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

In the Matter of	)	
	)	
GE American Communications, Inc.	)	
	)	
Request for Extension of Time to Construct,	)	
Launch, and Operate a Ka-band Satellite System in	)	File No. 19-SAT-EXT-98
the Fixed-Satellite Service	)	

ORDER AND AUTHORIZATION

Adopted: May 24, 2001 **Released:** May 25, 2001

By the Chief, International Bureau:

I. INTRODUCTION

1. With this *Order*, we grant GE American Communications, Inc. ("GE Americom") additional time in which to complete construction of and launch its Ka-band system.[1] This additional time will permit GE to incorporate inter-satellite links (ISLs) [2] into its system. Because of GE's timely and continuing efforts to implement a modified Ka-band system using ISLs, we find that granting GE additional time will not undermine Commission policy concerning "warehousing" of scarce orbital resources and will permit GE to offer another service option to customers in the United States.

II. BACKGROUND

2. In May 1997, as part of the first Ka-band processing round, the International Bureau ("Bureau") authorized GE Americom to launch and operate a geostationary-satellite orbit (GSO) satellite system to provide fixed-satellite services (FSS) in the Ka-band.[3] GE Americom's system consists of nine GSO FSS satellites in five orbital locations. As in all other satellite services, Ka-band licensees are

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[1] The term "Ka-band" generally refers to the space-to-earth (downlink) frequencies at 17.7-20.2 GHz and the corresponding earth-to-space (uplink) frequencies at 27.5-30.0 GHz.

[2] ISLs are communication links between in-orbit satellites. ISLs operate in spectrum allocated to the inter-satellite service. International Telecommunication Union ("ITU") Radio Regulation S1.22.

[3] *See In the Matter of GE Americom Communications Galaxy Inc. Application for Authority to Construct, Launch, and Operate a Ka-band Satellite System in the Fixed Satellite Service*, Order and Authorization, 12 FCC Rcd 6475 (1997) ("*GE Americom Authorization Order*").

required to adhere to a strict timetable for system implementation. However, several of the first Ka-band processing round applicants initially proposed to operate inter-satellite links ("ISLs") among multiple satellites in their constellations. When we granted these licenses, there was no suitable spectrum allocated for ISL operations, so we deferred assigning the ISL frequencies. Consequently, we issued licenses for those Ka-band applicants without implementation milestones, stating that we would impose a strict milestone schedule once ISL frequencies were authorized. GE Americom did not request operating authority for ISL service in its underlying application. Its license therefore included system implementation milestones. These milestones are as follows:

	Commence Construction	Complete Construction	Launch and Operate
First Satellite	May 1998	April 2002	May 2002
Remaining Satellites	May 1999	October 2004	November 2004

3. Six months after GE Americom received its authorization, it filed an application to modify its system to permit it to use ISLs in its system.[4] In the modification application, GE Americom also requested that the Commission extend the construction and launch milestones associated with its licenses to conform to those milestones applicable to other Ka-band licensees authorized to use ISLs, once these milestones were imposed.[5]

4. On December 9, 1999, we contacted GE Americom with a letter request for information. The letter to GE Americom requested: (1) a copy of any executed non-contingent contracts that would verify that satellite construction had commenced by May 1998; (2) confirmation that its satellites would be built within the time frame specified in its licenses; and, (3) detailed information on its proposed ISL operation.[6] On December 23, 1999, GE Americom sent us a letter concerning the status of GE Americom's construction and outlining the chronology of its request for an extension of its milestones.[7] On January 19, 2000, GE Americom submitted its detailed ISL proposal.[8] On March 20, 2000 GE Americom submitted a copy of its contract, executed May 29, 1998, for construction and launch site delivery of its Ka-band satellites.[9]

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[4] *See Application for Modification of GE American Communications, Inc., File Nos.* 169 through 173-SAT-P/LA-95, 54-SAT-AMEND-97 (dated November 18, 1997) ("*GE Modification Application*").

