

ORIGINAL

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

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Federal Communication Commission
Bureau / Office

In the Matter of)
)
Verestar, Inc.) SES-T/C-20030918-01300
American Tower Corporation)
SkyTerra Communications, Inc.)

To: Chief, International Bureau

CONSOLIDATED REPLY OF INTELSAT GLOBAL SALES
AND MARKETING, LTD.

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Dated: November 26, 2003

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Moreover, to the extent that Verestar's earth stations are noncompliant with the Commission's rules, the resulting interference threatens the technical integrity of the Intelsat system and the operations of U.S. carriers.¹

In its Petition, Intelsat expressed concern that SkyTerra has not demonstrated the ability to fund the Verestar network over the long-term. In support, Intelsat described SkyTerra's absence of any revenues; its multi-million dollar losses; and its recent de-listing from NASDAQ.²

Intelsat also raised serious questions as to the compliance of Verestar's licenses with Part 25 of the Commission's rules and whether Verestar continues to have the technical qualifications necessary to function as a Commission licensee. With regard to the latter, Intelsat requested simply that Verestar submit an affidavit attesting that the licenses being transferred as part of this application are accurate, current and in full compliance with the Commission's rules, including the conditions set forth therein.³

¹ An affidavit demonstrating that Intelsat is a party in interest to this proceeding is attached hereto, pursuant to 47 C.F.R. Section 25.154.

² Petition at 3-4.

³ *Id.* at 7.

Verestar has not submitted such an affidavit--a glaring and telling omission. Nor has SkyTerra demonstrated that it has sufficient financial qualifications to be a Commission licensee. Instead, the applicants attack Intelsat's motivation, referring to the issues raised by Intelsat as "unsupported," "frivolous" and evolving from "a private contractual dispute"⁴ but fail to address squarely the critical public interest issues raised by Intelsat:

- Will the contemplated transfer of control promote the public interest by providing long-term continuity of service through the Verestar network, or will SkyTerra monetize Verestar's assets and abandon whatever is left over, including Verestar's customers (who will have few, if any, service options)?
- Is Verestar operating its earth station network in compliance with the Commission's rules?

These are valid public interest issues requiring careful consideration and are hardly frivolous or a private matter, as the applicants would have the Commission believe.

⁴ Opposition of SkyTerra at 2; Joint Opposition of Verestar and ATC ("Joint Opposition") at 2-3.

Intelsat has standing to file its Petition.

The applicants allege that Intelsat lacks standing to file its Petition because Intelsat filed its Petition solely "to gain leverage in a private contractual dispute."⁵ This allegation is completely unfounded.

Intelsat, as a U.S.-licensed satellite operator and a provider of satellite capacity to Verestar and its end-user customers, has a clear and certain interest in the outcome of this proceeding. It is no private matter when a recently de-listed venture capital company proposes to take control of a Commission licensee with almost eighty earth stations accessing Intelsat's network, providing service to many U.S. consumers.

It is critical to Intelsat that Verestar's customers continue to be able to transmit and receive via the Intelsat system through a technically solid, customer-responsive, Verestar network. SkyTerra has not demonstrated that Verestar will be sufficiently funded to provide quality service. As a result, many of Verestar's customers could lose connectivity and will migrate to other

⁵Opposition of SkyTerra at 2-5; Joint Opposition at 2.

satellite systems, with a serious economic impact on Intelsat.

Moreover, ample evidence has been submitted to show that Verestar is not operating its earth stations in compliance with the Commission's rules. Intelsat, which works with U.S. earth station operators on a daily basis, relies on a licensee's compliance with the FCC's rules to ensure that service is provided via the Intelsat system on an interference-free and high quality basis. To the extent Verestar has operated with excessive power and modulation limits, the result is documented interference to other carriers in the Intelsat system.⁶ This causes direct and palpable injury to Intelsat, affecting Intelsat's ability to manage its system to the highest standards possible.

The issues raised by Intelsat are not a matter of private dispute or designed to delay the processing of the application.

Intelsat did not file its Petition out of some spite or malice or desire to "delay" the application, as the applicants maintain. In fact, Intelsat has no objection whatsoever to the prompt processing of the transfer applications, as long as the public interest concerns are addressed by the Commission.

⁶ See pages 9-11 *infra*.

One of the primary issues in this proceeding is whether SkyTerra has the requisite financial qualifications to properly fund and carry out the licensee's mandate to provide service in furtherance of the public interest. SkyTerra's publicly released third quarter 2003 results, released on November 17, 2003, highlight the ongoing nature of its financial distress: a net loss of \$2.4 million for the third quarter of 2003 with net income of approximately \$0.1 million.⁷ This quarterly loss is the latest in a long history of losses.

