

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

In the matter of
Application of
Motorola, Inc. and Teledesic, LLC
for Consent to Assignment of Authority to Launch
and Operate the Millennium Geostationary Fixed-
Satellite Service System
Request of
Teledesic LLC
for Exemption from the Cut-Off Rule for Pending
Applications for Authority to Launch and Operate
Geostationary and Non-Geostationary Fixed
Satellite Systems
Petition of
Motorola, Inc. and Teledesic LLC for Extension
of Time Allowed for Commencement of
Construction

File No. SAT-ASG-20010109-00005

File No. SAT-MOD-20020131-00012
Call Sign S2174

MEMORANDUM OPINION AND ORDER

Adopted: September 3, 2002

Released: September 4, 2002

By the Chief, International Bureau:

I. INTRODUCTION

1. In this Order, we deny a petition filed by Motorola, Inc. and Teledesic LLC (collectively, "Applicants") requesting extension of the first milestone period specified in the license issued to Motorola for a Ka-band satellite system known as the Millennium System ("Milestone Extension Request"). We further find that the Millennium license is null and void for failure to satisfy a condition requiring the licensee to commence construction by January 31, 2002. Consequently, we dismiss, as moot, an application for permission for Motorola to assign the license to Teledesic LLC. We reserve for separate

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. The frequency assignments for the Millennium System are 18.58-18.8 GHz and 19.7-20.2 GHz for service downlinks, 28.35-28.6 GHz and 29.25-30.0 GHz for service uplinks, and 66.0-67.0 GHz and 69.0-70.0 GHz for inter-satellite transmission.

2 Petition for Extension or Waiver of Milestone, filed Jan. 31, 2002. See Public Notice, Report No. SAT-00101 (Feb. 14, 2002).

3 Application of Motorola, Inc. and Teledesic LLC for Consent to Assignment of Authority to Launch and Operate the Millennium Geostationary Fixed-Satellite Service System and Request of Teledesic LLC for Exemption from the Cut-Off Rule for Pending Applications for Authority to Launch and Operate Geostationary and Non-Geostationary Fixed Satellite Systems, File No. SAT-ASG-20010109-00005, filed Jan. 10, 2001. ("Assignment Application").

disposition in a future order Teledesic LLC's associated request for a declaratory ruling that it would be eligible for exemption from the major-amendment cut-off rule if it were to replace Motorola as the party in interest in various pending applications for additional satellite licenses.⁴

II. BACKGROUND

2. Motorola was one of thirteen applicants that received licenses in 1997 in the Commission's first processing round for geostationary-satellite-orbit ("GSO") Ka-Band satellite systems to provide Fixed-Satellite Service ("FSS").⁵ Motorola's GSO-FSS license authorized construction, launch and operation of four "Millennium" satellites in orbital locations at 75°, 77°, 87°, and 91° West Latitude.⁶ Motorola has not yet built or launched those satellites.

3. Motorola has applications on file for additional satellite licenses. It applied for licenses for additional GSO orbital assignments in the Ka-band,⁷ for a constellation of non-geostationary-orbit Ka-band satellites;⁸ and for a constellation of NGSO-FSS satellites that would operate in the 50/40 GHz "V band."⁹ All of these applications are still pending.¹⁰

4. *Assignment Application.* In 1998 Motorola informed the Commission that it had acquired a minority ownership interest in Teledesic LLC and had granted Teledesic LLC options to acquire the Millennium license (subject to Commission approval) and Motorola's pending Ka-band and V-band satellite-license applications.¹¹ In January 2001, the Applicants applied for permission to assign the Millennium license from Motorola to Teledesic LLC.¹² They explained that Teledesic LLC had exercised its option pertaining to the license and that Motorola would consequently be obliged to assign the license to Teledesic LLC upon grant of the *Assignment Application*. They also reported that Teledesic LLC

⁴ *Id.* The request for a cut-off exemption is included in the *Assignment Application*.

