

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

ORIGINAL

In the Matter of )  
)  
Application of TerreStar Networks Inc. ) File Nos. SES-AMD-20070907-01253  
To Amend its Mobile Earth Terminal ) SES-AMD-20070723-00978  
Application to Request Authority to )  
Operate an Ancillary Terrestrial )  
Component In Connection with its )  
2 GHz Mobile Satellite Service System )

FILED/ACCEPTED  
MAY - 8 2008  
Federal Communications Commission  
Office of the Secretary

To: The Commission

**CONSOLIDATED RESPONSE AND OPPOSITION OF TERRESTAR  
NETWORKS INC.**

In the above-captioned application, TerreStar Networks Inc. ("TerreStar") has requested authority to operate ancillary terrestrial component ("ATC") facilities as part of its 2 GHz mobile satellite service ("MSS") system and has requested waivers of certain ATC technical rules. New ICO Satellite Services G.P. ("ICO") and Inmarsat Global Limited ("Inmarsat") filed individual comments addressing TerreStar's ATC application, and the Association for Maximum Service Television, Inc. ("MSTV") and the National Association of Broadcasters ("NAB") filed joint comments. Sprint Nextel Corporation ("Sprint") filed a petition to deny ("the Sprint Petition"). Pursuant to Sections 1.45 and 25.154 of the Commission's rules,<sup>1</sup> TerreStar hereby responds to the ICO, Inmarsat, and MSTV/NAB comments and opposes the Sprint Petition.

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<sup>1</sup> 47 C.F.R. §§ 1.45, 25.154.

## I. INTRODUCTION AND SUMMARY

At the outset, TerreStar notes that the portion of its application requesting waivers of the ATC technical rules is unopposed. The only party that commented on the waiver requests is ICO, and ICO supported them.<sup>2</sup> Sprint specifically notes that it does not oppose the waiver requests because the requests “appear unlikely to materially increase the risk of interference to adjacent channel licensees.”<sup>3</sup> Given this record, TerreStar asks that its ATC technical rule waiver requests be granted expeditiously. These waivers are critical to the design of TerreStar’s ATC system,<sup>4</sup> and granting them at the earliest possible opportunity will give TerreStar the certainty it needs to proceed with system development.

None of the parties’ filings, moreover, presents any impediment to granting the non-waiver portion of TerreStar’s ATC application:

- ICO supports a grant of the application.
- Inmarsat does not oppose a grant, but asks that TerreStar be required to provide additional information concerning its spare satellite. Inmarsat’s request is moot because the information already is a matter of public record.

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<sup>2</sup> ICO agrees with TerreStar that many of the ATC technical rules for the 2 GHz MSS band were designed to protect a system planned by Boeing that has been abandoned and that the waivers TerreStar has requested would enable it to use its 2 GHz MSS spectrum more efficiently and effectively. *See* ICO Comments at 1-2.

<sup>3</sup> Sprint Petition at 6 n. 13.

<sup>4</sup> For example, absent grant of the waivers TerreStar has requested, TerreStar could be compelled to use 13 foot ATC antenna arrays. *See* Waiver Request of TerreStar Networks Inc., File No. SES-AMD-20070723-00978 (July 23, 2007) at 12.

- MSTV/NAB does not oppose a grant, but questions whether TerreStar's ATC facilities can provide adequate interference protection to 2 GHz Broadcast Auxiliary Service ("BAS") stations that have not been relocated. Because TerreStar has represented that it will not initiate ATC operations in any market unless BAS relocation in the market has been completed or TerreStar's ATC operations have been coordinated with the market's BAS licensees, MSTV/NAB's concern is not implicated by grant of TerreStar's ATC application.
- Sprint principally makes arguments concerning reimbursement of BAS relocation expenses that are irrelevant to the merits of TerreStar's ATC application. Sprint also questions whether TerreStar can provide MSS service to all 50 states, Puerto Rico, and the U.S. Virgin Islands, as is required under one of the ATC gating criteria, without causing harmful interference to 2 GHz BAS stations that have not been relocated. Because TerreStar has submitted uncontested technical studies in the BAS clearance proceeding demonstrating that its MSS operations will not cause harmful interference to BAS stations that have not been relocated, Sprint's argument is baseless.

