

ORIGINAL

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

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In the Matter of)
)
Request for Special Temporary Authority for License held by)
)
Iridium Constellation, LLC)
)
For a Mobile Satellite System in the 1.6 GHz Frequency Band)

File No.

SAT-STA-20040319-00056

MAY 13 2004

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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Policy Branch
International Bureau

REPLY OF NEW OPERATING GLOBALSTAR LLC

New Operating Globalstar LLC ("Globalstar") hereby replies to the Opposition of Iridium Constellation, LLC ("Iridium") filed on May 6, 2004, in response to Globalstar's Petition to Deny the above-referenced application.¹

In its Petition, Globalstar explained why the Commission should reject Iridium's most recent request for extension of its special temporary authority ("STA") to use CDMA Channel 9 (1620.10-1621.35 MHz) of the Big LEO Mobile-Satellite Service ("MSS") spectrum from May 12, 2004, through and including November 8, 2004. In its Opposition, Iridium has not demonstrated factual evidence that extension of Iridium's modified operating authority is needed to resolve alleged capacity constraints in the Middle East region. Accordingly, Iridium's request for another STA should be denied.

¹ See Public Notice, Report No. SAT-00203 (released Mar. 26, 2004).

I. IRIDIUM HAS NOT JUSTIFIED THE NEED FOR CHANNEL 9 OF THE BIG LEO CDMA SPECTRUM.

As Globalstar established in its Petition, Iridium's prior presentations of data concerning its call traffic in the Middle East region do not demonstrate that the capability of the Iridium system to serve increased traffic in the Middle East is dependent upon Iridium obtaining access to Channel 9 of the CDMA Big LEO spectrum. Globalstar has repeatedly made the case that the availability of more spectrum was not the critical factor in any improvement in Iridium's service in the Middle East region,² and it did so again in the Petition (at 3). Iridium did not respond to Globalstar's technical analysis on this issue submitted with the Petition.

In response to Globalstar's questions regarding the inconsistency in the apparent increase in Iridium's capacity per MHz (Petition, at 3-4) with and without Channel 9, Iridium once again claims that Globalstar is ignoring that spreading calls over wider bandwidth has the effect of reducing call density and increasing the system's spectrum efficiency.³ Opposition, at 4-5. However, the issue is not just whether spreading wireless calls over more available bandwidth has the effect of reducing call density. The question presented by Iridium's various STA requests is

² See, e.g., Ex Parte Presentation and Technical Analysis (§ 4) filed by Globalstar, L.P., in IB Dkt. No. 02-364 (Mar. 19, 2004) (attached to Petition).

³ Iridium suggests that Globalstar should ignore data provided by Iridium from one year ago. Opposition, at 4. However, Iridium's March-May 2003 data is the only data that offers a contrast between Iridium system operations with and without access to CDMA Channel 9. Therefore, these data are relevant to the issue of whether the Iridium system needs access to Channel 9 to accommodate the call volume that the system is experiencing in the Middle East region.

whether the Iridium system *needs* more bandwidth to serve its Middle East traffic. Iridium has not established that additional spectrum is the necessary answer to whatever problems it may have experienced providing service in the Middle East region.

Globalstar's analyses of the effect of additional spectrum in the Middle East region on Iridium's service quality demonstrate that access to additional spectrum alone did not reduce call failures.⁴ Iridium continues to claim that additional spectrum is needed to maintain service quality, but Globalstar's analyses call into question the need for additional spectrum to achieve that goal. Information provided by the Defense Information Systems Agency does not counter Globalstar's technical analyses, and does not establish a necessary correlation between the level of usage on the Iridium system and a need for Channel 9.⁵

Iridium's Opposition fails to provide evidence that rebuts Globalstar's analyses of Iridium's alleged need for spectrum beyond the 5.15 MHz available for its TDMA system. Accordingly, pursuant to Section 309 of the Communications Act of 1934, as amended, the Commission must deny Iridium's request. At the least, the Commission must acknowledge that the current record does not continue to support Iridium's request, and there are substantial and material questions of fact

⁴ See Technical Analysis, supra note 2, at §§ 2, 4.

⁵ See Letter to Mr. Frederick R. Wentland and Ms. Kathy Smith, NTIA, from Carl Wayne Smith, Defense Information Systems Agency (dated May 4, 2004).

that must be resolved before the Commission can grant Iridium's most recent STA request.⁶

II. THE COMMUNICATIONS ACT DOES NOT AUTHORIZE GRANT OF IRIDIUM'S STA REQUEST.

Iridium's Opposition also failed to rebut Globalstar's analysis of why the Commission does not have the authority under the Communications Act of 1934 to specify the terms under which Iridium provides MSS in the Middle East region. As Globalstar pointed out (Petition, at 4-7), the Commission has repeatedly acknowledged that the Communications Act does not give it the authority to decide on what terms international satellite systems will provide service within foreign territories.⁷ But, that is exactly what the Commission's STA orders purport to do with respect to Iridium's Middle East service. See Petition, at 5.

Iridium's Opposition simply repeats the Commission's incomplete statements of the law on this issue from prior STA orders.⁸ While the Iridium system may have

⁶ See Serafyn v. FCC, 149 F.3d 1213, 1219-20 (D.C. Cir. 1998) (FCC is obligated to determine whether petitioner has raised a substantial question based on review of all the evidence taken together); Citizens for Jazz on WRVR, Inc. v. FCC, 775 F.2d 392, 394-96 (D.C. Cir. 1985).

⁷ See Amendment of the Commission's Rules to Establish Rules and Policies Pertaining to a Mobile Satellite Service in the 1610-1626.5/2483.5-2500 MHz Frequency Bands, 9 FCC Rcd 5936, ¶ 213 (1994) ("Big Leo Rules Order"); Amendment of the Commission's Rules to Establish Rules and Policies Pertaining to a Mobile Satellite Service in the 1610-1626.5/2483.5-2500 MHz Frequency Bands, 11 FCC Rcd 12861, ¶ 53 (1996); Maritime Telecommunications Network, Inc., 16 FCC Rcd 11615, ¶ 18 (Int'l Bur. 2001).

⁸ See Iridium Constellation, LLC, Order, DA 03-3926 (Dec. 11, 2003) ("December Order").

been authorized as an international satellite system, its FCC license authorizes, and the Big LEO MSS band plan applies to, service "in the United States" and no more.⁹ Accordingly, the Communications Act does not authorize the Commission to mandate what frequencies the Iridium constellation uses for service in the Middle East region.

III. CONCLUSION

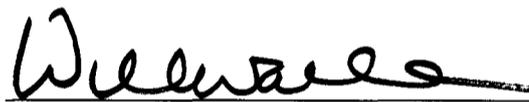
For the reasons set forth above, Globalstar urges the Commission not to grant Iridium additional authority to operate on CDMA Channel 9 in the Middle East, or, assuming that the Commission finds that it has the authority to so authorize Iridium, at the least, to modify any interim grant of authority to Iridium so that it operates only on a secondary basis as to the Globalstar system.

Respectfully submitted,

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Date: May 13, 2004

⁹ Motorola Satellite Communications, Inc., 10 FCC Rcd 2268, ¶ 25 (Int'l Bur. 1995); see Big LEO Rules Order, 9 FCC Rcd at 6019, ¶ 213.

CERTIFICATE OF SERVICE

I, William D. Wallace, hereby certify that I have on this 13th day of May, 2004, caused to be served true and correct copies of the foregoing "Reply of New Operating Globalstar LLC" upon the following persons via hand delivery (marked with an *) or first-class, United States mail, postage prepaid:

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