⁵ *Assignment of Orbital Locations to Space Stations in the Ka-Band* (Order), DA 97-967, 13 FCC Rcd 1030 (Int'l Bur. 1997), *modified*, DA 97-2654, 12 FCC Rcd 22004 (Int'l Bur. 1997) (prescribing orbital assignment plan for thirteen GSO FSS Ka-Band systems). Motorola's license was originally issued to a wholly-owned subsidiary, which subsequently assigned it to Motorola. *Comm, Inc.* (Order and Authorization), DA 97-968, 12 FCC Rcd 23001 (Int'l Bur. 1997) ("*License Order*").

⁶ *License Order* at 23012.

⁷ Application File Nos. 94-through 98-SAT-P/LA-97, filed July 15, 1997.

⁸ Application File Nos. 79-SAT-P/LA-97(63) and SAT-AMD-19980729-00067, filed July 29, 1998.

⁹ Application File Nos. 157-SAT-P/LA-96(72) and 19-SAT-AMEND-96, filed Sept. 4, 1996.

¹⁰ Motorola's applications for additional Ka-band satellites were designated for consideration in a second processing round along with other applications filed prior to a specified cut-off date of December 22, 1997. See Public Notice No. SPB-105, DA 97-2201 (Oct. 15, 1999), Public Notice No. SPB-106, DA 97-2202 (Oct. 15, 1999), and Public Notice No. SAT-00012 (March 16, 1999). The Bureau granted orbital assignments for other second-round Ka-band GSO applicants last year but postponed action on Motorola's GSO applications pending resolution of Teledesic LLC's request for a ruling regarding eligibility for a cut-off exemption. *Second Round Assignment of Geostationary Satellite Orbit Locations to Fixed-Satellite Service Space Stations in the Ka-Band* (Order), DA 01-1693, 16 FCC Rcd 14389, 14390 n.9 (Int'l Bur. 2001) ("*Second Round Assignment Order*"). The Commission accepted Motorola's V-band application for filing in 1997 and specified a September 1997 cut-off deadline for filing competing applications. Public Notice No. SPB-89, DA 97-1551 (July 22, 1997), *modified*, Public Notice No. SPB-95, DA 97-1723 (Aug. 13, 1997).

¹¹ Letter dated August 13, 1998 from Philip L. Malet and James M. Talens, counsel for Motorola, to Magalie Roman Salas, Secretary, Federal Communications Commission, referencing File Nos. 79-SAT-P/LA-97(63), 94 through 98-SAT-P/LA-97, 157-SAT-P/LA-96(72), and 29-SAT-AMEND-97.

¹² *Assignment Application, supra*.

intended to exercise its option to acquire Motorola's pending Ka-band and V-band applications, and Teledesic LLC requested a ruling that it would be eligible for exemption from the major-amendment cut-off rule after substituting itself for Motorola as the party in interest in those applications.¹³

5. *Subsequent Developments.* Disposition of the *Assignment Application* was hindered by delayed disclosure of relevant information and other complicating circumstances that ensued after its filing. In response to initial inquiries from Bureau staff, Teledesic LLC filed a supplement to the *Assignment Application* on March 14, 2001,¹⁴ after which the International Bureau placed the application on public notice.¹⁵ Several interested parties then filed petitions to dismiss or deny the *Assignment Application* and/or Teledesic LLC's associated request for a declaratory ruling.¹⁶ Among other things, the petitioners argued that the Applicants had not shown that Motorola would not profit from the proposed transactions and had therefore failed to establish that there was justification for a cut-off exemption or that assignment of the Millennium license would comport with the prohibition of "trafficking in bare licenses" in Section 25.145(d) of the Commission's rules.

