

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

In the matter of)	
)	File Nos. SAT-MOD-20021213-00242
LORAL SPACECOM CORPORATION)	SAT-MOD-20000606-00100
)	SAT-MOD-19981116-00087
(Debtor-in-Possession))	SAT-MOD-19981116-00088
)	
Application for Extension of Milestone Dates)	Call Sign: S2152
)	

MEMORANDUM OPINION AND ORDER

Adopted: July 6, 2005

Released: July 7, 2005

By the Chief, International Bureau:

I. INTRODUCTION

1. In this Order, we deny, with one exception, the multiple requests of Loral SpaceCom Corporation (Loral)¹ to extend or waive its construction completion and launch milestones for its Telstar 9 satellite at the 69° W.L. orbital location. Loral's failure to make any progress in constructing its satellite a full nine years after it was licensed represents an abdication of its license and renders its authorization null and void by its own terms. Accordingly, the 69° W.L. orbital location and associated 3700-4200 MHz, 5925-6425 MHz, 11.7-12.2 GHz, 13.75-14.0 GHz, 14.0-14.25 GHz, 10.95-11.2 GHz frequencies that had been assigned to Loral are available for reassignment.

II. BACKGROUND

2. On May 7, 1996, the Commission granted AT&T Corporation authority to construct, launch, and operate a hybrid C/Ku-band satellite at the 69° W.L. orbital location – now known as Telstar 9.² The authorization established the following milestone dates: (1) commencement of construction by January 30, 1997; (2) completion of construction by December 30, 1998; and (3) launch and operation by January 30, 1999.³ Under the terms of the grant, unless extended by the Commission for good cause shown, the Telstar 9 authorization would become null and void in the event the space station was not constructed, launched, and successfully placed into operation in accordance with the technical parameters, terms, and conditions of the authorizations by the milestone dates. In 1997, the Commission consented to AT&T's

¹ On June 28, 2005, Loral filed an application relating to the Telstar 9 satellite for consent to the transfer of control of Loral SpaceCom Corporation (Debtor-in-Possession), a Delaware corporation ("Loral SpaceCom DIP"), from Loral Space & Communications Ltd. (Debtor-in-Possession), a Bermuda company ("Old Loral"), to Loral Space & Communications Inc., a Delaware corporation ("New Loral"). IBFS File No. SAT-T/C-20050628-00139. This particular application is limited to the Telstar 9 satellite.

² Assignment of Orbital Location to Space Stations in the Domestic Fixed-Satellite Service, *Order and Authorizations*, 11 FCC Rcd 13788 (1996) (authorizing -- without opinion -- the construction, launch, and operation of eleven satellites and assigning them to orbit locations); AT&T Corp, *Memorandum Opinion and Order*, 11 FCC Rcd 15038 (Int'l Bur. 1996) (authorizing, *inter alia*, the construction of Telstar 6 and launch into the 69° W.L. orbit location) (*Telstar 9 Order*). Telstar 6 was later renamed Telstar 9 and transferred to Loral SpaceCom. For ease of reference, we will only use the name Telstar 9 in this order.

³ *Telstar 9 Order*, para. 18.

assignment to Loral of certain satellites used in the Skynet system, including Telstar 9.⁴

3. On November 16, 1998, Loral filed a request for an extension of its milestone requirements. Specifically, Loral seeks to extend the construction completion and launch milestones by two years until December 1, 2000 and February 1, 2001, respectively.⁵ In support of its request, Loral alleges that it timely commenced construction, but that further construction was delayed because of the 1997 in-orbit failure of Telstar 401 and the need to divert its resources towards replacing the failed satellite.⁶ Loral argues that its only option was to use a satellite from its group of newly authorized satellites that was nearest to completion as the replacement satellite.⁷ Loral further argues that this set back the construction schedule for its other satellites, including the one at the 69° W.L. orbital location. In November 1998, Loral also filed an application to modify Telstar 9 by: (1) enlarging the service area to provide full coverage of Canada and Mexico as well as coverage throughout South America;⁸ (2) adding extended Ku-band transponders; (3) increasing C-band transponder power; and (4) modifying the Ku-band transponder configurations.⁹ Loral states that the modification was prompted, in part, by the Commission's *DISCO I*¹⁰ decision that permitted all U.S.-licensed satellites to provide both domestic and international service.¹¹

