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15 March 2002

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MAR 15 2002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

98-237
00-32

BY HAND

William Caton
Acting Secretary
Federal Communications Commission
236 Massachusetts Avenue, N.E.
Suite 110
Washington, D.C. 20002

**Re: Verestar, Inc.
Petition for Waiver of Footnote NG169
to permit Acceptance of Verestar's
Earth Station Modification Applications
as if Timely Filed on December 1, 2000**

**KA20: SES-MOD-20001206-02479; SES-MOD-20010614-0117
E940531: SES-MOD-20001206-02380; SES-AMD-20010525-00967;
SES-AMD-20010919-01736
E950025: SES-MOD-20001206-02282; SES-AMD-20010525-00983
E970267: SES-MOD-20001206-02283; SES-AMD-20010525-01005
E000058: SES-MOD-20001206-02381; SES-AMD-20010525-01006**

Dear Mr. Caton:

Verestar, Inc., through its undersigned counsel, hereby submits this Request for Waiver pursuant to Section 1.3 of the Commission's Rules, 47 C.F.R. § 1.3. An Original and ten copies are enclosed. Please date-stamp and return the enclosed additional copy of this certification.

Respectfully submitted,

Ruth Pritchard-Kelly

Ruth Pritchard-Kelly
Counsel for Verestar, Inc.

Attachments

No. of Copies Filed 0110
List of Attachments

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED

MAR 15 2002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Amendment of the Commission's Rules)
with Regard to the 3650-3700 MHz)
Government Transfer Band)
)
Verestar, Inc.)
Petition for Waiver of Footnote NG169)
to permit Acceptance of Verestar's Earth)
Station Modification Applications as if)
Timely Filed on December 1, 2000)

ET Docket No. 98-237
RM-9411

WT Docket No. 00-32

**To: Chief, Satellite and Radiocommunications Division
International Bureau**

**PETITION FOR WAIVER AND NUNC PRO TUNC ACCEPTANCE OF
APPLICATIONS**

Verestar, Inc. ("Verestar"), pursuant to Section 1.3 of the Commission's Rules,¹ hereby requests waiver of Section 2.106, Footnote NG169, of the Commission's rules² so as to accept *nunc pro tunc* as timely filed, and therefore afforded a co-primary allocation status, five applications that Verestar submitted to modify existing earth station authorizations to use the extended C-band. Those five earth stations are call signs KA20, E940531, E950025, E970267, and E000058.³

¹ 47 C.F.R. §§ 1.3.

² 47 C.F.R. §§ 2.106.

³ The File numbers are:

KA20: SES-MOD-20001206-02479; SES-MOD-20010614-0117

E940531: SES-MOD-20001206-02380; SES-AMD-20010525-00967;
SES-AMD-20010919-01736

E950025: SES-MOD-20001206-02282; SES-AMD-20010525-00983

E970267: SES-MOD-20001206-02283; SES-AMD-20010525-01005

E000058: SES-MOD-20001206-02381; SES-AMD-20010525-01006

I. Background

In the *First Report and Order* in ET Docket No. 98-237,⁴ the Commission set a deadline of December 1, 2000 for any application for FSS earth stations in the 3650-3700 MHz band that wished to be treated with an allocation status co-primary with that of terrestrial services.⁵ Any applications received after that date would receive secondary allocation status.

Verestar filed its modification applications on December 1, 2000. It was only because of administrative problems not the fault of the applicant with both the International Bureau's Filing System ("IBFS") and Mellon Bank that the applications were issued filing dates after the 1st. Undersigned counsel personally prepared the filings, using the IBFS, and is personally knowledgeable about the IBFS system problems, which also contributed to the Mellon Bank problems in properly handling the application fee payments.

Previous discussions with Commission staff have made it clear that electronic filings are much preferred, and Verestar has made every effort in the past -- including in this instance -- to file that way. However, because KA20 for some unknown reason had not been entered in the IBFS (even though it is a valid authorization), an electronic filing could not be made for that call-sign at all. Unfortunately, by the time we realized we would *never* be able to file the application for KA20 electronically, it was too late to

⁴ *In the Matter of Amendment of the Commission's Rules with Regard to the 3650-3700 MHz Government Transfer Band, First Report and Order and Second Notice of Proposed Rule Making*, ET Docket No. 98-237, RM-9411, FCC 00-363 released October 24, 2000 ("*First Report and Order*").

