

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

In the Matter of	)	
	)	
GLOBALSTAR LICENSEE LLC	)	File No. SAT-MOD-20080516-00106
	)	
Application for Modification of License for	)	
Operation of Ancillary Terrestrial Component	)	
Facilities	)	

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**MOTION TO DISMISS AND OPPOSITION OF IRIDIUM SATELLITE LLC**

Iridium Satellite LLC (“Iridium”), by its attorneys and pursuant to 47 C.F.R. § 1.45,<sup>1</sup> submits this petition to deny and motion to dismiss the above-captioned application of Globalstar Licensee LLC (“Globalstar”)<sup>2</sup> to modify the conditions set forth in the Commission’s 2008 Order and Authorization, which temporarily waived certain gating criteria to allow Globalstar to offer Mobile Satellite Service (“MSS”) Ancillary Terrestrial Component (“ATC”) service for a finite period of time before constructing additional satellites and providing a dual mode MSS-ATC handset.

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<sup>1</sup> Iridium is filing this Motion To Dismiss and Opposition pursuant to Section 1.45 of the Commission’s rules out of an abundance of caution in case the Commission does not place this application on Public Notice. Section 25.151 of the FCC’s rules requires the Commission to issue public notices listing “[t]he receipt of applications for major modifications to station authorizations” and “[i]nformation which the Commission in its discretion believes to be of public significance.” 47 C.F.R. § 25.151(a)(3), (7). Globalstar’s application meets both of these criteria and thus warrants a Public Notice so that all interested parties will be alerted to Globalstar’s proposal and can participate in the proceeding. Iridium reserves the right to file a Petition to Deny pursuant to Section 25.154 after the date of any such Public Notice.

<sup>2</sup> *Globalstar Licensee LLC, Application for Modification of License for Operation of Ancillary Terrestrial Component Facilities, Call Sign S2115, Request for Modification of Waiver Conditions* (Filed Dec. 14, 2009) (“Globalstar ATC Modification Application”).

On October 31, 2008, the FCC granted Globalstar's request for waiver of the ATC gating requirements on the condition that Globalstar meet deadlines for coming into compliance by dates certain. The Order and statements of the Commissioners were explicit that the deadlines were absolute and that the interim waiver is "strictly time-limited" such that the waiver would "automatically terminate" if the deadlines were not met. In short, the FCC's waiver order stipulated that no excuses would be accepted for failing to comply within the generous time frames allotted.

Over one year later, as the waiver deadlines are beginning to loom larger, Globalstar now requests an additional 16 months in which to comply with the gating requirements – nearly doubling the amount of time originally set by the Commission. As a threshold matter, the Commission must summarily dismiss or deny Globalstar's attempt to extend an un-extendable waiver.

The excuses now offered by Globalstar, in any event, can not withstand even superficial scrutiny. Globalstar asserts that an extension is required because of global financial market conditions during the past year and an earthquake in Italy last Spring. However, several observations can quickly be made concerning these claimed causes of delay:

- Globalstar's claims concerning the causes of delays and the resulting amount of delays are not supported by affidavit as required by the Commission's rules. Accordingly, the claims cannot be credited without the required verifications and the extension request should be dismissed summarily for failure to comply with this well-established requirement.
- Globalstar's unverified claim that delays in meeting the gating requirements are occasioned by global financial market conditions cannot be credited for several reasons: First, the FCC does not accept financial market changes as grounds for granting or extending waivers of this nature. Second, Globalstar has repeatedly and publicly stated over the past year that its financing has been obtained for its next generation satellite system and that its plans were on schedule.

- Globalstar's claim that the tragic April 2009 earthquake in Italy caused delays with respect to meeting the ATC coverage requirements is belied by press coverage of Thales Alenia Space's CFO last July, who stated that Globalstar had lifted a stop-work order based on receiving French government financing and that Thales expected to meet Globalstar's deadlines. Moreover, the waiver extension request is silent in any event as to why the Thales contract and the specific Thales facility is critical to meeting the gating requirement for a dual mode MSS-ATC handset. Certainly, there is no affidavit from Globalstar's officers or Thales' officers to confirm the nexus between the earthquake and Globalstar meeting its deadlines concerning the gating requirements.

