

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

In the Matter of)
)
Globalstar Licensee LLC) File No. SAT-MOD-20091214-00152
) Call Sign: S2115
Application for Modification of License)
to Extend Dates for Coming into Compliance with)
Ancillary Terrestrial Component Rules)
)
And)
)
Open Range) File No. SAT-STA-20100625-00147
)
Request for Special Temporary Authority)
)

ORDER

Adopted: September 14, 2010

Released: September 14, 2010

By the Chiefs, International Bureau, Wireless Telecommunications Bureau, and the Office of Engineering and Technology:

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I. INTRODUCTION

1. In this Order, we deny a request by Globalstar Licensee LLC (“Globalstar”) for a 16-month extension to come into compliance with the Commission’s rules concerning the Ancillary Terrestrial Component (“ATC”) of Globalstar’s satellite system. In 2008, the Commission granted Globalstar a temporary waiver of the generally applicable ATC “gating criteria,” providing Globalstar 16 months to come into compliance with the Commission’s ATC rules.¹ Globalstar now seeks an additional 16 months to come into compliance. We conclude that Globalstar has not justified its request for a further extension of time. Specifically, we find that Globalstar has not established that its failure to come into compliance with the ATC gating criteria within the established timeframe was due to circumstances beyond its control or other sufficient justifications. We therefore deny the request and suspend Globalstar’s ATC authority until such time as it comes into compliance with Commission rules.

2. As a consequence of Globalstar’s failure to meet its obligations to justify continuation of its ATC operations under our rules, Open Range Communications, Inc. (“Open Range”), which is leasing spectrum from Globalstar, will not be able to continue to use Globalstar’s ATC authority to provide service. We grant Open Range Special Temporary Authority (STA) in a limited set of markets for a period of 60 days, as detailed below, to provide Open Range additional time to obtain access to other spectrum and to minimize disruption to its customers.

3. This Order first addresses Globalstar’s request to extend the deadline by which it was required to bring its satellite network into compliance with the ATC rules. The Order then addresses the Open Range request for Special Temporary Authority.

II. GLOBALSTAR MODIFICATION REQUEST TO EXTEND ATC DEADLINES

A. BACKGROUND

1. ATC Policy and Authorization Procedure

4. ATC consists of terrestrial base stations and mobile terminals licensed to the operator of a mobile satellite service (“MSS”) system. ATC facilities can be used to offer service together with MSS, re-using frequencies assigned for MSS operations.² An MSS operator with a license from the Commission for certain frequency bands, including the “Big LEO” bands in which Globalstar is licensed to operate, may request blanket authority for operation of ATC stations in the United States. In adopting rules to permit ATC operations, the Commission concluded that authorizing ATC would advance the public interest by facilitating increased network capacity, more efficient use of spectrum, extension of coverage to places where MSS operators have previously been unable to offer reliable service, improved emergency communications, enhanced competition, and economies of scale in handset manufacture.³

¹ *Globalstar Licensee LLC, Application for Modification of License for Operation of Ancillary Terrestrial Component Facilities, Order and Authorization*, 23 FCC Rcd 15975 (2008) (Copps, Adelstein, and Tate issuing separate statements; Martin and McDowell dissenting) (“*Globalstar/Open Range ATC Order*”), petition for reconsideration pending, appeal pending sub nom. *Iridium Satellite LLC v. FCC*, U.S. Court of Appeals (D.C. Circuit) No. 08-1374.

² *Flexibility for Delivery of Communications by Mobile Satellite Service Providers in the 2 GHz Band, the L-band, and the 1.6/2.4 GHz Bands; Review of the Spectrum Sharing Plan Among Non-Geostationary Satellite Orbit Mobile Satellite Service Systems in the 1.6/2.4 GHz Bands, Report and Order and Notice of Proposed Rulemaking*, FCC 03-15, 18 FCC Rcd 1962 (2003) (“*ATC Report and Order*”), modified by Order on Reconsideration, 18 FCC Rcd 13590 (2003), reconsidered in part in *Memorandum Opinion and Order and Second Order on Reconsideration*, FCC 05-30, 20 FCC Rcd 4616 (2005) (“*ATC Second Reconsideration Order*”), further reconsideration pending.

³ *ATC Report and Order* at ¶¶ 2, 20-45, and 210-11.

5. The Commission has prescribed “gating criteria” that MSS operators must meet in order to obtain ATC authority. Specifically, an MSS operator must be able to provide continuously available satellite service in specified geographic areas,⁴ maintain spare satellites,⁵ and make MSS commercially available throughout the required coverage area.⁶ The Commission also requires MSS-ATC licensees to integrate their offering of ATC with their offering of MSS.⁷ These provisions were adopted to ensure that ATC remains ancillary to MSS rather than as a stand-alone terrestrial service that operates separately from MSS.⁸ The Commission stated that a stand-alone terrestrial service would not serve the purposes of the ATC rules, which are to enhance MSS coverage and to enable MSS operators to extend service into areas that they were previously unable to serve, such as the interiors of buildings and high-traffic-density urban areas.⁹

2. Globalstar’s ATC License

6. In 2006, the Commission’s International Bureau granted Globalstar’s predecessor-in-interest authority to operate ATC base stations and dual-mode MSS/ATC mobile terminals using the cdma2000 air interface protocol, assigning the 1610-1615.5 MHz frequency band for ATC mobile-terminal transmissions and the 2487.5-2493 MHz band for ATC base-station transmissions.¹⁰ The Globalstar ATC frequency assignments were later expanded to 1610-1617.775 MHz for mobile-terminal transmissions and 2483.5-2495 MHz for base-station transmissions.¹¹

7. In an application filed in May 2008, Globalstar requested modification of its ATC license to permit implementation of a business plan developed in collaboration with Open Range.¹² Under the plan, Open Range would construct and operate a two-way ATC network using the WiMAX air interface protocol and S-band spectrum (2483.5-2495 MHz) leased from Globalstar.¹³ The S-band spectrum would be used for transmission in both directions between base stations and mobile terminals. The first-generation mobile terminal for subscribers to the proposed MSS/ATC offering would be a unit incorporating a WiMAX modem for access to the Open Range ATC network through connection to a laptop computer or Voice over Internet Protocol (VoIP) telephone. The MSS component in the first-

⁴ 47 C.F.R. § 25.149(b)(1).

⁵ 47 C.F.R. § 25.149(b)(2).

⁶ 47 C.F.R. § 25.149(b)(3).

⁷ 47 C.F.R. § 25.149(b)(4).

⁸ ATC Second Reconsideration Order at ¶¶ 19, 33.

⁹ *Id.* at ¶ 33.

¹⁰ *Globalstar LLC, Request for authority to implement an ancillary terrestrial component for the Globalstar Big LEO Mobile Satellite Service system, Order and Authorization*, 21 FCC Rcd 398 (2006).

¹¹ *Globalstar Licensee LLC, Modification of Authority to Implement an Ancillary Terrestrial Component*, 23 FCC Rcd 15056 (2008). *Also see Spectrum and Service Rules for Ancillary Terrestrial Components in the 1.6/2.4 GHz Big LEO Bands/Globalstar Licensee LLC, Authority to Implement an Ancillary Terrestrial Component, Report and Order and Order Proposing Modification*, 23 FCC Rcd 7210 (2008).

¹² File No. SAT-MOD-20080516-00106 (“2008 ATC Modification Application”).

¹³ In November 2007, Globalstar and Open Range notified the Commission that they had entered into a long-term “spectrum manager lease agreement” under which Open Range would lease access to Globalstar’s ATC spectrum. See letter dated Nov. 14, 2007 to Helen Domenici, Chief, International Bureau, from William T. Lake, Counsel to Globalstar Licensee LLC, and Joe D. Edge, Counsel to Open Range Communications, Inc. (“Globalstar/Open Range Spectrum Lease Notification”). In that letter, Open Range stated that the spectrum lease agreement was consistent with the Commission’s existing Part 1 rules for “spectrum manager” leases. *Id.* at 2; see 47 CFR § 1.9020.

generation terminals would provide one-way, transmit-only¹⁴ location-tracking and text-messaging, transmitting to Globalstar satellites in Globalstar's assigned L-band MSS uplink frequencies (1610-1618.725 MHz).¹⁵

8. Globalstar and Open Range planned to deploy second-generation MSS/ATC mobile terminals when a second-generation Globalstar MSS system went into operation. The second-generation terminals would include a chipset capable of supporting two-way MSS voice and data communications, including an ATC network.¹⁶ Customers with first-generation ATC terminals would have the option to upgrade to the second-generation terminals at no extra charge when the latter became available.¹⁷