⁵ It was further stipulated that only those earth stations within 10 miles of existing grandfathered stations would be eligible for co-primary status. *See First Report and Order*, ¶ 29 and Appendix F.

make the Commission's paper deadline. As for the other four applications, there were several times that day when Verestar's attorneys could not get in to the IBFS for various lengths of time, which led to working into the evening hours to finish the filing procedure. (Please see the attached confirmations of submission.) Both Mellon Bank and the electronic process, however, only require "date-stamping" by midnight of any given day, so that normally Verestar would not have been concerned about the difficulties with the IBFS. In this case, however, Verestar seems to have been caught in an administrative nightmare, not of its own doing, that threatens to adversely affect the rights Verestar diligently attempted to perfect and the quality of service Verestar provides to the public.

A brief chronology is as follows:

- Friday, Dec. 1, 2000: Verestar submits five earth station modifications: checks sent to Mellon. KA20 unrecognized by the IBFS (and so sent Monday with a motion to be accepted retroactively);⁶ four others successfully filed electronically.
- Mon., Dec. 4, 2000: KA20 sent directly to FCC with motion to be accepted "as if filed Dec. 1, 2000." Undersigned Counsel leaves a voicemail with the IBFS administrators about the filing problems.
- Wed., Dec. 6, 2000: Mellon returns the five checks directly to Verestar (which was not the payer) with a confusing explanation attached -- checking three possible choices. Verestar couriers the checks to Swidler. Undersigned Counsel calls the IBFS administrators, who advise Swidler to resubmit the checks and informs Swidler that the applications won't "show up" until the checks are associated with the applications. Swidler resubmits the same checks to Mellon.
- Mon., Dec. 12, 2000: Undersigned Counsel leaves voicemail for the IBFS administrators because the five applications still don't show up as "system entries."
- Mon. Dec. 20, 2000: Undersigned Counsel leaves voicemail for the IBFS administrators about the applications still not being entered. An administrator return the call, saying they'll look into it right away.

⁶ See attached *Motion of Verestar, Inc. for Permission to File Modification of Earth Station Call Sign KA20*.

- Tues. Dec. 21, 2000: The IBFS administrators calls Swidler to say they only see two checks associated with the four electronically-filed applications, and say that they do not know who might be handling the KA20 application and motion.
- Mon. Jan. 8, 2001: The four electronically-filed application finally show up on the IBFS as entered (although still not KA20), but they are considered as filed on Dec. 6, because that's when Mellon finally registered receipt of the checks.
- Tues. Jan 9, 2001: Undersigned Counsel calls the Division engineers about this mix-up. The engineers say they'll look into it.
- Mon. Jan. 22, 2001: Swidler sends a memo to the Division engineers detailing the administrative errors.
- Fri. May 25, 2001: Swidler attempts to file amendments to the modifications, only to find that KA20 still has not been entered in the IBFS. Swidler calls the IBFS administrators to query what can be done. In the end, the amendment is placed in the IBFS as a modification, as well as the original modification.
- Thu. May 31, 2001: Swidler sends a second memo to the Division engineers detailing the administrative errors.

Mellon Bank's mishandling of the checks is inexplicable. First, Mellon Bank returned the payments, causing a delay in associating the payments with the applications (and therefore delaying the supposed filing date). Five checks and five Form 159s were sent to Mellon on December 1st. (The courier receipt and copies of the 159s are attached.) Each Form 159 was clearly marked with the correct lock-box and respective call sign.

Because the Bank is some hours away from the Commission's headquarters, the checks had to be sent with the courier. Unfortunately, because of the problems with the IBFS, the checks had to be sent before the Verestar applications were finally filed electronically. Although the IBFS has improved enormously in the past year, in December of 2000 it was still often slow to respond, especially on days when there was heavy use. When there had been problems with other applications, Verestar had been able to work successfully with the IBFS administrators to associate all checks with the

electronically filed applications, even when the IB submission number was not on the 159. This time, however, Mellon returned the checks - by mail, with no phone call first - to the *applicant*, not the payer (Swidler). Mellon's pre-printed "check the box" form (a copy of which is attached) shows the confusion on the Bank's part: three different options were checked:

(1) "No application/filing accompanied the submission;" This was because Verestar was filing electronically. Never before has Verestar had a check rejected just because a hard copy did not accompany the check. In fact, in the past when filing non-electronic applications, Verestar has always sent the check to Mellon and the hard copies to the FCC. The call sign of the station was sufficient to associate the payment with the application.

(2) "Multiple checks for a single application;" These were not multiple checks for a single application -- these were five separate checks, with five separate 159s, for five separate applications, all clearly marked with the call signs they were associated with.

