

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

In the Matter of )  
 )  
GLOBALSTAR LICENSEE LLC ) File No. SAT-MOD-20091214-00152  
OPEN RANGE COMMUNICATIONS ) File No. SAT-STA-20100625-00147  
 )  
Application for Modification of License for )  
Operation of Ancillary Terrestrial Component)  
Facilities )

COMMENTS OF BLUE SKY INFORMATION SERVICES

Blue Sky Information Services (Blue Sky), hereby comments on the Request for Modification of Waiver Conditions filed December 14, 2009 by Globalstar Licensee, LLC. (Globalstar Request). Blue Sky provides these comments and viewpoints to support both the (Globalstar Request), and/or the Open Range Communications request for Special Temporary Authority to continue operating ATC facilities on spectrum licensed to Globalstar Licensee LLC during the requested period.

At face value, the Public Interest mechanisms of a requirement for Open Range to discontinue its' WiMAX based service to a rapidly expanding rural subscriber base are difficult, if not impossible to justify. Thus, appearing to rally against the specific goals of The National Broadband Plan which is supported by the current Administration.

The Commission appears once again ready to provide a "Zero Tolerance

Policy” against Globalstar. A policy that this commenter views as having been levied discriminately against Globalstar in the past regarding the cancellation of their 2Ghz MSS license. On January 30th, 2003 the Federal Communications Commission filed its “Memorandum Opinion and Order” (DA 03-328) which cancelled Globalstar’s 2Ghz MSS license authorizations due to what appears as a Zero Tolerance Policy on milestone achievement requirements.

In this proceeding, Globalstar’s first milestone was to provide a “non-contingent” satellite manufacturing contract for the development and launch of its 2Ghz MSS system by July 17th, 2002. On July 17, 2002, Globalstar filed an affidavit which asserted that it had met its first milestone by entering into a non-contingent contract with Space Systems/Loral for construction of its 2Ghz MSS system. Globalstar subsequently provided copies of this Contract to the Commission upon their request.

Contemporaneously with entering into its satellite manufacturing contract with Loral, Globalstar requested modifications to its system license to modify certain orbital parameters of its application, and requested a waiver of certain future milestone performance dates. Globalstar requested that it be given 90 days to negotiate a reformation of its executed satellite manufacturing contract in the event its request for milestone extension were to be denied by the Commission.

In its final ruling, the Commission claimed that it was acting on its long-standing policy to include conditions in satellite authorizations requiring licensees to meet system implementation milestones. The Commission claimed to have strictly enforced implementation milestones, because it was in the public interest to ensure licensees proceed expeditiously to complete construction of their full systems and commence service.

On June 24, 2004, the Commission released its “Memorandum Opinion and Order” (DA 04-126) denying Globalstar’s request for the Commission to overturn the International Bureau’s Order declaring that its 2Ghz MSS license had become null and void for failure to meet the first milestone deadline specified as a condition to that license.

In his “Consolidated Separate Statement of Commissioner Kevin J. Martin” (DA 04-124). Then acting FCC Chairman Kevin J. Martin opined.

*“While I do not take issue with these Orders’ interpretation of the “non-contingent satellite manufacturing contract” milestone, I question the usefulness of our approach. With respect to Globalstar, we take away its license because Globalstar’s manufacturing contract would not have provided for completion of construction of Globalstar’s originally proposed system within Globalstar’s original construction milestones. But Globalstar sought modification of its system and extension of the construction milestones. Globalstar specifically sought an opportunity to cure its satellite manufacturing contract to conform to the original requirements should its modification and extension requests be denied. In light of these facts, I think Globalstar could rather easily have entered into the requisite contract in order to meet the first milestone and preserve its license. Whether Globalstar could have ultimately lived with such a contract is a harder question, but Globalstar would have bought itself time to try. **It thus seems to me that Globalstar is here being penalized for taking a more honest approach.**”*

Subsequent to the cancellation of Globalstar's 2Ghz MSS licenses due to "milestone violations". Another 2Ghz MSS licensee, Boeing, applied to modify its FCC 2Ghz MSS authorizations (SAT-MOD-20020726-0013) and modify its entire set of orbital parameters, thereby converting from a constellation of 16 MEO (NGSO) spacecraft to a single GEO spacecraft. Thus by the conversion of the Boeing constellation from a NGSO configuration to a single GEO spacecraft. If granted, Boeing's construction milestone to launch its first satellite would be modified from the earlier January 17, 2005 requirement for NGSO systems to the GEO milestone some 15 months later of July 27, 2006. On June 24, 2003, the Commission granted Boeing its request to modify its orbital parameters, and hence its construction milestone deadlines via its "Order and Authorization" (DA-03-2073).