6. In response to a letter of inquiry from the Chief of the Bureau's Satellite Division,¹⁷ the Applicants submitted further information in June 2001 relevant to the trafficking and exemption issues, including copies of pertinent documents.¹⁸ In an associated motion the Applicants requested that their *June 2001 Response Letter* and a number of the documents that they had submitted with it be withheld from public inspection.¹⁹ Several of the petitioners to deny filed a joint opposition to the confidentiality motion, arguing that the Applicants had not shown justification for withholding the material from the

¹³ *Id.* at pp. 7-9.

¹⁴ Letter dated March 14, 2001 to Magalie Roman Salas, FCC Secretary, from Jonathan B. Mirsky, Counsel to Teledesic LLC.

¹⁵ Public Notice, Report No. SAT-00068 (April 6, 2002).

¹⁶ Petition to Dismiss or Deny filed May 7, 2001 by Pegasus Development Corp.; Petition to Deny filed May 7, 2001 by Hughes Communications, Inc.; Petition to Deny filed May 7, 2001 by TRW, Inc.; Opposition of @contact LLC to Teledesic LLC's Request for Exemption from Cut-off Rule filed May 7, 2001; Petition to Deny of Celsat America, Inc. filed May 7, 2001; Petition to Dismiss or Deny filed May 7, 2001 by KaStarcom World Satellite, LLC; and Letter to Magalie Roman Salas, FCC Secretary, from Tara K. Giunta and Timothy J. Logue for Pacific Century Group, Inc., filed May 7, 2001. *See also* Comments in Support of the Petition to Dismiss or Deny, filed June 6, 2001 by CAI Data Systems, Inc.; Petition to Dismiss filed March 26, 2001 by Pegasus Development Corp.; Consolidated Joint Opposition of Teledesic LLC and Motorola, Inc. to Petitions to Deny, filed May 22, 2001; and replies filed by Pegasus Development Corp., Hughes Communications, Inc., @contact LLC, and Pacific Century Group, Inc. on May 30, 2001 and by TRW Inc. on June 1, 2001.

¹⁷ Letter dated June 7, 2001 from Thomas S. Tycz, Chief, Satellite and Radiocommunications Division, International Bureau, FCC. The letter requested the following information: 1) a complete description of all consideration received by Motorola in exchange for granting the options to take over the Millennium license and the Celestri and M-Star applications; 2) an appraisal of the value of any stock or other non-pecuniary assets received as consideration for the options; 3) an account of any subsequent disposition by Motorola of any equity interest in Teledesic; 4) the nature and extent of Motorola's current interest in Teledesic; 5) an account of Motorola's incurred expenses for preparation and prosecution of the Millennium license application and for construction, coordination, and implementation of the Millennium system; and 6) an account of Motorola's expenses for preparation and prosecution of the Celestri applications.

¹⁸ Letter dated June 15, 2001 to Magalie Roman Salas, FCC Secretary, from Philip L. Malet and James M. Talens, Counsel for Motorola, Inc., and Mark A. Grannis and Kelly S. McGinn, Counsel for Teledesic LLC ("*June 2001 Response Letter*").

¹⁹ Request for Confidential Treatment, filed June 15, 2001.

public file.²⁰ In the alternative, the opponents urged the Bureau to order the Applicants to disclose the material to interested parties under a protective order. In reply, the Applicants argued that they should not be required to disclose any of the material to other parties, even under a protective order.²¹ Alternatively, the Applicants argued that if disclosure were to be compelled under a protective order, the protective order should include various special restrictions in addition to those that the Commission ordinarily prescribes in such orders. The opponents argued against adopting any of the special restrictions proposed by the Applicants, stressing that no such restrictions were included in the Model Protective Order that the Commission had previously approved for routine use.²²

7. In a decision released in September 2001, the Chief of the Bureau's Satellite Division ordered the Applicants to disclose the documents to the other parties under a protective order and granted permission for the latter to file supplemental comments addressing the newly-disclosed material within thirty days.²³ In a subsequent motion opposed by Hughes Communications, Inc., Teledesic LLC requested a ruling that it was not obliged to honor a request for disclosure of the documents to a certain named individual.²⁴ The Satellite Division sustained Teledesic LLC's objection in a decision released on October 26, 2002.²⁵ As permitted by the disclosure order, Pegasus, Hughes, TRW, and @contact LLC, filed supplemental comments on October 30, 2001, contending that the documents disclosed pursuant to the protective order largely confirmed their previous contentions concerning trafficking and other issues.²⁶