4. On June 6, 2000, Loral filed a second milestone extension request seeking an additional two years until December 1, 2002 for completion of construction and February 1, 2003 for launch of the satellite.¹² Loral states that the Telstar 9 satellite's construction schedule continues to be delayed because of the Telstar 401 failure. In addition, Loral argues that it could not complete construction until it has completed coordination allowing South American coverage. Loral notes that it has not been able to reach coordination agreements with Brazil, Venezuela, and Argentina.¹³

5. On December 12, 2002, Loral filed its third request for an extension of the construction completion milestone until November 30, 2004 and the launch milestone until December 31, 2004.¹⁴ Loral claims it is still having difficulty coordinating South American coverage for Telstar 9.¹⁵ Loral has

⁴ AT&T Corp. and Loral SpaceCom Corp., *Order and Authorization*, 12 FCC Rcd 925 (Int'l Bur. 1997) (*Assignment Order*).

⁵ IBFS File No. SAT-MOD-19981116-00087.

⁶ *Id.*

⁷ On January 11, 1997, the Telstar 401 satellite suffered a catastrophic in-orbit failure at the 97° W.L. orbit location. Loral filed an application for an emergency replacement satellite with operations beginning on or before July 1, 1997. See Public Notice (Report No. SPB-79) Satellite Policy Branch Information: Applications Accepted for Filing May 1, 1997. On May 24, 1997, the Telstar 401 satellite was replaced by Telstar 5, which had been a ground spare.

⁸ IBFS File No. SAT-MOD-19981116-00088, pps. 3-4. At the time, Brazil had ITU filings for satellites located at 70° W.L., 68° W.L., and 68.5° W.L. orbit locations that could co-exist with a satellite at 69° W.L. as long they did not serve the same coverage areas.

⁹ IBFS File No. SAT-MOD-19981116-00087, pps. 3-4.

¹⁰ Amendment to the Commission's Regulatory Policies Governing Domestic Fixed Satellites and Separate International Satellite Systems, Report and Order, IB Docket No. 95-41, 11 FCC Rcd 2429 (1996) (*DISCO I*). International service is service to or from points in the United States from or to points outside of the United States.

¹¹ Amendment to the Commission's Regulatory Policies Governing Domestic Fixed Satellite and Separate International Satellite Systems, *Report and Order*, 11 FCC Rcd 2429 (1996) (*DISCO I Order*).

¹² IBFS File No. SAT-MOD-2000060600100.

¹³ IBFS File No. SAT-MOD-2000060600100, p. 3-4.

¹⁴ IBFS File No. SAT-MOD-20021213-00242, p. 2-3.

¹⁵ IBFS File No. SAT-MOD-20021213-00242, p. 2.

not filed a further request for extension of the milestone requirements.

6. In a letter dated November 1, 2004, Loral states that it has entered into a contract to construct the Telstar 9 satellite, but has not begun physical construction. Loral states that the delay is due to continuing difficulties associated with coordinating the Telstar 9 satellite as well the circumstances that necessitated Loral's Chapter 11 reorganization.¹⁶

III. DISCUSSION

7. The Commission has required satellite licensees to adhere to system implementation milestone schedules for more than two decades.¹⁷ For most of that time, the Commission imposed three milestones for each space station or satellite system it licensed, requiring licensees to enter into a satellite-manufacturing contract (sometimes expressed as "commencing construction"), complete satellite construction, and launch the satellite by specific dates.¹⁸ 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.¹⁹ 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.²⁰ 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.²¹ Moreover, warehousing undercuts decisions by the Commission to allocate scarce spectrum resources to satellite services over other competing services.

¹⁶ Letter dated November 1, 2004 from John Stern, attorney for Loral Space and Communications Ltd. to Thomas S. Tycz, Chief, Satellite Division, International Bureau.

¹⁷ 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*).

¹⁸ We note, however, that for future licenses the milestones, as set forth in the *Space Station Licensing Reform Order*, are as follows: (1) enter a non-contingent construction contract; (2) complete critical design review; (3) begin physical construction; (4) launch; and (5) certify entire system is operational. 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 ¶ 173 (2003) (*Space Station Licensing Reform Order*).