[5] *GE Modification Application* at 1.

[6] *See* Letter from Thomas S. Tycz, Chief, Satellite and Radiocommunication Division, FCC to Peter A. Rohrbach, Counsel for GE American Communications, Inc. (December 9, 1999).

[7] *See* Letter from Peter A Rohrbach and Karis A. Hastings, Counsel for GE American Communications, Inc. to Thomas S. Tycz, Chief, Satellite and Radiocommunication Division, FCC (December 23, 1999).

[8] *See* Letter from Peter A. Rohrbach and Karis A. Hastings, Counsel for GE American Communications, Inc., to Thomas S. Tycz, Chief, Satellite and Radiocommunication Division, FCC (January 19, 2000).

[9] *See* Letter from Karis A. Hastings, Counsel for GE American Communications, Inc. to Thomas S. Tycz,

5. On January 31, 2001, we assigned GE Americom its requested ISL spectrum, but deferred consideration of its request to extend its milestones to conform to the milestones of other Ka-band licensees.[10] This *Order* disposes of GE Americom's milestone extension request.

III. DISCUSSION

6. The milestone schedule, included as a condition of space station authorizations, is designed to ensure that licensees are proceeding with construction and will launch their satellites in a timely manner.[11] Requiring licensees to adhere strictly to a milestone schedule prevents increasingly scarce orbital resources from being warehoused by licensees.[12] Such warehousing could hinder the 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.[13] Accordingly, Section 25.117(e)(1) of the Commission's rules permits milestone extensions only when delay in implementation is due to circumstances beyond the control of the licensee.[14]

7. GE Americom filed its request for milestone extension six months after receiving its initial license and six months prior to the date of its first milestone. In its request, GE Americom contends that its request to add ISLs and its corresponding request for modification of its milestone requirements stem from developments unforeseeable at the time GE Americom filed its initial application and beyond its control, namely that the technical information then available concerning ISLs was insufficient to justify the expenditures and technical adjustments necessary to equip its satellites with such links.[15] GE Americom further states that reevaluation of ISL technology and continuing improvements in technology compelled GE to conclude that ISLs would benefit consumers by improving the efficiency of its system. It therefore applied for a modification of its system as soon as this technical information became available.[16] It argues

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Chief, Satellite and Radiocommunication Division, FCC (March 20, 2000). GE Americom submitted additional exhibits to this contract on March 27, 2000. *See* Letter from Karis A. Hastings, Counsel for GE American Communications, Inc. to Thomas S. Tycz, Chief, Satellite and Radiocommunication Division, FCC (March 27, 2000).

[10] *See In the Matter of GE American Communications, Inc., Application for Authority to Construct, Launch, and Operate a Ka-band Satellite System in the Fixed-Satellite Service*, Order and Authorization, DA 01-225 (rel. Jan. 31, 2001) ("*GE Americom Modification Authorization*") at ¶¶ 3-7 and 9-11; n.3.

[11] *See, e.g.*, *Columbia Communications Corporation*, Memorandum Opinion and Order, 15 FCC Rcd 15566, 15571 ¶ 11 (Int'l Bur. 2000) ("*Columbia First MO&O*").

[12] *Id.*

[13] *Id.*

[14] 47 C.F.R. § 25.117(e)(1). *See also National Exchange Satellite, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 1990, 1991 ¶ 8 (Com. Car. Bur. 1992); *Hughes Communications Galaxy, Inc.*, Order and Authorization, 5 FCC Rcd 3423, 3424 ¶ 10 (Com. Car. Bur. 1990); *MCI Communications Corporation*, Memorandum Opinion and Order, 2 FCC Rcd 233, 233 ¶ 5 (Com. Car. Bur. 1987).

[15] *GE Modification Application* at 4-5.

