

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

FILED/ACCEPTED
AUG 17 2007
Federal Communications Commission
Office of the Secretary

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

REPLY OF INMARSAT GLOBAL LIMITED

Inmarsat Global Limited (“Inmarsat”) responds to the Reply of TerreStar Networks, Inc. (“TerreStar”) to Inmarsat’s comments on TerreStar’s request to extend the upcoming launch milestone for its 2 GHz mobile satellite service (“MSS”) system.¹

In its comments, Inmarsat explained that TerreStar’s recently proposed 2 GHz MSS system redesign (i) raises serious questions whether TerreStar’s inability to meet its November 2007 launch milestone is caused by circumstances beyond its control, and (ii) should have been proposed to the Commission for approval three years ago (before the Critical Design Review (CDR) milestone) so that the likely impact on future milestone compliance could be assessed well in advance of those milestones. Among other things, TerreStar proposes to use a different orbital location, additional Ku band frequencies, and a substantially modified 2 GHz payload, as compared with the system authorized by the Commission in 2001.

TerreStar does not dispute that its 2004 spacecraft redesign was voluntary and required Commission consent, or that TerreStar failed to seek appropriate consent at that time.² Nor does TerreStar deny that those unauthorized changes have impacted the current delay. Rather, TerreStar submits a letter from its manufacturer asserting that (i) the current design is “substantially similar” to the 2004 design, and (ii) the changes made during the manufacturing

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

² TerreStar Reply at 4-7.

process since the 2004 CDR are “evolutionary” and not the source of the current delay.³ Significantly, the one-page letter from TerreStar’s satellite manufacturer addresses only deviations from the 2004 design change, and does not specifically address the impact of the changes made to the 2001 Commission-authorized design. Moreover, the letter does not explain what deviations currently exist from the 2004 design. Therefore, there is no basis on which to conclude that TerreStar’s voluntary and unauthorized deviations from its 2001 Commission authorization have had no bearing on its ability to satisfy its launch milestone.

As Inmarsat indicated in its Comments, Commission policy is clear that TerreStar was required to seek approval for its system redesign “well in advance of” its November 2004 CDR deadline.⁴ TerreStar claims that its failure to seek that approval on a timely basis is not relevant, because (i) it would have been “premature” to seek Commission approval while TerreStar was awaiting modification authority from the Canadian administration, (ii) there is no “rule” that “bars” the Commission from granting a modification application that is filed a mere six months before a launch deadline, and (iii) in any event, TerreStar’s CDR certification to the Commission reflected its new design.⁵ As set forth below, none of these answers excuses TerreStar’s failure to present its design changes for Commission approval three years ago.

The record does not demonstrate that it was infeasible for TerreStar to seek Commission approval for its system redesign at an earlier time. To the contrary, Industry Canada approved certain of the system changes at issue (additional Ku band frequencies and orbital location) almost two years ago (in September 2005), and TerreStar acknowledged shortly

³ *Id.* at 5-6 & Attachment 1.

⁴ Inmarsat Comments at 5 (citing *The Boeing Co.*, 18 FCC Rcd 12317, 12320, ¶ 8 (2003); *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”)).

⁵ TerreStar Reply at 4-8.

thereafter that it would need to seek corresponding Commission consent.⁶ Although TerreStar suggests that Industry Canada approved certain “other technical modifications” in April 2007, the letter that TerreStar cites in support describes that approval as authority to transfer TMI’s 2 GHz Canadian license to TerreStar, not as a technical modification.⁷

More fundamentally, Commission precedent is clear that non-U.S.-licensed entities (like TerreStar) that hold spectrum reservations are subject to the same requirements as U.S. licensees.⁸ Thus, whether TerreStar may have needed modification authority from Industry Canada in no way affected TerreStar’s obligation also to seek Commission approval in 2004, prior to CDR. Indeed, when the Commission reinstated TerreStar’s⁹ 2 GHz U.S. spectrum reservation in 2004 (just five months prior to its CDR milestone), the Commission confirmed that the Canadian administration’s processes do not substitute for the Commission’s own requirements.¹⁰

In fact, the Commission’s *DISCO II* decision expressly contemplates that a space station operator may seek Commission authority to provide service to the United States on a

⁶ Letter from Counsel for TMI Communications and Co. L.P. to FCC, File Nos. 189-SAT-LOI-97 *et al.*, at 1 (filed Feb. 1, 2006).

