

Before the
Federal Communications Commission
Washington, D.C. 20554

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| In the Matter of |) | |
| |) | |
| VisionStar, Inc. |) | File No. 200-SAT-P/LA-95 |
| |) | |
| Application for Authority to Construct, Launch, and Operate a Ka-band Satellite System in the Fixed-Satellite Service |) | |
| |) | |
| Request for Extension of Milestones |) | |

ORDER

Adopted: May 24, 2001

Released: May 25, 2001

By the Chief, International Bureau:

I. INTRODUCTION

1. By this Order, we deny VisionStar, Inc.’s (“VisionStar’s”) request to toll the remaining implementation milestones for its licensed Ka-band satellite system.¹ VisionStar’s request to delay construction completion and launch is not due to circumstances beyond its control, nor to any other factor that would justify providing it with more time to hold these scarce orbital resources to the exclusion of others.

II. BACKGROUND

2. In May 1997, as part of the first Ka-band processing round, the International Bureau authorized VisionStar to launch and operate a geostationary-orbit (GSO) satellite to provide fixed-satellite service (FSS) in the Ka-band.² VisionStar is authorized to operate this satellite at 113° W.L.³ In its initial application, VisionStar had requested to operate on 1000 megahertz of spectrum for its satellite-to-user

¹ The Ka-band refers to the Earth-to-space (uplink) frequencies at 27.5-30.0 GHz and the corresponding space-to-Earth (downlink) frequencies at 17.7-20.2 GHz.

² See *In the Matter of VisionStar, Inc. Application for Authority to Construct, Launch, and Operate a Ka-band Satellite System in the Fixed-Satellite Service*, Order and Authorization, 13 FCC Rcd 1428 (Int’l Bur. 1997) (“*VisionStar Authorization Order*”). An application for transfer of control of VisionStar to EchoStar VisionStar Corporation, filed with the Commission on December 15, 2000, is currently pending and will be considered in a separate proceeding.

³ *VisionStar Authorization Order* at 1431, ¶ 9. Specifically, VisionStar is authorized to operate at a nominal orbit location of 113.05° W.L., with a station-keeping tolerance of ±0.05° in the East-West and North-South inclinations, thereby increasing the separation from a planned Canadian satellite at 111.1° W.L. *Assignment of Orbital Locations to Space Stations in the Ka-Band*, Order, 13 FCC Rcd 1030, 1032 n.7 (Int’l Bur. 1997).

(downlink) transmissions in the 18 GHz frequency range. Consistent with the 18 GHz band arrangement then in effect, we authorized VisionStar to operate its service downlinks on 500 megahertz of spectrum at 19.7-20.2 GHz. We also stated that VisionStar could make up the remaining 500 megahertz by operating in a portion of the 17.7-18.8 GHz frequency band, subject to coordination with terrestrial fixed services also authorized to operate in this band. The license contained a condition requiring VisionStar to begin construction of its satellite by May 1998, complete construction by April 2002, and launch its satellite by May 2002. In January 2001, after the Commission issued a revised band arrangement for the 18 GHz band, we authorized VisionStar to operate on 500 megahertz of downlink spectrum at 18.3-18.8 GHz.⁴

3. On May 17, 1999, one year after it was required to begin construction, VisionStar requested us to toll the milestone deadlines for its satellite. VisionStar contended that it could not proceed with construction until it knew what additional downlink frequencies would be granted for Ka-band systems.⁵ VisionStar argued that it would need to redesign its satellite to comport with the Commission's then-pending redesignation of the 17.7-20.2 GHz band in the "18 GHz band" redesignation proceeding.⁶ In March 2000, in response to a request by the Commission, VisionStar filed a copy of its satellite construction contract to demonstrate that it had met the construction commencement milestone contained in its license.⁷

III. DISCUSSION

4. We deny VisionStar's request for an extension of the remaining milestone deadlines. The milestone schedule, included as a condition of all space station authorizations, is designed to ensure that licensees are moving forward with the construction and launch of their systems in a timely manner. Requiring licensees to make and fulfill realistic construction and launch commitments prevents increasingly scarce orbital resources from being warehoused by licensees. Such warehousing could hinder the

⁴ See *In the Matter of VisionStar, Inc. Application for Authority to Construct, Launch, and Operate a Ka-band Satellite System in the Fixed-Satellite Service*, Order and Authorization, 16 FCC Rcd 2508 (Int'l Bur. 2001) ("*VisionStar Downlink Order*").

⁵ See Letter from Michael R. Gardner to Cassandra Thomas, Deputy Chief, Satellite and Radiocommunication Division, FCC, dated December 14, 1999, that references and attaches an earlier letter from Shant Hovnanian to Thomas Tycz, Chief, Satellite and Radiocommunication Division, FCC, dated May 17, 1999. This earlier letter was not filed with the Secretary's office. This letter was resubmitted on July 26, 1999 with a cover letter indicating that VisionStar was proceeding under the assumption that its request for extension had been granted. The latter communication also enclosed a letter from Motorola supporting VisionStar's request.

⁶ The Commission adopted a Report and Order redesignating frequencies in the 18 GHz band between satellite and terrestrial services in June 2000. See *Redesignation of the 17.7-19.7 GHz Frequency Band, Blanket Licensing of Satellite Earth Stations in the 17.7-20.2 GHz and 27.5-30.0 GHz Frequency Bands, and the Allocation of Additional Spectrum in the 17.3-17.8 GHz and 24.75-25.25 GHz Frequency Bands for Broadcast Satellite-Service Use*, IB Docket No. 98-172, Report and Order, 15 FCC Rcd 13430 (2000) ("*18 GHz Report and Order*"), *petition for review pending, Teledesic LLC v. FCC*, D.C. Cir. No. 00-1466 (filed November 6, 2000).