[16] *Id.*

that a failure to extend the milestone requirements applicable to its system would place it at a severe disadvantage relative to other Ka-band licensees.[17]

8. We find that GE Americom's decision to add ISLs to its authorized system does not, in itself, justify a milestone extension.[18] The Commission has repeatedly determined that requesting a license modification is a business decision wholly within the discretion and control of the licensee, and so, is not a circumstance beyond the licensee's control.[19] Further, extending milestones on this basis would allow licensees to "extend indefinitely their nonperformance by repeated modifications of their proposals."[20] This, in turn, could facilitate warehousing of scarce orbital resources or, at a minimum, delay service to the public.

9. Nevertheless, we find that there is "good cause" to waive Section 25.117(e)(1) on our own motion in this case.[21] Waiver is appropriate if special circumstances warrant a deviation from the general rule and such deviation would better serve the public interest than would strict adherence to the general rule.[22] Circumstances that justify a waiver include "considerations of hardship, equity, or more effective implementation of overall policy."[23] Generally, the Commission may grant a waiver of its rules only if the relief requested would not undermine the policy objective of the rule in question, and would otherwise serve the public interest.[24]

10. We grant GE Americom a waiver of Section 25.117(e)(1) because it has demonstrated, from early after licensing, its intent to proceed with its modified Ka-band system. In every instance where the Commission has denied a milestone extension request, construction of the satellite either had not begun or

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17 *Id*. at 4.

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

19 *See, e.g., Columbia First MO&O*, 15 FCC Rcd at 15571, ¶ 12; *Columbia Communications Corporation*, Memorandum Opinion and Order, 15 FCC Rcd 16496, 16497-98, ¶ 5 (Int'l Bur. 2000); *Advanced Communications Corporation*, Memorandum Opinion and Order, 10 FCC Rcd 13337, 13341, ¶ 14 (Int'l Bur. 1995) ("*Advanced Order*"). *Cf. Advanced Communications Corporation*, Memorandum Opinion and Order, 11 FCC Rcd 3399, 3417, ¶ 45 (1995) (delay related to negotiations with potential investors does not constitute circumstances beyond the licensee's control); *American Telephone and Telegraph Company and Ford Aerospace Satellite Services Corporation*, Memorandum Opinion and Order, 2 FCC Rcd 4431, 4433-34, ¶ 21 (1987) (delay due to construction contract negotiation does not constitute circumstances beyond the licensee's control).

20 *Advanced Order*, 10 FCC Rcd at 13341 ¶ 14 (quoting *Tempo Enterprises, Inc.*, Memorandum Opinion and Order, 1 FCC Rcd 20 (1986)).

21 *See WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969) ("*WAIT Radio*"); *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1166 (D.C. Cir. 1990) ("*Northeast Cellular*").

22 *Northeast Cellular*, 897 F.2d at 1166. *See also Comsat Corporation*, Order, 11 FCC Rcd 9622, 9625 ¶ 10 (1996); *General Communications, Inc.*, Memorandum Opinion and Order, 11 FCC Rcd 2535, 2536 ¶ 4 (Int'l Bur. 1996).

23 *WAIT Radio*, 418 F.2d at 1159.

24 *WAIT Radio*, 418 F.2d at 1157; *Dominion Video Satellite, Inc.*, Order and Authorization, 14 FCC Rcd 8182, 8185 ¶ 5 (Int'l Bur. 1999).

was not continuing, thus raising questions regarding the licensee's intention to proceed.[25] GE Americom filed its request to add ISLs to its satellite system in November 1997, just six months from the grant of its Ka-band license and only days after actions taken at the World Radio Communication Conference in November 1997 (WRC-97) made ISL frequencies available.[26] GE stated in its modification application that it did not file for ISLs in its initial application because the technical information available at that time concerning ISLs was insufficient to justify the expenditures and technical adjustments necessary to equip its satellites with such links. As soon as the ISL information did become available, GE Americom filed its modification to add ISLs, along with its milestone extension request. Further, GE filed the extension request well before its first milestone deadline of May 1998 and kept in close contact with Commission to monitor this request.[27] Indeed, GE Americom met the first milestone date by entering into a timely non-contingent contract for its Ka-band satellites despite its then-pending milestone extension request.[28] Moreover, a review of this contract shows that ISLs were contemplated in the system design at that early time.[29] Consequently, we find that granting GE's extension would not be contrary to the Commission's warehousing policy, and the purpose of Section 25.117(e)(1), and that it serves the public interest by allowing GE sufficient time to construct, launch, and operate a Ka-band system with ISLs.[30]

