

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

In the Matter of
KaStarCom. World Satellite, LLC
Application for Authority to Construct,
Launch, and Operate a Ka-Band Satellite
System in the Fixed-Satellite Service
File Nos. 102-SAT-P/LA-98
IBFS Nos. SAT-LOA-19980312-00018
SAT-AMD-20010607-0050
Call Sign S2355

MEMORANDUM OPINION AND ORDER

Adopted: October 27, 2003

Released: October 27, 2003

By the Chief, International Bureau:

I. INTRODUCTION

1. In this Order, we find that KaStarCom. World Satellite, LLC ("KaStarCom") has satisfied milestone requirements with respect to Ka-Band service links for its satellite at the 109.2° W.L. orbital location. We find, however, that KaStarCom is not constructing inter-satellite links ("ISLs") as part of its Ka-band satellite system. Consequently, we cancel the ISL portion of KaStarCom's authorization.

II. BACKGROUND

2. On August 3, 2001, the International Bureau ("Bureau") authorized KaStarCom to construct, launch, and operate a geostationary-orbit satellite ("GSO") at the 111° W.L. orbital location to provide fixed-satellite service ("FSS") in the United States in the 18.3-18.8, 19.7-20.2, 28.35-28.6, and 29.25-30.0 GHz frequency bands. In November 2001, the Bureau authorized

1 On March 27, 2003, the International Bureau granted authority to transfer control of space station authorizations held by KaStarCom. World Satellite, LLC from Televerde Communications Corporation to Wildblue Communications, Inc. See Public Notice, Federal Communications Commission, Report No. SAT-00142, DA No. 03-1010 (March 27, 2003).

2 For purposes of this order, the term "Ka-band" or "28 GHz band" refers to the space-to-Earth communications (downlink) in radio frequencies at 17.7-20.2 GHz and the corresponding Earth-to-space communications (uplink) in frequencies at 27.5-30.0 GHz.

3 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.

4 KaStarCom subsequently surrendered this license. See Letter from David M. Drucker, President, Televerde Communications Corp., to Marlene H. Dortch, Secretary, Federal Communications Commission

KaStarCom to construct, launch and operate one Ka-band satellite at each of the 73° W.L. and 109.2° W.L. orbital locations.<sup>5</sup> In that order, the Bureau also authorized KaStarCom to operate ISLs for its entire Ka-band system in the 69.0-70.0 GHz frequency bands.<sup>6</sup> KaStarCom's license required it to commence construction of its satellite at the 109.2° W.L. orbital location by November, 2002.<sup>7</sup>

3. To determine KaStarCom's compliance with milestones, the Satellite Division, International Bureau ("Division"), directed KaStarCom to submit a copy of an executed contract verifying that construction of its first satellite had commenced and that KaStarCom's satellite will be built within the time frame specified in KaStarCom's Ka-band license.<sup>8</sup> In response, KaStarCom provided a copy of a construction contract, dated November 2, 1999, between iSKY.net, Inc., subsequently renamed Wildblue Communications, Inc. ("WB")<sup>9</sup> and Space Systems/Loral, Inc. ("Loral") and a copy of the Satellite Sharing Agreement between KaStarCom and WB Holdings, dated August 1, 2001. The contract, submitted pursuant to a request for confidential treatment, provides for design, development, and detailed satellite specifications of the spacecraft.<sup>10</sup> KaStarCom and WB Holdings are each authorized to operate on 500 megahertz of discrete Ka-band spectrum in each direction at the 109.2° W.L. orbital location. The information submitted by KaStarCom did not cover the construction or operation of ISLs.

4. On December 9, 2002, the Bureau requested additional information concerning KaStarCom's contract. Specifically, we requested KaStarCom to verify that its construction contract requires the manufacturer to include ISLs on the satellite as set forth in its authorization.

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(dated March 7, 2003).

<sup>5</sup> *KaStarCom. World Satellite, LLC, Application for Authority to Construct, Launch and Operate a Ka-band Satellite in the Fixed Satellite Service*, Order and Authorization, DA 01-2614, 16 FCC Rcd 20133 (Int'l Bur. rel. November 13, 2001)("KaStarCom 73° W.L. and 109.2 ° W.L. Authorization"). KaStarCom recently surrendered its authorization for the 73° W.L. orbital location. See Letter from David M. Brown, Vice President and General Counsel, to Marlene H. Dortch, Secretary, Federal Communications Commission (dated September 9, 2003).

<sup>6</sup> *Id.*

<sup>7</sup> *KaStarCom 73° W.L. and 109.2 ° W.L. Authorization* at ¶ 35.

<sup>8</sup> Letter from Jennifer M. Gilson, Chief, Satellite Policy Branch, Federal Communications Commission to Stephen Coran, Counsel for KaStarCom (September 12, 2002).

<sup>9</sup> WB Holdings is a first round licensee and was originally authorized to launch and operate at the 73° W.L. and 109° W.L. orbit locations. *KaStar Satellite Communications Corp, Application for Authority to Construct, Launch and Operate a Ka-band Satellite in the Fixed Satellite Service*, Order and Authorization, 13 FCC Rcd 1366 (1997)("WB Authorization"). We note that WB Holdings subsequently surrendered the 73° W.L. orbital location. See Letter from David M. Brown, Vice President and General Counsel, Wild Blue, to Marlene H. Dortch, Secretary, Federal Communications Commission (dated January 31, 2003). WB Holdings and KaStarCom are now under the common control of WB, pursuant to FCC approval. See n.1, *supra*.

