

Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of the Application of)
)
Globalstar, L.P. and L/Q Licensee, Inc.,) IB Docket No. 03-136
Transferors,)
)
and)
)
New Globalstar Corporation,)
Transferee,)
)
for Consent to Assignment and Transfer of)
Control of Licenses and Authorizations)
pursuant to Sections 214(a) and 310(d) of the)
Communications Act of 1934)

To: The Commission

**COMMENTS OF
THE OFFICIAL CREDITORS' COMMITTEE OF GLOBALSTAR, L.P.**

The Official Creditors' Committee (the "Committee") of Globalstar, L.P. ("Globalstar"), hereby submits these comments in support of the New Globalstar Corporation ("New Globalstar") applications seeking the consent of the Federal Communications Commission ("Commission") for the assignment and transfer of control of the licenses and authorizations held by Globalstar and its affiliates to New Globalstar pursuant to Sections 214(a)¹ and 310(d)² of the Communications Act of 1934, as amended (the "Act").³

¹ See 47 U.S.C. § 214(a).

² See 47 U.S.C. § 310(d).

³ See *New Globalstar Corporation seeks Consent to Assignment and Transfer of Control of Licenses and Authorizations held by Globalstar, L.P. Subsidiaries and Affiliate*, Public Notice, DA 03-1932, IB Docket No. 03-136 (rel. June 12, 2003).

As discussed in greater detail below, the Commission should approve the New Globalstar applications on an expedited basis. The proposed transaction will benefit the public interest by securing the Globalstar mobile satellite services (“MSS”) system’s (the “Globalstar System”) continued financial and operational viability, which will enable the public to continue to benefit from the unique and ubiquitous services offered by Globalstar as enhanced by the additional capital resources and expertise that ICO will bring to the reorganized New Globalstar. Further, the proposed transaction does not raise any anti-competitive concerns.

I. Background.

Globalstar currently provides a diverse array of communications services to over 93,000 subscribers, many of whom are involved in national defense, homeland security, disaster relief, humanitarian assistance and other critical tasks.⁴ Further, Globalstar has become the world’s most widely used handheld satellite phone service.

Despite this success, Globalstar has thus far been unable to achieve the subscriber levels necessary to maintain financial stability. Further, Globalstar suffered from the same economic conditions that drove hundreds of communications companies into bankruptcy and caused billions of dollars in market capital to evaporate in 1999 and 2000. In January, 2001, Globalstar defaulted on various debt instruments, credit facilities and vendor financing agreements to conserve cash for operations. After a year of efforts to restructure its debt, Globalstar and three wholly owned subsidiaries filed for Chapter 11 bankruptcy protection on February 15, 2002. On the same date, Globalstar’s managing general partner, Loral/QUALCOMM Satellite Services, L.P. (“LQSS”), and LQSS’s general partner and the parent of L/Q Licensee, Inc. (“LQL”),

⁴ See Attachment B to Joint Comments of L/Q Licensee, Inc.; Globalstar, L.P.; and Globalstar USA, L.L.C., IB Docket No. 02-364 (filed July 11, 2003) (*Joint Comments*).

Loral/Qualcomm Partnership, LP, also filed Chapter 11 petitions in Delaware. LQL itself did not file a Chapter 11 petition.

Since January, 2001, Globalstar has been working with its financial and legal advisors to develop a plan for restructuring the company's debt, the key component of which involves finding new investors and emerging from bankruptcy with its pre-existing debt substantially reduced. On April 25, 2003, the U.S. Bankruptcy Court for the District of Delaware ("Bankruptcy Court") approved an investment transaction pursuant to which Globalstar's assets will be transferred to a new company, New Globalstar, to be controlled by ICO Global Communications (Holdings) Limited (individually or together with its subsidiaries, "ICO"). Under the proposed transaction, ICO, a Delaware corporation, will own 54 percent of the equity interests and 80 percent of the voting interests in New Globalstar. Globalstar initially will own the remaining 46 percent of the equity interests and 20 percent of the voting interests in New Globalstar. Globalstar's ownership interests in New Globalstar ultimately will be distributed to the Globalstar creditors in proportion to the value of their allowed claims against the estate.

On May 27, 2003, New Globalstar filed five applications (the "Applications") pursuant to sections 214 and 310(d) of the Act, seeking Commission approval of the proposed assignment or transfer of control of certain Commission authorizations relating to the operation of the Globalstar System, from Globalstar or LQL to New Globalstar.

In the interim period during which regulatory and government approvals for the proposed transaction are under consideration, the Globalstar System is funded by a debtor-in-possession ("DIP") loan provided by ICO. The ICO loan, which is convertible into equity in New Globalstar upon consummation of the proposed transaction, replaces a \$12 million DIP loan

provided by a consortium of six lenders, including ICO, in February, 2003. As of March 31, 2003, Globalstar had drawn \$4.026 million of the ICO loan to help cover its operating expenses.⁵

II. The proposed transaction promotes the public interest, convenience and necessity.

Pursuant to Section 310(d) of the Act, the Commission must determine whether the public interest, convenience and necessity supports Commission grant of the Applications in light of any potential harms.⁶ As discussed below, the proposed transaction benefits the public interest by ensuring the continued financial viability of the Globalstar System and by creating the opportunity for New Globalstar to operate more efficiently and effectively with an infusion of capital and expertise from ICO, a company with extensive satellite communications experience.

