

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

In the Matter of
VISIONSTAR INCORPORATED
Application for Modification of
Authority to Construct, Launch
and Operate a Ka-Band Satellite
System in the Fixed Satellite Service
File No. SAT-MOD-20020430-00075;
SAT-LOA-19950929-00156;
200-SAT-P/LA-95
Call Sign: S2210

MEMORANDUM OPINION AND ORDER

Adopted: August 3, 2004

Released: August 3, 2004

By the Chief, International Bureau:

I. INTRODUCTION

1. By this Order, we deny the application of VisionStar, Inc. (VisionStar) to extend or waive the construction completion and launch milestones for its satellite system in the Ka-band.

II. BACKGROUND

2. In May 1997, the International Bureau (Bureau) authorized VisionStar to launch and operate a geostationary-satellite orbit (GSO) satellite to provide fixed-satellite service (FSS) in the 18.3-18.8 GHz and 19.7-20.2 GHz (downlink) and 28.35-28.6 GHz and 29.25-30.0 GHz (uplink) frequency bands.

1 VisionStar, Inc., Request for Extension of Time to Complete Construction and to Launch Fixed-Satellite Service Satellite, File No. SAT-MOD-20020430-00075 (filed Apr. 30, 2002) (VisionStar Extension Application).

2 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).

authorization was granted as part of the first “processing round” of Ka-band systems, in which the Bureau authorized a total of thirteen Ka-band systems.³ VisionStar’s authorization is conditioned on Visionstar meeting the following explicit construction and launch commitments, or “milestones”:

<u>Construction Commenced</u>	<u>Construction Completion</u>	<u>Launch</u>
May 1998	April 2002	May 2002

As clearly stated in the license and the Commission’s rules, VisionStar’s authorization automatically becomes null and void if these milestone deadlines are not met, unless an extension is granted by the Commission.⁴

3. In December 2000, VisionStar applied for authority to transfer control over its authorization to EchoStar VisionStar Corp. (EchoStar).⁵ The Bureau granted VisionStar’s transfer of control application in October 2001.⁶ The Bureau’s authorization of the transfer of control of VisionStar was conditioned on VisionStar’s compliance with its existing milestone schedule, as well as VisionStar’s informing the Commission of any change in the status of its contract with Lockheed Martin Corporation (Lockheed Martin) to construct its system according to its existing milestone schedule.⁷

4. On April 30, 2002, VisionStar filed an application to modify its space station license by extending its existing satellite construction and launch milestones. VisionStar seeks to extend its construction completion deadline from April 2002 to April 2005 and to extend its launch deadline from May 2002 to May 2005.⁸ As discussed in detail below, VisionStar argues that good cause exists to support such an extension of time, and that such an extension would serve the public interest. VisionStar’s modification application was placed on public notice.⁹ The National Rural Telecommunications Cooperative (NRTC) filed a petition to deny the modification request,¹⁰ which VisionStar opposed.¹¹

³ Assignment of Orbital Locations to Space Stations in the Ka-band, *Order*, 11 FCC Rcd 13737 (Int’l Bur. 1996).

⁴ *VisionStar Authorization Order*, 13 FCC Rcd at 1438 (para. 31); 47 C.F.R. § 25.145(f).

⁵ Application of VisionStar, Inc., Licensee, *et al.*, for Consent to Transfer of Control Over Authorization to Construct, Launch and Operate a Ka-Band Satellite System in the Fixed-Satellite Service at the 113° W.L. Orbital Location, File No. SAT-T/C-20001215-00163 (filed Dec. 13, 2000) (Transfer Application).

⁶ VisionStar, Inc., Application for Consent to Transfer Control Over Authorization to Construct, Launch and Operate a Ka-Band Satellite System in the Fixed-Satellite Service at the 113° W.L. Orbital Location, *Order and Authorization*, 16 FCC Rcd 19187 (Int’l Bur. 2001) (*VisionStar Transfer Order*). Pegasus Development Corp. (Pegasus) initially sought reconsideration of the *VisionStar Transfer Order*, but later withdrew its petition for reconsideration. *See* Pegasus Development Corp., Notice of Withdrawal, File No. SAT-T/C-20001215-00163 (filed July 11, 2003).

