

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

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OCT 31 2003

In the Matter of )  
 )  
Verestar, Inc. ) SES-T/C-20030918-01300  
American Tower Corporation )  
Rare Medium Group, Inc. )

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

To: Chief, International Bureau

**Int'l Bureau**  
**NOV 04 2003**  
**Front Office**

PETITION TO DENY

Intelsat Global Sales and Marketing, Ltd. (Intelsat) hereby petitions to deny the above-referenced application for transfer of control ("the application") of Verestar, Inc. ("Verestar") from American Tower Corporation ("ATC") to Rare Medium Group, Inc. ("Rare Medium"), which recently changed its name to SkyTerra Communications, Inc. ("SkyTerra").

SkyTerra is a highly leveraged, financially stressed venture capital company. It has neither the financial ability nor the technical expertise necessary to continue to provide service to Verestar's customers. Moreover, this transaction is contingent and cannot close until such time as Verestar reaches accords with its vendors, including Intelsat, to which it owes millions of dollars. At a minimum, the Commission should defer action on the

application until such time as Verestar reaches agreements with its suppliers.

I. SkyTerra sees Verestar as a short term speculative opportunity, which is inconsistent with the public interest.

SkyTerra is not a Commission licensee nor is it a company with operational experience in the communications field. SkyTerra is a venture capital company whose business is to take positions in independently managed companies, and to sell them or to discontinue their operations, as quickly as possible.<sup>1</sup>

In keeping with this business strategy, in 2001, SkyTerra (then, Rare Medium) sold a majority of its equity interest in the operations of three speculative start-up companies in which it recently invested: ChangeMusic Network, ePrize and Regards.com.<sup>2</sup> It also discontinued the operations of its Live Market line of business and its Rare Medium, Inc. subsidiary, when those investments failed to pan out.<sup>3</sup>

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<sup>1</sup> See Rare Medium Group, Inc., U.S. Securities and Exchange Commission, Form 10-K (hereinafter cited as *Rare Medium 10-K*), filed March 5, 2003 at 1-25.

<sup>2</sup> *Id.* at 25.

<sup>3</sup> *Id.*

The proposed acquisition of Verestar, of course, is governed by Section 310(d) of the Communications Act of 1934, as amended, which requires the Commission to determine if the transfer of control of Verestar will promote the public interest.<sup>4</sup> SkyTerra suggests that this transaction will further the public interest by providing additional funding enabling it to "expand the customer base of Verestar."<sup>5</sup> The truth of the matter is that SkyTerra has insufficient liquidity to expand Verestar's customer base, let alone to continue to fund SkyTerra's other subsidiaries, all of which are on the brink of extinction.

Rare Medium's revenues for the year ending December 31, 2002 were "nil."<sup>6</sup> For the year ending December 31, 2002, Rare Medium recorded a net loss of \$4.0 million.<sup>7</sup> In December 2002, NASDAQ de-listed Rare Medium's stock from the exchange, in view of Rare Medium's lack of "tangible business operations."<sup>8</sup> This resulted in a reduction in the liquidity of Rare Medium's common stock and an event of non-compliance under the provisions of its preferred stock.<sup>9</sup>

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<sup>4</sup> Communications Act of 1934, as amended, 47 U.S.C. Section 310(d).

<sup>5</sup> Attachment to FCC Form 603 at 2.

<sup>6</sup> *Rare Medium 10-K* at 26.

<sup>7</sup> *Id.* at 28. To the extent that SkyTerra has any cash on hand, it has not yet committed that cash to fully fund Verestar's operations.

<sup>8</sup> *Id.* at 15

<sup>9</sup> *Id.*

SkyTerra has neither the ability nor the desire to fund Verestar for the long-haul nor does it care about service to Verestar's current or future customer base. SkyTerra's only interest in Verestar is the speed at which it can flip the company.

II. At a minimum, the Commission should defer action on the application until such time as Verestar reaches accords with its vendors to which it owes millions of dollars.

Recent economic conditions have severely affected Verestar's ability to maintain its business relationships with its vendors while continuing to provide service to its customers. These vendors, including Intelsat, supply Verestar with critical communications capacity and earth station functionality--the basic underpinnings of Verestar's business. Thus, the applicants have conditioned the closing of the transaction subject to Verestar achieving significant concessions from its satellite and terrestrial vendors.<sup>10</sup>

Intelsat has been working for some time to reach a mutually satisfactory accord with Verestar with regard to its overdue account balance, which exceeds four million dollars. Despite our best efforts, it is now evident that these negotiations will not result in a mutually

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<sup>10</sup> Rare Medium Press Release dated September 2, 2003 at 1.

satisfactory agreement. Intelsat like other vendors similarly situated, is considering all of its remedies, including a forthcoming termination of service and initiation of litigation. Consequently, the transaction cannot close and Commission action on the application would be premature.