¹⁹ See, e.g., Advanced Communications Corporation, *Memorandum Opinion and Order*, 10 FCC Rcd 13337, 13338 (para. 4) (Int'l Bur. 1995) (*Advanced Order*), *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*).

²⁰ 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*).

²¹ *Space Station Licensing Reform Order*, 18 FCC Rcd at 10827 (para. 173), 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).

8. Loral filed three requests to extend the construction and launch 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 Fixed-Satellite Service licensees, such as Loral, only when the delay in implementation is due to extraordinary circumstances beyond the control of the licensee,²² or when there are unique and overriding public interest concerns that justify an extension.²³ As discussed below, although Loral may have originally articulated a valid basis for extension of its milestone requirements in its first extension request, it has since failed to justify further extensions. Loral acknowledges that it has not taken any steps towards the physical construction of the satellite although almost nine years have now passed since grant of the license.²⁴ Thus, the record establishes that Loral has effectively abdicated its license, which renders its authorization null and void.

9. *First Milestone Extension Request.* Loral claims that it met its first milestone by entering into a binding, non-contingent contract construction contract.²⁵ Although that is sufficient to meet the first milestone, the Commission has held that there must be neither significant delay between the execution of the construction contract and the actual commencement of physical construction nor conditions precedent to construction.²⁶ Loral's milestone schedule called for construction to be completed by December 30, 1998 and launch of the satellite by January 30, 1999. On November 16, 1998, Loral sought an extension until December 1, 2000 for the completion of construction and February 1, 2001 for the launch of the satellite. Loral relies upon the 1997 in-orbit failure of its Telstar 401 as a basis for the delay in constructing the Telstar 9 satellite. We find this argument persuasive because the in-orbit failure was not within Loral's control and the need to address this situation immediately by launching a replacement satellite on an emergency basis would conceivably justify a delay in commencing the construction of other satellites such as Telstar 9. Thus, a one-time only extension of two years of the completion of construction and launch milestones would be warranted in light of the failure of the Telstar 401 satellite.

10. *Second Milestone Extension Request.* In its second milestone extension request filed on June 6, 2000, Loral seeks to extend milestone for completion construction until December 1, 2002 and the milestone for launch of the satellite until February 1, 2003. Loral again relied upon the 1997 in-orbit failure of the Telstar 401 satellite. In addition, Loral cites the proposed modifications to the satellite to permit full coverage of Canada, Mexico, and South America as justification for its second milestone extension request. Loral states that these changes were motivated in part by the Commission's *DISCO I* decision in which the Commission allowed all satellites to provide domestic as well as international service. Loral also argues that that it could not commence construction until it had coordination agreements in place with several South American countries.

11. Turning to Loral's first argument, while we believe that the 1997 in-orbit failure of the Telstar 401 satellite justified one milestone extension, Loral has not demonstrated its continued impact on

²² 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); *Columbia Communications Corporation, Memorandum Opinion and Order*, 15 FCC Rcd 16496, 16497 (para. 5) (Int'l Bur. 2000) (*Second Columbia Milestone Order*); *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).

²³ 47 C.F.R. § 25.117(c)(2).

²⁴ Letter dated November 1, 2004, from John Stern, attorney for Loral Space and Communications Ltd. to Thomas S. Tycz, Chief, Satellite Division, FCC.

²⁵ Letter dated November 1, 2004, from John Stern, attorney for Loral Space and Communications Ltd. to Thomas S. Tycz, Chief, Satellite Division, FCC. See *Tempo Enterprises, Inc., et al., Memorandum Opinion and Order*, 1 FCC Rcd 20, 21 ¶ 7 (1986) (*Tempo Order*).

