

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

In the Matter of)
)
MORNING STAR SATELLITE COMPANY,) File Nos. 190 - 193-SAT-P/LA-95
L.L.C.) New IBSF No. SAT-LOA-19950929-00120/
) 00123
Application for Authorization to Construct,)
Launch, and Operate a Ka-Band Communications)
Satellite System in the Fixed-Satellite Service at)
Orbital Locations 62° W.L., 30° E.L., 107.5° E.L.,)
and 147° W.L.)

MEMORANDUM OPINION AND ORDER

Adopted: June 26, 2000

Released: June 26, 2000

By the Chief, International Bureau:

I. INTRODUCTION

1. In this Order, we cancel Morning Star Satellite Company’s, L.L.C. (“Morning Star”) authorization to construct, launch, and operate Ka-band satellites in the fixed-satellite service. Morning Star has failed to satisfy the initial, mandatory implementation milestone explicitly set forth in its authorization requiring it to begin construction of this satellite system by May 1998. Consequently, we render Morning Star’s authorization null and void, and the orbit locations that had been assigned to Morning Star are available for reassignment to a qualified applicant in the second Ka-band “processing round.”

II. BACKGROUND

2. On May 9, 1997, the Chief, International Bureau, pursuant to delegated authority, authorized Morning Star to construct, launch, and operate four geostationary-orbit satellites and to provide fixed-satellite service in the United States in the 19.7–20.2 GHz frequency bands (“Ka-band”).¹ This authorization was granted as part of the first “processing round” of Ka-band systems. In the first round, the Bureau authorized a total of 14 Ka-band systems, including Morning Star’s Ka-band system.² Morning Star proposed to offer services such as high-speed data, voice, and interactive video communications with its satellite system.³

¹ Morning Star Company, L.L.C., 12 FCC Rcd 6039 (Int’l Bur. 1997). Morning Star’s request for uplink spectrum was inconsistent with the Ka-band frequency plan. Morning Star was authorized to operate in the 28.35-28.6 and/or 29.25-30.0 GHz bands and directed to file a modification once it determined which 300 MHz it wanted to use. Id. at 6045.

² Assignment of Orbital Locations to Space Stations in the Ka-band, Order, 13 FCC Rcd 13737 (1996).

³ Morning Star Company, L.L.C., 12 FCC Rcd at 6040.

3. Morning Star’s license, like all instruments of authorization granted to satellite licensees, was a conditional license. It contained explicit deadlines or “milestones” for system implementation that Morning Star was required to satisfy. Morning Star’s authorization explained that the milestones are necessary to ensure that Morning Star proceeds in a “timely manner and does not tie up valuable orbital locations and spectrum to the exclusion of qualified applicants.”⁴ Morning Star’s authorization specified that:

... unless extended by the Commission for good cause shown, this authorization shall become NULL AND VOID in the event the space station is not constructed, launched, and successfully placed into operation in accordance with the technical parameters and terms and conditions of the authorization by the following dates:⁵

	<u>Construction Commenced</u>	<u>Construction Completion</u>	<u>Launch</u>
First satellite	May 1998	April 2002	May 2002
First satellite at remaining orbit locations	May 1999	April 2002	May 2002

4. On November 3, 1999, Celsat America, Inc. (“Celsat”), filed a Petition for Declaratory Ruling requesting that the Commission cancel Morning Star’s authorization based on Morning Star’s failure to satisfy its May 1998 construction commencement milestone.⁶ In a responsive filing submitted on November 18, 1999, Morning Star denied that it had not complied with the milestones in its authorization.⁷

5. By letter, dated December 9, 1999, the Chief, Satellite and Radiocommunication Division, International Bureau, asked Morning Star to substantiate its compliance with the first implementation milestone requiring the commencement of construction by May 1998. The letter reminded Morning Star that:

The Commission requires the execution of a non-contingent construction contract to satisfy the construction commencement milestone of domestic satellite licenses. The non-contingent requirement contemplates that there will be neither significant delays between the execution of the construction contract and the actual commencement of construction, nor conditions precedent to construction.⁸

⁴ *Id.* at 6044.

⁵ *Id.* at 6050.

⁶ Although styled as a Petition for Declaratory Ruling, Celsat’s filing is in the nature of an informal complaint and will be treated as such herein.

⁷ We have also considered the following related filings: Letter from Tara Kalagner Giunta, Counsel for Pacific Century Group, Inc., to Magalie Roman Salas, Secretary of the FCC (Nov. 5, 1999); Reply of Celsat America, Inc., filed on December 1, 1999; and Motion to Strike, filed on December 9, 1999, by Morning Star.