In hindsight, it is clear that Boeing's original "non-contingent" Satellite Manufacturing Contract was not "non-contingent", yet the Commission approved the changes to the Boeing orbital parameters and milestone dates, only months after their refusal to do the same for Globalstar. As a matter fact, all of the 2Ghz licensees that "cleared the first milestone" requirement and claimed to have provided a "non-contingent" Satellite Manufacturing Contract, either ultimately surrendered their authorizations, or requested and were granted extensions to their deployment milestones by the Commission (See DBSD, Terrestar). Hence, it is viewed by this commenter that none of these licensees actually presented a "non-

contingent” construction contract. But, only Globalstar was penalized by this “Zero Tolerance Policy” in the views of this Commenter.

This commenter makes no representations as to the ultimate financial capabilities of Globalstar at the time to actually complete the construction of its 2Ghz constellation, but more so simply points out that the Commissions dealings with Globalstar seem more “Heavy-Handed” than other MSS licensees in their peer group, and as ex-FCC Chairman Martin opined... “Globalstar is being penalized for taking a more honest approach.”

Perhaps the underlying message here is that those that “game” the Commissions rules are rewarded, while those that come before the Commission with their “game plan” open are punitively punished. To this commenter, this type of rewarding the “gamesman” only encourages future “gaming” of the system and should be discouraged rather than rewarded as appears to be the case here.

Meanwhile, One of Globalstar main competitors, Iridium, who is also a Commenter in these proceedings opines in its December, 2009, “Motion to Hold Globalstar Applications in Abeyance”. That Globalstar is violating its MSS License terms by operating 8 spare satellites that were launched in 2007. Iridium specifically claims in its Motion to Hold in Abeyance”, that..

*“After two letters from the International Bureau requesting a formal application, Globalstar filed in July 2007 an application for interim operating authority to add these eight satellites to its 40-satellite constellation. Although the Commission has never approved Globalstar’s application, Globalstar has already placed the eight new MSS satellite into orbit. In November 2007 and July 2008, Globalstar certified that all eight satellites “have drifted into their orbital locations in the Globalstar Big LEO constellation and been placed into operation.” But as Globalstar itself admitted, the authorization request was still pending at the time -- and is still pending today. As a result, GlobalStar is currently operating 8 more satellites than its authorization allows and has placed its constellation in orbital configuration at variance from its license.”*

To date, Globalstar has filed no less than 7 applications for Special Temporary Authority to continue to operate its 8 satellites launched in 2007. To date the Commission has failed to act on even one of its applications. Globalstar is a publicly traded company and has responsibilities to provide some amount of reassurances to its shareholders that they will be allowed to continue business into the future as a “going concern”. Unresolved regulatory issues do little to provide the confidence that potential investors require. Given these facts, it is not difficult to question as to why Globalstar sought regulatory representation with the ITU from an external foreign regulatory body for its next generation spacecraft.

Iridium appears to trumpet this lack of Commission action on Globalstar’s applications, and applications for Special Temporary Authority as Globalstar’s lack of respect for the Commissions Rules and Regulations. Yet, it appears to this commenter that Iridium itself has a history of operating outside of its “officially licensed” authorizations.

On July 1st, 2008 Iridium Constellation filed SAT-MOD-20080701-00140 requesting “Application for Minor Modification” to its authorizations. In this application, Iridium requested that the Commission modify its authorization to operate a constellation of non-geostationary satellites to better reflect the requirements of orbital debris mitigation, that were adopted by the Commission in 2004. Since Iridium’s license is “conditioned” on the earlier 2001 more stringent orbital debris mitigation requirements. Iridium applied to the Commission to have their license modified to reflect the orbital debris mitigation requirements adopted by the Commission in 2004. Accordingly, Iridium filed an amended orbital debris mitigation and end-of-life disposal plan in 2005 to conform its license to the Commission’s new regime at the time. That application lay dormant in the intervening years.