In view of the foregoing, Globalstar has no basis for seeking, let alone receiving, additional time to comply with the ATC gating requirements. The Commission clearly anticipated that further delays might be sought, and was unequivocal that the waivers were subject to firm dates for Globalstar's compliance. Accordingly, the Commission should dismiss or deny Globalstar's request

I. **THE COMMISSION SHOULD SUMMARILY DISMISS OR DENY GLOBALSTAR'S ATTEMPT TO EXTEND AN UNEXTENDABLE WAIVER**

On October 31, 2008, the Commission granted Globalstar a temporary waiver of certain ATC "gating criteria."<sup>3</sup> The Commission concluded at that time that Globalstar was out of compliance with the requirements relating to MSS coverage, integration of MSS and ATC service, and in-orbit spares,<sup>4</sup> for which, absent a waiver, Globalstar would lose its authorization to conduct ATC operations. Despite this, the Commission determined that a limited waiver would serve the public interest if, and only if, Globalstar met two strict deadlines for coming into compliance with the Commission's rules:

- July 1, 2010: Meet the coverage requirements of Section 25.149(b)(1)(iii) of the Commission's rules; and

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<sup>3</sup> See *Globalstar Licensee LLC, Application for Modification of License for Operation of Ancillary Terrestrial Component Facilities, Order and Authorization*, 23 FCC Rcd 15975 (2008) (*WiMax ATC Order*).

<sup>4</sup> See *id.* at 15981-83, ¶¶ 14-19. These ATC gating criteria are contained in 47 C.F.R. § 25.149(b).

- July 1, 2011: Provide two-way MSS to customers via a dual-mode MSS-ATC terminal.<sup>5</sup>

The Commission also informed Globalstar that it would have to suspend ATC services if these prescribed deadlines were not met.<sup>6</sup>

The FCC did not quibble on the firmness of its deadlines. The Commission considered the possibility that the “interim waivers might evolve into a long-term exemption with repeated extensions to prevent service disruption”<sup>7</sup> and ultimately granted the waiver because it was “subject to conditions that set *firm* dates by which Globalstar must comply with the gating requirements.”<sup>8</sup> In fact, all three concurring Commissioners emphasized in their separate statements that the deadlines were fixed and were critical to their decision to grant the limited waiver.<sup>9</sup> Commissioner Copps stated, for example, that “[o]f particular importance, [the] waiver is strictly time-limited” and would “automatically terminate” if the deadlines were not met.<sup>10</sup>

Despite the clear intent of the Commission not to extend these waivers, Globalstar

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<sup>5</sup> See *WiMax ATC Order*, 23 FCC Rcd at 15992, ¶ 41.

<sup>6</sup> See *id.*, 23 FCC Rcd at 15981, 15984, 15985, 15992, ¶¶ 13, 22, 23, 41. The Order also requires Globalstar to “notify [its] customers that ATC services are subject to mandatory suspension in the event that the gating conditions are not met.” *Id.* at 15985, 15993, ¶¶ 23, 41.

<sup>7</sup> See *id.* at 15985, ¶ 23.

<sup>8</sup> *Id.* (emphasis added).

<sup>9</sup> See *id.* at 15995 (Statement of Commissioner Copps) (“[I]f the companies are unable to meet the benchmarks imposed by today’s waiver . . . the waiver will automatically terminate.”); *id.* at 15996 (Statement of Commissioner Adelstein) (“The determination we make here is a narrow one, one that is limited to a date certain, and one that is terminable if the compliance deadlines are not met.”); *id.* at 15997 (Statement of Commissioner Tate) (“I support this waiver because, first, it is temporary in nature and imposes a strict set of conditions for noncompliance.”).

<sup>10</sup> See *id.* at 15995 (Statement of Commissioner Copps).

nevertheless requests an additional 16 months to comply with the ATC gating criteria. The Commission should reject this request outright based on its decision that the waivers required absolute deadlines.

## **II. GLOBALSTAR FAILS TO JUSTIFY THE REQUESTED EXTENSION**

### **A. Globalstar's Claims Are Not Supported by Affidavit**

Section 25.117(c) of the Commission's rules provides that "any application for modification of authorization to extend a required date of completion ... included as a condition of any earth station or space station authorization[] must include a *verified* statement from the applicant...."<sup>11</sup> Globalstar's application does not include an affidavit or any other sworn statement attesting to the veracity of the facts contained in its application. Globalstar has included only a limited "engineering certification" testifying to the accuracy of the "engineering" and "technical" information in its filing. Thus, the application is facially deficient under the Commission's rules and should be dismissed.