## II. TERRESTAR HAS SATISFIED THE SPARE SATELLITE REQUIREMENT.

One of the Commission's ATC gating criteria requires that geostationary orbit ATC applicants "maintain a spare satellite on the ground within one year of commencing operations."<sup>5</sup> To demonstrate compliance with this requirement, TerreStar represented in its ATC application that it has entered into a construction contract for a spare satellite and that the contract specifies a delivery date well in advance of the "within one year" requirement.<sup>6</sup>

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<sup>5</sup> 47 C.F.R. § 25.149(b)(2)(ii).

<sup>6</sup> See TerreStar's ATC application, File No. SES-AMD-20070907-01253 (Sept. 7, 2007), Narrative at 8.

Inmarsat does not object to a grant of TerreStar's ATC application. It questions, however, whether TerreStar's representations concerning its spare satellite are sufficient. To ensure compliance with the spare satellite requirement, Inmarsat asks that TerreStar be required to provide a copy of its spare satellite contract and to provide information concerning the status of the contract, the status of spare satellite construction, and the relationship in time between when construction of the spare satellite will be complete and when ATC operations will commence.<sup>7</sup>

The information Inmarsat seeks is already a matter of public record. The construction contract for the spare satellite, TerreStar-2, is attached as an exhibit to the Form 10-K that TerreStar's parent company, TerreStar Corporation, filed with the Securities and Exchange Commission on March 31, 2008.<sup>8</sup> As stated in the Form 10-K, the purchase price for TerreStar-2 is \$192 million, of which \$116 million (60%) had been paid as of December 31, 2007.<sup>9</sup> Of the remaining \$76 million, \$72 million is to be paid in 2008 and \$4 million in 2009.<sup>10</sup> TerreStar-2 is scheduled to be delivered in the second quarter of 2009,<sup>11</sup> which is less than one

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<sup>7</sup> See Inmarsat comments at 3-4.

<sup>8</sup> The contract is Exhibit 10.67 to the Form 10-K (available at <http://www.sec.gov/Archives/edgar/data/913665/000119312508071188/dex1067.htm>).

<sup>9</sup> Form 10-K at 5 (available at <http://www.sec.gov/Archives/edgar/data/913665/000119312508071188/0001193125-08-071188-index.htm>). The Form 10-K was amended on April 29, 2008 and May 7, 2008, but these amendments were not related to TerreStar-2.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

year from the time that TerreStar-1 will be launched, and certainly less than one year from the commencement of ATC operations.<sup>12</sup>

TerreStar incorporates by reference this Form 10-K and asks that the Commission take administrative notice of it. Incorporation of this information in the record in this proceeding renders moot Inmarsat's request that TerreStar be required to provide the information.

### III. TERRESTAR WILL NOT CAUSE HARMFUL INTERFERENCE TO BAS OPERATIONS.

MSTV/NAB are among the "Joint Parties" that requested a twenty nine month extension of the September 7, 2007, deadline for relocating BAS stations operating on 2 GHz frequencies.<sup>13</sup> Although the Commission found that a 29 month extension was unjustified, it recently granted a shorter extension of the deadline, through March 5, 2009.<sup>14</sup>

MSTV/NAB does not oppose TerreStar's ATC application, but questions whether TerreStar can provide adequate interference protection to BAS stations that have not been relocated. MSTV/NAB's concern is with protection for BAS

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<sup>12</sup> The launch milestone for TerreStar-1 is November 2007. See Memorandum Opinion and Order, File No. SAT-MOD-20070608-00080, DA 07-4148 (Int'l Bur., Oct. 3, 2007). TerreStar has publicly announced that launch of its satellite could be delayed by up to three months. See Press Release, TerreStar announces strategic investment by Echostar, Harbinger & other investors – Transaction facilitates funding through satellite launch and will enhance TerreStar's nationwide spectrum footprint (Feb. 7, 2008) (available at <http://www.terrestar.com/news/index.html>).