9. The Commission addressed Globalstar's modification application in a decision released in October 2008.¹⁸ First, the Commission discussed the issue of Globalstar's compliance with the requisite ATC gating criteria. The Commission concluded that the first-phase plan to offer S-band ATC service in conjunction with first-generation Globalstar MSS was inconsistent with the gating criterion in Section 25.149(b)(1)(iii) of the Commission's rules that requires MSS coverage to be continuous throughout the United States, Puerto Rico, and the U.S. Virgin Islands. The Commission noted that the first-generation Globalstar satellite system was not providing continuous coverage throughout the United States for S-band downlink signals, but instead only coverage for one-way, transmit-only services using Globalstar's L-band uplink spectrum. The Commission held that L-band-only coverage was insufficient for compliance with the continuous-coverage requirement because the gating criteria must be met in the S-band, *i.e.*, the frequency band proposed for ATC operation.¹⁹ Similarly, the Commission held that the proposed first-phase deployment of terminals coupling an S-band-only ATC transceiver with an L-band-only MSS transmitter would not satisfy the integration gating requirement in Section 25.149(b).²⁰ Further, the Commission held that Globalstar had not met the spare-satellite gating requirement in Section

¹⁴ Operations of Globalstar's first-generation satellites have over time become increasingly impacted by degradation in the S-band subsystems that transmit downlink signals to mobile terminals. Globalstar surmised that the S-band malfunctions were caused by solar irradiation. Globalstar, Inc. Quarterly Report (SEC Form 10-Q) filed May 12, 2008 ("Globalstar May 2008 10-Q Report") at 17. Malfunction or failure of a Globalstar satellite's S-band transmitter impairs or eliminates the availability of two-way communications via that satellite. *Id.* at 19. There are periods of time each day, at any given location, during which two-way communication is unavailable via the Globalstar MSS system. *Id.* at 17. All of the currently active Globalstar satellites, however, can provide one-way, send-only data communications, *i.e.*, communications beginning with L-band transmissions from mobile earth terminals, received by Globalstar satellites and then relayed via feeder links to gateway earth stations, from which they may be routed through terrestrial networks. For such L-band-only services, there is no return path to the mobile earth terminal, thus preventing an end user from receiving satellite communications on the mobile earth terminal. 2008 ATC Modification Application, Attachment 1 at 15.

¹⁵ Globalstar described the functions of the first-generation MSS component as follows:

The device provides a "Check In" function to let contacts know where the user is and that [the user is] okay, a "Track Progress" function to send and save the user's location using a mapping application, an "Ask For Help" function requesting non-emergency assistance at the user's location from the user's designated contact, and an "[Alert]" function to dispatch emergency responders to the user's location.

2008 ATC Modification Application, Technical Exhibit at 16.

¹⁶ Specifically, Globalstar asserted that the second-generation devices would receive MSS downlink signals at speeds up to 1 megabit per second and transmit MSS uplink signals at up to 256 kilobits per second. 2008 ATC Modification Application, Exhibit 1 at 18.

¹⁷ Globalstar *ex parte* Submissions in File No. SAT-MOD-20080516-00106 dated October 16 and 17, 2008.

¹⁸ *Globalstar/Open Range ATC Order.*

¹⁹ *Id.* at ¶ 16.

²⁰ *Id.* at ¶ 18.

25.149(b)(2)(i) because there were no spare Globalstar satellites in orbit with functional S-band transmitters.²¹

10. The Commission nonetheless concluded that it would grant temporary waivers of the ATC gating criteria, subject to Globalstar meeting certain specified conditions. Specifically, the Commission considered Globalstar's plans for coming into compliance with the MSS coverage and spare-satellite gating criteria no later than July 1, 2010. The Commission also noted that Open Range had received a loan commitment from the Department of Agriculture's Rural Development Utilities Program to support deployment of the proposed ATC network in rural communities over a period of five years.²² The Commission then granted interim waivers of the MSS coverage and spare-satellite gating requirements until July 1, 2010, and the dual-mode MSS/ATC terminal requirement until July 1, 2011, in an effort to facilitate deployment in rural communities.²³ In reaching its decision, however, the Commission noted the concerns of Iridium, CTIA, and others that the interim waivers might evolve into a long-term exemption from the gating criteria. To address those concerns, the Commission expressly provided that the waivers were "limited in scope," and subject to conditions that set firm deadlines by which Globalstar must comply with the gating requirements and required Globalstar and Open Range to notify their customers that ATC services were subject to mandatory suspension in the event that the gating criteria were not met.²⁴

11. The Commission thus granted authority for the proposed Globalstar/Open Range MSS/ATC operation, subject to specific conditions, including that:

- Operation of ATC stations in the S-band shall be suspended as of July 1, 2010 unless, at that time, two-way Globalstar MSS operation fully meets the coverage requirements of 47 C.F.R. § 25.149(b)(1)(iii) and there is at least one spare Globalstar satellite in orbit capable of operating in the Globalstar system's assigned MSS downlink band. The suspended operation may resume at such time as Globalstar complies with the foregoing requirements.
- Operation of ATC stations in the S-band shall be suspended as of July 1, 2011 unless, at that time, Globalstar provides two-way MSS to customers equipped with dual-mode MSS-ATC terminals [with L-band/S-band MSS transceivers]. The suspended operation may resume at such time as Globalstar commences providing two-way MSS to customers equipped with such terminals.
- Globalstar and any affiliated ATC provider shall deploy MSS-ATC first generation terminals (*i.e.*, those without a high-speed [two-way] MSS chip set) only to communities served pursuant to the RUS loan. Globalstar and any affiliated ATC provider(s) shall not market or distribute MSS-ATC terminals that cannot be upgraded to high-speed [two-way] MSS after early 2010. Beginning in early 2010, any MSS-ATC terminals marketed or distributed by Globalstar and any affiliated ATC provider(s) shall be upgradeable to include high-speed MSS. After early 2011, Globalstar and any affiliated ATC provider shall have a chipset available that provides high-speed MSS, and upon availability in

²¹ *Id.* at ¶ 19.

²² *Id.* at ¶ 21.

²³ *Id.* at ¶¶ 21, 23.

²⁴ *Id.* at ¶ 23.

production quantities of such chipset at that time, Globalstar and any affiliated ATC provider(s) shall market and distribute only MSS-ATC terminals that can provide such services²⁵

3. Globalstar's Current Extension Request

12. On December 14, 2009, Globalstar filed a modification application requesting that the Commission extend, by 16 months, the July 1, 2010 compliance deadline prescribed in the *Globalstar/Open Range ATC Order* for meeting the coverage and spare-satellite requirements. Globalstar states that this extension reflects a revised launch schedule for its 24 second-generation satellites, which are to be launched in four batches, with six satellites in each batch.²⁶ Globalstar acknowledges that all 24 satellites must be deployed in order for it to meet the continuous coverage and spare-satellite gating requirements.²⁷ Globalstar also requests that the Commission extend the deadline for having high-speed MSS chipsets in production quantities from "after early 2011" to "after September 15, 2012." In addition, Globalstar requests a 16-month extension of the July 1, 2011 deadline for providing two-way MSS to customers with dual-mode MSS/ATC terminals.²⁸ The requested extensions are as follows:

| <u>Requirement</u> | <u>Existing Deadline</u> | <u>Requested Deadline</u> |
|--|--------------------------|---------------------------|
| Meet MSS coverage and spare-satellite gating requirements | July 1, 2010 | November 1, 2011 |
| Obtain production quantity of MSS/ATC terminal chipset with high-speed MSS capability; cease distribution of MSS/ATC terminals with low-speed, one-way MSS component | After early 2011 | After September 15, 2012 |
| Commence provision of two-way MSS to users with dual-mode MSS/ATC terminals | July 1, 2011 | November 1, 2012 |

13. On June 11, 2010, Globalstar filed supplemental information pertaining to the schedule

²⁵ *Id.* at ¶ 41.

²⁶ Globalstar indicates that the first batch of satellites is scheduled for launch by Arianespace in September or October 2010; the second batch is scheduled for launch in a window beginning on December 5, 2010; the third batch is scheduled for launch in a window beginning on February 5, 2011; and the fourth batch is scheduled for launch between April 5 and July, 2011. Globalstar states that it expects that the fourth batch will be put in service by November 2011, at which point it will have an operational constellation of 32 satellites, comprised of 24 second-generation satellites and eight first-generation replacement satellites launched in 2007. IBFS File No. SAT-MOD-20091214-00152 at 11-12 ("Application for Extension of Compliance Deadlines").

²⁷ *Id.* at 11-12 and n.24. Globalstar states that it expects that, as of November 2011, at least one first-generation satellite will be available to serve as an in-orbit spare. *Id.* at 12.