11. We therefore waive Section 25.117(e)(1) on our own motion and modify GE Americom's remaining milestones to comport with those of other Ka-band licensees who received ISLs in January 2001. These milestones are based upon the dates by which U.S. satellites must be "brought into use" to assure international recognition and protection of these satellites pursuant to regulations promulgated by the World Radio Conference and published by the International Telecommunication Union (ITU). We will require GE Americom to launch a satellite into each of its five orbit locations by the appropriate "bringing into use" date for that orbit location. At those orbit locations where GE Americom is authorized to operate more that one satellite, the second co-located satellite, if not launched by the "bringing into use" date, will be required to operate on the same frequencies that are used by the first satellite that met the ITU deadline.

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[25] *See, e.g., AMSC Subsidiary Corporation*, Memorandum Opinion and Order, 8 FCC Rcd 4040, 4042 ¶ 13 (1993) ("*AMSC Order*").

[26] *See* Final Acts of the 1997 World Radiocommunication Conference, Geneva (1997); ITU Radio Regulations Article S5 (frequency allocations).

[27] *See* Letter from Peter A. Rohrbach and Karis A. Hastings, Counsel for GE American Communications, Inc. to Thomas S. Tycz, Chief, Satellite and Radiocommunication Division, FCC (December 23,1999). Additionally, prior to meeting its first milestone (May 9, 1998), GE Americom contacted FCC staff to discuss the status of GE Americom's ISL request and milestone issues.

[28] *Id. See also AMSC Order*, 8 FCC Rcd at 4042 ¶ 14. *See also GE American Communications, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 5169 (Com. Car. Bur. 1992); *Columbia Second Memorandum Opinion and Order*, 15 FCC Rcd at 16502 ¶ 16 (once a licensee has met its construction commencement milestone, we can be more certain that it will proceed with its business plan).

[29] *See* GE American Communications, Inc., Ka-Band Satellite Construction Contract, executed May 29, 1998.

[30] *See AMSC Order.*

IV. CONCLUSION AND ORDERING CLAUSES

12. Accordingly, we grant GE Americom an extension of its construction and launch milestones to allow it to incorporate ISLs into its satellite system.

13. Accordingly, IT IS ORDERED that issued pursuant to Section 0.261 of the Commission's rule on delegations of authority, 47 C.F.R. § 0.261, the request to defer milestones filed by GE American Communications, Inc. on November 18, 1997, IS GRANTED to the extent set forth herein.

14. IT IS FURTHER ORDERED that, pursuant to Section 1.3 of the Commissions Rules, 47 C.F.R. § 1.3, Section 25.117(e)(1) of the Commission's rules regarding the remaining construction and launch milestones, 47 C.F.R. 25.117(e)(1) IS WAIVED, and the milestones imposed on GE American Communications, Inc. in its original *Authorization Order*, 12 FCC Rcd 6475 (1997) are extended as follows:

	Complete Construction	Launch and Operate
Satellite licensed at 105° W.L.	May 2005	June 25, 2005
Satellite licensed at 85° W.L.	May 2005	June 25, 2005
Satellite licensed at 17° W.L.	June 2005	July 2, 2005
Satellite licensed at 56° E.L.	June 2005	July 2, 2005
Satellite licensed at 114.5° E.L.	June 2005	July 16, 2005

15. This Order is effective upon release.

FEDERAL COMMUNCIATIONS COMMISSION

Donald Abelson
Chief, International Bureau