⁷ *VisionStar Transfer Order*, 16 FCC Rcd at 19195-96 (para. 30).

⁸ *VisionStar Extension Application* at 1.

⁹ Public Notice, *Satellite Policy Branch Information*, Report No. SAT-00110 (May 17, 2002).

¹⁰ Petition to Deny by the National Rural Telecommunications Cooperative, File No. SAT-MOD-20020430-00075 (filed June 17, 2002) (NRTC Petition to Deny).

¹¹ Opposition of VisionStar Corporation to the Petition to Deny by the National Rural Telecommunications Cooperative, File No. SAT-MOD-20020430-00075 (filed June 27, 2002) (*VisionStar Opposition*). NRTC filed a reply to the *VisionStar Opposition*. *See* Reply of the National Rural Telecommunications Cooperative, File No. SAT-MOD-20020430-00075 (filed July 3, 2002).

III. DISCUSSION

5. It is longstanding Commission policy to impose milestones for satellite system implementation upon licensees.¹² Milestone schedules are designed to ensure that licensees are proceeding with construction and will launch their satellites in a timely manner, and that the orbit spectrum resource is not being held by licensees unable or unwilling to proceed with their plans.¹³ Milestones ensure speedy delivery of service to the public and prevent warehousing of valuable orbit locations and spectrum, by requiring licensees to begin operation within a certain time.¹⁴ 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.¹⁵ Moreover, warehousing undercuts decisions by the Commission to allocate scarce spectrum resources to satellite services over other competing services.

A. Extension of Milestones

6. VisionStar seeks to extend the construction milestones upon which its authorization is conditioned. The standard that licensees must meet to justify a milestone extension request is well-established. Generally, we grant milestone extensions to FSS licensees only when the delay in implementation is due to unforeseeable circumstances beyond the control of the licensee,¹⁶ or when there are unique and overriding public interest concerns that justify an extension.¹⁷ We examine VisionStar's extension request pursuant to this standard.

¹² See, e.g., *Inquiry into the Development of Regulatory Policy in Regard to Direct Broadcast Satellites, Report and Order*, 90 F.C.C.2d 676, 719 (para. 114) (1982) (adopting rule requiring DBS licensees to "begin construction or complete contracting for construction" of satellites within one year after receiving construction permits), and *MCI Communications Corp., Memorandum Opinion and Order*, 2 FCC Rcd 233, 233 (para. 5) (Com. Car. Bur. 1987) (*MCI Order*) (noting that a milestone schedule is included in each domestic space station authorization issued by the Commission). See also *Norris Satellite Communications, Inc., Memorandum Opinion and Order*, 12 FCC Rcd 22299 (1997) (*Norris Review Order*); *Morning Star Satellite Company, L.L.C., Memorandum Opinion and Order*, 15 FCC Rcd 11350 (Int'l Bur. 2000), *aff'd*, 16 FCC Rcd 11550 (2001) (*Morning Star Reconsideration Order*).

¹³ See, e.g., *Advanced Communications Corporation, Memorandum Opinion and Order*, 10 FCC Rcd 13337, 13338 (para. 4) (Int'l Bur. 1995) (*Advanced*), *aff'd*, 11 FCC Rcd 3399 (1995) (*Advanced Review Order*), *aff'd*, *Advanced Communications Corporation v. FCC*, 84 F.3d 1452 (D.C. Cir. 1996) (unpublished order available at 1996 WL 250460); *National Exchange Satellite, Inc., Memorandum Opinion and Order*, 7 FCC Rcd 1990 (Com. Car. Bur. 1992) (*Nexsat Order*); *AMSC Subsidiary Corp., Memorandum Opinion and Order*, 8 FCC Rcd 4040, 4042 (para. 13) (1993) (*AMSC Order*); *Motorola, Inc. and Teledesic LLC, Memorandum Opinion and Order*, 17 FCC Rcd 16543 (Int'l Bur. 2002) (*Motorola/Teledesic Order*).