²⁸ *Id.* at 13-14. Globalstar indicates that it expects to receive delivery of production quantities of chipsets for MSS-ATC mobile terminals with two-way MSS capability in mid-2012.

for delivery of its second-generation satellites.²⁹ In response to a request from Commission staff,³⁰ Globalstar filed additional information on June 22, 2010, including a copy of its contract with Thales Alenia Space, the satellite manufacturer, for construction of its second-generation satellites, as amended and restated in June 2009.³¹ In a subsequent letter, Commission staff noted that Globalstar's June 22 filing did not include all of the previously requested information and urged Globalstar to promptly submit the missing information.³² Globalstar filed a further informational supplement on July 21, 2010 in response to the second request.³³ Globalstar filed another supplement on July 30, 2010.³⁴

14. In its application, as supplemented, Globalstar asserts that a 16-month extension to meet the MSS coverage and spare-satellite gating requirements is warranted because delivery and launch of its 24 second-generation satellites was delayed due to circumstances beyond its control. Globalstar contends that the circumstances beyond its control are: (1) the global economic market crisis that occurred after its ATC license was issued; (2) an earthquake in Italy that closed a production facility in L'Aquila used by its satellite manufacturer, Thales Alenia Space, for eight months, and that had a "cascading effect" on the delivery and launch schedules for Globalstar's 24 satellites; and (3) production delays for essential satellite thruster sub-system components.³⁵

15. Globalstar also states that, given the delay in second-generation satellite deployment, it is "pointless" to enforce the deadlines for distributing dual-mode MSS/ATC terminals that incorporates high-speed, two-way MSS transceiver chipset, and for providing two-way MSS to customers. Consequently, Globalstar also requests a 16-month extension to meet the ATC rules for its MSS/ATC terminals.³⁶

16. Globalstar contends that the reasons stated in the *Globalstar/Open Range ATC Order* for granting temporary waivers of gating requirements further support a grant of its extension request. These reasons include facilitating deployment of wireless broadband services in rural areas and maximizing the benefits of a USDA loan commitment that was made available to promote development of rural telecommunications infrastructure. Globalstar maintains that these public interest factors are more compelling now, as denial of the requested extensions would force Open Range to discontinue wireless broadband service to rural customers who are currently receiving it.³⁷

²⁹ Globalstar requested that this information be treated as confidential. Letter with attachment dated June 11, 2010 to Marlene Dortch, Secretary, FCC, from Samir C. Jain.

³⁰ Letter dated June 16, 2010 to Anthony J. Navarra, Gregory J. Vogt, and Samir C. Jain from Roderick K. Porter, Deputy Chief, International Bureau.

³¹ Letter with attachments dated June 22, 2010 to Marlene Dortch, Secretary, FCC, from Samir C. Jain ("June 22, 2010 Letter"). Globalstar requested that the response to the June 16 inquiry be treated as confidential.

³² Letter dated July 13, 2010 to James Monroe III, Anthony J. Navarra, Gregory J. Vogt, and Samir C. Jain from Roderick K. Porter.

³³ Letter with attachments dated July 21, 2010 to Marlene Dortch, Secretary, FCC, from James Monroe III, Executive Chairman, Globalstar, Inc. ("July 21, 2010 Letter"). Globalstar requested that this response be treated as confidential.

³⁴ Letter with confidential attachments dated July 30, 2010, to Marlene Dortch, Secretary, FCC, from Samir Jain ("July 30, 2010 Letter").

³⁵ Application for Extension of Compliance Deadlines at 2 and 8-12; July 30, 2010 Letter at 3.

³⁶ Application for Extension of Compliance Deadlines at 12-13.

³⁷ *Id.* at 15. In comments filed in this proceeding, Open Range reported that as of April 5, 2010, it was providing broadband ATC service in 13 rural communities in Colorado. Comments of Open Range Communications Inc. filed April 5, 2010 at 2-3. Open Range further reported that, as of September 1, 2010, it was providing service to (continued....)

17. CTIA - The Wireless Trade Association (“CTIA”) and Iridium Satellite LLC (“Iridium”) filed petitions to deny Globalstar’s December 14, 2009 request.³⁸ CTIA and Iridium contend that the Commission effectively ruled out any possibility of granting future extensions in the *Globalstar/Open Range ATC Order*.³⁹ Iridium notes that to prevent the interim waivers from “evolv[ing] into a long-term exemption with repeated extensions to prevent service disruption to Globalstar/Open Range ATC subscribers,” the Commission stressed that the waivers were subject to conditions setting firm deadlines by which Globalstar would have to come into compliance.⁴⁰ Iridium and CTIA also argue that the Commission has held that an unfavorable business climate does not warrant extension of a satellite licensee’s implementation “milestone” deadlines.⁴¹ In addition, Iridium argues that Globalstar has not adequately explained the nexus between the eight-month shutdown of the L’Aquila facility and the delays in constellation deployment and chipset manufacturing.⁴² Furthermore, Iridium contends that Globalstar’s assertions regarding delay resulting from the earthquake are contradicted by a reported statement by Thales Alenia’s chief financial officer in July 2009 that Thales could “re-engage full production quickly enough to complete the 24 [Globalstar] satellites in time for launches in 2010.”⁴³ CTIA argues, moreover, that Globalstar has failed to make effective use of its assigned spectrum and that the spectrum should be

(Continued from previous page) —————

[REDACTED] subscribers. Open Range September 2, 2010 *ex parte* submission to Marlene H. Dortch, Secretary, FCC, from Joe D. Edge, Counsel to Open Range (“Open Range September 2 Submission”), Attachment A (confidential treatment requested).

³⁸ Opposition of CTIA–The Wireless Association, filed Dec. 24, 2009; Motion to Dismiss and Opposition of Iridium Satellite LLC, filed Dec. 24, 2009. Iridium and CTIA filed the petitions before Globalstar’s request was placed on public notice. Globalstar requested, and was granted, permission to withhold its response to the petitions until required by a pleading cycle established once its application was placed on public notice. Letter dated Dec. 29, 2009 to Mindel De La Torre from Samir C. Jain, Counsel to Globalstar Licensee LLC, granted on Jan. 13, 2010. After public notice was given that the application had been accepted for filing, Space Station Applications Accepted for Filing, Report No. SAT-00669 (March 5, 2010), Iridium filed a petition to deny, and Open Range filed supporting comments. Petition to Deny of Iridium Satellite LLC filed April 5, 2010; Comments of Open Range Communications Inc. filed April 5, 2010; *see also* Opposition of Globalstar to Petition to Deny, filed April 15, 2010, and Reply Comments in Support of Petition to Deny of Iridium Satellite LLC, filed April 22, 2010. Later in the same month, Iridium filed a motion to hold the application in abeyance pending “investigation and remediation” of violations by Globalstar of Commission rules and license terms. Motion to Hold Globalstar Applications in Abeyance, filed Dec. 31, 2009. *See also* Opposition to Iridium’s Motion to Hold Globalstar’s Applications in Abeyance, filed by Globalstar on Jan. 11, 2010, and Reply of Iridium Satellite LLC in Support of Motion to Hold Globalstar Applications in Abeyance, filed Jan. 19, 2010.

³⁹ Petition to Deny of Iridium Satellite LLC filed April 5, 2010 (“April 2010 Iridium Petition”) at 4; Opposition of CTIA – The Wireless Association filed Dec. 24, 2009 (“CTIA Petition”) at 6-7.

⁴⁰ April 2010 Iridium Petition at 3-4. Iridium and CTIA also point out that Commissioners also emphasized this point in concurring statements. *Id.* at 4; CTIA Petition at 3 and 6-7.

⁴¹ *Id.* at 5, citing *NetSat 28 Company*, 19 FCC Rcd 17722 ¶ 14 (Int’l Bur. 2004); CTIA Petition at 8-9. Iridium also cites *Styles Interactive, Inc. Application for Review of Denial of Petition for Reconsideration of IVDS Final Down Payment Deadline*, 12 FCC Rcd 17987 ¶ 8 (1997), where the Commission held that a licensee’s financial difficulty did not warrant waiver of a regulatory deadline for an installment payment on a license purchased at auction.

⁴² Reply Comments in Support of Petition to Deny of Iridium Satellite LLC, filed April 22, 2010 at 7.