(3) "If you are filing electronically, please enter the authorization number in the FCC code 2 block." Verestar *was* filing electronically, but, due to the unresponsiveness of the IBFS, could not get the applications accepted by the IBFS in time to meet the courier's deadline for driving the five hours to Pittsburgh.

Since Verestar had submission ID numbers from its December 1st filing, it was able to resubmit the four checks for the applications for the call signs other than KA20, which were then accepted, but not given the filing date of their original submission. This aggravating series of events has therefore led to the applications' receiving the untenable filing date of December 6th -- technically past the cut-off date for the protection of primary allocation status.⁷

⁷ It should also be pointed out that the Wireless Bureau allows up to three days after submitting an application for receipt of the fee payment, meanwhile granting a filing date as of the submission -- not as of receipt of the payment.

II. Waiver is Warranted

The standard for grant of a waiver of the Commission's Rules is that “the underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest.”⁸ Verestar’s waiver request meets these standards.

A. The Underlying Purpose of the Commission’s Rules would be Frustrated by Application to the Instant Case.

In its *Memorandum Opinion and Order*, the Commission stated that by establishing a cut-off date, it could be assured that any application filed before the cut-off date would be “an expression of immediate need, consistent with the intent of the [Memorandum Opinion and Order].”⁹ This is not a case in which an applicant disregarded a filing deadline but a case in which the applicant’s diligent efforts to meet it were frustrated by deficiencies in the Commission’s processing systems. If the purpose of the cut-off date was to winnow out the truly needy from the merely greedy, Verestar has given repeated and earnest indications of its need for these modifications. Counsel for Verestar repeatedly communicated with staff of the Satellite Division by e-mail, memorandum and personal visit.

It would frustrate the underlying purpose of the FCC’s rules if Verestar were denied the protection of primary allocation status because of administrative errors not its

⁸ 47 C.F.R. § 1.925(b)(3)(i).

⁹ *First Report and Order*, ¶ 29, citing *In the Matter of Amendment of the Commission’s Rules with Regard to the 3650-3700 MHz Government Transfer Band*, *Memorandum Opinion and Order*, ET Docket No. 98-237, RM-9411, 15 FCC Rcd at 9341, ¶ 4.

fault. The purpose of setting an otherwise arbitrary cut-off date is to ease the administrative burden of an endless trickle of interest in the extended C-band. In no way does Verestar's unique situation subvert the underlying purpose of this cut-off date or set a precedent for ignoring Commission rules. Verestar made every effort to file on December 1 but was frustrated by problems with the IBFS and filing fee management contractor. A denial of this waiver would be a severe injustice to the American users dependent on Verestar for access to the skies.

B. Waiver and Nunc Pro Tunc Acceptance of the Applications as Timely Filed on December 1 Would be in the Public Interest.

As the country's premier operator of public teleports, Verestar is relied upon by its customers to have fully functional and flexible access to the world's satellites. Verestar currently has at least three customers that actively use the extended C-band, and the modifications to these earth stations are crucial to continued reliability of service. The Commission need not fear that grant of Verestar's waiver request will "impede any potential widespread use of the band for terrestrial services,"¹⁰ nor is Verestar's request "unrestrained."¹¹ It is very specific to the five particular stations that its teleports need to use for back-up and redundancy protection. These stations are all within areas already protected by grandfathered stations, so there is no imposition of a new "exclusion zone" for terrestrial users by granting these applications.¹² Should these stations not be available to support the existing customers and supply redundancy to the grandfathered stations, the potential disruptions in service would negatively affect the continuity of

¹⁰ *Id.*

¹¹ *First Report & Order*, ¶ 18.

¹² *Id.*

Verestar's operations. Avoiding such disruption of existing service to the public has long been one of the Commission's primary policy goals. At the same time, none of the Commission's objectives would be served by denying waiver of the cut-off rule.

III. Conclusion

These earth station license modifications are vital for Verestar and its existing customers. It would be enormously difficult to continue offering reliable service to these customers should Verestar's earth stations not have the primary protection afforded modifications filed on or before December 1, 2000. If the point of setting a cut-off date is to ascertain which operators truly need the extended C-band, Verestar's repeated and extensive actions in trying to get its modifications filed in time stand as proof of its interest in, and need for these bands.

Verestar has shown every possible "expression of immediate need," and would be severely disadvantaged should the Commission not consider these five applications as timely filed. Therefore, Verestar respectfully requests the Commission to grant its request to consider these applications as timely filed by December 1, 2000.

Respectfully submitted,

VERESTAR, INC.