¹⁴ See *The Establishment of Policies and Service Rules for the Mobile Satellite Service in the 2 GHz Band, Report and Order*, IB Docket No. 99-81, 15 FCC Rcd 16127, 16177 (para. 106) (2000). See also *Columbia Communications Corporation, Memorandum Opinion and Order*, 15 FCC Rcd 15566, 15571 (para. 11) (Int'l Bur. 2000) (*First Columbia Milestone Order*).

¹⁵ *Amendment of the Commission's Space Station Licensing Rules and Policies, First Report and Order*, IB Docket No. 02-34, 18 FCC Rcd 10760, 10827 (para. 173) (2003) (*First Space Station Reform Order*), citing *PanAmSat Ka-Band License Revocation Review Order*, 16 FCC Rcd at 11537-38 (para. 12), citing *Nexsat Order*, 7 FCC Rcd at 1991 (para. 8); *MCI Order*, 2 FCC Rcd at 233 (para. 5); *First Columbia Milestone Order*, 15 FCC Rcd at 15571 (para. 11).

¹⁶ 47 C.F.R. § 25.117(c)(1). See also *INTELSAT LLC, Order and Authorization*, 17 FCC Rcd 2391, 2392 (para. 5) (Int'l Bur. 2002); *First Columbia Milestone Order*, 15 FCC Rcd at 16497 (para. 4); *Nexsat Order*, 7 FCC Rcd at 1991 (para. 8); *Hughes R and Galaxy A-R Domestic Fixed-Satellites, Order and Authorization*, 5 FCC Rcd 3423, 3424 (para. 11) (Com. Car. Bur. 1990); *MCI Order*, 2 FCC Rcd at 233 (para. 5).

¹⁷ 47 C.F.R. § 25.117(c)(2).

7. First, VisionStar argues that good cause exists to extend its construction milestones because unforeseeable circumstances beyond its control have prevented it from complying with its existing milestones. Namely, VisionStar asserts that unforeseen adverse financial developments in the marketplace have made the financial community unwilling to fund additional investments in Ka-band projects.¹⁸ According to VisionStar, this drying-up of capital has afflicted the Ka-band market with special force and has affected Ka-band licensees in a much more acute and direct way than a general economic downturn.¹⁹ VisionStar claims that the drought of investment funds, which it maintains affects the entire Ka-band community, has forced it to delay certain payments to its satellite contractor and has made it unable to complete construction of its satellite by its established milestone deadline.²⁰

8. Second, VisionStar contends that unique public interest concerns justify its extension request. VisionStar contends that strict adherence to its existing milestones puts at risk the United States' ability to allocate Ka-band slots with coverage of the 48 contiguous United States (CONUS) to U.S. licensees.²¹ VisionStar argues that voiding its license would leave insufficient time for a successor licensee to implement a system by the expiration of the 2005 "bringing into use" date for the 113° W.L. orbital position, which could result in the United States losing its International Telecommunication Union (ITU) date priority with respect to other Administrations.²² VisionStar also argues that an extension is consistent with the Commission's goal of ensuring that orbital spectrum is put to use as promptly as possible, because implementation under an extended timetable would be preferable to no implementation at all due to the potential risk of failing to meet the bringing into use date.²³

9. Third, VisionStar argues that an extension of its milestones at 113° W.L. is justified by the launch of the EchoStar 9 satellite by EchoStar Satellite Corp. (ESC) at the 121° W.L. orbit location several years ahead of its construction completion milestone.²⁴ VisionStar claims that ESC is exploring the possibility of operating its EchoStar 9 satellite at the 113° W.L. orbital position to provide Ka-band services from that orbital location on a temporary basis until the VisionStar satellite is launched and operational. Finally, VisionStar contends that the early stage of development of commercial Ka-band projects warrants a more flexible approach to enforcement of our milestone policy.²⁵

10. We find that none of VisionStar's arguments justifies an extension of the Commission's milestone requirements. The Commission has held that a failure to attract investors, an uncertain business situation or an unfavorable business climate in general has never been an adequate excuse for failure to meet a construction timetable.²⁶ As the Commission has previously explained, to whatever extent a

¹⁸ VisionStar Extension Application at 2-3, 7.