⁴³ April 2010 Iridium Petition at 7, citing an article published in Space News on July 27, 2009. Both Iridium and CTIA also argue that the factual assertions in Globalstar’s request are not adequately supported by verified statements. Iridium Petition at 5; CTIA Petition at 8, n.24 (noting absence of a confirming statement from Thales Alenia Space regarding delay in satellite construction).

reallocated for terrestrial wireless broadband services.⁴⁴ ⁴⁵

B. DISCUSSION

18. In granting Globalstar authority to operate ATC facilities prior to complying with all of the ATC gating requirements, the Commission relied on Globalstar's commitment to complete the steps needed to come into compliance on a firm schedule developed by the company itself. We find that Globalstar's asserted justification for extending by 16 months the compliance deadlines the Commission prescribed in accordance with Globalstar's previous representations is unsupported by the record. We therefore conclude that extending the temporary waivers for another 16 months would undermine the goals and intent of the Commission's rules and the deadlines in the *Globalstar/Open Range ATC Order*. Under the circumstances, we are unable to conclude that extending the waivers would serve the public interest. We discuss these findings and conclusions in more detail below.

1. Framework for Analysis

19. Because Globalstar is requesting modification of license conditions adopted in connection with an Order granting rule waivers, we employ the level of scrutiny applied in connection with waiver of a Commission rule, in this case the ATC gating criteria. We may grant a waiver pursuant to Section 1.3 of the Commission's rules if the petitioner demonstrates good cause for such action.⁴⁶ Good cause may be found "where particular facts would make strict compliance inconsistent with the public interest."⁴⁷ To make this public interest determination, the waiver cannot undermine the purposes of the rule, and there must be a stronger public interest benefit in granting the waiver than in applying the rule.⁴⁸

20. In this case, the Commission granted temporary waivers in October 2008 to allow WiMAX ATC operation to be conducted in Globalstar's assigned S-band spectrum, even though Globalstar was not then in compliance with the ATC gating requirements. As discussed above, the Commission concluded that temporary waiver of the ATC gating criteria was appropriate as a means to facilitate deployment in rural communities.⁴⁹ However, in response to petitioners' concerns that the gating waivers might evolve into a long-range exemption with repeated extensions to avert disruption of service to ATC subscribers, the Commission stressed that the WiMAX ATC authorization waivers "are

⁴⁴ CTIA Petition at 9-10. This issue is beyond the scope of this proceeding. Nevertheless, we note that Globalstar has been providing mobile satellite service to customers in the United States and around the world since 1999.

⁴⁵ Several parties filed comments after the close of the pleading cycle expressing support for grant of Globalstar's application. Letter from William B. Wigton, Merrion Securities, LLC, to Marlene Dortch, Secretary, FCC, July 23, 2010; Letter from Senator Mary L. Landrieu to Julius Genachowski, August 25, 2010; Comments of Blue Sky Information Services, dated August 2, 2010, submitted via email dated September 4, 2010. Globalstar and Open Range also submitted a number of notices of *ex parte* communications.

⁴⁶ 47 C.F.R. § 1.3. See also *ICO Global Communications (Holdings) Limited v. FCC*, 428 F.3d 264 (2005); *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164 (D.C. Cir. 1990); *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969).

⁴⁷ *Northeast Cellular*, 897 F.2d at 1166; *ICO Global Communications*, 428 F.3d at 269 (quoting *Northeast Cellular*); see also *WAIT Radio*, 418 F.2d at 1157-59.

⁴⁸ See, e.g., *WAIT Radio*, 418 F.2d at 1157 (stating that even though the overall objectives of a general rule have been adjudged to be in the public interest, it is possible that application of the rule to a specific case may not serve the public interest if an applicant's proposal does not undermine the public interest policy served by the rule); *Northeast Cellular*, 897 F.2d at 1166 (stating that in granting a waiver, an agency must explain why deviation from the general rule better serves the public interest than would strict adherence to the rule).

⁴⁹ See ¶ 10, *supra*.

subject to conditions that set firm dates by which Globalstar must comply with the gating requirements,” and that “ATC services are subject to mandatory suspension in the event that the gating conditions are not met.”⁵⁰ The specified deadlines were consistent with Globalstar’s prior representations concerning its schedule for deployment of second-generation satellites, which was a prerequisite for meeting the gating requirements.⁵¹ Now, having conceded that it will not meet the previously reported schedule for second-generation satellite deployment and therefore will not meet the compliance deadlines specified in its authorization, Globalstar seeks extension of the temporary gating waivers. In order to determine whether granting the requested extension would serve the public interest, several factors merit close consideration:⁵² the causes of delay that prevent Globalstar from meeting the current compliance deadlines; the amount of time that has elapsed since the waivers were granted; and the amount of additional time requested.

2. Causes of Delay

21. Globalstar requests additional time in which to bring both its space segment and its MSS/ATC terminals into compliance with the ATC rules. Because Globalstar cites different causes of delay in support of each of these requests, we address them separately. We first discuss Globalstar’s request for additional time in which to meet the July 1, 2010 continuous MSS coverage and spare satellite requirements.

a. Continuous MSS Coverage / Spare Satellite Requirements

22. Globalstar maintains that its inability to meet the continuous MSS coverage and spare satellite deadlines is due to unforeseeable occurrences beyond its control:⁵³ (1) the collapse of global

⁵⁰ *Globalstar/Open Range ATC Order* at ¶ 23; see also Separate Statement of Commissioner Jonathan S. Adelstein (“[t]he determination we make here is a narrow one, one that is limited to a date certain, and one that is terminable if the compliance deadlines are not met”); Separate Statement of Commissioner Michael J. Copps (“if the companies are unable to meet the benchmarks imposed by today’s waiver...the waiver...will...automatically terminate”); Separate Statement of Commissioner Deborah Taylor Tate (“this waiver...is temporary in nature and imposes a strict set of conditions for noncompliance”); Dissenting Statement of Chairman Kevin J. Martin and Robert M. McDowell (objecting to waiver grant).

⁵¹ See 2008 ATC Modification Application, Attachment 1 at 16 (“by June 2010, the first 24 [second-generation] satellites ... will have become operational and, when combined with the eight replacement satellites launched in 2007, there will be 32 fully operational satellites providing robust voice and two-way data services, and at least one satellite remaining from the first constellation that provides for L- and S-band service as an in-orbit spare”).

⁵² Commission practice with respect to “milestone” extensions provides a general framework for analyzing whether Globalstar has exercised diligence in meeting its proposed schedule. In connection with licensing of new satellites, the Commission requires that the licensee complete steps in the construction and launch process by certain dates in order to ensure that spectrum and orbital resources are promptly put to use and are not held to the exclusion of others. 47 C.F.R. § 25.164. The Commission will modify a license to extend a milestone if the applicant establishes that “additional time is required due to unforeseeable circumstances beyond the applicant’s control, describes these circumstances with specificity, and justifies the precise extension period requested; or [that there are] unique and overriding public interest concerns that justify an extension, identifies those interests and justifies a precise extension period.” 47 C.F.R. § 25.117(c); see also *ICO Satellite Services G.P.*, 20 FCC Rcd 9797 (Int’l Bur. 2005). The approach taken here regarding Globalstar’s diligence in meeting its deadlines is consistent with the milestone cases.

⁵³ 47 C.F.R. § 25.117(c). Globalstar argues that its request for a 16-month extension is consistent with extensions granted to meet satellite implementation milestones pursuant to Section 25.117(c) of the Commission’s rules, 47 C.F.R. § 25.117(c). It further states that its situation is distinguishable from cases where the Commission has denied extensions, because no “warehousing” is involved here. Application for Extension of Compliance Deadlines at 22. As noted, we are evaluating Globalstar’s extension request in light of the ATC rules and the deadlines in the *Globalstar/Open Range ATC Order*.

financial markets following the release of the *Globalstar/Open Range ATC Order*; (2) the direct and indirect consequences of an earthquake that struck in the vicinity of L’Aquila, Italy on April 6, 2009; and (3) technical problems related to production of the satellite thruster sub-system. None of these arguments are persuasive.

