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July 18, 2001

Via HAND DELIVERY

Magalie Roman Salas
Secretary
Federal Communications Commission
445 Twelfth Street, SW
Room TW - A325
Washington, D.C. 20554

RECEIVED
JUL 18 2001
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

**Re: VisionStar, Incorporated Transfer of Control Application
File No. SAT-T/C-20001215-00163**

Dear Ms. Salas:

Enclosed for filing are an original and four copies of a letter to Donald Abelson, Chief of the International Bureau, regarding the above-referenced transfer of control application.

Also enclosed is an additional copy of the letter to Mr. Abelson, which we ask you to date-stamp and return to our messenger.

Please do not hesitate to contact me if you have any questions regarding this filing.

Sincerely,



Rhonda M. Bolton
Counsel for EchoStar VisionStar Corporation

Enclosures

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July 18, 2001

Via HAND DELIVERY

Mr. Donald Abelson
Chief
International Bureau
Federal Communications Commission
445 Twelfth Street, SW
Room 6-C750
Washington, D.C. 20554

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**Re: VisionStar, Incorporated, Transfer of Control Application
File No. SAT-T/C-20001215-00163**

Dear Mr. Abelson:

On behalf of EchoStar VisionStar Corporation ("EchoStar"), we write to urge expeditious approval of the transfer of control application submitted to the Commission by EchoStar and VisionStar, Inc. ("VisionStar") in December 2000, to alert the Commission to recent relevant precedent in support of this action, and to request that this proceeding be converted to 'permit but disclose' status should the Commission require additional information from the applicants.

In considering this application, the Commission is confronted with a stark choice: either approve the application expeditiously and allow a satellite to soon commence providing actual service to consumers from the 113° W.L. orbital location; or allow that orbital location to lie fallow for several years and indulge in the unproductive paper wars instituted by two second-round Ka-band applicants – Pegasus and TRW.

Among other things, these two petitioners have made much of their claim that the recent decision of VisionStar to change its satellite contractor denotes some lack of diligence on

VisionStar's part.¹ A recent Bureau action, however, provides further proof that this claim is baseless. The Bureau recently gave a satellite licensee a significant degree of flexibility in switching from one satellite contractor to the other when it granted the request of R/L DBS Company LLC to extend its interim satellite construction milestones. The request was necessitated, according to R/L DBS, by a switch in satellite construction contractors that arose in the context of a proposed transfer of control (for which R/L DBS has separately requested Commission approval).² The Bureau summarily approved the milestone extension.³ Indeed, the Bureau approved the request notwithstanding the Commission's earlier explicit decision that "failure to meet any of these interim milestones will automatically render [R/L DBS's] DBS permit null and void without further Commission action."⁴

Whether or not such routine disposition is appropriate, the action that TRW and Pegasus request – finding a lack of diligence due to a change in contractors – is completely inconsistent with the Bureau's action in the R/L DBS case.⁵

¹ See, e.g., TRW, Inc.'s Petition to Deny the VisionStar transfer of control application, File No. SAT-T/C-20001215-00163 (dated Feb. 5, 2001), at 24-26 (citing *AT&T/Ford Aerospace Satellite Services Corp.*, 2 FCC Rcd. 4431(1987)).

² See Letter from James L. Casserly, Counsel for R/L DBS Company, LLC, to Donald Abelson, Chief, International Bureau, FCC, Re: File Nos. DBS 97-01, 94-SAT-AL-96, 94-SAT-TC-96, 49 SAT-TC-95, 130-SAT-EXT-95 (dated June 11, 2001), at 1.

³ The grant notes only that "R/L DBS must adhere to the substitute milestone schedule indicated in this filing." ³ See *id.* (stamped "Granted" with grant date of June 22, 2001). It is not clear from the Bureau's "Granted" stamp whether the Bureau adopted the justifications proffered by R/L DBS in a "Proposed Order" submitted along with the R/L DBS Request to Substitute Milestones.

⁴ *In re Petition of R/L DBS Company, L.L.C. for Extension of its Direct Broadcast Satellite Construction Permit*, 16 FCC Rcd. 9, 18 (2000).

⁵ In the most recent of its numerous submissions on the merits of this proceeding, TRW claims that VisionStar's description of work performed under its satellite construction contracts demonstrates that VisionStar did not meet its commencement of construction milestone. See Letter from Stephen D. Baruch, Counsel to TRW, Inc., to Magalie Roman Salas, Secretary, FCC (dated July 12, 2001), at 2-3. Beyond the factual flaws of TRW's arguments, TRW is essentially pressing on the Commission a new, higher construction commencement standard – proof of "bending metal." VisionStar has made significant progress under the Orbital contract. It has made substantial additional headway in constructing its satellite under the current contract (including order or allocation from inventory of a number of parts and payments of millions of dollars). All that aside, however, the construction commencement standard is actually a narrow

(Continued...)