⁷ See TerreStar Reply at 6-7 (citing Letter from Counsel for TMI and TerreStar to FCC, File Nos. SAT-ASG-20021211-00238 *et al.* (filed May 1, 2007)).

⁸ *2 GHz Service Rules Order*, 15 FCC Rcd 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.”); *Amendment of the Commission’s Space Station Licensing Rules and Policies; Mitigation of Orbital Debris*, 18 FCC Rcd 10760, 10878-79, ¶ 320 (2003) (“*Satellite Licensing Reform Order*”) (“[W]e . . . require non-U.S.-licensed satellite operators modifying their operations to provide the same information as required in a new space station application . . .”).

⁹ For purposes of convenience, this pleading refers to “TerreStar” when discussing matters involving its predecessor in interest, TMI.

¹⁰ *TMI Communications and Co., L.P. and TerreStar Networks Inc. Application for Review and Request for Stay*, 19 FCC Rcd 12603, 12617, ¶ 38 (2004).

parallel path with its efforts to pursue a license from another administration.¹¹ TerreStar took this dual path when it sought a U.S. spectrum reservation prior to obtaining authority from Industry Canada.¹² As the Commission recognized in granting TerreStar's spectrum reservation, "we caution [TerreStar] that delay in approval of its request for a Canadian license will not toll the milestones imposed herein."¹³ Thus, the Commission expressly put TerreStar on notice that the Canadian licensing process is not an excuse for any failure to also comply with Commission policies.

Having no good answer for the tardiness of its modification application, TerreStar resorts to arguing that no Commission "rule" bars the Commission from authorizing modifications proposed after CDR.¹⁴ That the Commission's timeliness requirement is not codified in the Code of Federal Regulations does not mean that TerreStar is entitled to wholly disregard that requirement. And while the Commission may waive the application of its rules or policies when doing so does not undermine their purpose,¹⁵ TerreStar has provided no good reason for excusing its non-compliance in this case and, in fact, has not even sought a waiver.

TerreStar simply argues that it should be treated like ICO, which was allowed to change its system design a number of years after receiving its 2 GHz spectrum reservation.¹⁶ However, the facts here are very different from those when the Commission allowed ICO to

¹¹ *Amendment of the Commission's Regulatory Policies to Allow Non-U.S. Licensed Space Stations to Provide Domestic and International Satellite Service in the United States*, 12 FCC Rcd 24049, 24177-78, ¶ 196 (1997).

¹² *TMI Communications and Co.*, 16 FCC Rcd 13808, 13815-16, ¶ 21 (2001) (noting that TerreStar had only "begun the process of getting a license to operate a 2 GHz MSS system in Canada.").

¹³ *Id.*

¹⁴ TerreStar Reply at 5.

¹⁵ *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969).

¹⁶ TerreStar Reply at 5.

change its system design after its CDR deadline “despite” its application being filed late in the process.¹⁷ In doing so, the Commission *confirmed* its timeliness policy which requires that 2 GHz system modifications be sought well in advance of CDR.¹⁸ The Commission granted ICO’s request because, prior to seeking a modification, ICO actually met its CDR milestone based on its authorized system design and then launched two spacecraft based on its authorized system design.¹⁹ In contrast, TerreStar has *not* met its CDR or its construction milestones *for its authorized system*. By TerreStar’s own admission, its CDR and construction commencement certifications do not relate to its Commission-authorized spacecraft design.

In fact, TerreStar’s argument that its CDR certification somehow excuses its failure to timely seek approval for its system redesign raises a separate issue. TerreStar’s CDR certification (and its construction commencement certification) pertain to a substantially different satellite than the one on which its Commission milestones are based (*i.e.*, different orbital location, additional Ku band frequencies, fundamentally different 2 GHz payload). Designing and building a different satellite calls into question TerreStar’s compliance with its *prior* Commission milestones, including the requirements to (i) maintain a contract to build the

¹⁷ *ICO Satellite Services G.P.*, 20 FCC Rcd 9797, 9804, ¶ 26 (2005) (“*ICO Modification Order*”).