(i) Financial Crisis

23. Globalstar asserts that the financial crisis hindered it from securing funds needed to meet payments due under its satellite construction contract with Thales. Globalstar states that while it ultimately secured approximately \$738 million in new financing, it was unable to fund satellite construction on the original schedule “over a period of several months in late 2008 to early 2009.”⁵⁴ Globalstar states that Thales accordingly slowed work on the project, which resulted in a “several-month delay in the schedule for completion of the second-generation satellites.”⁵⁵ While acknowledging that the Commission has held that an “unfavorable business climate” does not warrant milestone extension, Globalstar maintains that the recent financial crisis should be regarded as *sui generis* because its scope and depth are without precedent in modern times.⁵⁶

24. Iridium and CTIA argue that Globalstar’s alleged difficulty in obtaining funding is immaterial. They note that the Commission has held that an unfavorable business climate does not justify an extension of time for a satellite licensee to meet an implementation “milestone.”⁵⁷ CTIA also maintains that the global financial crisis was not unforeseeable when Globalstar requested waivers of the gating requirements in May 2008, as prominent economists were then predicting that a recession was imminent.⁵⁸ Iridium contends that Globalstar’s allegation of temporary financial difficulty is inconsistent with statements in a pleading filed in another proceeding in May 2009, in which Globalstar reported that it had recently obtained additional financing commitments and asserted that in light of this, “there can be little doubt as to Globalstar’s financial ability to proceed with its plans” for construction and launch of a

⁵⁴ Application for Extension of Compliance Deadlines at 9. The record shows that Globalstar missed a series of monthly payments to Thales beginning in 2008 and continuing well into 2009. Thus, Globalstar should have known, either before or shortly after the *Globalstar/Open Range ATC Order* was released on October 31, 2008, that its previous representations to the Commission regarding the schedule for deploying 24 second-generation satellites were unrealistic, and that delays were foreseeable. It was not until December 14, 2009 – more than a year later – that Globalstar informed the Commission, by filing the application now before us, that it could not meet the deadlines. This delay in providing material information further informs our analysis of Globalstar’s current application. *See also* 47 C.F.R. § 1.65(a).

⁵⁵ Application for Extension of Compliance Deadlines at 9. Globalstar indicates that it had to seek debt and equity financing to a greater extent than it had originally anticipated, due to a decline in service revenue from \$92 million in 2006 to \$62 million in 2008 as a result of the degradation of its voice and duplex services. *Id.* at 2 n.3.

⁵⁶ *Id.* at 21. Globalstar notes that Chairman Genachowski described the situation as “an historic global financial crisis.” *Id.* at 20, citing Prepared Remarks of Chairman Julius Genachowski, “Global Opportunities and Challenges,” at the International Telecommunication Union Global Symposium for Regulators, 2009 WL 3749402 (Nov. 10, 2009).

⁵⁷ April 2010 Iridium Petition at 5, citing *NetSat 28 Company*, 19 FCC Rcd 17722 ¶14 (Int’l Bur. 2004); CTIA Petition at 8-9. Iridium also cites *Styles Interactive, Inc. Application for Review of Denial of Petition for Reconsideration of IVDS Final Down Payment Deadline*, 12 FCC Rcd 17987 ¶ 8 (1997), where the Commission held that a licensee’s financial difficulty did not warrant waiver of a regulatory deadline for an installment payment on a license purchased at auction.

⁵⁸ CTIA Petition at 8, citing news reports published in the Wall Street Journal and the New York Times in April and May of 2008.

second-generation satellite constellation.⁵⁹

25. While we do not require that licensees have committed funds at the inception of a satellite manufacturing project,⁶⁰ case law also does not excuse licensees from the consequences of choosing to proceed without already having secured sufficient funds, including any consequences of the licensee's decision that are exacerbated by difficult economic conditions or an unfavorable business climate.⁶¹ In any case, many licensees went forward with space station implementation during this period, as evidenced by their posting of a \$3 million bond upon Commission license grant that becomes payable to the U.S. Treasury if the license is cancelled for failure to meet an implementation milestone, or by submitting evidence that the licensee had met a milestone.⁶² Under the circumstances, we cannot conclude that the financial crisis warrants an extension of time in which to meet the ATC gating criteria.

(ii) Earthquake in Italy

26. Globalstar asserts that another unforeseen hindrance was an earthquake on April 6, 2009, that caused damage to a Thales Alenia Space factory in L'Aquila, Italy. Globalstar states that the factory manufactures a component – hybrid microelectronic circuits – used for the second-generation Globalstar satellites.⁶³ Globalstar states that, because of the earthquake, the factory was closed for safety reasons for eight months, until December 1, 2009,⁶⁴ and that this adversely impacted both the delivery and launch schedules for its 24 second-generation satellites. Globalstar indicates that all 24 satellites must be launched in order for it to meet the continuous-coverage gating requirement.⁶⁵

27. Globalstar claims that the earthquake caused 17 months of delay in delivery of second-

⁵⁹ Iridium Petition at 6, quoting from Opposition of Globalstar Licensee LLC filed May 28, 2009 in IBFS File No. SAT-MOD-20080904-00165. In support of its assertion in the May 28, 2009 pleading that it had obtained additional funding, Globalstar cited a March 25, 2009 press release announcing that Coface, an agency of the French government, had agreed to provide a payment guaranty for a proposed \$574 million loan to Globalstar from a syndicate of banks.

⁶⁰ The Commission eliminated financial qualification requirements in 2003. In the Matter of Amendment of the Commission's Space Station Licensing Rules and Policies, *First Report and Order in IB Docket No. 02-34*, 18 FCC Rcd 10760 (2003).

⁶¹ *Constellation Communications Holdings, Inc.*, FCC 03-217 (2003) ("failure to attract investors, an uncertain business situation, or an unfavorable business climate in general does not justify an extension of a licensee's construction timetable").

⁶² During the period from October 2008 to May 2009, two satellite licensees posted \$3 million bonds, another submitted documentation that it had met an implementation milestone, and another launched a satellite. See IBFS File Nos. SAT-LOA-20060412-00044 (Pegasus Development Corp. posted \$3 million bond on Jan. 16, 2009); SAT-LOA-20080509-00101 (Intelsat New Dawn Co. posted \$3 million bond on Feb. 6, 2009); SAT-MOD-20091127-00129 (ViaSat, Inc. filed documentation that it had met critical design review milestone on May 1, 2009); SAT-MOD-20050511-00097 (OrbImage License Corp. launched satellite on Oct. 28, 2008). Indeed, in another proceeding in 2009, Intelsat North America, which holds several space station licenses, stated that current economic conditions did not justify a waiver of existing bond and milestone requirements. See Letter dated May 1, 2009 to Marlene H. Dortch, Secretary, FCC, from Kalpak S. Gude, Vice President and Deputy General Counsel, Intelsat North America LLC; AtContact Communications, LLC Request for Waiver of Milestones and Bond Requirement (File No. SAT-MOD-20080813-00155, *et al.*). In its letter, Intelsat stated that financial reports "undercut [any] claim that the satellite industry is critically harmed by the current financial situation." Letter at 3.

⁶³ The circuits are used in the satellites' L-band and C-band uplink-receive low-noise amplifiers, frequency generation units, and telemetry transmitters. Application for Extension of Compliance Milestones at 9-10.

⁶⁴ *Id.* at 9-10.

⁶⁵ *Id.* at 11-12 and n. 24.

generation satellites.⁶⁶ Specifically, Globalstar states that the eight-month closing of the L'Aquila facility, and the consequent need to establish alternative production facilities, directly delayed delivery of the 24 second-generation satellites by nine months. Further, Globalstar asserts that delivery was indirectly delayed an additional eight months because: i) creditors and insurance underwriters required five additional months of in-orbit testing to be conducted after the first launch, and ii) the launch contractor determined that a total of three months of additional time for “ground spacecraft processing” would be required prior to launches.⁶⁷

28. Globalstar also asserts that the disruption at the L'Aquila factory had a “cascading” effect, as uncertainty as to when the facility would reopen prevented it from establishing a revised launch schedule until December 2009. Globalstar states that its 24 second-generation satellites are to be launched in four batches of six satellites.⁶⁸ Globalstar asserts that the availability of launch windows in December 2009 was such that launch of the last batch of satellites had to be postponed for twelve months from the date it provided in its original schedule.⁶⁹

29. While the closing of the L'Aquila facility from April 2009 until December 2009 may have had some effect on delivery of the 24 second-generation satellites, the record does not support Globalstar's assertion that the earthquake delayed delivery by 17 months and launch by 12 months. Globalstar acknowledges it had missed a series of payments to Thales *before* the earthquake, “over a period of several months in late 2008 to early 2009.”⁷⁰ Globalstar also acknowledges that because of the missed payments, Thales slowed work on the project, which resulted in a “several-month delay in the schedule for completion.”⁷¹ The record shows that delivery of satellites was delayed by [REDACTED] months by the resultant work stoppages.⁷² Thus, delivery of the satellites was well behind schedule even before the April 2009 earthquake. Indeed, had work proceeded as originally scheduled, the impact of the earthquake may have been lessened. If more components had been fabricated at the L'Aquila factory before the earthquake struck, those same components presumably could have been integrated into their respective modules at other Thales facilities.

30. Moreover, Globalstar has not explained how the eight months of delay due to additional testing and processing required by creditors, insurance underwriters, and the launch contractor relate to the earthquake. Rather, a more rigorous in-orbit testing plan and increasing pre-launch processing time seem to be ordinary contingencies of a sort that Globalstar should have anticipated and made allowance for in its original projections upon which the Commission relied and based the compliance deadlines in

⁶⁶ July 30, 2010 Letter at 1. In a previous filing, Globalstar stated that the delivery delay was eight months. *See* Opposition of Globalstar to Petition to Deny, filed Apr. 15, 2010 (“Globalstar Opposition”) at 12.