8. On November 6, 2001, the Applicants filed a supplemental information statement, reporting that pursuant to a recent agreement with Teledesic LLC, Motorola had surrendered all of its shares in the Teledesic companies in exchange for: (1) cancellation of a \$50 million debt owed by Motorola to Teledesic and (2) an option to repurchase an equal number of non-voting shares in Teledesic LLC.²⁷ In reply to comments on the material subject to the disclosure order, the Applicants argued that Motorola's surrender of its equity interest in the Teledesic companies should allay concern about trafficking.²⁸ Hughes Communications argued, on the other hand, that in light of the reported surrender of equity it could not be held that the proposed assignment of Motorola's applications to Teledesic LLC would serve a legitimate business purpose.²⁹

²⁰ Joint Opposition to Request for Confidential Treatment, filed June 28, 2001 by Pegasus Development Corporation, Hughes Communications Inc., TRW Inc., @contact LLC, and CAI Data Systems, Inc.

²¹ Reply to Joint Opposition to Request for Confidential Treatment, filed July 11, 2001.

²² Comments on the Proposed Protective Order, filed August 2, 2001.

²³ *Motorola Inc. and Teledesic, LLC* (Disclosure Order and Order Adopting Protective Order), 16 FCC Rcd 17056 (Sat. Div. 2001). The protective order included some, but not all, of the restrictions that the Applicants had demanded.

²⁴ Objection to Declaration of Confidentiality of Montserrat Sans-Ballus, filed October 1, 2001. *Also see* Letter dated October 2, 2001 to Magalie Roman Salas, FCC Secretary, from John P. Janka and Teresa D. Baer, Counsel for Hughes Communications, Inc., and Reply to HCI Response to Objection to Declaration of Confidentiality of Monserrat-Ballus, filed by Teledesic LLC on October 3, 2002.

²⁵ DA 01-2499, 16 FCC Rcd 18933 (Sat. Div. 2001).

²⁶ In addition, CAI Data Systems filed an untimely supplement in the same vein on November 7, 2001.

²⁷ Letter dated November 6, 2001 to Magalie Roman Salas, FCC Secretary, from Philip L. Malet and James M. Talens, Counsel for Motorola, Inc., and Mark A. Grannis and Kelly S. McGinn, Counsel for Teledesic LLC.

²⁸ Consolidated Reply of Motorola, Inc. and Teledesic LLC to Supplements to Petitions to Deny, filed November 6, 2001, at pp. 4-5.

²⁹ Letter dated November 28, 2001 to Magalie Roman Salas, FCC Secretary, from Gary Epstein, John Janka, Teresa Baer, and Dori K. Bailey, Counsel for Hughes Communications, Inc.

9. On May 14, 2002, the Chief of the Satellite Division issued another inquiry letter addressed to the Applicants, advising that additional information was needed pertaining to the transaction reported on November 6 in order to assess its relevance to issues presented by the *Assignment Application*. Among other things, the Satellite Division asked the Applicants whether their debt-settlement agreement specified a price that Motorola would have to pay to repurchase shares of Teledesic LLC and, if so, how that price was determined; what value, if any, the Applicants ascribed to the repurchase option in their books of account; whether Motorola had exercised the option, and, if not, when it would expire.³⁰ The Applicants filed a response to the inquiry on May 21, 2002, again requesting confidential treatment.³¹