²⁶ *Norris Satellite Communications, Inc., Application for Review of Order Denying Extension of Time to Construct and Launch Ka-band Satellite System*, 12 FCC Rcd 22299 (1997), ¶ 9.

the construction of the Telstar 9 satellite. The Commission has explained that where there is delay due to circumstances beyond the control of the licensee, “we expect licensees to consider alternatives or exercise reasonable care to attempt to resolve issues that may impede its ability to meet its milestones.”²⁷ We note that following the failure of the Telstar 401 satellite in February 1997, Loral launched a replacement satellite - which had been a ground spare in May 1997. In addition, Telstar also subsequently constructed and launched its Telstar 7 satellite into the 129° W.L. orbit location and started construction on its Telstar 8 satellite that was to be launched into the 89° W.L. orbit location. These actions demonstrate that any issues surrounding the impact of the Telstar 401 satellite failure on subsequent Telstar series satellites had been resolved. Accordingly, it was incumbent upon Loral to explain why an additional extension of time to complete construction of Telstar 9 was warranted. Instead, Loral merely reiterated the same general justification included in its first milestone extension request without any further showing that construction of Telstar 9 was still being affected by the 1997 Telstar 401 failure almost three and one-half years later. Consequently, we reject this argument as a basis for Loral’s second milestone extension request.

12. Reviewing Loral’s second argument, it is beyond doubt that coordination difficulties do not justify an extension of milestone requirements. Grant of a license to launch and operate a satellite carries with it the responsibility to coordinate with other potentially affected satellite operators. The U.S. is under a treaty obligation, in connection with its membership in the International Telecommunication Union (ITU),²⁸ to coordinate all U.S.-licensed satellite systems.²⁹ The coordination procedures are intended to ensure that the operations of one country’s satellites do not cause harmful interference to the operations of another country’s satellites. Once a system has been properly coordinated with the ITU, it is entitled to international recognition and is protected against interference. If a system has not been successfully coordinated, it is obligated to avoid interfering with other properly coordinated systems. Moreover, such an uncoordinated system receives no protection from interference caused by other satellite systems.

13. In light of the international coordination responsibilities, the Commission’s rules specifically provide that a licensee is not protected against interference caused by foreign satellites until it has successfully complete coordination.³⁰ This provision is also typically imposed as a condition on the license as was the case with Telstar 9.³¹ The Commission more recently reminded applicants that they “take their licenses subject to the outcome of the international coordination process” and that the

²⁷ WB Holdings 1 LLC, Application for Extension of Launch and Operation Milestone, Memorandum Opinion and Order, DA 05-1698 (rel. June 21, 2005) (“*WB Holdings Order*”) (Granting only twelve months of requested eighteen month launch and operating milestone extension request).

²⁸ See Final Acts of the World Administrative Radio Conference for Space Telecommunications, Geneva, 1971. Because orbital locations and spectrum must be shared among nations and because satellite coverage areas cross national boundaries, international procedures have been developed to ensure that interference levels remain acceptable when accessing the orbit-spectrum resource.

²⁹ See Amendment Of Parts 2, 22 and 25 of the Commission’s Rules to Allocate Spectrum for and to Establish Other Rules and Policies Pertaining to the Mobile Satellite Service for the Provision of Various Common Carrier Services, 6 FCC Rcd 4900 (1991) (describing the international coordination process); See also 47 C.F.R. § 25.111(b) (“Applicants, permittees and licensees of radio stations governed by this part shall provide the Commission with all information it requires for the Advance Publication, Coordination and Notification of frequency assignments pursuant to the International Radio Regulations. No protection from interference caused by radio stations authorized by other Administrations is guaranteed unless coordination procedures are timely completed or, with respect to individual administrations, by successfully completing coordination agreements. Any radio station authorization for which coordination has not been completed may be subject to additional terms and conditions as required to effect coordination of the frequency assignments with other Administrations.”)

³⁰ 47 C.F.R. § 25.111(b).

³¹ *Telstar 9 Order* at para. 22.

Commission “does not guarantee the success of the required coordination.”³² Consequently, problems with coordination cannot be used as a basis for an extension of milestone requirements because the duty to coordinate with potentially affected satellite operators, and the risks inherent in this process, are assumed by the licensee upon acceptance of the authorization. Hence, Loral’s coordination difficulties do not constitute an extraordinary circumstance beyond an applicant’s control.

14. We also reject Loral’s argument that an extension was required because it filed to modify the design of the Telstar 9 satellite in order to take advantage of the *DISCO I* decision. Specifically, Loral decided to increase the coverage area of the satellite. Although the Telstar 9 satellite, as originally proposed, would have been able to provide some international service from the 69° W.L. orbit location due to spillover of its coverage pattern, Loral decided to modify its license to provide full coverage of South America. The Commission has held that the decision to file a modification application is a business decision within the control of the licensee that does not justify a milestone extension³³ and that to hold otherwise would allow licensees to defer milestones indefinitely with repeated modifications.³⁴ Consequently, Loral’s decision to extend the Telstar 9 satellite’s coverage area was not an extraordinary circumstance beyond its control.³⁵ Further, its decision not to commence construction until it had completed coordination agreements was a business decision that was wholly within Loral’s control.