¹⁹ *Id.* at 7.

²⁰ *Id.* at 3.

²¹ *Id.* at 8.

²² *Id.*

²³ *Id.*

²⁴ *Id.* at 9. ESC's Ka-band authorization was conditioned on the launch and operation of a satellite at 121° W.L. by June 25, 2005. See EchoStar Satellite Corp., *Order and Authorization*, 16 FCC Rcd 2453, 2458 (Int'l Bur. 2001). However, ESC launched the EchoStar 9 spacecraft ahead of this deadline in August, 2001. See EchoStar Satellite Corp., *Order and Authorization*, 18 FCC Rcd 15875 (Sat. Div., Int'l Bur. 2003) (*EchoStar 121° Ka-band Order*).

²⁵ VisionStar Extension Application at 9.

²⁶ See Constellation Communications Holdings, Inc., *Memorandum Opinion and Order*, 18 FCC Rcd 18822 (2003); United States Satellite Broadcasting Co., *Memorandum Opinion and Order*, 3 FCC Rcd 6858, 6859 (para. 11) (1988) (*USSB Order*). See also E-SAT, Inc., *Memorandum Opinion and Order*, 18 FCC Rcd 7662 (Int'l Bur.

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licensee's ability or willingness to construct satellite facilities is dependent on uncertain future fundraising or tentative business projections, the risk of success or failure in that endeavor falls squarely on the licensee's shoulders.²⁷ Neither the Commission nor existing or potential licensees can, or should be expected to, accommodate mistaken projections or modified expectations.²⁸ Although VisionStar contends that the commercial Ka-band satellite market has been especially hard hit economically and that this fact distinguishes its situation from that created by an unfavorable business climate in general, it provides no evidence to support this contention.²⁹ Thus, VisionStar's argument for an extension of its construction timetable deadlines is reduced to a failure to attract financing due to adverse economic conditions – an argument that the Commission has consistently rejected.

11. Furthermore, the public interest rationales identified by VisionStar do not support the grant of an extension. We conclude that VisionStar overstates the difficulty that another U.S. satellite operator might face in trying to bring the 113° W.L. orbital location into use prior to the ITU bringing into use date. Under the first-come, first-served procedure adopted in the *First Space Station Reform Order*,³⁰ another U.S. licensee can apply for the 113° W.L. orbital location as soon as this Order is released without awaiting the outcome of a processing round. Furthermore, even if the United States does lose date priority at the 113° W.L. orbital location, it does not follow that the U.S. public will necessarily lose service from this orbital location. Under the Commission's *DISCO II* process,³¹ non-U.S.-licensed space stations could also potentially serve the U.S. market from this orbital location. Thus, the underlying objective of the Commission's milestone policy – delivery of service to the public – could be met even if VisionStar's milestone deadlines are not extended. Moreover, the Administration has not identified maintenance of U.S. priority over orbital locations as a policy goal. In particular, it is interesting to note that the State Department did not weigh in on this matter. In any event, given that VisionStar has not provided any information or plans to demonstrate that it can and will complete construction of its system within the requested timeframe of its extension request, there is no assurance that VisionStar would meet the ITU bringing into use date even if an extension were granted. Thus, the Commission could grant an extension but still lose U.S. priority at the orbital location. In such a case, the Commission risks undermining the policy goals of its milestone rules without achieving any corresponding public benefit.