10. *Milestone Extension Request.* Motorola's Millennium license, the subject of the *Assignment Application*, is contingent on compliance with certain "milestone" requirements. In particular, the order that assigned intersatellite frequencies for the Millennium system stipulated that the Millennium satellite license would become null and void if the licensee failed to meet a construction milestone schedule that, among other things, required construction of a first satellite to commence by the end of January 2002.³² On January 31, 2002, the Applicants filed a request for postponement of that deadline until 90 days after release of an order granting or denying the *Assignment Application*.³³

III. DISCUSSION

A. Milestone Extension Request

11. The Commission imposes construction milestone requirements in satellite licenses in order to prevent "warehousing" of spectrum and orbital slots by licensees who are not ready and willing to build their systems in a timely manner. Construction-commencement milestones are especially important because they provide an initial objective indication as to whether licensees are committed to proceeding with implementation of their proposals. The Commission has therefore prescribed specific construction-commencement deadlines and other milestone requirements for Ka-band FSS licensees in Section 25.145 of its rules. Paragraph (f) of Section 25.145 states, *inter alia*, that unless their licenses specifically provide otherwise, Ka-band GSO-FSS licensees must begin construction of a first satellite within one year after receiving all space-station frequency assignments.³⁴ The International Bureau granted the final space-station frequency assignments for the Millennium system on January 31, 2001.³⁵ Section 25.145(f) therefore required Motorola, as the Millennium licensee, to commence satellite construction by January 31, 2002. Thus, in addition to being specified as a license condition by the *ISL Order*, the requirement that the Millennium licensee commence construction of at least one satellite by January 31, 2002 is also prescribed by a Commission rule.

³⁰ Letter dated May 14, 2002 from Thomas S. Tycz, Chief, Satellite Division, International Bureau, FCC, to Counsel for Teledesic LLC and Counsel for Motorola, Inc.

³¹ Letter dated May 21, 2001 to Marlene H. Dortch, FCC Secretary, from Mark A. Grannis and Kelly S. McGinn, Counsel for Teledesic LLC, and Philip L. Malet and Marc A. Paul, Counsel for Motorola, Inc.; Request for Confidential Treatment filed May 21, 2002.

³² *Motorola, Inc.* (Order and Authorization), DA 01-222, 16 FCC Rcd 2432, 2439, 2440 (Int'l Bur. 2001) ("*ISL Order*").

³³ *Milestone Extension Request.* Pegasus Development Corp. filed a petition to deny the extension request on March 18, the Applicants filed an opposition on April 2, and Pegasus filed a reply on April 15. The filing of the extension request preserved the license pending disposition of the request. See 47 C.F.R. § 25.161(a).

³⁴ 47 C.F.R. § 25.145(f) (as amended by *Rulemaking to Amend Parts 1, 2, 21, and 25 of the Commission's Rules to Redesignate the 27.5-29.5 GHz Frequency Band, to Reallocate the 29.5-30.0 GHz Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services* (Memorandum Opinion and Order), 16 FCC Rcd 11464 (2001), at ¶10 and Appendix ¶2.

³⁵ *ISL Order, supra.*

12. Consequently, in requesting postponement of the January 31, 2002 milestone deadline, Motorola is effectively asking not only for a modification of the terms of the Millennium license but also for a limited waiver of the pertinent requirement of Section 25.145(f). Section 1.3 of the rules provides that waivers may be granted when good cause is shown. According to criteria delineated by the Court of Appeals, however, a waiver is appropriate only when the Commission finds, in light of special circumstances presented in the case at hand, that granting such relief would not undermine the underlying purpose of the rule requirement in question and would better serve the public interest than insisting on strict compliance.³⁶ Further, if it grants a waiver, the Commission must articulate a rational justification for the exception that establishes a predictable, workable standard for non-discriminatory resolution of future cases.³⁷ An applicant for waiver “faces a high hurdle even at the starting gate” and “must plead with particularity the facts and circumstances which warrant such action.”³⁸ The Commission has held, moreover, that requests for extension of construction-commencement milestone periods are to be granted only when a licensee has been hindered from meeting the milestone requirement due to circumstances beyond its control.³⁹