15. *Third Milestone Extension Request.* In its December 12, 2002 request, Loral cites its continuing problems with reaching a coordination agreement with Brazil and Argentina. We reject it for the reasons articulated above.

IV. CONCLUSION

16. Loral has effectively abandoned prosecution of its milestone extensions and has not commenced physical construction of its satellite more than nine years after it was licensed. Indeed, Loral has failed to meet even one of the dates proposed in its own milestone extension requests and the construction completion and launch milestones specified in Loral’s last extension request,³⁶ November 30, 2004 and December 31, 2004, respectively, have passed without Loral filing for a further extension. Thus, even if we were to grant all pending requests, Loral’s authorization would still be declared null and void for failing to meet the milestones as extended. Consequently, Loral’s authorization to launch and operate a satellite at the 69° W.L. orbit location is null and void. The 69° W.L. orbital location and

³² Amendment of the Commission’s Space Station Licensing Rules and Policies, *First Report and Order*, 18 FCC Rcd. 10760 (para. 96) (2003).

³³ See Loral Space & Communications Corporation Request for Extension of Time to Construct, Launch, and Operate a Ka-band Satellite System in the Fixed Satellite Service, *Order*, 16 FCC Rcd 11044, 11047 (Int’l Bur. 2001) (*Loral Ka-Band Extension*); Tempo Enterprises, Inc. et al., *Memorandum Opinion and Order*, 1 FCC Rcd 20 (1986) (*DBS Contract Review Order*).

³⁴ See Panamsat Licensee Corp. Application for Authorization to Construct, Launch, and Operate a Ka-band Communications Satellite System in the Fixed-Satellite Service at Orbital Locations 58° W.L. and 125° W.L., *Memorandum Opinion and Order*, 15 FCC Rcd 18720, 18723 (Int’l Bur. 2000); Advanced Communications Corporation, *Memorandum Opinion and Order*, 10 FCC Rcd 13337, 13341 (Int’l Bur., 1995).

³⁵ See *Loral Ka-band Extension*, 16 FCC Rcd at 11047; *DBS Contract Review Order* Tempo, 1 FCC Rcd 20 (1986); see also Columbia Communications Corporation Petition to Revoke Authorization of Orion Satellite Corporation to Construct, Launch, and Operate an International Communications Satellite to be Located at 47° W.L., *Memorandum Opinion and Order*, 15 FCC Rcd. 15566, 15571 (Int’l Bur. 2000) (Commission denied Columbia’s request to toll the milestone deadlines for a C-band GSO satellite based on Columbia’s assertion that it could not proceed with satellite construction until it knew whether it would be granted the Ku-band authority for that location it requested in a pending modification application).

³⁶ File No. SAT-MOD-20021213-00242.

associated frequencies originally assigned to Loral are now available to other potential applicants.

V. ORDERING CLAUSES

17. Accordingly, IT IS ORDERED that the Loral SpaceCom Corporation's First Milestone Extension Request, File SAT-MOD-19981116-00088 IS GRANTED and the completion of construction milestone is extended until December 1, 2000 and satellite launch milestone is extended until February 1, 2001.

18. IT IS FURTHER ORDERED that the Loral SpaceCom Corporation's Second and Third Milestone Extension Requests, File Nos. SAT-MOD-20021213-00242 and SAT-MOD-20000606-00100, ARE DENIED.

19. IT IS FURTHER ORDERED that the authorization held by Loral SpaceCom Analysis Communication Services, Inc., is DECLARED NULL and VOID and the 69° W.L. orbital location and associated frequencies originally assigned to Loral SpaceCom are available to potential applicants.

20. IT IS FURTHER ORDERED that the application of Loral SpaceCom to modify its license, File No. SAT-MOD-19981116-00087, is DISMISSED as moot.

21. This Order is issued pursuant to delegated authority, 47 C.F.R. § 0.261, and is effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

Donald Abelson
Chief
International Bureau