A. *The Globalstar System provides vital communications services to a broad array of customers, and will be better able to fully realize the public interest benefits of MSS upon approval of the Applications.*

The Globalstar System allows its 93,000 subscribers to instantly establish communications virtually anywhere in the world without the need to establish a terrestrial infrastructure. As a result, the Globalstar System is the ideal choice for individuals and organizations that must operate in regions in which no communications infrastructure exists (e.g., Afghanistan or wilderness areas in the United States) or the existing infrastructure is badly damaged (e.g., Iraq or areas that have suffered a natural or man-made disaster.)

Consumers have increasingly relied on the Globalstar System for their mission critical communications needs. Globalstar's subscriber base grew by more than 29% in 2002 and an

⁵ See Globalstar Telecommunications Limited and Globalstar, L.P., Form 10-Q, filed March 31, 2003 at 10 (*March 31 10-Q*).

⁶ See, e.g., *Motient Services Inc. and TMI Communications and Company, LP, Assignors, and Mobile Satellite Ventures Subsidiary LLC, Assignee*, Order and Authorization, DA 01-2732, 16 FCC Rcd 20469, 20473, ¶ 11 (Int'l Bur. 2001) (*Motient Services Order*).

additional 13% in the first half of 2003 alone.⁷ In addition, Globalstar has seen its total system usage almost double in the last calendar year.⁸ This growth is impressive considering that Globalstar has been operating without an advertising budget in a highly competitive market and is hampered by consumer concerns regarding its financial situation and long-term viability. The Committee believes that Globalstar is likely to experience even greater demand for its services once the uncertainty of Globalstar's financial situation is resolved and Globalstar's successful emergence from bankruptcy is assured. Commission approval of the Applications will ensure that Globalstar is able to meet this pent-up demand for MSS services, which will serve the interest of both Globalstar and the public at large. The Commission should therefore grant the Applications without further delay.

B. *The proposed transaction is pro-competitive.*

The Commission's public interest analysis under the Act must consider the competitive effects of the proposed transfer.⁹ The merger of the resources and expertise provided by ICO and Globalstar will lead to a variety of pro-competitive effects, not the least of which will be the certain preservation of Globalstar as a going concern. By contrast, the proposed transaction will have no concomitant anti-competitive effects.

1. The proposed transaction will have a number of favorable effects on competition in the MSS market.

As noted above, ICO has demonstrated its willingness to risk substantial capital resources to secure and expand Globalstar's operations. In addition, ICO has over a decade of experience in the domestic and international MSS industries which ICO will bring to the management and

⁷ See *Joint Comments*, *supra* note 4 at 5-6.

⁸ See *Joint Comments*, *supra* note 4 at Attachment A.

⁹ See, e.g., *AT&T/BT Order*, 14 FCC Rcd at 19148.

operation of Globalstar to increase system efficiencies and opportunities. The combination of this expertise with the experience of Globalstar's current management in operating Globalstar's best-of-class MSS system will leave New Globalstar ideally positioned to substantially expand operations and take advantage of new and existing business opportunities, both in the U.S. and abroad. Further, ICO and New Globalstar may be able to realize significant synergies resulting in substantial cost savings once ICO's 2 GHz system is deployed.

Further, the Commission's decision to permit MSS systems to deploy an ancillary terrestrial component ("ATC") will greatly increase the efficiency and utility of MSS systems, including the Globalstar System, by enabling ubiquitous system coverage, including indoor and urban areas.¹⁰ ICO has been one of the leading proponents of ATC, recognizing that the improved system capabilities and increased spectral efficiencies realized by MSS ATC systems will likely provide the MSS industry with far greater success than has been previously realized.¹¹ Commission grant of the Applications will pave the way for the necessary infusion of capital and expertise for Globalstar to develop and deploy an ATC system, a service which the Commission has found to be in the public interest.

Finally, as further discussed in Section C below, the viability of the Globalstar System is threatened if Globalstar is unable to effectuate the reorganization plan approved by the Bankruptcy Court. This result is not consistent with the public interest. Any such reduction in

¹⁰ See *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*, IB Docket Nos. 01-185, 02-364, Report and Order and Notice of Proposed Rulemaking, 18 FCC Rcd. 1962 (2003).