By: 
Ruth Pritchard-Kelly
Counsel to Verestar, Inc.
(202) 295-8423

cc: Michael Milsom
Robert Hanson
Scott Lyon
Scott Anderson
Helen Disenhaus
Wendy Creeden

15 March 2002

399210

ATTACHMENT 1
IBFS SUBMISSION CONFIRMATIONS

E940531

FCC IBFS - Electronic Filing

Submission_id :IB2000000998
Successfully filed on :Dec 1 2000 7:04:53:383PM

[Return to Main Menu](#)

E950075

FCC IBFS - Electronic Filing

Submission_id :IB2000000999
Successfully filed on :Dec 1 2000 7:15:28:626PM

[Return to Main Menu](#)

EQ70267

FCC IBFS - Electronic Filing

Submission_id :IB2000001001
Sucessfully filed on :Dec 1 2000 7:31:38:530PM

[Return to Main Menu](#)

Submission_id :1B2000001002
Sucessfully filed on :Dec 1 2000 7:41:30:940PM

+ 000058

[Return to Main Menu](#)

ATTACHMENT 2

KA20 MOTION TO BE FILED

SWIDLER BERLIN SHEREFF FRIEDMAN, LLP

3000 K STREET, NW, SUITE 300
WASHINGTON, DC 20007-5116
TELEPHONE (202)424-7500
FACSIMILE 202-424-7645

DATE STAMP & RETURN

NEW YORK OFFICE
405 LEXINGTON AVENUE
NEW YORK, NY 10174

December 4, 2000

VIA COURIER

Magalie Roman Salas, Secretary
Federal Communications Commission
445 12th St., NW
Washington, DC 20554

RECEIVED

DEC 4 2000

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: ET Docket No. 98-237; RM-9411 – Amendment of the Commission's Rule with
Regard to the 3650-3700 MHz Government Transfer Band

Motion of Verestar, Inc. for Permission to File Modification of Earth Station
Call Sign KA20

Dear Ms. Salas:

Verestar, Inc., by its attorneys, respectfully requests permission to submit an earth station modification to call sign KA20 to be considered for co-primary authorization with terrestrial services in the extended C band. The above-captioned proceeding allowed for such modifications to be filed only until December 1, 2000 (last Friday). Verestar attempted to submit its modification electronically on December 1st, but the International Bureau's Filing System ("IBFS") refused to accept the document. This is because the IBFS does not yet have all of the older earth station authorizations entered in its database, and even though KA20 is a valid authorization, since the call sign was not in the IBFS, the IBFS refused to accept the application.

Verestar now submits an original and three copies of its Motion and application to modify call sign KA20. Verestar submitted payment to Mellon Bank's lockbox last Friday.

Sincerely,



Ruth Pritchard-Kelly
Counsel for Verestar, Inc.

cc: Sylvia Lam, International Bureau
Jackie Ponti, International Bureau
Robert E. Hanson

ATTACHMENT 3

DATE STAMPS, CHECK COPIES, COURIER RECEIPT

READ INSTRUCTIONS CAREFULLY BEFORE PROCEEDING

FEDERAL COMMUNICATIONS COMMISSION REMITTANCE ADVICE

APPROVED BY OMB 3060-0589

(1) LOCKBOX # 358160

PAGE NO 1 OF 1

SPECIAL USE
FCC USE ONLY

SECTION A - PAYER INFORMATION

(2) PAYER NAME: Swidler Berlin Shereff Friedman LLP
(3) TOTAL AMOUNT PAID: 145.00
(4) STREET ADDRESS LINE NO. 1: 3000 K Street, N.W.
(5) STREET ADDRESS LINE NO. 2: Suite 300
(6) CITY: Washington
(7) STATE: DC
(8) ZIP CODE: 20007
(9) DAYTIME TELEPHONE NUMBER: (202) 424-7500
(10) COUNTRY CODE: (if not in U.S.A.)

DATE STAMP & RETURN

IF PAYER NAME AND THE APPLICANT NAME ARE DIFFERENT, COMPLETE SECTION B IF MORE THAN ONE APPLICANT, USE CONTINUATION SHEETS (FORM 159-C)

SECTION B - APPLICANT INFORMATION

(11) APPLICANT NAME: Verestar, Inc.
(12) STREET ADDRESS LINE NO. 1: 3040 Williams Drive
(13) STREET ADDRESS LINE NO. 2: Suite 600
(14) CITY: Fairfax
(15) STATE: VA
(16) ZIP CODE: 22031
(17) DAYTIME TELEPHONE NUMBER: (978) 720-2566
(18) COUNTRY CODE: (if not in U.S.A.)

