00238 (filed Sep. 26, 1997) (“TMI 1997 LOI Application”); *TMI Communications and Company, L.P.*, 16 FCC Rcd 13808 (2001) (approving letter of intent authorization based on technical design provided in the TMI 1997 LOI Application).

Clearly, these design changes affect critical components on the spacecraft. And many of these design changes could impact the choice or design of the hardware on the spacecraft that TerreStar now blames for the manufacturing delay. While TerreStar indicates that there is a problem with the 2 GHz (S-band) antenna feed array, it is not clear whether that problem arises from, or is complicated by, the eight-fold increase in 2 GHz spot beams on the satellite. And while TerreStar cites a problem with oscillators, it does not indicate whether the performance requirements of those oscillators were part of the originally-contracted 2001 system design, or whether the problem instead flows from the subsequent incorporation of ground-based-beam-forming capabilities.

TerreStar simply states that its need for an extension of time, “is not a circumstance . . . of a licensee . . . changing the performance, function, requirements, or anything else from what was originally required under the satellite manufacturing contract.”²³ That statement begs the question whether the design choices reflected in the current modification application—matters wholly within TerreStar’s control—have given rise to the current delay. It also begs the question *when* TerreStar entered into the contract specifying the parameters for the satellite components that are the asserted cause of the delay. TerreStar has filed several versions of its satellite manufacturing contract over time, including in 2002 (to meet the contract execution milestone), in 2004 (after reinstatement of TerreStar’s letter of intent authorization),

²² Compare TerreStar System Modification Application at 14 (Table 2) (gain, power, EIRP), 16 (ground based beam forming), 25 (Table 7) (mass), 35 (spot beams) *with* TMI 1997 LOI Application at Section 5 (spot beams), Section 7 (mass), Section 12 (Table 1) (gain, power, EIRP); *see also* TerreStar Milestone Extension Request at Attachment 1 (letter from the satellite manufacturer referring to use of ground based beam forming); Letter from TMI and TerreStar to Donald Abelson, Chief, International Bureau, FCC, Technical Appendix at 4 (Apr. 19, 2005) (discussing use of ground based beam forming).

²³ TerreStar Milestone Extension Request at 15.

and in 2005 (with its certification of the commence construction milestone).²⁴ Unfortunately, which of these contracts reflects the satellite design reflected in TerreStar's modification application cannot be gleaned from the public record because TerreStar's contract submissions are heavily redacted, including the wholesale elimination of any matters pertaining to spacecraft design.

Thus, TerreStar's building a different spacecraft than the one underlying its Commission authorization and milestones calls into question whether TerreStar's milestone non-compliance is caused by TerreStar's voluntary choices. Clearly, Commission policy does not allow an entity to (i) disregard the system for which it is authorized, (ii) contract for, and build, a fundamentally different spacecraft without first seeking to modify its authorization, and then (iii) in an effort to justify a launch delay, blame the manufacturer because the modified design cannot be built in time. Indeed, TerreStar's building a different satellite than the one on which its milestones are based calls into question whether TerreStar has met its *prior* Commission milestones, including the requirements to (i) maintain in force a contract to build the *authorized* system, (ii) submit documentation of CDR that conforms to the *authorized* system, and (iii) commence construction of the *authorized* system.²⁵

²⁴ Letter from Counsel for TMI to FCC, File Nos. 189-SAT-LO3-97, *et al.* (filed Jul. 26, 2002); Letter from Counsel for TMI to FCC, File Nos. 189-SAT-LO3-97, *et al.* (filed Aug. 2, 2004); Letter from Counsel for TMI to FCC, File Nos. SAT-LOI-199709926-00161 (filed Apr. 11, 2005).

²⁵ *2 GHz Service Rules Order*, 15 FCC Rcd at 16177-16178, ¶ 106 (establishing system implementation milestones); *id.* at 16179, ¶ 108 (“The CDR milestone . . . allows us to identify any failure in system progress. This approach also will require prospective operators to identify any system modifications needing prior FCC approval well in advance of the CDR milestone.”); *Satellite Licensing Reform Order*, 18 FCC Rcd at 10831, n.434 (a company choosing not to construct its system as authorized must seek modification of its authorization prior to the date of the construction commencement milestone, “rather than simply submitting a contract to construct a different satellite system”); *EchoStar Satellite Corp.*, 17 FCC Rcd 12780 (2002) (cancelling Ka band authorization because contract did not ensure

In sum, rather than satisfy TerreStar's burden of justifying its milestone extension request, the information available on the public record raises more questions than it answers. It certainly does not justify the extraordinary relief that TerreStar seeks.