EchoStar and VisionStar requested expeditious action (by March) on their transfer of control application when the application was filed on December 15, 2000. As noted in the application, both the urgent need for the introduction and expansion of services in the Ka-band and the goal of ensuring timely deployment of VisionStar's system favor expedited action. First round licensees such as VisionStar represent the best prospects for rapid commercial deployment of Ka-band systems. EchoStar's decision to make a significant investment in VisionStar recognizes this fact, as well as the fact that the Bureau had previously examined the diligence of all first-round licensees and clearly determined that there was no basis to take any enforcement action against VisionStar.⁶ EchoStar accordingly urges the Bureau not to allow the dilatory tactics of a few second processing round applicants to further delay a decision regarding transfer of control.

In contrast with the routine grant of R/L DBS's recent modification application, the instant application has already been subject to all due scrutiny. Indeed, the parties have promptly and fully complied with the Bureau's request for additional information even though that request clearly went further than what applicants are typically required to submit.

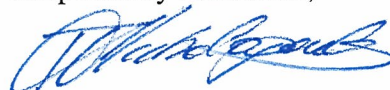
one. The milestone is met by execution of a non-contingent satellite construction contract. *See Netsat 28 Company, L.L.C.*, 15 FCC Rcd. 11321 (Int'l Bur. 2000), at ¶ 4 ("The Commission requires the execution of a non-contingent construction contract to satisfy the commencement milestone of domestic satellite licenses.") (citation omitted). While the Commission has proposed a higher, "bending metal" standard as an interim milestone for a new service in another proceeding, it has not done so here, and it would be inappropriate to suddenly raise the bar for existing licensees. *See In the Matter of the Establishment of Policies and Service Rules for the Non-Geostationary Satellite Orbit, Fixed Satellite Service in the Ku-Band*, IB Docket No. 01-96, Notice of Proposed Rulemaking, FCC 01-134, (rel. May 3, 2001), at ¶ 57 (seeking comment on a proposal to adopt an interim milestone requirement that NGSO-FSS licensees "begin physical construction of all satellites in their systems within two and a half years of authorization."). Since TRW's concerns about VisionStar's progress are irrelevant to the question of construction commencement, they can only be read as similar to Pegasus's claims – i.e., as relating to the next, construction *completion* milestone. In other words, TRW believes that VisionStar's progress is slow, and Pegasus likewise believes that VisionStar will not be able to meet its *future* construction milestone. Such claims, however, are not a cognizable ground for *preemptive* cancellation of a license.

⁶ The Bureau, however, did order the cancellation of Ka-band authorizations of three other companies for failure to meet the commencement of construction milestone. *See Netsat 28 Company, LLC*, 15 FCC Rcd. 11321 (Int'l Bur. 2000); *Panamsat Licensee Corp.*, 15 FCC Rcd. 18720 (Int'l Bur. 2000); *Morning Star Satellite Company*, 15 FCC Rcd. 11350 (Int'l Bur. 2000).

Mr. Donald Abelson
July 13, 2001
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EchoStar believes that the ample record already compiled in this matter justifies swift approval of the transfer of control application, and no further delay is warranted. Nevertheless, to the extent that the Commission staff deems it necessary, EchoStar would also be pleased to discuss its request for expeditious approval with the staff in greater detail. In that case, the Commission should convert this proceeding to a non-restricted, permit-but-disclose status, consistent with the treatment of second-round Ka-band matters. The permit-but-disclose status of those matters has given the petitioners unfettered opportunities to visit Commissioners and staff and discuss issues that are inevitably related to the questions pending in this proceeding.⁷ Thus, while in EchoStar's view the record is complete, conversion of the proceeding to non-restricted status would only be fair if the Bureau were to disagree with that view.

Respectfully submitted,



Pantelis Michalopoulos
Counsel for EchoStar VisionStar Corporation

cc: Service List
Jennifer Gilsenan
Rosalee Chiara
Marilyn Simon

⁷ For example, Pegasus representatives met with Commissioner Copps on June 27, 2001. *See* Notice of June 27, 2001 Ex Parte Presentation of Pegasus Development Corporation, File Nos. SAT-LOA-19980403-00025 to 00029 (filed June 28, 2001). The substance of what was discussed at that meeting is not known to EchoStar, because unfortunately the perfunctory notice filed by Pegasus does not truly comply with the "summary" requirement of the rules. *See* 47 C.F.R. § 1.1206. After meeting with Commissioner Copps, however, Pegasus transmitted what it described as a "Summary of Ka-band Proceedings" to the Commissioner specifically arguing that VisionStar had not met its commencement of construction milestone and that VisionStar "has abandoned its efforts to develop its own system and now seeks to transfer its license to another party," matters directly at issue in this restricted transfer of control proceeding. *See* Letter from Cheryl Crate, Pegasus Communications, to Commissioner Michael J. Copps, FCC (dated July 12, 2001), at 4. Pegasus representatives also met with an advisor to Commissioner Copps and International Bureau staff members on July 6, 2001 to discuss matters related to the Ka-band. *See* Notice of July 6, 2001 Ex Parte Presentation of Pegasus Development Corporation, File Nos. SAT-LOA-19980403-00025 to 00029 (filed July 9, 2001).

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