**III. Serious questions exist as to whether SkyTerra and/or Verestar have the requisite technical qualifications to be a Commission licensee.**

As set forth above, SkyTerra, with its six employees, has no technical experience whatsoever in running an earth station network of Verestar's magnitude. In view of Verestar's cost-cutting activities and loss of key personnel, serious questions exist as to whether Verestar has the requisite technical qualifications to function as a Commission licensee.

Simply stated, a licensee cannot possibly provide service in furtherance of the public interest when it does not know what earth stations are in its system. Unfortunately, that is now true with respect to Verestar. In this proceeding, the applicants seek to transfer Verestar's WM43 FSS license, when, in fact, this license was surrendered in July 2003.<sup>11</sup> In the companion wireless

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<sup>11</sup> FCC Public Notice, July 23, 2003, Report No. SES-00518 at 23.

license transfer application, the applicants are unaware of, and fail to transfer, Verestar's WPYN943 common carrier, fixed, point-to-point wireless license--a station located at Verestar's Fairfax headquarters. Verestar's unfamiliarity with its licenses and ignorance of the Commission's rules is further reflected in the applicants' wireless application which requests inclusion of "construction permits . . . which may have been omitted from this application."<sup>12</sup> While Verestar may have had familiarity with the Commission's rules and a licensee's obligations at one time, this knowledge is no longer existent within the company.

Thus, it is unsurprising that, in July 2003, the Commission's staff, on its own motion, found serious deficiencies in Verestar's KA330 license, requiring the company to modify its license to submit "half power, change points of communications, change satellite arc, and change emission designators."<sup>13</sup> Indeed, according to the FCC's IBFS database, other than the KA330 license modification mandated by the Commission, Verestar has filed few license modification applications over the last several years. Further, within the last several weeks, the Commission has

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<sup>12</sup> Attachment to FCC Form 403 at 2.

<sup>13</sup> IBFS Dbase, File No. SES-MOD-20020723-01143.

sought additional information from Verestar relating to the operation of its KA20 and E910548 earth stations.<sup>14</sup> Thus, it seems likely that a number of Verestar's other licenses contain serious deficiencies.

These deficiencies, material omissions, and/or pattern of non-compliance demonstrate that neither SkyTerra nor Verestar possess the requisite expertise or technical qualifications necessary to be a Commission licensee. It is also troubling that ATC recently received a Notice of Apparent Liability for forfeiture for failure to properly post certain information at various tower sites and for failure to properly light a tower.<sup>15</sup> At minimum, Verestar should certify that all of its earth stations are operating consistent with the Commission's rules and must cure the defects in its applications.

#### **Conclusion**

For the reasons stated herein, Intelsat recommends that the Commission either deny the application, or, at a minimum, defer any action on it until Verestar reaches reasonable business accords with its vendors such that it can continue to provide service in furtherance of the public interest.

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<sup>14</sup> Email from D. White, Verestar to C. Harriot, Intelsat Global Service Corp., dated October 27, 2003.

<sup>15</sup> American Tower Corporation, 2002 Annual Report at 9.

Respectfully submitted,  
Intelsat Global Sales and Marketing, Ltd.

By 

Robert A. Mansbach  
3400 International Drive, N.W.  
Washington, D.C. 20008  
Its Attorney

October 31, 2003

CERTIFICATE OF SERVICE

I hereby certify that on October 31, 2003, I caused a copy of the foregoing Petition to Deny of Intelsat Global Sales and Marketing, Ltd., to be served via first class mail, postage prepaid, upon the following:

Scott H. Lyon  
Verestar, LLC  
3040 Williams Drive  
Suite 600  
Fairfax, VA 22031

Chief Compliance Officer  
American Tower Corporation  
116 Huntington Avenue  
11<sup>th</sup> Floor  
Boston, MA 02116

Robert Lewis  
Rare Medium Group, Inc.  
19 West 44<sup>th</sup> Street  
New York, NY 10036

Elliot Greenwald  
Swidler, Berlin, Shereff, Freidman, LLP  
3000 K Street, N.W.  
Washington, DC 20007

Donald Abelson  
Chief,  
International Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, DC 20554

Qualex International, Portals II  
445 12<sup>th</sup> Street, S.W.  
Washington, DC 20554

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, DC 20554

James L. Ball  
Chief, Policy Division  
International Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, DC 20554

John Muleta  
Chief,  
Wireless Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554



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Robert A. Mansbach