### **B. Unfavorable Financial Conditions Are Insufficient Grounds for the Requested Extension**

Globalstar's reliance on the "collapse of the global financial markets"<sup>12</sup> to justify its request for an extension is unavailing. It is settled law that financial hardship cannot justify the type of extension Globalstar seeks. Moreover, Globalstar has repeatedly and publicly stated that its financing has been obtained for its next generation satellite system and that its plans were on schedule.

FCC precedent is steadfast that financial hardship is not a legitimate basis for the waiver extension that Globalstar seeks. The Commission has made clear that "[i]t is a long-standing

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<sup>11</sup> 47 C.F.R. § 25.117(c) (emphasis added).

<sup>12</sup> Globalstar ATC Modification Application, at 9.

principle” that “a failure to attract investors or an unfavorable business climate does not warrant an extension of a licensee’s milestones.”<sup>13</sup> Likewise, the “failure to obtain back-up financing” does not warrant a rule waiver.<sup>14</sup> Indeed, granting Globalstar a waiver on the basis of unfavorable market conditions would open the floodgates for numerous other satellite licensees seeking an excuse for not complying with regulatory conditions.<sup>15</sup>

Globalstar’s claim of financial hardship is also contradicted by its own public statements. In a May 2009 filing in support of its application for a license modification to launch new satellites, Globalstar asserted that “there can be little doubt as to Globalstar’s financial ability to proceed with its plans.”<sup>16</sup> Globalstar refuted any suggestion of financial hardship as “simply false” and touted its ability to obtain sufficient financing as “no small commitment in today’s

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<sup>13</sup> *NetSat 28 Company*, Memorandum Opinion and Order, 19 FCC Rcd 17722, ¶ 14 (2004).

<sup>14</sup> *Styles Interactive, Inc. Application for Review of Denial of Petition for Reconsideration of IVDS Final Down Payment Deadline*, 12 FCC Rcd 17987, ¶ 8 (1997); *see also Citizens Utility Company Petitioner for Waiver of Section 36.154(d) of the Commission’s Rules*, 7 FCC Rcd 8656, ¶¶ 6-7 (Common Carrier Bur. 1992) (finding that hardship related to repaying funds mistakenly withheld did not amount to good cause for waiver).

<sup>15</sup> In fact, other satellite operators have already claimed that unfavorable economic conditions should extend milestones or excuse payment of bonds due upon missing milestones. *See EchoStar Corporation, Withdrawal of Authorization and Request for Waiver*, File Nos. SAT-LOA-20030827-00186 and SAT-MOD-20050308-00059 (Mar. 9, 2009) (requesting release of the performance bond submitted for a surrendered authorization due to its need to prioritize resources given “the current economic condition of the capital markets”); *AtContact Communications, LLC, Request for Waiver of Milestones and Bond Requirement*, File Nos. SAT-MOD-20080813-00155, SAT-AMD-20080930-00195, SAT-AMD-20080505-00098, SAT-AMD-20080930-00194, and SAT-MOD-20060511-00057 (Feb. 6, 2009) (seeking waiver of the Commission’s bond requirements given the “current economic emergency”).

<sup>16</sup> *Globalstar Licensee LLC, GUSA Licensee LLC, Application for Modification of Nongeostationary Mobile Satellite Service System License (S2115) To Launch a Second-Generation System*, Call Sign S2115, Opposition of Globalstar Licensee LLC, at 11 (filed May 28, 2009).

economic environment.”<sup>17</sup> Indeed, Globalstar obtained \$738 million in new financing.<sup>18</sup> In its November 2009 SEC filing, Globalstar also noted its ability if needed to “defer a significant portion of our capital expense unrelated to the launch and construction of our satellites.”<sup>19</sup>

**C. Globalstar Has Shown No Nexus Between the April 2009 Earthquake in Italy And Its Inability to Meet the ATC Gating Criteria Deadlines**

Finally, Globalstar has not shown that the April 2009 earthquake is the direct cause of its inability to meet existing regulatory deadlines: launch additional satellites to meet the coverage requirements of Section 25.149(b)(1)(iii) of the Commission’s rules by July 1, 2010 and make a dual-mode MSS-ATC handset available by July 1, 2011. Globalstar’s waiver extension request does not make clear that the delay in meeting the coverage requirement is due to the earthquake as opposed to Globalstar’s financing issues and business decisions. Globalstar also fails to explain how the Thales facility damaged by the earthquake in April 2009 makes production of a dual mode MSS-ATC handset more than two years later unattainable.<sup>20</sup>