12. We also cannot accept the attempt to use the possible deployment of trial Ka-band services through the EchoStar 9 satellite as a justification to extend VisionStar's own milestone deadlines. VisionStar appears to argue either that the launch of EchoStar 9 ahead of its launch milestone offsets VisionStar's failure to meet its own milestone requirements, or that the possible temporary deployment of the EchoStar 9 satellite at the 113° W.L. orbital position meets VisionStar's milestone obligation. Neither argument is persuasive. In either case, it is well established that a licensee cannot use the efforts of another licensee to satisfy its own milestone obligations,³² or use the advanced deployment of a satellite at

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2003); Constellation Communications Corp., *Memorandum Opinion and Order*, 17 FCC Rcd 23489 (Int'l Bur. 2002); EchoStar Satellite Corp. *et al.*, *Memorandum Opinion and Order*, 17 FCC Rcd 8831 (Int'l Bur. 2002).

²⁷ See *USSB Order*, 3 FCC Rcd at 6859 (para. 11).

²⁸ See *id.*

²⁹ VisionStar Extension Application at 7.

³⁰ Amendment of the Commission's Space Station Licensing Rules and Policies, *First Report and Order*, IB Docket No. 02-34, 18 FCC Rcd 10760 (2003) (*First Space Station Reform Order*).

³¹ Amendment of the Commission's Regulatory Policies to Allow Non-U.S. Licensed Satellites Providing Domestic and International Service in the United States, *Report and Order*, IB Docket No. 96-111, 12 FCC Rcd 24094 (1997) (*DISCO II*).

³² See *Advanced*, 10 FCC Rcd at 13343 (para. 21) (construction progress of affiliated party is irrelevant in determining whether applicant should be granted an extension of time to construct and operate its own satellite system). See also Joint Application for Review of Constellation Communications Holdings, Inc., Mobile

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one location to justify extension of a milestone at another.³³ In addition, one satellite cannot be used to provide service from two orbit locations at the same time. Simply moving the EchoStar 9 satellite to 113° W.L. on a temporary basis may lead to an unacceptable lapse in service at either the 113° W.L. location or EchoStar 9's original location, 121° W.L., which would also render one of the authorizations null and void.³⁴ In other contexts, the Commission has explained that lapses in service, or requiring earth station operators to repoint their antenna to a satellite at a new location, is very disruptive to customers.³⁵

13. Furthermore, even if we were willing to consider such a temporary arrangement to be an acceptable method of meeting a milestone as a general proposition, we cannot do so in this case. Although VisionStar claims that ESC is "exploring the possibility" of temporarily locating its EchoStar 9 satellite at the 113° W.L. orbital location, ESC itself has not requested authorization for this move from the Commission. We also note that ESC has been granted authority to modify EchoStar 9 to operate as a hybrid Ka-/Ku-/C-band satellite and that the EchoStar 9 satellite has been successfully launched to the 121° W.L. orbital location.³⁶ Hypothetically, VisionStar could request authority to relocate EchoStar 9 to operate its Ka-band transponders at 113° W.L. on a temporary basis, but ESC has no authority to operate C- or Ku-band transponders at that orbital location.³⁷ Without such authority, the C- and Ku-band transponders on EchoStar 9 would need to be shut down while operating at the 113° W.L. orbital location. Thus, any reliance on the EchoStar 9 satellite to provide service at the 113° W.L. orbital location is purely conjectural and cannot serve as a basis for an extension of VisionStar's Ka-band milestones.

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Communications Holdings, Inc., and ICO Global Communications (Holdings) Limited, *Memorandum Opinion and Order*, FCC 04-131 (rel. June 24, 2004) (sharing agreement to use capacity on satellite of affiliated party cannot be used to satisfy construction milestone).

³³ See *EchoStar Satellite Corp., Directsat Corp., EchoStar DBS Corp., Memorandum Opinion and Order*, 13 FCC Rcd 8595, 8600 (para. 10) (Sat. and Radiocomm. Div. 1998) (stating that the decision to place a satellite at one orbital location prior to a milestone deadline is a business decision that is separate and distinct from milestone requirements at different orbital locations).

³⁴ 47 C.F.R. § 25.161(c).