<sup>13</sup> See *Improving Public Safety Communications in the 800 MHz Band*, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, FCC 08-73 (March 5, 2008) at ¶ 20.

<sup>14</sup> See *Improving Public Safety Communications in the 800 MHz Band*, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, FCC 08-73 (March 5, 2008) at ¶ 1.

stations in markets in which TerreStar commences ATC operations before BAS stations have been relocated.<sup>15</sup>

A commitment TerreStar has made in another proceeding resolves MSTV/NAB's interference concern. TerreStar has represented that it will not initiate ATC operations in any market unless BAS relocation in the market has been completed or TerreStar's ATC operations have been coordinated with the market's BAS licensees.<sup>16</sup> TerreStar recently reaffirmed this commitment.<sup>17</sup> Accordingly, TerreStar's ATC operations will not interfere with BAS stations and MSTV/NAB's interference concern is not implicated by grant of TerreStar's ATC application.

#### **IV. THE SPRINT PETITION SHOULD BE DENIED.**

The Commission's rules clearly articulate the standards by which requests for ATC authority are to be judged. In the case of ATC facilities to be operated in conjunction with 2 GHz MSS systems, Section 25.149 of the rules<sup>18</sup> establishes gating criteria and other basic requirements for ATC systems and Section 25.252 of the rules<sup>19</sup> establishes technical requirements for ATC base stations and mobile stations. TerreStar made detailed showings in its ATC application that are responsive to these requirements.

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<sup>15</sup> See MSTV/NAB comments at 1-2.

<sup>16</sup> See Comments of TerreStar Networks Inc. in WT Docket 02-55, ET Docket No. 00-258, and ET Docket No. 95-18 (Dec. 18, 2007) at n. 12.

<sup>17</sup> See Comments of TerreStar Networks Inc. in WT Docket 02-55, ET Docket No. 00-258, and ET Docket No. 95-18 (Apr. 30, 2008) at 5.

<sup>18</sup> 47 C.F.R. § 25.149.

<sup>19</sup> 47 C.F.R. § 25.252.

Subject to a single exception discussed below, the Sprint Petition is silent on these matters. The principal argument in the Sprint Petition concerns whether TerreStar is required, under procedures that the Commission established in an unrelated rulemaking, to reimburse Sprint for a *pro rata* portion of the expenses Sprint incurs when it clears a portion of the 2 GHz band that is currently used by certain BAS licensees. The Commission adopted these procedures in response to an unprecedented proposal made by Sprint under which Sprint was given access to additional spectrum in exchange for agreeing to clear incumbent users from spectrum in the 800 MHz band and the 2 GHz BAS band.<sup>20</sup>

This proceeding is one of several unrelated proceedings in which Sprint has tried to raise the BAS clearance reimbursement issue. For example, in a previous proceeding involving a request by ICO for an extension of the milestones for launching its 2 GHz MSS satellite and certifying that its system was operational, Sprint raised similar objections relating to BAS relocation reimbursement.<sup>21</sup> The International Bureau dismissed Sprint's filing because it

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<sup>20</sup> A portion of the 2 GHz BAS band that Sprint agreed to clear is to be used by 2 GHz MSS licensees that have an independent obligation to clear that portion of the band. The Commission adopted procedures under which Sprint may be entitled to *pro rata* reimbursement from the MSS licensees for certain 2 GHz BAS band clearance costs if specific conditions are met. See n. 24, *infra*.