¹⁸ *Id.*

¹⁹ *Id.* The Commission did not, as TerreStar implies, previously address TerreStar’s building a different spacecraft than the one authorized. In the context of the 2005 decision increasing TerreStar’s 2 GHz spectrum assignment, Inmarsat argued that TerreStar could not justify an increased spectrum assignment on an unauthorized spacecraft design. The Commission “place[d] no weight” on TerreStar’s arguments in this regard and did not “address any other party’s criticisms of these contentions.” *Use of Returned Spectrum in the 2 GHz Mobile Satellite Service Frequency Bands*, 20 FCC Rcd 19696, 19715 n.116 (2005).

authorized system, (ii) submit CDR documentation that conforms to the authorized system, and (iii) commence construction of the authorized system.²⁰

The 2003 *Satellite Licensing Reform Order* confirms that milestone compliance must relate to the *authorized* system, not a different system design that an entity may choose to implement.²¹ The Commission stated: “In cases where a licensee chooses not to construct the 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.”²² It simply is not up to TerreStar to decide on its own to provide CDR and construction commencement certifications for an unauthorized design. Moreover, providing information to the Commission as part of a milestone certification is not a substitute for seeking requisite consent.

* * * * *

TerreStar’s substantial network design change warrants that the Commission carefully examine whether (i) TerreStar’s voluntary decisions have led to its inability to meet the November 2007 launch milestone, and (ii) TerreStar has failed to comply with its prior milestones by building a satellite to operate at a different orbital location, using additional frequencies, with a different payload. Prior to acting on this extension request, the Commission should require TerreStar to answer the questions Inmarsat has raised about the source of TerreStar’s manufacturing delay.²³

²⁰ Inmarsat Comments at 5-6, 11.

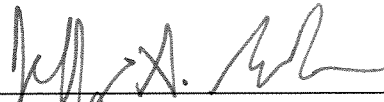
²¹ *Satellite Licensing Reform Order*, 18 FCC Rcd at 10831, n.434.

²² *Id.* This clear policy renders unavailing TerreStar’s attempt to distinguish, on the facts, prior milestone non-compliance cases where entities were found not to have implemented their licensed systems. *See* TerreStar Reply at 7-8.

²³ *See* Inmarsat Comments at 12-13.

In the absence of a clear demonstration that the inability to meet its milestones is due to circumstances beyond TerreStar's control, the Commission should deny TerreStar's extension request. If the Commission nonetheless grants TerreStar's extension request, the Commission should closely examine TerreStar's continued progress by requiring TerreStar to meet further milestones prior to launch²⁴ and clarify that TerreStar will face an even higher burden if it comes back to seek any further milestone extension.²⁵

Respectfully submitted,



John P. Vanka
Jeffrey A. Marks
LATHAM & WATKINS LLP
555 Eleventh Street, NW
Suite 1000
Washington, DC 20004
Telephone: (202) 637-2200

Counsel for Inmarsat Global Limited

Diane J. Cornell
Vice President, Government Affairs
INMARSAT, INC.
1101 Connecticut Avenue, NW
Suite 1200
Washington, DC 20036
Telephone: (202) 248-5155

August 17, 2007

²⁴ See *ICO Modification Order*, 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).

²⁵ See *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 17th day of August, 2007, I caused to be served a true copy of the foregoing by first class mail, postage prepaid, upon the following:

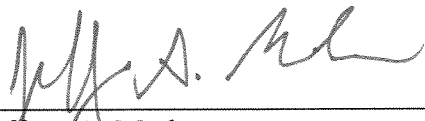
Douglas I. Brandon
Vice President for Regulatory Affairs
TerreStar Networks, Inc.
12010 Sunset Hills Road, 9th Floor
Reston, VA 20190

Henry Goldberg
Joseph A. Godles
Jonathan L. Wiener
Goldberg Godles Wiener & Wright
1229 19th Street, NW
Washington, DC 20036
Counsel for TerreStar Networks, Inc.

Suzanne Hutchings Malloy
Senior Vice President, Regulatory Affairs
New ICO Satellite Services, G.P.
815 Connecticut Avenue, NW, Suite 610
Washington, DC 20006

Cheryl A. Tritt
Phuong N. Pham
Morrison & Foerster LLP
2000 Pennsylvania Avenue, NW
Suite 5500
Washington, DC 20006
Counsel for New ICO Satellite Services, G.P.

William T. Lake
Wilmer Cutler Pickering Hale and Dorr LLP
1875 Pennsylvania Avenue, NW
Washington, DC 20006
Counsel for Globalstar, Inc.



Jeffrey A. Marks