⁶⁷ *Id.* *See also* July 21, 2010 Letter.

⁶⁸ Opposition of Globalstar to Petition to Deny, filed April 15, 2010 (“Globalstar Opposition”), at 12.

⁶⁹ Application for Modification of Compliance Deadlines at 11; Globalstar Opposition at 12 and n.32.

⁷⁰ Application for Modification of Compliance Deadlines at 9. A July 1, 2009, press release announced that Globalstar had “completed a financing of approximately \$738 million.” Globalstar asserts that this financing funded the manufacture, delivery, and first four launches of its second-generation satellite constellation and ground facilities. *Id.* at 7-8.

⁷¹ *Id.* at 9. Globalstar indicates that it had to seek debt and equity financing to a greater extent than it had originally anticipated, due to a decline in service revenue from \$92 million in 2006 to \$62 million in 2008 as a result of the degradation of its voice and duplex services. *Id.* at 2, n.3.

⁷² *See* Amendment No. 8 included in Supplemental Filing of July 21, 2010 and Supplemental Filing of June 22, 2010, Appendix 2, Amended and Restated Contract Between Globalstar Inc. and Thales Alenia Space France, Article 18.1(B), and Amendment No. 1 (confidential treatment requested).

the *Globalstar/Open Range ATC Order*.⁷³

31. Thus, at least [REDACTED] months ([REDACTED] months of delay caused by work stoppages by the manufacturer due to non-payment, plus eight months of delay caused by additional ground processing and testing) of the 17-month delay allegedly caused by the earthquake are attributable to causes other than the earthquake. Consequently, we cannot find that the requested 16-month extension is warranted based on delays resulting from the earthquake.

(iii) Thruster Production Delay

32. In its June 2010 supplemental filing, Globalstar also alleges, for the first time, that the satellite delivery schedule was materially affected by a third unanticipated problem beyond its control: a subcontractor's failure to timely deliver thrusters, a crucial satellite component. According to Globalstar, the production schedule in effect prior to the release of the *Globalstar/Open Range ATC Order* required the thrusters for the first batch of second-generation satellites to be provided to Thales in March 2009, but the subcontractor did not actually deliver them until June 2010.⁷⁴

33. The record indicates that the thrusters for the first batch of satellites were delivered to Thales more than [REDACTED] after the delivery date specified in the initial manufacturing contract.⁷⁵ However, the record nowhere indicates that late delivery of the thrusters impacted the deployment schedule of the second-generation satellites. Rather, the record shows that the dates by which Thales was required to complete construction of the satellites were postponed as a result of the missed payments and the temporary closing of the L'Aquila facility.⁷⁶ Even with the delay in thruster production, the record shows that the thrusters were delivered to Thales well before the revised date by which Thales was required to complete construction of the satellites.⁷⁷ Thus, it does not appear that the later-than-originally-scheduled delivery of thrusters had any impact on satellite deployment.

34. In sum, we find that Globalstar's failure to deploy 24 second-generation satellites by the July 1, 2010 deadline, and its admitted inability to do so sooner than 16 months thereafter, is due to ordinary contingencies and a shortage of funds that prevented Globalstar from fully meeting its contractual payment obligations, not to circumstances beyond its control. Consequently, we cannot find that the reasons cited by Globalstar as a cause for delay in the delivery and launch of its 24 second-generation satellites justify the requested further extension of time in which to meet the continuous coverage and spare satellite gating criteria. We next turn to the causes for delay Globalstar cites to support its request for an additional 16 months in which to bring its MSS/ATC terminals into compliance with the ATC rules.

b. Dual-Mode MSS/ATC Terminal Requirements

35. Given the delay in second-generation satellite deployment, Globalstar contends it is "pointless" to meet the deadlines for distributing MSS/ATC terminals incorporating a high-speed, two-way MSS transceiver chipset, and for providing two-way MSS to customers with dual-mode MSS/ATC terminals.⁷⁸ Globalstar argues that requiring it to deploy such user terminals "far in advance of the [second-generation] constellation availability . . . would make no sense (and indeed would likely confuse

⁷³ July 30, 2010 Letter at 2-3.

⁷⁴ July 30, 2010 Letter at 3.

⁷⁵ See Amendment No. 2 to Amended and Restated Contract, included in Appendix 2 to the June 22, 2010 Letter (confidential treatment requested).

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ Application for Extension of Compliance Deadlines at 12-13; Opposition of Globalstar to Petition to Deny at 13.

consumers) and would cause unnecessary expense for Globalstar when . . . that equipment's new, second-generation space capabilities cannot be used.”⁷⁹ Consequently, Globalstar also asks for 16-month extensions of the dates by which its MSS/ATC terminals must come into compliance with the ATC rules.

36. Globalstar has not justified its proposal to postpone distribution of MSS/ATC terminals with high-speed MSS transceivers until after September 15, 2012, and postpone provision of two-way MSS to users with dual-mode MSS-ATC terminals until November 1, 2012. Globalstar does not allege that the L’Aquila earthquake or any other occurrence beyond its control hindered or disrupted design, manufacture, or distribution of dual-mode terminals with two-way MSS transceivers. It contends, rather, that the delay of the launch schedule for the second-generation satellites makes it “pointless” to adhere to the original schedule for deploying second-generation terminals with two-way MSS components.⁸⁰ This contention does not justify postponing such deployment beyond the point when the second-generation constellation becomes operational. According to Globalstar’s revised schedule, the second-generation constellation will be in operation by November 1, 2011. Yet, Globalstar proposes to postpone distribution of dual-mode terminals with high-speed MSS transceivers for another ten and a half months after that date and postpone provision of two-way MSS to users equipped with such terminals (which, as previously found, is necessary for compliance with the integration gating requirement) for another 12 months afterward. Thus, Globalstar seeks permission to delay provision of second-generation MSS to its ATC customers, thereby delaying compliance with the integration gating requirement, for a full year beyond the expected date for commencing second-generation MSS operation, but offers no persuasive justification for the request. Moreover, the original waiver request was based upon the premise that the waiver would affect only a small percentage of customers and markets that Open Range would serve.⁸¹ However, delaying compliance with the requirement to deploy dual-mode terminals with two-way satellite integrated capabilities, while at the same time allowing Open Range to continue to deploy terminals that do not have those capabilities, would result in an increase in the number of Open Range markets and customers with non-compliant terminals. This would substantially broaden the scope of the waiver.

3. Duration of Non-Compliance to Date and Amount of Additional Time Requested

37. Globalstar has not complied with the continuous 24-hour MSS coverage requirement, the spare satellite requirement, or the integration requirement since we granted it conditional authority for WiMAX ATC operation nearly two years ago. Assuming that Globalstar’s current projections for second-generation MSS deployment prove to be accurate, granting the requested 16-month extensions would allow Open Range ATC operation to continue and expand in scope over a total period of three years before Globalstar would come into full compliance with the gating requirements that were supposed to be met before ATC operation commenced. Indeed, the extension requested is nearly as long as the original time period granted for coming into compliance. We have already found that a major portion of the delays involved were not caused by circumstances beyond Globalstar’s control. Absent overriding public interest considerations that support non-compliance with Commission rules over this extended

⁷⁹ Application for Extension of Compliance Deadlines at 12-13.

⁸⁰ *Id.* at 12; Globalstar Opposition at 13.

⁸¹ See *Globalstar/Open Range ATC Order*, at ¶7, and sources cited therein; see also Opposition of Globalstar to Petition for Reconsideration of CTIA, at 4 (December 11, 2008), IBFS File No. SAT-MOD-200800516-00106 (“full scale rollout of [Open Range] service will not begin until 2010, and will extend over the subsequent four years, . . . well after Globalstar’s second-generation satellites have been launched and become operational. Therefore, the waivers will affect only a small percentage of the customers and markets that Globalstar and Open Range will serve . . .”).

period, a topic we address below, the lengthy extension request is not justified.