While Intelsat was involved in commercial negotiations with SkyTerra prior to filing its Petition, these negotiations were related to SkyTerra's ability to take Verestar, one of Intelsat's major customers, forward. The transfer of control of Verestar to a company which has failed to demonstrate that it can make good on Verestar's debts is directly and incontrovertibly related to whether SkyTerra has the public interest qualifications necessary to be a Commission licensee, as set forth in the Petition.

Finally, Intelsat is not asking the Commission to interject itself in a contractual dispute. Intelsat simply is requesting the Commission to address the serious public interest issues raised in its Petition and Consolidated

⁷ SkyTerra Press Release, issued November 17, 2003 at 1.

Reply. As set forth therein, the public interest requires that the application be denied.

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

In its Petition, Intelsat pointed out a number of deficiencies, material omissions, and examples of non-compliance with the Commission's rules. This pattern, which was not intended to be all inclusive, demonstrated that Verestar apparently lacks the technical qualifications to function as a Commission licensee. Verestar recently filed amendments correcting several of the errors pointed out by Intelsat, and explains that to the extent mistakes are made they are "corrected" or "minor."⁸ However, this is not the case. Substantial questions remain as to whether Verestar's licenses are compliant with Part 25 of the Commission's rules. Certainly, Verestar has not submitted an affidavit attesting to their accuracy.

One strong indication that Verestar is not compliant with Part 25 is the virtual absence of license modifications for multiple licenses over multiple years. The Commission's rules require a licensee to modify its

⁸ Joint Opposition at 5.

license when, for example, adding new emission designators and related service, changing emission designators and related service, increasing EIRP and EIRP density, replacing or adding antennas, or changing assigned frequencies.⁹ While Intelsat does not have full conversancy with Verestar's licenses, even a cursory examination of the IBFS database shows that Verestar's have been maintained on autopilot for quite some time.

One of the Verestar licenses to be transferred in this proceeding, E5199 (accepted for filing in 1982), apparently has been modified only once in the last seventeen years. Verestar's E873883 license apparently has been modified only once in the last sixteen years; its E860099 license appears to have been last modified fourteen years ago. Seven of the Verestar earth station licenses to be transferred in this proceeding apparently have not been modified since 1993; four licenses have not been modified since 1994. Six stations: E900018, E900017, E940373, E940262, E940173, and E950302 have not been modified at all since the licenses were granted--a range of eight to thirteen years.

⁹ See 47 C.F.R. Section 25.117; FCC Form 312, Main Form at 1. Until recently, Section 25.117 also required a licensee to amend its license when adding points of communications.

Verestar's compliance problems continue through the 2001-2003 timeframe. Between 2001-2003, Verestar modified the seventy-eight licenses to be transferred in this proceeding just five times. Nor does the IBFS database appear to reflect any recent minor modifications to the station licenses—although it does reflect another recent "mistake" when, in 2002, Verestar neglected to renew its E920132 license.¹⁰ Finally, within the last few weeks, Verestar apparently failed to amend its application to include Verestar's pending license application for E030294, yet another apparent omission or mistake.

While there may have been some changes to these stations made at renewal time, this record of few, if any, modifications to the licenses over many years, suggests that the Commission's rules have not been complied with by Verestar.

Not coincidentally, Verestar's operational problems are seriously disrupting the operations of the Intelsat system. In brief, over the past few months alone:

On August 6, 2003, Verestar's Glenwood earth station caused interference to another customer in an adjacent transponder by over driving the HPA into the non-linear region and transmitting a combination of broadband noise and intermodulation

¹⁰ See IBFS database, E920132, File No. SES-19911220-00033.

products into its own transponder. This interfered with Verestar's own service and into the adjacent transponder. Unable to correct the problem, the Intelsat Operations Center ("IOC") coordinated with Glenwood to change the frequency of one carrier to change the characteristics of the offending inter-modulation products. When Glenwood stopped transmitting the carrier to be relocated, the noise floor in the transponder dropped 8 dB. Upon transmitting the relocated carrier, the noise floor increased again. The intermodulation profile changed enough to give the other customer relief. The degradation to Verestar's service remained.

On August 7, 2003, Glenwood transmitted broadband noise into the transponder it was operating in, causing a 10 dB rise in the noise floor of the 36MHz transponder. Glenwood staff was resistant to the idea that they were causing the problem. The IOC and the Technical Operation Control Center ("TOC") guided Glenwood staff through an exercise that proved that Glenwood was at fault. Trained engineers and technicians would have prevented this operational problem from happening. Those at Glenwood were unable to recognize it without guidance from the IOC.