³⁵ See, e.g., Amendment of the Commission's Space Station Licensing Rules and Policies, Second Report and Order, IB Docket No. 02-34, 18 FCC Rcd 12507, 12510 (para. 8 n.16), citing *GE American Communications, Inc., Order and Authorization*, 10 FCC Rcd 13775, 13775 (para. 6) (Int'l Bur. 1995); Licensing Space Stations in the Domestic Fixed-Satellite Service, *Report and Order*, CC Docket No. 85-135, FCC 85-395, 58 Rad. Reg. 2d 1267, 1277-78 (paras. 26-27) (released Aug. 29, 1985); Hughes Communication Galaxy, Inc., *Order and Authorization*, 3 FCC Rcd 6989, 6990 (para. 10) (1988) (goal of replacement policy is to ensure continuity of service); Loral Spacecom Corp., *Order and Authorization*, 13 FCC Rcd 16348, 16440 (para. 5) (Int'l Bur., Sat. and Rad. Div., 1995) (Commission policy favors continuity of service); Columbia Communications Corporation, Authorization to Launch and Operate a Geostationary C-band Replacement Satellite in the Fixed-Satellite Service at 37.5° W.L., *Memorandum Opinion and Order*, 16 FCC Rcd 20176, 20180-81 (para. 14) (Int'l Bur. 2001) (*petition for reconsideration pending*) (conditioning replacement satellite license on launch of replacement satellite at the time of retirement of existing satellite); *GE American Communications, Inc., Order and Authorization*, 11 FCC Rcd 11497, 11498 (para. 3) (Int'l Bur., Sat. and Rad. Div., 1996) (*GE Americom 1996 Replacement Order*) (we routinely authorize replacement satellites at their present locations without a processing round, to ensure continuity of service for customers without requiring them to repoint their antennas).

³⁶ See *EchoStar 121° Ka-band Order*, 18 FCC Rcd 15875. The C-band payload aboard the EchoStar 9 satellite is operated pursuant to an authorization from Papua New Guinea under the name "Telstar 13." See *Loral SpaceCom Corp., Order*, 18 FCC Rcd 16374 (Sat. Div., Int'l Bur. 2003). Although Loral SpaceCom Corp. was the original operator of the Telstar 13 payload, its interest in the payload was recently transferred to Intelsat North America LLC (Intelsat). See *Loral Satellite, Inc., Order and Authorization*, 19 FCC Rcd 2404 (para. 10) (Int'l Bur. 2004).

³⁷ As VisionStar acknowledges, ESC would require third-party consent to relocate the EchoStar 9 satellite to 113° W.L., see VisionStar Opposition at 6, and there is no indication that Intelsat would consent to such a move since Intelsat lacks authority to operate a C-band payload at that orbital position.

14. Finally, we disagree with VisionStar's contention that a more lenient review of its milestone extension request is warranted due to the early stage of development of commercial Ka-band projects. VisionStar relies on our *EarthWatch Order* to support this contention.³⁸ In the *EarthWatch Order*, the Bureau considered, as one factor of its analysis, that a more lenient approach to a milestone extension request was appropriate given the early stages of development of the U.S. commercial remote sensing industry.³⁹ The early stage of industry development was not, however, the determinative factor permitting the extension of EarthWatch's milestone deadlines. Rather, it was one of several factors, including the fact that EarthWatch had already commenced the physical construction of its satellite system at the time of its milestone extension application.⁴⁰ These other factors were of equal or greater importance than the stage of industry development. Thus, the *EarthWatch Order* does not establish that an early stage of industry development, by itself, justifies an extension of a licensee's milestones.