COMPLETE SECTION C FOR EACH SERVICE, IF MORE BOXES ARE NEEDED, USE CONTINUATION SHEETS (FORM 159-C)

SECTION C - PAYMENT INFORMATION

Table with columns for FCC Call Sign/Other ID, Payment Type Code (PTC), Quantity, Fee Due For (PTC) in Block, and FCC Code 1 & 2. Includes entries for E940531, C G X, 1, 145.00, and 1B200000998.

SECTION D - TAXPAYER INFORMATION (REQUIRED)

(28) PAYER TIN: 0132679676
(29) APPLICANT TIN: 0043457136

SECTION E - CERTIFICATION

(27) CERTIFICATION STATEMENT: I, Ruth Pritchard-Kelly, Certify under penalty of perjury that the foregoing and supporting information are true and correct to the best of my knowledge, information and belief. SIGNATURE: [Signature]

SECTION F - CREDIT CARD PAYMENT INFORMATION

(30) CREDIT CARD PAYMENT INFORMATION: Includes fields for MASTERCARD, VISA, ACCOUNT NUMBER, EXPIRATION DATE, AUTHORIZED SIGNATURE, and DATE.

REF. #	INV #	DATE	INVOICE AMOUNT	INVOICE DESCRIPTION	AMOUNT PAID
132858	ST120100D	12-01-00	145.00		145.00
<p>CUSTOMER NO.</p>					

Safeguard

ORIGINAL DOCUMENT IS PRINTED ON CHEMICAL REACTIVE PAPER & HAS A MICROPRINTED BORDER

SWIDLER BERLIN SHEREFF FRIEDMAN, LLP
 3000 K STREET, N.W. SUITE 300
 WASHINGTON, DC 20007

CHECK DATE
 12/01/00

CHECK NO. D 126775

Citibank DC Operating
 1775 Pennsylvania Avenue, NW
 Suite 440
 Washington, DC 20006

CHECK AMOUNT
 145.00*****

ONE HUNDRED FORTY-FIVE AND 00/100 Dollars

TWO SIGNATURES REQUIRED ON CHECK
 OVER \$10,000.00



PAY
 TO THE
 ORDER OF

FCC

OPERATING ACCOUNT

CALL SIGN E970267

THE REVERSE SIDE OF THIS DOCUMENT INCLUDES AN ARTIFICIAL WATERMARK - HOLD AT AN ANGLE TO VIEW

⑈ 26775⑈ ⑆ 254070116⑆ ⑈ 37402064⑈

REF. #	INV. #	DATE	INVOICE AMOUNT	INVOICE DESCRIPTION	AMOUNT PAID
132863	ST120100F	12-01-00	145.00		145.00
<p>CUSTOMER NO.</p>					

Safeguard® 1140 USA 3FSLD 047508113U 11297

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SWIDLER BERLIN SHEREFF FRIEDMAN, LLP
 3000 K STREET, N.W. SUITE 300
 WASHINGTON, DC 20007

CHECK DATE
 12/01/00

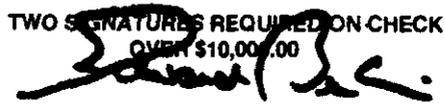
CHECK NO. D 126777

Citibank DC Operating
 1775 Pennsylvania Avenue, NW
 Suite 440
 Washington, DC 20006

CHECK AMOUNT
 145.00*****

ONE HUNDRED FORTY-FIVE AND 00/100 Dollars

TWO SIGNATURES REQUIRED ON CHECK
 OVER \$10,000.00



PAY TO THE ORDER OF
 FCC

OPERATING ACCOUNT

CALL SIGN E000058

THE REVERSE SIDE OF THIS DOCUMENT INCLUDES AN ARTIFICIAL WATERMARK - HOLD AT AN ANGLE TO VIEW

⑈ 1 26 77 7 ⑈ ⑆ 254070116⑆ ⑈ 37402064⑈

REF. #	INV. #	DATE	INVOICE AMOUNT	INVOICE DESCRIPTION	AMOUNT PAID
132865	ST120100G	12-01-00	145.00		145.00
<p>Safeguard™</p>					
<p>CUSTOMER NO.</p>					

ORIGINAL DOCUMENT IS PRINTED ON CHEMICAL REACTIVE PAPER & HAS A MICROPRINTED BORDER

SWIDLER BERLIN SHEREFF FRIEDMAN, LLP
 3000 K STREET, N.W. SUITE 300
 WASHINGTON, DC 20007

CHECK DATE
 12/01/00

CHECK NO. D 126778

Citibank DC Operating
 1775 Pennsylvania Avenue, NW
 Suite 440
 Washington, DC 20006