<sup>21</sup> See letter from Lawrence R. Krevor, Vice President – Spectrum, Sprint, to Marlene H. Dortch, Secretary, FCC, File No. SAT-AMD-20071109-00155 (March 18, 2008). Sprint also has raised the reimbursement issue in response to a TerreStar petition for declaratory ruling that concerned foreign ownership, not BAS clearance, and in comments on a Further Notice of Proposed Rulemaking in which the Commission sought comment on BAS interference issues, not BAS reimbursement issues. See Petition to Deny of Sprint Nextel Corporation, File No. ISP-PDR-20080229-00004 (Apr. 10, 2008); Comments of Sprint Nextel Corporation in WT Docket 02-55, ET Docket No. 00-258, and ET Docket No. 95-18 (Apr. 30, 2008).

“[did] not ... in any way address the issue of ICO’s adherence to satellite milestone requirements,”<sup>22</sup> noting that “issues related to BAS reimbursement costs have been raised in other Commission proceedings.”<sup>23</sup> The International Bureau’s grounds for dismissing Sprint’s reimbursement-related objections to ICO’s milestone extension request apply with equal force to the Sprint Petition in this proceeding.<sup>24</sup>

Sprint does make one argument related to the ATC gating criteria, but the argument is without merit. Sprint’s argument concerns Section 25.149(b),<sup>25</sup> which requires, among other things, that 2 GHz MSS ATC applicants demonstrate their systems will be capable of providing service to all 50 states, Puerto Rico, and the U.S. Virgin Islands. According to Sprint, TerreStar may not be able to satisfy this requirement because at the time TerreStar initiates MSS service there may be markets in which BAS stations have not been relocated and continue to operate on 2 GHz frequencies that will be used by TerreStar for MET to satellite transmissions.<sup>26</sup>

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<sup>22</sup> Grant stamp, File No. SAT-AMD-20071109-00155 (Apr. 2, 2008) at n. 3.

<sup>23</sup> *Id.*

<sup>24</sup> In any event, Sprint’s BAS reimbursement claims are without merit. Under the Commission’s BAS reimbursement policies, 2 GHz MSS licensees that “enter the band” after a specified period do not have reimbursement obligations. TerreStar is not scheduled to launch its satellite, much less enter the 2 GHz MSS band, until after the end of that specified period.

<sup>25</sup> 47 C.F.R. § 25.149(b).

<sup>26</sup> See Sprint Petition at 2-3.



Sprint's coverage argument is baseless. In the BAS clearance proceeding, TerreStar has submitted technical studies demonstrating that its MSS system can operate with BAS stations in uncleared markets without causing harmful interference to BAS operations.<sup>27</sup> Neither Sprint nor any other party to the proceeding has taken issue with the technical merits of these studies.

Accordingly, TerreStar's system will be capable of providing mobile satellite service in relocated and non-relocated markets throughout the United States, in compliance with the coverage requirement established under the gating criteria as outlined in TerreStar's application.

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<sup>27</sup> See du Treil, Lundin & Rackley, "Predicted Impact To 2 GHz Broadcast Auxiliary Operations From Proposed Handset To Satellite Emissions, TerreStar Networks" (Jan. 30, 2008) ("dLR Study"), attached to a letter from Joseph A. Godles, counsel to TerreStar, to Marlene H. Dortch, FCC (Jan. 30, 2008); Comments of TerreStar Networks Inc. in WT Docket 02-55, ET Docket No. 00-258, and ET Docket No. 95-18 (Apr. 30, 2008) at 4-5. To the extent necessary, TerreStar hereby incorporates by reference the studies it filed in the BAS clearance proceeding.

## CONCLUSION

In view of the foregoing, TerreStar's uncontested request for waivers of the ATC technical rules should be granted expeditiously; the Sprint Petition should be denied; and TerreStar's request for ATC authority should be granted.

Respectfully submitted,

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May 8, 2008

**CERTIFICATE OF SERVICE**

I hereby certify that on this 8<sup>th</sup> day of May, 2008, a true and correct copy of the foregoing **CONSOLIDATED RESPONSE AND OPPOSITION OF TERRESTAR NETWORKS INC.** was mailed by first class United States mail, postage prepaid, to each of the following:

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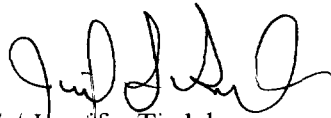
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