B. Request for Waiver of Milestone Requirements

15. Alternatively, VisionStar requests a waiver of the Commission's rules to permit an extension of its milestone deadline.⁴¹ Rules may be waived if there is "good cause" to do so.⁴² Waiver is appropriate if (1) special circumstances warrant a deviation from the general rule, and (2) such deviation would better serve the public interest than would strict adherence to the general rule.⁴³ Generally, the Commission may grant a waiver of its rules in a particular case only if the relief requested would not undermine the policy objective of the rule in question, and would otherwise serve the public interest.⁴⁴

16. Applying this standard, we conclude that a waiver of VisionStar's milestone conditions is not appropriate in this instance. Unfavorable or adverse business conditions are to be expected from time to time in a market economy and do not generally constitute special circumstances that warrant a waiver of our rules. Furthermore, we find that the public interest would not be served by the grant of waiver. VisionStar claims that grant of waiver serves the public interest because such waiver would not undermine the policy objective of our milestone rules and would not prejudice third parties.⁴⁵ We disagree. The Commission's milestone requirements seek to ensure that spectrum licensees are building their systems in a timely manner and that the orbit-spectrum is not being held by licensees unable or unwilling to proceed with their plans.⁴⁶ VisionStar argues that waiving its construction completion and launch milestones would actually further these policy goals by ensuring that use of the 113° W.L. orbital location by the U.S. is not forfeited due to a failure to bring the location into use before the expiration of the ITU bringing into use date.⁴⁷ However, as discussed above in paragraph 11, cancellation of VisionStar's authorization will not necessarily result in the loss of U.S. date priority at 113° W.L. and, in any event, non-U.S. licensed space stations could still potentially provide service to the U.S. public through the Commission's *DISCO II* process from 113° W.L. even if the United States does lose date

³⁸ VisionStar Extension Application at 9, citing EarthWatch Inc., *Order and Authorization*, 12 FCC Rcd 19556, 19559 (para. 10) (Int'l Bur. 1997) (*EarthWatch Order*).

³⁹ *EarthWatch Order*, 12 FCC Rcd at 19559 (para. 10).

⁴⁰ *Id.*

⁴¹ VisionStar Extension Application at 11.

⁴² 47 C.F.R. § 1.3. See also *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969) (*WAIT Radio*); *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

⁴³ See *Northeast Cellular*, 897 F.2d at 1166.

⁴⁴ See *WAIT Radio*, 418 F.2d at 1157.

⁴⁵ VisionStar Extension Application at 13.

⁴⁶ See footnote 15, *supra*, and accompanying text.

⁴⁷ VisionStar Extension Application at 13; VisionStar Opposition at 9.

priority at this location. Thus, accepting VisionStar's argument would risk undermining the Commission's milestone policies without any corresponding benefit to the public.

17. We also reject VisionStar's argument that a waiver of the Commission's milestone rules will not prejudice third parties. VisionStar argues that all second-round Ka-band applicants have been accommodated and that no other party has expressed interest in triggering a third processing round.⁴⁸ Although it is true that all second-round Ka-band applicants have been accommodated,⁴⁹ VisionStar's assertion that no other party is interested in operating a Ka-band satellite at the 113° W.L. orbital location is speculative at best. Indeed, at least one party has already notified the Commission of its interest in exploiting the 113° W.L. orbital location in the event VisionStar is unable or unwilling to do so.⁵⁰ Only by making the orbital location available for reassignment can it be conclusively determined whether or not a third party is interested in using the 113° W.L. orbital position forfeited by VisionStar. Furthermore, we note that recent action taken by the Commission to streamline its space station licensing rules and policies, and the decision to adopt a "first-come, first-served" approach for GSO-like networks, will allow this orbital location to be assigned to another operator without the need to open a lengthy processing round proceeding.⁵¹ Thus, we conclude that good cause does not exist in this case for a waiver of the Commission's longstanding milestone requirements.

18. We also take note that VisionStar's transfer of control authorization was conditioned on VisionStar's notification of any changes in the status of its contract milestones or its contract milestone payment schedule.⁵² VisionStar's authorization was also conditioned on VisionStar notifying the Commission if Lockheed Martin did not achieve any of the milestones set out in the construction contract.⁵³ We stated that these conditions were required due to the tight schedule of contract deadlines relative to the milestones in VisionStar's license and in order to ensure that the transferred spectrum would be used expeditiously.⁵⁴

19. VisionStar has not provided this notification in a timely manner. In its milestone extension application, VisionStar states that it has been unable to complete construction of its satellite and informs that it has been forced to delay payments to Lockheed Martin.⁵⁵ Although VisionStar does not say at what point in its contract it began to delay payments, we infer that the delays began prior to VisionStar's filing of its extension request. The extension request was filed on the eve of its construction completion deadline. If VisionStar had been making payments under the contract as scheduled, Lockheed Martin should have completed physical construction of the satellite by the time of the filing of the extension request and no milestone extension would have been necessary.⁵⁶ Although VisionStar claims that this delay in payment has not altered the status of the contract or necessitated the amendment of the contract

⁴⁸ VisionStar Extension Application at 13; VisionStar Opposition at 9.