However, in 2008, Iridium found that one Iridium spacecraft no longer had sufficient fuel to perform de-orbit maneuvers as required in the original 2001 Plan. With one satellite operating below the fuel threshold of that plan, and hence their then-current conditions of licensing. Iridium opined:

*“Unfortunately, as confirmed in a recent fuel gauging estimate, after the unexpected two-and-a-half year delay in considering the new 2005 Plan, one IRIDIUM spacecraft no longer has sufficient fuel to perform de-orbit maneuvers anticipated in the original 2001 Plan to achieve atmospheric re-entry within one year. Importantly, however, all IRIDIUM spacecraft have sufficient fuel to meet the Commission’s 25-year de-orbit standard and the terms of the plan Iridium filed in 2005.”*

Iridium admitted that it was in de-facto violation of its Commission administered space station license authorities. Specific regulations that Iridium itself described as one of their basic necessary conditioned authorities required to operate its spacecraft. However, out of basic respect for the Commission's rules and authorities. One might have expected Iridium to provide the Commission with the courtesy of at least filing for a Special Temporary Authority (STA) to continue operations of the satellite in question until this application was ultimately approved. Especially since the original application had already lain dormant for nearly 4 years. Yet, no Special Temporary Authority (STA) appears to have been tendered by Iridium.

Quite interestingly, Iridium termed the Orbital Debris Modification as a "Minor Modification" to its license, yet opined in the latter part of its application.

*"Conversely, failure to modify the Iridium license as requested would result in the unnecessary de-orbit of productive spacecraft well before the end of their useful lives, potentially compromising the MSS services available to support critical national security and first responder functions."*

It appears to this commenter that Iridium prods the Commission to administer a "Zero-Tolerance-Policy" with Globalstar yet again. While Iridium failed to provide even the courtesy of an STA application for its Orbital Debris Motion, and hence, continued to operate the subject spacecraft outside of its then currently conditioned parameters. At the same time, Iridium asks the Commission to punish Globalstar for operating subject spacecraft without final authority, even



though Globalstar has followed Commission rules, and filed valid uninterrupted STA applications spanning nearly 4 years.

Thus it appears that Iridium prefers to hold itself to one set of regulatory and operational standards by waving the banner of Public Interest motivations, while holding its competition who employ similar Public Interest justifications to yet a different set of standards.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Richard Foley', with a stylized, cursive script.

Richard Foley  
Blue Sky Information Services  
5674 El Camino Real, Suite H  
Carlsbad, CA 92008

August 2, 2010

## CERTIFICATE OF SERVICE

I, Richard Foley, certify that on this 4th day of September, 2010, a copy of the foregoing Comment was sent via Federal Express to the following persons (unless another delivery method is specified):

Ms. Marlene Dortch  
Secretary  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, DC 2005

Samir C. Jain\*  
Wilmer Cutler Pickering Hale and Dorr LLP  
1875 Pennsylvania Avenue, N.W.  
Washington, D.C. 20554  
Samir.Jain@wilmerhale.com

Mindel De La Torre\*  
Chief, International Bureau  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington D.C. 20554  
[Mindel.DeLaTorre@fcc.gov](mailto:Mindel.DeLaTorre@fcc.gov)

Roderick K. Porter\*  
Deputy Chief, International Bureau  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington D.C. 20554  
[Roderick.Porter@fcc.gov](mailto:Roderick.Porter@fcc.gov)

Gardner Foster\*  
Assistant Bureau Chief, Intl. Bureau  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington D.C. 20554  
Gardner.[Foster@fcc.gov](mailto:Foster@fcc.gov)

Robert Nelson\*  
Chief, Satellite Division, Intl. Bureau  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington D.C. 20554  
[Robert.Nelson@fcc.gov](mailto:Robert.Nelson@fcc.gov)

Karl Kensinger\*  
Associate Division Chief, Satellite  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington D.C. 20554  
[Karl.Kensinger@fcc.gov](mailto:Karl.Kensinger@fcc.gov)

Paul De Sa\*  
Chief, Office of Strategic Planning & Policy  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington D.C. 20554  
[Paul.DeSa@fcc.gov](mailto:Paul.DeSa@fcc.gov)

Suzanne Tetreault\*  
Deputy Chief, Enforcement Bureau  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington D.C. 20554  
[Suzanne.Tetreault@fcc.gov](mailto:Suzanne.Tetreault@fcc.gov)



\*Denotes service via email.

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Richard Foley