4. Public Interest Considerations

38. Finally, we address whether there are overriding public interest reasons, not already considered, to grant Globalstar's requested extension. Globalstar contends that we should grant an extension for the same reasons the Commission enunciated when granting Globalstar a temporary waiver of the gating requirements in the *Globalstar/Open Range ATC Order*. Globalstar states that, as was the case in the previous grant, allowing an extension will facilitate deployment of wireless broadband services in rural areas and maximize the benefits of the USDA loan granted to Open Range. Globalstar maintains that this consideration is even more compelling at this time, since a denial would force Open Range to terminate service to its customers.⁸²

39. In this regard, Globalstar notes that Congress, in the American Recovery and Reinvestment Act of 2009, directed the Commission to devise a plan "to ensure that every American has access to broadband capability."⁸³ Globalstar notes that the *National Broadband Plan* acknowledges that the ATC gating criteria have made it difficult for MSS providers to deploy ancillary terrestrial networks and, in particular, that "[r]equiring full satellite coverage prior to initiation of ATC forces MSS licensees to incur substantial costs and obligations ... before integrated ATC can be deployed."⁸⁴ Further, Globalstar points out that the *National Broadband Plan* accordingly recommends that the Commission "take actions that will optimize licensee flexibility sufficient to increase terrestrial broadband use of MSS spectrum, while preserving market wide capability to provide unique mission-critical MSS services."⁸⁵ Globalstar concludes that the benefits that would result from allowing continued deployment of Open Range's rural broadband ATC network pending implementation of the second-generation Globalstar MSS system constitute an overriding public interest justification for granting the requested extensions.⁸⁶

40. Globalstar contends that grant of its request would not subvert the purpose of the ATC gating requirements because the ATC service that Open Range provides is, and will remain, ancillary to Globalstar MSS operation. Globalstar emphasizes that it has been providing MSS since 2000 and asserts that as of September 2009, it had 382,000 MSS subscribers worldwide.⁸⁷ Globalstar also maintains that it has introduced innovative services and invested substantial funds in implementing a second-generation system. It asserts that it will continue to make good use of its assigned spectrum to provide MSS, both up to and following the deployment of second-generation facilities. In this regard, Globalstar asserts that despite the deterioration of S-band subsystems in its first-generation satellites, it added 53,000 new MSS subscribers between September 30, 2008 and September 30, 2009, largely due to the popularity of its "SPOTTM" MSS terminals.⁸⁸

41. Provision of improved broadband service generally serves the public interest. The question in this case, however, is whether that potential benefit is sufficient to override the policy

⁸² *Id.* at 15.

⁸³ Application for Extension of Compliance Deadlines at 15-16, citing Pub. L. No. 111-5 § 6001(k)(2)(D), 123 Stat. 115 (2009).

⁸⁴ Globalstar Opposition at 8, quoting *Connecting America: The National Broadband Plan* (March 16, 2010) ("National Broadband Plan") at 88.

⁸⁵ *Id.* at 8-9, quoting *National Broadband Plan* at 87.

⁸⁶ Application for Extension of Compliance Deadlines at 21.

⁸⁷ *Id.* at 18.

⁸⁸ *Id.* at 18-19. SPOT terminals are transmit-only handheld devices that can be used for location-tracking, transmitting text messages, and sending distress signals with location information to emergency responders. Their use is not affected by the degradation of the S-band transmitters on Globalstar's first-generation satellites.

underlying the ATC gating rules. As we concluded above, the proposed extension would substantially broaden the scope of the waiver, both in duration and in the number of markets and consumers receiving non-compliant terminals. Given the purposes of the ATC rules, we cannot conclude that, on balance, the public interest would be served by an extended period of non-compliance. However, we grant Open Range an STA in a limited set of markets, as detailed below, to provide Open Range additional time to obtain access to other spectrum and to minimize disruption to its customers.

42. This course of action is consistent with the Commission's policy regarding implementation of the National Broadband Plan. As indicated in the Commission's Joint Statement on Broadband, the Commission will consider the Plan's recommendations "through proceedings that provide notice and ample opportunity for comment, allowing the agency to generate robust records."⁸⁹ Thus, to the extent the Commission would consider changes in its rules that might permit more extensive stand-alone terrestrial operations in this frequency band, this action would be taken following a proceeding in which a full record concerning all potentially available options can be developed.⁹⁰

III. OPEN RANGE REQUEST FOR SPECIAL TEMPORARY AUTHORITY

A. BACKGROUND

43. On June 25, 2010, Open Range filed a letter requesting that the Commission issue Open Range special temporary authority (STA) to continue operating on the spectrum licensed to Globalstar.⁹¹ Noting that the Commission had yet to rule on Globalstar's extension application and that the Commission had required that Globalstar meet the coverage and spare satellite requirements of the ATC rules by July 1, 2010 or else cease operation of any ATC facilities, Open Range seeks its own STA for a period of 18 months to continue operating on Globalstar's licensed spectrum. Open Range claims that this time is needed to allow Open Range to explore access to alternative spectrum in its rural markets and to make the changes necessary to accommodate different spectrum.⁹²

44. Open Range has begun deploying service using the spectrum it has leased from Globalstar. In mid-June of this year, Open Range indicated that it had a total of approximately 2,000 active residential customers.⁹³ In its June 25 letter request, Open Range identified 27 markets in which it had launched services by the end of May 2010.⁹⁴ In its July 28 submission, Open Range indicated that as

⁸⁹ *Joint Statement on Broadband*, FCC 10-42 (released March 16, 2010).

⁹⁰ The Commission recently released a *Notice of Proposed Rulemaking and Notice of Inquiry* that takes significant steps towards making additional spectrum available for new investment in mobile broadband networks while ensuring that the United States maintains robust mobile satellite service capabilities, and inquires about how best to increase the value, utilization, innovation and investment in the spectrum for terrestrial services.. In the Matter of Fixed and Mobile Services in the Mobile Satellite Service Bands at 1525-1559 MHz and 1626.5-1660.5 MHz, 1610-1626.5 MHz and 2483.5-2500 MHz, and 2000-2020 MHz and 2180-2200 MHz, *Notice of Proposed Rulemaking and Notice of Inquiry in ET Docket No. 10-142*, FCC 10-126 (released July 15, 2010).

⁹¹ Letter to Mindel De La Torre, Chief of the International Bureau of the FCC, from Joe D. Edge, Counsel to Open Range, dated June 25, 2010 ("Open Range STA Application"). Open Range's request for STA was placed on Public Notice on July 16, 2010. Policy Branch Information, Space Station Applications Accepted for Filing, Report No. SAT-00707 (Jul. 16, 2010). No comments were received.

⁹² Open Range STA Application at 1-2. Open Range also asserts that the 18-month period would be the "minimum time realistically required" to negotiate for new spectrum and accomplish any necessary equipment changes. *Id.* at 1-2 n.5.

⁹³ Letter to Marlene H. Dortch, Secretary, FCC, from Joe D. Edge, Counsel to Open Range, dated June 12, 2010 (reflecting *ex parte* meeting).

⁹⁴ Open Range STA Application, Exhibit 1.

of July 24, 2010 it had [REDACTED] active residential customers in markets covering 256,689 households.⁹⁵ In its September 2 submission, Open Range indicated that as of September 1, 2010 it had [REDACTED] active residential customers in markets covering 491,543 households.⁹⁶ Most recently, in its September 13, 2010 submission, Open Range indicated that other markets subsequently had been built or were in the process of being constructed, and it projected that there would be approximately 1,850,000 households covered by the end of this year.⁹⁷

B. DISCUSSION

45. As a consequence of the suspension of Globalstar's authority for WiMAX ATC stations in the 2483.5-2495 MHz frequency band, which we note was a foreseeable potential risk when Open Range entered into its spectrum leasing agreement with Globalstar, Open Range may not continue to use Globalstar's ATC authority to provide service. However, to provide Open Range some limited additional time to gain access to other spectrum for use in the provision of service while also minimizing disruption to its customers, we grant Open Range a limited STA for 60 days in specified markets identified below. We also attach other conditions on this STA.

46. From the outset, Open Range's use of Globalstar's spectrum pursuant to a spectrum leasing arrangement has been contingent upon Globalstar complying with all of the Commission's requirements associated with the deployment of ATC. In granting Globalstar temporary waivers of the ATC rules in the 2008 *Globalstar/Open Range ATC Order*, the Commission considered the purposes of the ATC gating policy and the concerns expressed by commenters that the interim waiver of those rules might evolve into a long-term exemption of the requirement that the gating criteria be met before ATC can be authorized.⁹⁸ In issuing an interim waiver to permit launching of ATC for an interim period, the Commission made clear that the scope of the waiver was limited and would permit Open Range's deployment pursuant to the RUS loan "subject to termination" if Globalstar's required dates for coming into compliance with gating criteria were not met.⁹⁹ In keeping with the limited scope and conditions of this temporary waiver, the Commission also required that Globalstar and Open Range notify their customers that their services are subject to mandatory suspension in the event that the gating criteria are not met.¹⁰⁰

47. We further note that Open Range, in notifying the Commission in 2007 of its spectrum leasing arrangement with Globalstar, recognized that the spectrum lease did not provide Open Range with

⁹⁵ Open Range July 28, 2010 *ex parte* submission to Marlene Dortch, Secretary, FCC, from Joe D. Edge, Counsel to Open Range ("Open Range July 28 Submission"), exhibit titled "A Progress Report to the FCC, dated July 24, 2010" at 17 (confidential treatment requested) (filed in response to a letter request from Roderick K. Porter, Deputy Chief, International Bureau, FCC, to Joe D. Edge, Counsel to Open Range, dated July 20, 2010 ("July 20, 2010 Letter Request to Open Range")); Open Range September 14, 2010 *ex parte* submission to Marlene Dortch, Secretary, FCC, from Joe D. Edge, Counsel to Open Range ("Open Range September 14 Submission").