More specifically, Globalstar’s claims that the April 2009 earthquake in Italy is responsible for delays is belied by press statements made by its satellite manufacturer, Thales Alenia Space (“Thales”).<sup>21</sup> In a July 27, 2009 conference call Thales’ Chief Financial Officer Patrice Durand noted that “the Globalstar work had been ‘suspended for several months’ before

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<sup>17</sup> *Id.* at 10-11.

<sup>18</sup> Globalstar ATC Modification Application, at 9.

<sup>19</sup> Globalstar, Inc. Form 10-Q, filed with the U.S. Securities and Exchange Commission on November 6, 2009 (“Nov. 2009 10-Q”).

<sup>20</sup> Globalstar has executed a contract with Hughes Network Systems, not Thales, to design and supply the satellite interface chips that will make the handsets capable of dual-mode MSS/ATC operation, *see* Globalstar ATC Modification Application, at 7.

<sup>21</sup> Globalstar ATC Modification Application, at 9.

[certain] new financing was made available” and that “the contract had been subjected to a ‘temporary stop-work’ order.”<sup>22</sup> Thales then noted that it could “re-engage full production quickly enough to complete the 24 satellites in time for launches in 2010.”<sup>23</sup> That same month, Thales’ Chief Executive Officer told industry press that all 24 Thales satellites were expected to be in orbit by the end of 2010.<sup>24</sup> In its November 2009 10-Q filing with the Securities Exchange Commission, Globalstar also reported that the earthquake in Italy would “*not* have a material adverse effect on our operations and business plan.”<sup>25</sup>

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<sup>22</sup> Peter B. de Selding, *Thales Revenue Is Flat, But Orders Are Up*, Space News, July 27, 2009, available at [http://www.spacenews.com/satellite\\_telecom/thales-revenue-flat-but-orders-are.html](http://www.spacenews.com/satellite_telecom/thales-revenue-flat-but-orders-are.html) (“*Thales Revenue*”).

<sup>23</sup> *Thales Revenue*, *supra*.

<sup>24</sup> Michael A. Taverna, *Globalstar Completes Financing Plans*, Aerospace Daily & Defense Report, July 6, 2009.

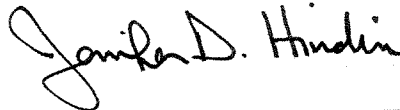
<sup>25</sup> Nov. 2009 10-Q (emphasis added). In its related conference call with investors, Globalstar stated that due to the earthquake, Thales had informed it delivery of its satellites would be delayed by only “one to three months.” Globalstar, Inc., Q3 2009 Earnings Call Presentation, at 16, (attached to Form 8-K, filed with the U.S. Securities and Exchange Commission on November 5, 2009); *see also* Peter B. de Selding, *Globalstar Trims Spending as it Awaits New Constellation*, Space News, Nov. 6, 2009, available at [http://www.spacenews.com/satellite\\_telecom/091106-globalstar-cuts-costs-awaiting-new-fleet.html](http://www.spacenews.com/satellite_telecom/091106-globalstar-cuts-costs-awaiting-new-fleet.html).



**III. CONCLUSION**

For the foregoing reasons, Iridium respectfully requests that the Commission dismiss or deny Globalstar's request to modify its waiver conditions.

Respectfully submitted,



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December 24, 2009

## AFFIDAVIT OF DONNA BETHEA MURPHY

I, Donna Bethea Murphy, am the Vice President of Regulatory Engineering for Iridium Satellite LLC ("Iridium"). I hereby declare under penalty of perjury that I am qualified to speak on behalf of Iridium and that I have reviewed the preceding Motion to Dismiss and Opposition submitted on behalf of Iridium, and the factual statements therein are complete and accurate to the best of my knowledge, information, and belief.

*/s/ Donna Bethea Murphy*

Donna Bethea Murphy  
Vice President – Regulatory Engineering  
Iridium Satellite LLC

CERTIFICATE OF SERVICE


I hereby certify that on December 24, 2009 I caused a true and correct copy of the foregoing to be served by first-class mail, unless noted otherwise, on the following:

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