On August 11, 2003, Glenwood transmitted intermodulation products created in their HPA that interfered with their own carriers, and increased the noise floor of the transponder they were working in. This was caused by over-driving their HPA. (Multi-carrier operation in the non-linear region of the HPA is the known source of this problem). Verestar's earth station staff, in an attempt to improve the receive performance of their transmitted carriers, actually degraded the performance more by unauthorized increases in transmit e.i.r.p. Transmitting with multi-carrier operation in a saturated HPA likely exceeded the

e.i.r.p limits of the Verestar FCC license. Experience and trained technicians and engineers understand this and would have pursued other methods to improve the receive performance, if necessary.¹¹

On October 2, 2003, the Intelsat TOC was required to send a message informing Verestar that it was exceeding its allocated e.i.r.p. and causing cross-polarization interference into another customer's service. Unable to maintain system discipline in this lease, the TOC also was required to modify the transmission plan and carrier characteristics to reduce the potential of interference from Glenwood.¹²

These problems require immediate resolution. The Commission must conduct a thorough investigation into Verestar's license base, its technical qualifications, and its current and future ability to run its network.

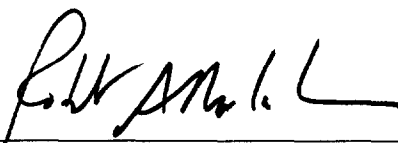
Conclusion

For the reasons set forth above and in its Petition to Deny, the application to transfer control of Verestar to SkyTerra should be denied, as contrary to the public interest, convenience and necessity, consistent with Section 310(d) of the Communications Act of 1934, as amended.

¹¹ On July 27, 2003, a similar event occurred in the same transponder.

¹² The information regarding these operational deficiencies is derived from a quick scan of IOC log entries. The information is of a highly technical nature and is paraphrased here to facilitate understanding.

Respectfully submitted,
Intelsat Global Sales and Marketing, Ltd.

By 

Intelsat Global Service Corporation
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3400 International Drive, N.W.
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Its Attorney

November 26, 2003

City of Washington)
District of Columbia)

District of Columbia: SS Subscribed and Sworn to before me this <u>25th</u> day of <u>November, 2003</u> <u>Susanna M. Gill</u> Susanna M. Gill, Notary Public, District of Columbia My commission expires October 31, 2007

Affidavit of Thomas Collins, Senior Director, Special Programs, Intelsat Global Service Corporation

I hereby certify that I have reviewed the information contained in the Petition to Deny and the Consolidated Reply filed in this proceeding and that the facts therein are true and correct to the best of my knowledge and belief.

As a U.S.-licensed satellite operator and as a provider of satellite capacity to Verestar and to its ultimate customers, Intelsat is a party in interest in this proceeding. If SkyTerra fails to financially support the Verestar network, Intelsat will suffer a direct economic impairment, as Verestar represents Intelsat in the marketplace. If end-users are not satisfied with its service, many of them could migrate off the Intelsat satellite system. Moreover, to the extent Verestar's earth stations are noncompliant with the Commission's rules, the resulting interference threatens the technical integrity of the Intelsat system.

Thomas Collins
Thomas Collins

Subscribed before me this 25th day of November, 2003

Susanna M. Gill
Notary Public

My Commission expires:

MY COMMISSION EXPIRES OCTOBER 31, 2007

City of Washington)
District of Columbia)

District of Columbia: SS
Subscribed and Sworn to before me
this 25th day of November, 2003
S.M. Gill
Susanna M. Gill, Notary Public, District of Columbia
My commission expires October 31, 2007

Affidavit of Ernest Nichols, Senior Principal Engineer,
Intelsat Global Service Corporation

I hereby certify that I have reviewed the technical
information contained in the Petition to Deny and the
Consolidated Reply filed in this proceeding and that the
facts therein are true and correct to the best of my
knowledge and belief.

Ernest Nichols
Ernest Nichols

Subscribed before me this 25th day of November, 2003

S.M. Gill
Notary Public

My Commission expires:

MY COMMISSION EXPIRES OCTOBER 31, 2007

CERTIFICATE OF SERVICE

I hereby certify that on November 26 , 2003, I caused a copy of the foregoing "Consolidated Reply" of Intelsat Global Sales and Marketing, Ltd., to be served via first class mail, postage prepaid, upon the following:

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A handwritten signature in black ink, appearing to read 'RAM', written over a horizontal line.

Robert A. Mansbach

*By hand