⁸ Letter from Thomas S. Tycz, Chief, Satellite and Radiocommunication Division, FCC, to Francis L. Young, Esq.,

6. In its response, Morning Star provided a redacted copy of a construction contract, effective June 29, 1998. The contract, submitted pursuant to a request for confidential treatment, provides for the general design, development, and manufacture of Morning Star's spacecraft and ground support equipment.⁹ It did not contain any terms relating to the contractor's construction schedule, Morning Star's payment schedule or any other evidence of a binding commitment for satellite construction. Thereafter, Morning Star submitted an affidavit from Francis X. Solomon, President of Morning Star, also pursuant to a request for confidentiality. Mr. Solomon indicated that a contract had been executed and the parties were proceeding in accordance with the terms of the contract but did not provide any additional information regarding its specific terms.¹⁰

III. DISCUSSION

7. It is long-standing Commission policy to impose mandatory construction commencement milestones upon licensees in the fixed-satellite service.¹¹ The milestone schedule included in each authorization is designed to ensure that licensed entities are proceeding with construction and will achieve launch in a timely manner. Requiring licensees to adhere strictly to a milestone schedule prevents orbital locations from being 'warehoused' by licensees to the exclusion of qualified entities that are prepared to implement systems immediately.¹² Moreover, the Commission has consistently required licensees to execute non-contingent satellite construction contracts in order to meet their construction commencement milestones.¹³ Because it is manifestly in the public interest to ensure that licensees proceed expeditiously in completing construction of their systems and commencing service, the Commission has strictly enforced its milestone schedules.¹⁴

8. By its terms, Morning Star's authorization required Morning Star to commence construction of its satellite system by no later than May 1998. To meet this deadline, Morning Star was required to have entered into a non-contingent construction contract executed on or before this deadline. Morning Star did not execute a construction contract until June 29, 1998. Moreover, even if it had been timely executed, the contract provided to the staff to document Morning Star's compliance with its license condition shows no evidence that it binds the parties, does not contain conditions precedent, and does not commit the contractor to construct the satellite.

Young & Jatlow (Dec. 9, 1999), citing *Norris Satellite Communications, Inc.*, 12 FCC Rcd 22299, 22303-04 (1997).

⁹ Letter from Francis L. Young, Young & Jatlow, Counsel for Morning Star, Inc. to Magalie Roman Salas, Secretary, FCC (Dec. 22, 1999).

¹⁰ Letter from Francis L. Young, Young & Jatlow, Counsel for Morning Star, Inc. to Magalie Roman Salas, Secretary, FCC (Jan. 19, 1999).

¹¹ See, e.g., *Norris Satellite Communications, Inc.*, 12 FCC Rcd 22,299 (1997).

¹² *MCI Communications Corporation*, 2 FCC Rcd 233 (CCB 1987).

¹³ *Norris Satellite Communications, Inc.*, 12 FCC Rcd 22,299 (1997).

¹⁴ See, e.g., *National Exchange Satellite, Inc.*, 8 FCC Rcd 636 (1993); *Advanced Communications Corporation*, 10 FCC Rcd 13,337 (Int'l Bur. 1995).

9. Morning Star's authorization expressly provided that, unless extended upon a showing of good cause, the license would become null and void in the event Morning Star failed to satisfy any one of the three milestones. Morning Star did not request an extension of the May 1998 construction commencement deadline, and we find no independent basis for extending or otherwise waiving this threshold milestone.

IV. CONCLUSION AND ORDERING CLAUSES

10. Based on our review of the record, including, but not limited to, Morning Star's arguments in response to Celsat's informal complaint as well as the affidavit from Morning Star's President, Francis X. Solomon, we conclude that Morning Star has failed to meet the May 1998 construction commencement deadline, as required by its authorization. We further conclude that Morning Star's failure to satisfy this condition in its authorization renders the authorization null and void.

11. Accordingly, IT IS ORDERED that, pursuant to Section 0.261 of the Commission's rules, 47 C.F.R. § 0.261, the authorization held by Morning Star Company L.L.C., File No. 190-193, SAT-P/LA-95, IBSF No. SAT-LOA-19950929-00120/00123, IS DECLARED NULL AND VOID.

12. IT IS FURTHER ORDERED that the orbital assignments granted in *Morning Star Company, L.L.C.*, 12 FCC Rcd 6039 (Int'l Bur. 1997) are available for reassignment.

FEDERAL COMMUNICATIONS COMMISSION

Donald Abelson
Chief, International Bureau