CHECK AMOUNT
 145.00*****

ONE HUNDRED FORTY-FIVE AND 00/100 Dollars

TWO SIGNATURES REQUIRED ON CHECK
 OVER \$10,000.00

PAY
 TO THE
 ORDER OF

FCC

[Signature]
 OPERATING ACCOUNT

CALL SIGN E950025

THE REVERSE SIDE OF THIS DOCUMENT INCLUDES AN ARTIFICIAL WATERMARK. HOLD AT AN ANGLE TO VIEW

⑈ 26778⑈ ⑆ 254070116⑆ ⑈ 37402064⑈

MW

F.C.C. SHUTTLE

8900 Telegraph Road
Lorton, VA 22079
(703) 550-5000
FAX: (703) 550-5031

conf. # 1328369

Client Reference: 15636.0003

Date: 12/1/00

Description of Filing: Earth Station Applications
extended Cha
Application
Report
Other

F.C.C. Form Number 405 Number of Copies Original
F.C.C. Box Number 358160 Copy for Date Stamp 2
Facilities Specified _____

Name and Address of Filing Agent: Ruth Prochard-Kelly
Sindler Berin Sieck Friedman
3000 K Street, N.W., #300
Wash, DC 20007

Filers Account Number 15081

Name of Applicant Virestar, Inc.

Certification of Pick Up

I Hereby certify that the F.C.C. Application/Report/Other described above was picked up by me
on _____ day of _____ 199_____.

By: [Signature] Date: 12 Time: _____

Certification of Delivery

I Hereby certify that the F.C.C. Application/Report/Other described above was filed and the accompanying fee
tendered to the Mellon Bank in Pittsburgh, PA. on _____ day of _____ 199_____.

By: _____ Date: _____ Time: _____

ATTACHMENT 4

EMAILS

Creeden, Wendy

From: Pritchard-Kelly, Ruth
Sent: Friday, December 01, 2000 7:21 PM
To: 'jponti@fcc.gov'; 'sburnham@fcc.gov'
Cc: 'slam@fcc.gov'; Robert J. Hanson (E-mail); Disenhaus, Helen; Creeden, Wendy
Subject: Inability to modify e/s KA20 bcz its file # not on IBFS

Hello Jackie and Shawana --

Just now (Friday) I have been unable to file a modification to call sign KA20 because its old file number is not entered in the IBFS database. (The file number is CSG-93-007-P/L, and is still valid.) Today was the last day for filing modifications to use the extended C-band and still have the earth station be given co-primary status with terrestrial users. It is extremely important to our client that this application be considered as filed on time, so that it can be considered for co-primary authority to use the extended C-band. I hope that - since our inability to file the application stems from a quirk of the database - the Commission will consider a waiver and allow us to file this application as soon as one of you can correct the IBFS database. Please let me know how we can work this out as soon as possible. Thank you.

(If it's helpful, our client's account number is 245230 and the password is "holm".)

Ruth Pritchard-Kelly

Swidler Berlin Shereff Friedman, LLP
Washington, D.C.
U.S.A.
email: RPKelly@swidlaw.com
phone: +202-295-8423

The preceding E-mail message contains information that is confidential, may be protected by the attorney/client or other applicable privileges, and may constitute non-public information. It is intended to be conveyed only to the designated recipient(s). If you are not an intended recipient of this message, please notify the sender at (202) 295-8423. Unauthorized use, dissemination, distribution, or reproduction of this message is strictly prohibited and may be unlawful.

ATTACHMENT 5
MELLON BANK FORM LETTER

Verestar, Inc.
3040 Williams Dr.
Suite 600
Fairfax, VA. 22031

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

RE: CALL SIGN/ID

FCC CODE #1 _____

FCC CODE #2 —0—

12-4-00
KA20
E970267
E940531
E000058
E950025

Dear FCC Customer:

Re: Return of Unprocessable Application

This is to notify you that your application package is being returned for the following reasons:

- No application/filing accompanied your submission. *
- No remittance accompanied your submission. Please refer to the appropriate Fee Filing Guide.
- The remittance for payment type code _____ is now \$ _____.
- Your check is not acceptable for this reason _____.
- Multiple checks for a single application are not accepted, please send one check for \$ 72,500.
- No remittance advice (FCC Form 159) accompanied your submission.
- The payment type code is needed.
- The remittance advice form is incomplete or obsolete.
- When paying with a single remittance and filing for more than one applicant, or filing more than one call sign/identifier, each item must be listed individually on FCC Form 159/159C Remittance Advice.
- The credit card section of FCC Form 159 Remittance Advice needs _____ Expiration date _____ Signature.
- Block 3 must be completed (please enter \$ _____) to authorize a credit card charge, only the credit card holder can complete this item.
- Your credit card was denied by Authorizations; please confirm or correct card number.
- Your credit card was declined; if any question, please contact bank that issued card.
- Please sign the application form; original signature required (not photocopy or stamp).
- Please include a signed form FCC574R, FCC405A, FCC601 or FCC605. Signature must be original; photocopy or facsimile stamp not acceptable.