13. The Applicants argue that extension and waiver of the initial Millennium construction-commencement milestone is warranted because it was infeasible for Motorola to enter into a non-contingent contract for construction of a Millennium satellite while the *Assignment Application* was pending.⁴⁰ The Applicants contend that because they filed the *Assignment Application* on January 10, 2001, more than a year in advance of the January 31, 2002 deadline for commencing construction, they had reason to expect that the Bureau would rule on the *Assignment Application* sufficiently in advance of that deadline to allow the resultant party-in-interest to negotiate a construction contract in the time remaining. Stressing that a timeline published in the Commission’s website indicates that assignment and transfer applications pertaining to complex merger transactions will generally be disposed of within 180 days after being placed on public notice,⁴¹ the Applicants contend that they were no less entitled to expeditious consideration of their “straight-forward” *Assignment Application*.⁴² They maintain that the Commission’s failure to rule on the *Assignment Application* before the end of the first milestone period was a circumstance beyond their control that prevented them from meeting the milestone requirement within the time allowed.

³⁶ *WAIT Radio*, 418 F.2d 1153, 1157 (D.C. Cir. 1969) (“*WAIT Radio*”); *Northeast Cellular Telephone Co., L.P. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (“*Northeast Cellular*”).

³⁷ *WAIT Radio* at 1159; *Northeast Cellular* at 1166.

³⁸ *WAIT Radio* at 1157, quoting *Rio Grande Family Radio Fellowship, Inc. v. FCC*, 406 F.2d 664 (D.C. Cir. 1968).

³⁹ See, e.g., *MCI Communications Corp.* (Memorandum Opinion and Order), DA 87-24, 2 FCC Rcd 233, 233 (CC Bur. 1987); *Norris Satellite Communications, Inc.* (Memorandum Opinion and Order), FCC 97-377, 12 FCC Rcd 22299, 22303 (1997); and *PanAmSat Licensee Corp.* (Memorandum Opinion and Order), FCC 01-178, 16 FCC Rcd 11534, 11537 (2001).

⁴⁰ A licensee can satisfy a commencement-of-satellite-construction requirement by entering into a “non-contingent” contract for construction of the relevant satellite(s). See, e.g., *Norris Satellite, supra*. Hence, Motorola could have met its first milestone requirement by entering into a non-contingent contract on or before January 31, 2002, providing for construction of one of the four proposed Millennium satellites.

⁴¹ See *Proposed Timeline for Consideration of Applications for Transfers or Assignments of Licenses or Requests for Authorizations Relating to Complex Mergers*, FCC Transaction Team Public Forum, March 1, 2000, available at <http://www.fcc.gov/transaction/timeline.html>.

⁴² To dispose of the assignment application within 180 days of public notification, the Bureau would have had to issue the decision by September 3, 2001. (As previously noted, the Millennium license-assignment application was put on Public Notice on April 6, 2001.)

14. The Bureau considered a similar request for milestone extension in *Columbia Communications Corporation*.⁴³ The licensee in that case asked for extension of a construction-commencement deadline until after disposition of a transfer-of-control application, arguing that such relief was warranted because uncertainty due to the unresolved status of the transfer application made it difficult to negotiate a non-contingent satellite construction contract.⁴⁴ The Bureau denied the extension request in *Columbia* because it found that the uncertainty of which the licensee complained was a direct result of the licensee's decision to pursue a merger, rather than a circumstance beyond its control.⁴⁵ Furthermore, the Bureau found that the licensee had not shown that the uncertainty actually prevented it from meeting the milestone deadline.

15. The Applicants argue that the facts of this case are materially different from the circumstances of *Columbia*. They point out that the licensee in *Columbia* filed the transfer application only two months before the relevant deadline, whereas they filed their *Assignment Application* more than a year in advance of the relevant milestone deadline for the Millennium licensee and before the Bureau even specified the milestone schedule for the Millennium license in the *ISL Order*. The Applicants maintain that it should be obvious, in light of these circumstances, that they did not file the *Assignment Application* merely to create a pretext for seeking a milestone extension. They contend that this case is also distinguishable from *Columbia* because in this instance the Commission was primarily at fault, due to its inaction on the *Assignment Application*, for the licensee's failure to meet the construction-commencement deadline.