⁷ See Letter from Michael R. Gardner to Gary Schonman, Assistant Chief, Investigations and Hearings Division, Enforcement Bureau, FCC, dated Mar 14, 2000, transmitting the satellite construction contract between VisionStar and Orbital Sciences Corporation that is dated May 26, 1998 and was executed on May 29, 1998.

availability of services to the public at the earliest possible date by blocking entry by other entities willing and able to proceed immediately with the construction and launch of their satellite systems.⁸ Accordingly, extensions of the milestone schedule are granted only when delay in implementation is due to circumstances beyond the control of the licensee.⁹

5. VisionStar requests us to extend the construction completion and launch milestones associated with its license because of uncertainty regarding its downlink frequencies. We will not do so. As VisionStar's authorization clearly sets out, the additional 500 megahertz of downlink spectrum requested would be within the 17.7-18.8 GHz band. Given this limited range of spectrum, we imposed implementation milestones on VisionStar and all other first-round Ka-band licensees where the requested spectrum ranges were available for assignment. Moreover, the subsequent 18 GHz Redesignation Notice proposed to redesignate GSO FSS systems, such as VisionStar's, to spectrum within this 17.7-18.8 GHz band.¹⁰ The Commission ultimately redesignated 500 megahertz of spectrum at 18.3-18.8 GHz for GSO FSS systems: 280 megahertz for co-primary use by GSO FSS and the fixed terrestrial service in the 18.3-18.58 GHz band, and 220 megahertz to GSO FSS for primary use in the 18.58-18.8 GHz band.¹¹

6. VisionStar does not explain how the choice of 500 megahertz within a 1100 megahertz bandwidth would require it to "redesign" its satellite or why it could not "retune" its transponders to operate on the designated frequencies. Indeed, other similarly-situated first-round licensees began construction of their systems in compliance with their milestones.¹² Moreover, no other licensee has requested additional time because of uncertainty regarding 18 GHz downlink spectrum. Thus, any delay in VisionStar's implementation of its satellite relating to the downlink spectrum issue was and is completely within VisionStar's control. Finally, VisionStar accepted its conditional license, which included implementation milestones, knowing there was uncertainty regarding specific downlink frequencies within the 17.7-18.8 GHz range. It did not request an extension of time until one year after its first milestone date had passed. We therefore deny VisionStar's request for extension of its milestones.

⁸ *National Exchange Satellite, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 1990, 1991 (para. 8) (Com. Car. Bur. 1992) (*Nexsat Order*) citing MCI Communications Corporation, Memorandum Opinion and Order, 2 FCC Rcd 233 (1987) (*MCI Order*).

⁹ *Nexsat Order*, 7 FCC Rcd at 1991 (para. 8) citing *MCI Order*, 2 FCC Rcd 233; *Hughes Communications Galaxy*, Order and Authorization, 5 FCC Rcd 3423, 3424 (Com. Car. Bur. 1990).

¹⁰ *Redesignation of the 17.7-19.7 GHz Frequency Band, Blanket Licensing of Satellite Earth Stations in the 17.7-20.2 GHz and 27.5-30.0 GHz Frequency Bands, and the Allocation of Additional Spectrum in the 17.3-17.8 GHz and 24.75-25.25 GHz Frequency Bands for Broadcast Satellite-Service Use*, IB Docket No. 98-172, Notice of Proposed Rulemaking, IB Docket No. 98-172, 13 FCC Rcd 19223 (1998).

¹¹ *Redesignation of the 17.7-19.7 GHz Frequency Band, Blanket Licensing of Satellite Earth Stations in the 17.7-20.2 GHz and 27.5-30.0 GHz Frequency Bands, and the Allocation of Additional Spectrum in the 17.3-17.8 GHz and 24.75-25.25 GHz Frequency Bands for Broadcast Satellite-Service Use*, IB Docket No. 98-172, Report and Order, 15 FCC Rcd 13430, 13443, ¶ 28 (2000).

¹² See, e.g., *Loral Space & Communication*, Order, DA 01-1287 (rel. May 25, 2001) at ¶ 4.

IV. CONCLUSION

7. Accordingly, upon review, we deny VisionStar's request to toll milestone requirements applicable to its license.

V. ORDERING CLAUSES

8. Accordingly, IT IS ORDERED that VisionStar, Inc.'s request to toll milestone requirements applicable to its license IS DENIED.

9. IT IS FURTHER ORDERED that VisionStar, Inc. is subject to all terms and conditions in its original *Authorization Order*, 13 FCC Rcd 1428 (1997), and in the subsequent *VisionStar Downlink Order*, 16 FCC Rcd 2508 (Int'l Bur. 2001), including the implementation milestones.

10. This Order is issued pursuant to Section 0.261 of the Commission's rules on delegated authority, 47 C.F.R. § 0.261, and is effective upon release. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's rules, 47 C.F.R. §§ 1.106, 1.115, may be filed within 30 days of the date of the release of this Order. (*See* 47 C.F.R. § 1.4(b)(2).)

FEDERAL COMMUNICATIONS COMMISSION

Donald Abelson
Chief, International Bureau