⁹⁶ Open Range September 2, 2010 *ex parte* submission to Marlene H. Dortch, Secretary, FCC, from Joe D. Edge, Counsel to Open Range ("Open Range September 2 Submission"), Attachment A (confidential treatment requested); Open Range September 14 Submission.

⁹⁷ Open Range September 13, 2010 *ex parte* submission to Marlene H. Dortch, Secretary, FCC, from Joe D. Edge, Counsel to Open Range ("Open Range September 13 Submission"), Attachment A (confidential treatment requested); Open Range September 14 Submission.

⁹⁸ See *Globalstar/Open Range ATC Order* at ¶¶ 20-23. These commenters included CTIA, Iridium, and Sprint. *Id.*

⁹⁹ *Id.* at ¶ 22-23. See also *supra* para. 17 (arguments raised by CTIA and Iridium in their petitions to deny).

¹⁰⁰ *Globalstar/Open Range ATC Order* at ¶ 23.

the right to use leased spectrum for the provision of terrestrial service if Globalstar, the MSS licensee, failed to meet the ATC gating criteria.¹⁰¹ The express terms of the lease agreement – which Globalstar and Open Range modeled on the Commission’s spectrum leasing rules for terrestrial spectrum,¹⁰² and which the Commission found to be consistent with those policies¹⁰³ – similarly recognize that, as a spectrum lessee, Open Range does not have any greater rights to use the spectrum than Globalstar, the licensee, would have.¹⁰⁴

48. We nonetheless issue a 60-day STA to Open Range to provide additional time to gain access to spectrum that it could use and to minimize disruption to its customers. We temporarily waive Section 2.106, Table of Frequency Allocations, to permit Open Range to continue to offer terrestrial fixed and mobile service in the 2483.5-2495 MHz frequency band for the duration of this STA.¹⁰⁵ We specifically reject Open Range’s request that we provide authorization for a period of 18 months, which would be beyond the 180-day maximum period permitted by statute.¹⁰⁶ We observe that Open Range has been on notice since December 2009, if not longer, that Globalstar would not be able to meet the July 1, 2010, deadline, and thus already has had significant opportunity to seek access to alternative spectrum.

49. In issuing an STA to Open Range, we adopt certain conditions. We provide Open Range authority to operate only in the specific geographic markets listed in Appendix A. This list includes those markets in which Open Range either already is providing service or has projected that it will have launched by the end of this year.¹⁰⁷ If Open Range enters into an agreement for accessing alternative spectrum and presents a plan to transition off the 2483.5-2495 MHz frequencies, we will consider revisiting the terms of the STA to make any appropriate adjustments that would assist Open Range’s customers in transitioning to the use of this alternative spectrum and associated equipment.

IV. CONCLUSION

50. We conclude that Globalstar has not shown good cause for granting the requested

¹⁰¹ Globalstar/Open Range Spectrum Lease Notification at 2 (“an MSS carrier may choose to deploy ATC services through the lease of some or all of its spectrum to a terrestrial provider, so long as the gating criteria contained in the Commission’s rules governing ATC service are met”).

¹⁰² *Id.* at 2 (stating that the Globalstar/Open Range lease agreement is “[c]onsistent with the Commission’s Part 1 rules governing ‘Spectrum Manager’ leases,” and citing the Commission’s Part 1, Subpart X rules that apply to terrestrial spectrum leasing arrangements).

¹⁰³ *Globalstar/Open Range ATC Order* at ¶ 24 (wherein the Commission reviewed the terms of the Globalstar/Open Range lease agreement, the text of which is available as Exhibit 10.3 to Globalstar’s May 2008 10-Q Report to the Security and Exchange Commission).

¹⁰⁴ See Globalstar May 2008 10-Q Report, Exhibit 10.3 (“Spectrum Manager Lease Agreement”); Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets, *Report and Order and Further Notice of Proposed Rulemaking*, 18 FCC Rcd 20604 (2003) at ¶ 91 (applicable service rules apply to the spectrum lessee in the same manner as they apply to the licensee); *see also id.* at ¶ 187; 47 C.F.R. § 1.9020(k).

¹⁰⁵ 47 C.F.R. § 2.106. Because there is no fixed or mobile allocation in the 2483.5-2495 MHz band, we waive the Table of Allocations, 47 C.F.R. § 2.106, to grant Open Range a separate authorization to provide service under the limited terms of the STA.

¹⁰⁶ 47 U.S.C. § 309(f).

¹⁰⁷ See Open Range September 13 Submission, Attachment A (confidential treatment requested). This list includes all of the markets that Open Range indicated that it had already built or in which construction was in progress and the “market date” would be no later than the end of 2010.

additional extensions of time for compliance with the continuous-coverage, spare-satellite, and integrated-service gating requirements.¹⁰⁸ Consequently, we deny Globalstar's extension request. Since Globalstar did not meet the continuous coverage or spare satellite requirements by July 1, 2010, as required by Condition (d) in the *Globalstar/Open Range ATC Order*, Globalstar is required, by the terms of that Condition, to immediately suspend operation of ATC stations in the S-band. As provided for in Condition (d), the suspended operation may resume at such time that Globalstar complies with the continuous coverage and spare satellite requirements. Further, the requirements specified in Condition (e) of the *Globalstar/Open Range ATC Order*, regarding two-way dual-mode MSS/ATC terminals, remain in effect.

51. As a consequence of the suspended ATC operations, Open Range may not continue to operate under Globalstar's ATC authority. We do, however, grant Open Range an STA, for a period of 60 days, to provide Open Range additional time to obtain access to other spectrum for its service and to minimize disruption to its existing customers.

V. ORDERING CLAUSES

52. Accordingly, pursuant to Section 309 of the Communications Act, 47 U.S.C. § 309, IT IS ORDERED that the application for modification of license, File No. SAT-MOD-20091214-00152, IS DENIED. Consequently, Globalstar Licensee LLC's authority for operation of WiMAX ATC stations in the 2483.5-2495 MHz frequency band IS SUSPENDED.

53. IT IS FURTHER ORDERED that the Motion to Hold Globalstar Applications in Abeyance filed by Iridium Satellite LLC on December 31, 2009 IS DISMISSED AS MOOT with respect to the captioned application.

54. IT IS FURTHER ORDERED that Open Range's request for an STA is GRANTED IN PART and DENIED IN PART, and that Open Range IS AUTHORIZED, for a period of 60 days, to provide terrestrial fixed and mobile service in the 2483.5-2495 MHz frequency band, subject to the following conditions:

(a) Open Range is authorized to provide service only in the markets identified in Appendix A, attached hereto;

(b) Open Range is not authorized to provide service in any additional markets;

(c) Operations shall be subject to the technical specifications and conditions identified in the *Globalstar/Open Range ATC Order*, including the conditions specified in paragraphs 35, 36, 41(b) and 41(c) of that Order; and

(d) Open Range shall not cause harmful interference to, and shall not claim protection from, any other lawfully operating station. In the event harmful interference results from operation pursuant to this authorization, Open Range shall cease operations immediately upon notification of such interference, and shall immediately inform the Federal Communications Commission, in writing, of the incident.

¹⁰⁸ Because we have acted to deny Globalstar's license modification request, we consider Iridium's request that we hold Globalstar's pending applications in abeyance moot with respect to the instant application. We therefore partially dismiss Iridium's request. We will address Iridium's request, insofar as it concerns other pending applications, in connection with those other applications.

55. IT IS FURTHER ORDERED that Section 2.106 of the Commission's rules, 47 C.F.R. § 2.106, IS WAIVED, consistent with the terms of Open Range's authorization.

FEDERAL COMMUNICATIONS COMMISSION

Mindel De La Torre
Chief, International Bureau

Ruth Milkman
Chief, Wireless Telecommunications Bureau

Julius Knapp
Chief, Office of Engineering and Technology

APPENDIX A

[REDACTED]