<sup>10</sup> The contract provides for the construction of a single satellite to be located at the 109.2 W.L. orbit location.

In its response, KaStarCom acknowledged that its satellite construction contract does not call for a satellite capable of utilizing ISLs.<sup>11</sup>

### III. DISCUSSION

5. It is long-standing Commission policy to impose mandatory construction commencement milestones upon licensees in the fixed-satellite service.<sup>12</sup> The milestone schedule included in each authorization is designed to ensure that licensed entities are proceeding with construction and will achieve launch and operate 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 expeditiously.<sup>13</sup> Moreover, the Commission has consistently required licensees to execute non-contingent satellite construction contracts in order to meet their construction commencement milestones.<sup>14</sup> 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 and has rendered licenses null and void when the licensee has failed to commence construction.<sup>15</sup>

6. KaStarCom’s authorization, which specified distinct milestones with respect to each of the three orbital locations authorized, required it to commence construction of its satellite at the 109.2° W.L. orbital location by November 2002. We conclude that the contract entered into by WB satisfies KaStarCom’s first milestone at the 109.2° W.L. orbital location with respect to its authorized Ka-band frequencies but has not satisfied the milestone with respect to the ISL portion of this satellite.<sup>16</sup> The contract submitted by KaStarCom does not cover the construction or operation of ISLs and KaStarCom has affirmed that it will not implement ISLs on this satellite.

7. The Bureau has stated that “the execution of a contract that does not provide for complete construction of the satellites by the milestone deadline cannot satisfy a construction-commencement milestone requirement.”<sup>17</sup> KaStarCom’s contract did not provide for ISLs and

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<sup>11</sup> See Letter from David M. Drucker and Robert S. Goldstein, Counsel, KaStarCom. World Satellite, LLC to Magalie Roman Salas, Secretary, Federal Communications Commission (dated December 20, 2002).

<sup>12</sup> See, e.g., *Norris Satellite Communications, Inc.*, Memorandum Opinion and Order, 12 FCC Rcd 22299 (1997).

<sup>13</sup> *MCI Communications Corporation*, Memorandum Opinion and Order, 2 FCC Rcd 233 (CCB 1987).

<sup>14</sup> *Norris Satellite Communications, Inc.*, Memorandum Opinion and Order, 12 FCC Rcd 22299 (1997).

<sup>15</sup> See, e.g. *National Exchange Satellite, Inc.*, Memorandum Opinion and Order, 8 FCC Rcd 636 (1993); *Advanced Communications Corporation*, Memorandum Opinion and Order, 10 FCC Rcd 13337 (Int’l Bur. 1995). See also *Mobile Communications Holdings, Inc.*, DA 02-1468 (2002).

<sup>16</sup> Because KaStarCom, WB Holdings, and WB are now commonly controlled, pursuant to a request for transfer of control filed on October 23, 2002 (SAT-T/C-20021023-00221), we need not address whether earlier arrangements involving a Satellite Sharing Agreement satisfy FCC milestone requirements.

<sup>17</sup> See, e.g., *Globalstar, L.P., for Modification of License for a Mobile – Satellite Service System in*

therefore did not provide for “complete” construction of the satellite as authorized. Nevertheless, we find that declaring KaStarCom’s entire Ka-band license null and void for failure to incorporate an ancillary package would not advance the purpose of our milestone policy. ISLs, unlike Ka-band service links, are not necessary in this case to provide Ka-band service to the end user. ISLs provide communications between in-orbit satellites. These communications can also be accomplished by linking the satellites through an intermediate earth station. Thus, ISLs provide merely an alternative method of completing the transmission link. Because ISLs are not an integral part of the Ka-band satellite system, we find that canceling this part of KaStarCom’s authorization while finding the service link portion of the authorization remains valid is consistent with our milestone policies.

#### IV. CONCLUSION AND ORDERING CLAUSES

8. We find that KaStarCom has met its construction commencement milestone for the Ka-band portion of its satellite at the 109.2° W.L. orbital location. In light of KaStarCom’s surrender of authorizations for other orbital locations, we also dismiss as moot a request to modify the milestones for the three orbital locations it was previously authorized.

9. Accordingly, IT IS ORDERED that, pursuant to Section 0.261 of the Commission’s rules, 47 C.F.R. § 0.261, the portion of KaStarCom. World Satellite, LLC’s license SAT-LOA-19980312-0019 (Call Sign S2355) authorizing use of the 69.0-70.0 GHz band for inter-satellite links IS CANCELLED.

10. This order is effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

Donald Abelson  
Chief, International Bureau

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*the 2 GHz Band for Waiver and Modification of Implementation Milestones for 2 GHz MSS Systems*, Memorandum Opinion and Order, 18 FCC Rcd 1249 (2003) and *Mobile Communications Holdings, Inc.*, Memorandum Opinion and Order, 17 FCC Rcd 11898 (2002). See also *Morning Star Satellite Company, LLC*, Memorandum Opinion and Order, 16 FCC Rcd 11550 (2001) at ¶ 5.