

**DISSENTING STATEMENT OF
COMMISSIONER KATHLEEN Q. ABERNATHY**

*Re: TMI Communications Company, Limited Partnership and TerreStar Networks, Inc.
Application for Review and Request for Stay.*

One of my core principles, and one that I believe is essential in order for effective regulation, is that the FCC aggressively enforce its rules. Failure to enforce rules sends the inappropriate signal that licensees may engage in unlawful conduct with impunity. And, in the case of satellite milestones, failure to enforce our requirements results in spectrum laying fallow and inefficient utilization of the orbital resource.

In the current case, the majority finds that TMI Communications Company (TMI) should be granted a waiver of the first milestone requirement of its license. Under this milestone, TMI was required to execute within one year a non-contingent satellite manufacturing contract. While the majority concedes that TMI did not meet this milestone, it nonetheless grants a retroactive waiver of the requirement and concludes that the underlying purposes of the milestone will not be disserved by providing such relief.

This is simply not true. While I have sympathy for TMI in this proceeding, I think it is mistaken to undermine the Commission's policy of strict milestone enforcement by granting a waiver. To turn compliance into a subjective evaluation undermines the very basis of this policy and, as such, does not meet the requirements of our waiver standard. If the Commission wishes to abandon its milestone policy it must do so via a rulemaking proceeding and not through inconsistent ad hoc waivers.¹

In the long term, I believe that the public interest is best served by requiring strict compliance with our milestone policy. Any approach that relies on something less substantially weakens our milestone enforcement policy and enables licensees to warehouse spectrum. It is for these reasons that I dissent from this order.

¹ For example, in *Joint Application for Review of Constellation Communications Holdings, Inc., Mobile Communications, Inc. and ICO Global Communications (Holdings) Limited*, Memorandum Opinion and Order, FCC No. 04-131 (released June 24, 2004) (ICO Decision), the Commission determined that it should not grant a waiver of its milestone requirement. By denying a waiver in the ICO Decision, but granting one here, we have created an inconsistency in our milestone enforcement, hence creating greater ambiguity for licensees.