III. REQUESTED RELIEF

TerreStar's voluntary decision to fundamentally modify its spacecraft design some time ago, but wait until six months prior to its launch milestone to seek necessary Commission consent, warrants that the Commission carefully examine the asserted basis for TerreStar's milestone extension request.

There are a number of questions on which the Commission should seek clarification before determining whether TerreStar has demonstrated that an extension would serve the public interest:

- When did TerreStar contract with its manufacturer for the *modified* spacecraft design that is now under construction?
- When were the performance requirements and other relevant specifications established for the components that are the asserted source of the manufacturing delay?
- Why did TerreStar wait until only six months prior to its launch milestone to seek Commission consent for its fundamental system modification?
- Did TerreStar's modifications to the spacecraft design affect the manufacturer's ability to timely complete construction on the original schedule?
- Did changes in performance specifications, or in other requirements, make it more difficult to deliver the desired low noise amplifiers, contributing to the manufacturing delay?
- Did the incorporation of ground based beam forming, with an eight-fold increase in the number of spot beams over the 2001 FCC-approved design, require

licensed Ka band payload would become operational); *Mobile Communications Holdings, Inc.*, 18 FCC Rcd 11650 (2003) (cancelling Big LEO authorization because MCHI's contract did not provide sufficient assurances that all of the spacecraft in its authorized 16-satellite system would be built).

different specifications or other requirements for the oscillators or the feed array, contributing to the manufacturing delay?

The answers to these and other similar questions would assist the Commission in determining whether a technology choice, or another circumstance within TerreStar's control, is the cause of TerreStar's missing its upcoming launch milestone.

In the absence of a clear demonstration that the inability to meet the launch milestone is due to circumstances beyond TerreStar's control, the Commission should deny TerreStar's request for a milestone extension. The Commission repeatedly has emphasized the importance of milestone compliance, and recently reaffirmed the strict application of its milestone policy in its 2005 decision increasing TerreStar's (and ICO's) 2 GHz spectrum assignment by 250 percent. In doing so, the Commission emphasized: "Both ICO's and TMI's spectrum reservations include milestone requirements, under which *they will lose their rights to provide service in the United States if they do not construct their satellite systems in a timely manner.*"²⁶ The facts that TerreStar presents simply do not provide a valid reason to deviate from Commission policies and decisions.

If the Commission nonetheless grants TerreStar's request, the Commission should closely examine TerreStar's continued progress²⁷ and clarify that TerreStar will face an even higher burden if it comes back to seek any further extensions. As the Commission cautioned earlier this year in granting ICO a milestone extension for its 2 GHz MSS spacecraft, "any further delays would be a cause for concern, and any further extension requests would face a

²⁶ *2 GHz Returned Spectrum Order*, 20 FCC Rcd at 19722, ¶ 57 (emphasis supplied); see *2 GHz Service Rules Order*, 15 FCC Rcd at 16176-16177, ¶ 106 ("Non-compliance with implementation milestones will result in cancellation of the authorization.").

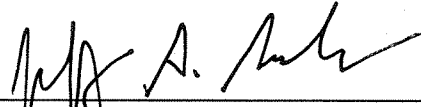
²⁷ See *ICO*, 20 FCC Rcd at 9797, ¶ 1 (subjecting ICO to twelve milestones, spaced two months apart, over the two years leading to ICO's final milestone deadline).

substantial burden of persuasion.”²⁸ TerreStar is approximately ten months behind schedule, with its proposed launch date a precarious two months before the November 2008 deadline, by which time TerreStar must have its entire MSS system operational.

IV. CONCLUSION

For the foregoing reasons, the Commission should require that TerreStar supplement the record with answers to the critical questions posed above. If TerreStar does not provide the documentary evidence sufficient to carry its burden of proof that the reason for its launch delay is outside of TerreStar’s control, the Commission should deny TerreStar’s request. If the Commission nevertheless grants TerreStar’s extension request, the Commission should closely examine TerreStar’s continued progress in solving its asserted technical problems, and emphasize that further milestone extensions are unlikely to be granted.

Respectfully submitted,



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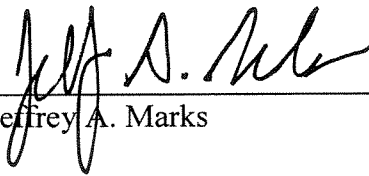
July 23, 2007

²⁸ *New ICO Satellite Services G.P.*, 22 FCC Rcd 2229, 2235, ¶ 19 (2007).

CERTIFICATE OF SERVICE

I, Jeffrey A. Marks, hereby certify that on this 23rd day of July, 2007, I caused to be served a true copy of the foregoing by first class mail, postage prepaid, upon the following:

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Jeffrey A. Marks