⁴⁹ See Second Round Assignment of Geostationary Satellite Orbit Locations to Fixed Satellite Service Space Stations in the Ka-Band, *Order*, 16 FCC Rcd 14389 (Int'l Bur. 2001).

⁵⁰ See Letter from Jack Richards, Counsel to National Rural Telecommunications Cooperative, to Marlene H. Dortch, Secretary, FCC, dated August 8, 2002 (File No. SAT-MOD-20020430-00075).

⁵¹ See Amendment of the Commission's Space Station Licensing Rules and Policies, *First Report and Order and Further Notice of Proposed Rulemaking*, IB Docket No. 02-34, 18 FCC Rcd 10760 (2003).

⁵² *VisionStar Transfer Order*, 16 FCC Rcd at 19193 (para. 23).

⁵³ See *id.*

⁵⁴ See *id.*

⁵⁵ VisionStar Extension Application at 3.

⁵⁶ Alternatively, if VisionStar was making timely payments and Lockheed Martin was not meeting its milestone commitments, this fact, too, was required to be notified to the Commission and does not alter our reasoning herein.

milestones and payments, this claim does not comport with the reality of the situation. VisionStar's delay in payment and Lockheed Martin's corresponding postponement of construction has materially altered the contract construction and payment schedule that was supplied to the Commission in support of VisionStar's transfer of control application, and on which we relied in granting VisionStar's request. Although we did not impose a strict time period within which VisionStar was to notify us of any changes in its construction and payment schedule, VisionStar's failure to notify the Commission of these changes until the eve of its construction completion deadline violates the underlying purpose of the condition. Declaring VisionStar's authorization null and void for failure to meet its construction completion milestone removes the necessity of taking any further action for VisionStar's failure to comply with the notification provisions on which its transfer of control was conditioned. VisionStar's failure to comply with the notification conditions of its authorization, however, provides additional evidence of a lack of diligence that supports our action today.

IV. CONCLUSION

20. Based on the foregoing, we conclude that VisionStar has failed to meet its satellite construction and launch milestones as required by its authorization, and that neither an extension of time nor a waiver of the Commission's rules is justified in this instance. Accordingly, we find that VisionStar's failure to meet these milestones renders its authorization null and void, and that the 113° W.L. orbit location and associated Ka-band frequencies that had been assigned to VisionStar are available for reassignment.

V. ORDERING CLAUSES

21. Accordingly, IT IS ORDERED that VisionStar Inc.'s Request for Extension of Time to Complete Construction and to Launch Fixed-Satellite Service Satellite, File No. SAT-MOD-20020430-00075, is DENIED.

22. IT IS FURTHER ORDERED that the authorization held by VisionStar, Inc., File Nos. SAT-LOA-19950929-00156; 200-SAT-P/LA-95 (Call Sign: S2210) is DECLARED NULL and VOID.

23. IT IS FURTHER ORDERED that the orbital assignment at 113° W.L. and the frequencies at 18.3-18.8 GHz and 19.7-20.2 GHz (downlink) and 28.35-28.6 GHz and 29.25-30.0 GHz (uplink), which were granted to VisionStar, Inc. in 13 FCC Rcd 1428 (Int'l Bur. 1997) and 16 FCC Rcd 2508 (Int'l Bur. 2001), are available for reassignment as of 11:00 am EST on the date this Order is released.

24. 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.

FEDERAL COMMUNICATIONS COMMISSION

Donald Abelson
Chief
International Bureau