16. Although the Applicants may not have anticipated when they filed the *Assignment Application* that it would remain pending past the deadline for commencing construction, the Bureau was under no legal obligation to rule on the application prior to the January 31, 2002 milestone deadline, and there was no guarantee that it would do so. The major-transaction timeline, to which the Applicants refer in their pleadings, is merely a guideline for informational purposes, not a rule or guarantee conferring legal rights. The timeline "should ... be viewed as a flexible tool, not an effort to force the review of all ... transactions into one inflexible mold ... [because] the time to complete a task may vary."⁴⁶ As stated in a memorandum published in the section of the FCC's internet website where transaction timelines are displayed, "[t]he review process will operate most efficiently if the parties file the relevant material as soon as possible"⁴⁷ When applicants submit revisions during the review period in response to issues raised by the Commission or other parties, the timeline "clock" is stopped or reset as necessary to afford time for additional public comment.⁴⁸

17. In this case, the Applicants failed to provide information relevant to issues presented by the *Assignment Application* and the request for a cut-off exemption until the Commission's staff prompted them to produce it, then demanded that the information be withheld from other interested parties, triggering a prolonged controversy over terms of disclosure and necessitating a supplemental comment round. After the supplemental comments were filed, the Applicants reported the consummation of a

⁴³ (Memorandum Opinion and Order), DA 00-702, 15 FCC Rcd 16496 (Int'l Bur. 2000).

⁴⁴ *Id.* at 16498.

⁴⁵ *Id.* at ¶7. *Cf. Loral Space & Communications Corp.* (Order), DA 01-1287, 16 FCC Rcd 11044 (Int'l Bur. 2001) (the filing of an application for license modification was not justification for granting a milestone extension because it was not a circumstance beyond the licensee's control).

⁴⁶ Proposed Timeline for Consideration of Applications for Transfers or Assignments of Licenses or Requests for Authorizations Relating to Complex Mergers, <http://www.fcc.gov/transaction/timeline.html>.

⁴⁷ Issues Memorandum for March 1, 2000 Transactions Team Public Forum on Streamlining FCC Review of Applications Relating to Mergers, <http://www.fcc.gov/transaction/issuesmemo.html>.

⁴⁸ *Id.* at p.3.

transaction that was materially relevant to issues raised by the petitioners to deny, according to both the Applicants themselves and another party. At that point the Applicants again failed to provide key information until our staff prompted them to submit it. Thus, the delay of which the Applicants complain is largely of their own making.

18. Even if the Applicants had reason to assume, however, that the Bureau would act on the *Assignment Application* well in advance of the first milestone deadline, they have not shown that its continued pendency made it either impossible or infeasible for Motorola to comply with the construction-commencement requirement. In attempting to explain how inaction on the *Assignment Application* prevented compliance with the milestone requirement, the Applicants assert that it was not a viable option for Motorola to negotiate a construction contract with a contingency clause that would shift payment obligations to Teledesic LLC in the event the proposed license assignment were consummated. Such an arrangement would not have satisfied the construction-commencement requirement, according to the Applicants, because the contract would not have been “non-contingent.”⁴⁹

19. The Applicants are mistaken in this regard. Providing for a shift of payment obligations from the current licenseholder to a successor upon consummation of a proposed license assignment would not disserve the purpose of the milestone requirement if the successor would be contractually bound to meet the assignor’s remaining obligations after acquiring the license. Hence the inclusion of such a provision in a construction contract signed by the incumbent and the proposed successor would not make the contract materially contingent.⁵⁰ Thus, contrary to the Applicants’ assertions, Motorola could have satisfied the construction-commencement requirement by entering into a construction contract providing for a shift of payment obligations to Teledesic upon consummation of the proposed license assignment.

