

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

In the matter of)
)
TerreStar Networks Inc.) File No. SES-AMD-20070723-00978
) File No. SES-AMD-20070907-01253

FILED/ACCEPTED
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Federal Communications Commission
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COMMENTS

Inmarsat Global Limited (“Inmarsat”) comments on the application of TerreStar Networks Inc. (“TerreStar”) to add an Ancillary Terrestrial Component (“ATC”) to TerreStar’s authorized but unlaunched 2 GHz MSS system. As detailed below, TerreStar’s brief description of its ground spare plans does not provide certainty that TerreStar will satisfy a critical ATC gating criterion—having that ground spare fully constructed within one year of commencing ATC operations.

The Commission’s rules include a number of “gating criteria” that an ATC applicant must meet prior to receiving ATC authority.¹ Those gating criteria include requirements to: (1) satisfy geographic and temporal MSS service requirements; (2) maintain a ground spare satellite at the ready within one year of commencing commercial ATC operations; (3) have commercial MSS service available; (4) offer an integrated MSS/ATC service; and (5) operate ATC in the same band as the applicant’s MSS operations.² The Commission policy is to grant ATC authority *before* an applicant actually satisfies each of the ATC gating criteria only in

¹ 47 C.F.R. § 25.149; see *Flexibility for Delivery of Communications by Mobile Satellite Service Providers in the 2 GHz Band, the L-Band, and the 1.6/2.4 GHz Bands*, 18 FCC Rcd 1962 (2003) (“ATC Order”), modified, *Order on Reconsideration*, 18 FCC Rcd 13590 (2003) (“*First ATC Reconsideration Order*”), further modified, *Memorandum Opinion and Order and Second Order on Reconsideration*, 20 FCC Rcd 4616 (2005) (“*Second ATC Reconsideration Order*”).

² 47 C.F.R. § 25.149(b)(1)-(5).

“limited circumstances,”³ and only where the applicant makes a “satisfactory, prospective and substantial showing that [it] will soon meet the gating criteria.”⁴ The Commission requires a “detailed showing” that the applicant is “near to meeting the gating criteria,”⁵ and any applicant that has not actually satisfied a given gating criterion must “show substantial progress toward meeting that gating criterion before receiving a grant of ATC authority.”⁶

The Commission’s policy not to grant ATC authority until an applicant makes a substantial, detailed showing that it has met, or will soon meet, each ATC gating criterion serves important public interest goals. The Commission considered and rejected the concept of granting a “conditional” ATC license based on an applicant’s mere promise to actually meet the gating criteria before commencing commercial ATC service.⁷ Requiring that the gating criteria be satisfied in advance “reduce[s] the likelihood that Commission staff will be faced with processing speculative, prematurely filed ATC applications.”⁸ More fundamentally, requiring that an applicant satisfy each of the gating criteria in advance of ATC licensing avoids the undesirable situation where an ATC operator commences commercial ATC service based on its own assessment that it has satisfied the gating criteria, when that assessment might fall short of the Commission’s standards. As the Commission recognized, “customers could be deprived of

³ *Second ATC Reconsideration Order*, 20 FCC Rcd at 4648-49, ¶ 87.

⁴ *Id.* at 4649, ¶ 89.

⁵ *Id.* at 4650, ¶ 90.

⁶ *Id.* at 4648-49, ¶ 87.

⁷ *Id.* at 4648, ¶ 86 (citing *First ATC Reconsideration Order*, 18 FCC Rcd at 13594-95, ¶ 10).

⁸ *First ATC Reconsideration Order*, 18 FCC Rcd at 13594-95, ¶ 10.

service for which they had contracted if we found that the gating criteria had not been met and required the MSS/ATC operator to cease operations pending satisfaction of the gating criteria.”⁹

Commission rules require that TerreStar “maintain a spare satellite on the ground within one year of commencing operations” that is ready for launch in the event of failure of its authorized satellite.¹⁰ In adopting the ground spare requirement, the Commission found that it is critical to ensuring (i) that an MSS operator maintains technical redundancy to facilitate the continuous provision of MSS in the event of a satellite failure, and (ii) that ATC operations remain ancillary to the operator’s MSS service.¹¹

TerreStar addresses the ground spare gating criterion simply by stating:

“TerreStar has entered into a construction contract for the spare satellite, and the contract specifies a delivery date that is well in advance of the ‘within one year’ requirement.”¹²

TerreStar provides no further information about this contract or the construction status of this satellite. Nor does TerreStar indicate when it intends to deploy ATC so that the Commission can be sure that the ground spare will be ready within one year. TerreStar’s assertion regarding its spare satellite does not provide sufficient information to satisfy the required “substantial,” “detailed showing”¹³ that TerreStar is close to meeting the ground spare gating criterion.

The Commission should require that TerreStar provide detailed information about (1) the status of its ground spare contract, as well as a copy of the contract itself (as amended to date), (2) the actual construction status of its ground spare, and (3) the timing of its planned

⁹ *Second ATC Reconsideration Order*, 20 FCC Rcd at 4648, ¶ 86.

¹⁰ 47 C.F.R. § 25.149(b)(2)(ii).

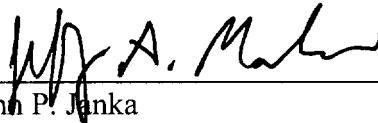
¹¹ *ATC Order*, 18 FCC Rcd at 2005-06, ¶¶ 78-84.

¹² TerreStar Networks Inc., IB File No File No. SES-AMD-20070907-01253, Amendment Description at 8 (filed Sep. 7, 2007).

¹³ *Second ATC Reconsideration Order*, 20 FCC Rcd at 4649-50, ¶¶ 89-90.

commencement of ATC, so that the Commission has a basis to determine whether TerreStar actually will have a ground spare at the ready within one year of its deployment of ATC. Granting ATC authority before TerreStar has fully satisfied the ground spare requirement would undermine the fundamental policy rationale for this gating criterion (providing redundancy to ensure continuous service to the public), and would call into question whether TerreStar's planned ATC operations are in fact ancillary to its planned MSS service.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I, Jeffrey A. Marks, hereby certify that on this 25th day of April, 2008, I caused to be served a true copy of the foregoing Comments by first class mail, postage prepaid, upon the following:

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