OTHER: IF YOU ARE FILING ELECTRONICALLY, PLEASE ENTER THE AUTHORIZATION NUMBER IN THE FCC CODE 2 BLOCK
Please refer to the enclosed Fee Filing Guide for further instructions, and mail your corrected application, remittance advice form and payment to the appropriate P. O. Box in Pittsburgh, PA.

If you have further questions, please contact the FCC at: 1-888-225-5322 or 202-418-1995

Sincerely,
FCC Financial Operations

For Office Use Only

1267B
126775
126776
122777
126776
Enclosures: INT, SAT
Filing Guide
Check(s) # 5 \$ 175⁰⁰ EA
FCC Form(s) 159 ONLY

Rec'd. in P. O. Box # 160

Proc #1 1499
Proc #2 1785

ATTACHMENT 6

FIRST MEMO TO RON REPASI

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MEMORANDUM

VIA FACSIMILE

TO: Ronald Repasi

FROM: Ruth Pritchard-Kelly

DATE: January 22, 2001

RE: Mellon Bank Mishandling of Verestar's Payments for Extended C-band Earth Station Modifications to Call Signs KA20, E940531, E950025, E970267, and E000058

To follow up on our conversation of last week, on behalf of Verestar, Inc., we would like to detail Mellon bank's mishandling of Verestar's payments for its applications to modify existing earth stations to add frequencies in the extended C-band. As you know, applications for the extended C-band had to have been filed by December 1, 2000 if they wished to receive co-primary protection from interference. As such, we worked hard to get these five applications filed by that deadline, and were distressed to hear that they might not be considered as filed on time due to several circumstances beyond our control.

A brief chronology, which is explained more fully below, is as follows:

- Friday, Dec. 1, 2000: Verestar submits five earth station modifications: checks sent to Mellon. KA20 unrecognized by the IBFS (and so sent Monday with a motion to be accepted retroactively); four others successfully filed electronically.
- Mon., Dec. 4, 2000: KA20 sent directly to FCC with motion to be accepted "as if filed Dec. 1, 2000." I leave Shawana voicemail about the filing problems.
- Wed., Dec. 6, 2000: Mellon returns the five checks to Verestar with a confusing explanation attached, checking three possible choices. Verestar couriers the checks to me. I call Shawana, who advises me to resubmit the checks and tells me the applications won't show up until the checks are associated with the applications. I resubmit the same checks.
- Mon., Dec. 12, 2000: I leave Shawana voicemail because the five applications still don't show up as "system entries."
- Mon. Dec. 20, 2000: I leave Shawana voicemail about the applications still not being entered. I leave Jackie voicemail about the same thing. Jackie returns my call, saying she'll have Shawana look into it right away.

Tues. Dec. 21, 2000: Shawana calls - she only sees two checks associated with applications, and says she'll look into the other two electronically-filed applications. She has no idea who might be handling the KA20 application and motion.

Mon. Jan. 8, 2001: I call Shawana - the four electronically-filed application finally show up as entered, but I still don't see KA20. She will try to find out who is handling it. Jeannette Spriggs calls - she has the four electronically-filed applications, but she tells me they are considered as filed on Dec. 6, because that's when Mellon finally registered receipt of the checks. She has no idea who has KA20.

Tues. Jan 9, 2001: I call you, Ron, to ask about this mix-up.

There were two separate problems that have worked to frustrate these applications: Mellon Bank's mix-up with the checks, and problems with the IBFS. First, Mellon Bank returned the payments, causing a delay in associating the payments with the applications (and therefore delaying the supposed filing date). Five checks and five Form 159s were sent to Mellon on December 1st. (The courier receipt and copies of the 159s are attached.) They were clearly marked with the correct lock-box and call sign. The Bank is some hours away, and therefore the checks had to be sent with the courier before we had successfully filed the electronic applications. As you may know, the International Bureau's Filing System ("IBFS") can sometimes be slow to respond, especially on days when there is heavy use. Nonetheless, in the past we have successfully been able to associate all checks with the electronically filed applications even when the IB submission number was not on the 159. (I credit Jackie Ponti and Shawana Burnham for their excellent handling of such IBFS problems.) Mellon returned the checks - by mail, with no phone call first - to the *applicant*, not the payor (Swidler). Mellon's explanatory form-memo (a copy of which is attached) shows the confusion on their part: three different options were checked:

- (1) "No application/filing accompanied the submission;" This was because we were filing electronically. Never before have we had a check rejected just because a hard copy did not accompany the check. In fact, in the past when filing non-electronic applications, we have always sent the check to Mellon and the application hard-copies to the FCC.
- (2) "Multiple checks for a single application;" These were not multiple checks for a single application -- these were five separate checks and five separate 159s for five separate applications, all clearly marked with the call signs they were for.
- (3) "If you are filing electronically, please enter the authorization number in the FCC code 2 block." We *were* filing electronically, but couldn't get the applications accepted by the server in time to meet our courier's deadline for driving to Pittsburg.

The second problem was with the IBFS. We know from previous discussions with your staff that electronic filings are much preferred, and so we always try to file that way. However, KA20 wasn't entered in the IBFS, and so an electronic filing could not be made for that call-sign at all. By the time we realized we would *never* be able to file KA20 electronically, it was too late to make the Commission's paper deadline. Furthermore, there were times that day when we could not get in to the IBFS for various lengths of time, which was why we were working into the evening hours to finish the filing procedure. Both Mellon Bank and the electronic process

only require "date-stamping" by midnight of any given day, so that normally we would not have been concerned about the difficulties with the IBFS holding us up past the normal 7:00 filing deadline. In this case, however, we seem to have been caught in a small cyclone, and would deeply appreciate your help in rectifying the situation.

cc: Jackie Ponti
Helen E. Disenhaus

ATTACHMENT 7
SECOND MEMO TO RON REPASI

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MEMORANDUM

VIA FACSIMILE

TO: Ron Repasi
Sylvia Lam
Jeannette Spriggs
Frank Peace

FROM: Ruth Pritchard-Kelly

DATE: May 31, 2001

RE: Verestar's Extended C-band Modifications:
KA20, E940531, E950025, E970267, and E000058.

In response to your request, we are attaching a variety of documents pertaining to Verestar's five modifications for extended C-band frequencies that we tried to file last December 1, 2000.

All five had IBFS problems: one could not be filed electronically at all (KA20), and the other four had server problems and could not be filed until late on the evening of December 1. Since the courier to Pittsburgh takes five hours, we had to send the checks up before we succeeded in electronically filing those four, and so the checks went up without an electronic submission ID number - just the call sign. Mellon sent the checks back to us, seemingly confused as to what to do with them. (Please see attached form letter from Mellon.) By then we had electronic submission ID numbers, and so we resubmitted the four checks, which were then accepted.

Meanwhile, for the one application that couldn't be filed electronically at all (because its call sign wasn't listed in the IBFS), we submitted it by hand delivery the next business day (and sent the check to Mellon), requesting that it be considered "as if filed on December 1." (Please see attached submission letter, check, and courier receipt.) There were several weeks of confusion about what was filed (please see the attached earlier memo we sent), and as of today, KA20 still does not have a file number for its modification.

Most recently, we attempted to file additional frequency coordination information, and while we were able to amend the four pending modifications that have been assigned file numbers, we were not able to electronically file an amendment to KA20, because the IBFS would not accept an amendment since it has not pending modifications file number.

I can not stress enough how vital these modifications are for Verestar. As the country's premier operator of public teleports, Verestar is relied upon by its customers to have fully functional and flexible access to the world's satellites. Verestar currently has at least three customers that actively use the extended C-band, and the modifications to these earth stations are crucial. It would be difficult to continue offering reliable service to these customers should Verestar's earth stations not have the "primary" protection afforded modifications filed on or before December 1, 2000.

If the point of setting a cut-off date is to ascertain which operators truly need the extended C-band, Verestar's actions in trying to get its modifications filed in time stand as proof of its interest in, and need for these bands.

For easier reference on your part, the file numbers are as follows:

E940531 - SES-MOD-20001206-02380; amending information filed as IB2001000643
E950025 - SES-MOD-20001206-02282; amending information filed as IB2001000644
E970267 - SES-MOD-20001206-02283; amending information filed as IB2001000645
E000058 - SES-MOD-20001206-02381; amending information filed as IB2001000646
KA20 has no MOD file number as yet; its existing file number is SES-LIC-19921013-00010

Thank you very much for looking into this.

attachments: KA20's December 1 check (front and back)
December 1 courier receipt
KA20 letter
Mellon's form
First memo to R. Repasi

cc: Helen E. Disenhaus
R. Hanson
M. Milsom