20. The Applicants assert, however, that Motorola was unwilling to sign a satellite construction contract without first negotiating a side-agreement with Teledesic that would “mak[e] Teledesic responsible for the payments to the contractor,” require Teledesic to advance Motorola the money needed for down payment, and require Teledesic to pay termination fees to the contractor on Motorola’s behalf if Motorola were to cancel the construction contract following denial of the *Assignment Application*.⁵¹ The Applicants maintain that such an arrangement would have been unsatisfactory for Teledesic because Teledesic would have had to commit a large amount of money to pay for construction of a satellite that it might never be authorized to operate.⁵² Thus, the Applicants’ explanation indicates that what actually thwarted Motorola from complying with the construction-commencement requirement prior to the milestone deadline was that it could not reach agreement with Teledesic regarding apportionment of cost burdens that would arise under a construction contract executed while the *Assignment Application* was pending. The Applicants’ failure to reach agreement with each other concerning reimbursement was not a circumstance beyond their control and cannot be deemed good cause for waiving the milestone rule.

21. The Applicants failed to apprise us in a diligent manner, moreover, of the problem that allegedly thwarted timely compliance with the milestone requirement. They waited until the milestone period expired before asserting, for the first time, that the pendency of the *Assignment Application* was preventing Motorola from meeting the construction-commencement requirement. Not having even taken the basic step of apprising us of the alleged difficulty prior to expiration of the time allowed for compliance, the Applicants must accept the consequences of their failure to satisfy the milestone

⁴⁹ Opposition to Petition to Deny filed April 2, 2002, p.8.

⁵⁰ See *Columbia Communications Corporation, supra*, 15 FCC Rcd at 16500-01; cf. *PanAmSat Licensee Corp., supra*, 16 FCC Rcd at 11539.

⁵¹ Opposition to Petition to Deny, *supra*, pp. 8-9.

⁵² *Id.*, p.9.

requirement within that time-period.⁵³

B. Dismissal of the Assignment Application

22. As previously noted, the license for the Millennium satellite system is subject to a condition that the authorization will become null and void if the licensee fails to commence construction of the first Millennium satellite by the end of January 2002. The Applicants have conceded that Motorola did not commence construction of the first Millennium satellite by then, and they have not shown that there is justification for granting an extension of the milestone deadline and waiving the corresponding rule requirement. It follows that the Millennium license is now null and void by its own terms. Consequently, the application for permission to assign the license from Motorola to Teledesic LLC is moot. We are therefore ordering dismissal of the *Assignment Application*.

IV. ORDERING CLAUSES

23. Accordingly, IT IS ORDERED that the “Petition for Extension or Waiver of Milestone” filed by Motorola, Inc. and Teledesic LLC on January 31, 2002, File No. SAT-MOD-20020131-00012, IS DENIED and the petition of Pegasus Development Corporation to deny the petition for extension IS GRANTED.

24. IT IS FURTHER ORDERED that the application of Motorola, Inc. and Teledesic LLC for consent for assignment of license, File No. SAT-ASG-20010109-00005, IS DISMISSED as moot and that the petitions to deny that application filed by Celsat America, Inc., KaStarcom World Satellite LLC, TRW, Inc., Pegasus Development Corporation, and Pacific Century Group, Inc. ARE also DISMISSED as moot.

FEDERAL COMMUNICATIONS COMMISSION

Donald Abelson
Chief, International Bureau

⁵³ See *Morning Star Satellite Company, L.L.C.* (Memorandum Opinion and Order), FCC 01-179, 16 FCC Rcd 11550, 11554 (2001) (“when satellite licensees do not pursue procedural avenues available to them to address concerns surrounding their authorizations, but rather wait until their authorizations are null and void due to their failure to act, their inaction ensures the result that the milestone concept is designed to prevent”).