¹¹ See, e.g., *New ICO Global Communications (Holdings) LTD.*, Docket No. 99-81, *Ex Parte*, at 2 (filed Mar. 8, 2001) ("[P]erhaps the most important benefit of the ATC concept is that it will allow the 2 GHz MSS service itself . . . to become a viable enterprise.").

competition in the MSS market would limit consumer choice and prevent Globalstar from driving equipment and per-minute cost reductions in the MSS industry.¹²

2. The proposed transaction will not result in any anti-competitive effects.

At present, four companies—Iridium Satellite LLC (“Iridium”), Inmarsat Ltd. (“Inmarsat”), The Boeing Company (“Boeing”), and Mobile Satellite Ventures Subsidiary LLC (“MSV”)—currently operate systems that compete with Globalstar in the provision of domestic MSS services, and both Inmarsat and MSV serve substantially more subscribers than Globalstar.¹³ Thus, Globalstar currently has no ability whatsoever to exercise market power in the MSS industry. In addition, the Commission also has assigned Iridium, Boeing, and Celsat America, Inc. (“Celsat”) 2 GHz MSS licenses,¹⁴ and both MSV and Inmarsat are in the process of deploying advanced second generation systems.¹⁵ Therefore, even if controlled by ICO, New Globalstar is highly unlikely to have market power in the future. More importantly, ICO currently does not compete in the MSS market and, at most, can only be considered a potential

¹² See, e.g., Press Release, Globalstar L.P., Globalstar Introduces Lower International Roaming Charges (rel. July 7, 2003) available at http://www.globalstar.com/view_pr.jsp?id=340; Press Release, Globalstar, L.P., Globalstar Introduces New U.S. Pricing Plan For Seasonal Users (rel. July 14, 2003) available at http://www.globalstar.com/view_pr.jsp?id=341.

¹³ See Satellite Industry Association, *Mobile Satellite Services* (last visited July 14, 2003) available at http://www.sia.org/industry_overview/Mobile.ppt. Thuraya Satellite Telecommunications Company also competes with Globalstar in the international market. See Thuraya Satellite Telecommunications Company, Products and Services, available at <http://www.thuraya.com/products/>.

¹⁴ See Public Notice Report No. SAT-00135, DA 03-386, 18 FCC Rcd 1732 (Sat. Div., Int’l Bur. 2003) (announcing that Celsat America, Inc., Iridium LLC, and ICO met the first milestone requirement); *The Boeing Company*, Order and Authorization, DA 03-2073 (rel. June 24, 2003) (holding that Boeing met the first milestone requirement).

¹⁵ See, e.g., Application of Motient Services Inc., File Nos. SAT-LOA-19980702-00066, SAT-AMD-20001214-00171 & SAT-AMD-20010302. See Public Notice, Report No. SAT-00066 at 2 (rel. Mar. 19, 2001); Inmarsat Ltd., *Our Satellites* (last visited July 14, 2003) available at http://www.inmarsat.org/about_inm_satellite.cfm.

entrant into the market.¹⁶ The Commission has on several well publicized occasions permitted potential entrants to merge with existing market participants where, as in the instant case, there are multiple potential entrants that are "equivalent" in capability to the merging potential entrant.¹⁷ Thus, the purchase of a majority stake in Globalstar by ICO will not enable either company to exercise market power in the future, but instead merely will enable the companies to be effective competitors going forward.

¹⁶ Some reports suggest that ICO will need to raise upwards of an additional \$1.7 billion to successfully launch its constellation. *See, e.g.,* Peter B. de Selding, *ICO Falls Short of Goal: Lackluster Stock Offering Leads to Extension*, Space News This Week at 1 (Jun. 14, 1999); SPACEandTECH Digest, *ICO, Teledesic and Ellipso to Collaborate on Offering Mobile Satellite Service* (Mar. 19, 2001) available at <http://www.spaceandtech.com/digest/sd2001-11/sd2001-11-002.shtml>. In light of the current dearth of capital available to MSS companies, ICO's ability to raise such an amount cannot be assured. In any event, the likelihood that ICO will be able to raise the necessary capital to finance deployment of its system would be significantly reduced if Globalstar is unable to successfully emerge from bankruptcy. The capital markets would be likely to perceive Globalstar's failure as further evidence that the MSS industry is not sustainable. By contrast, ICO's successful operation of New Globalstar will greatly increase the confidence of the financial markets in the MSS industry and thereby increase ICO's ability to raise additional funding.

¹⁷ In the satellite context, the Commission has approved the merger of a licensee providing service in the United States with an entity set to offer such service in the near future on the basis that several other firms were offering or planning to offer the same or similar services. *See Motient Services Order* at ¶ 24 ("Given that there are a number of other firms offering or planning to offer MSS services and given that other firms have substantial capacity available for MSS, we find that the proposed transaction raises no significant anticompetitive concerns.") In similar contexts, such as the merger of two regional bell operating companies, the Commission has stated that the doctrine of "potential actual competition" shall apply only in the event there are few potential entrants in the same position as the potential entrant that is merging. *See, e.g., In re Applications of Pacific Telesis Group Transferor, and SBC Communications, Inc. Transferee, For Consent to Transfer Control of Pacific Telesis Group and its Subsidiaries*, 12 FCC Rcd 2624, 2636-2637 (1997) (*SBC PacTel*). In the instant case, there are at least five current competitors and potential entrants – namely, Iridium, MSV, Boeing, Celsat, and Inmarsat – each in as good of, if not better, position than ICO to compete in the MSS market. In any event, there certainly are more than the three potential entrants that the Department of Justice uses as a benchmark in applying the actual potential competition doctrine. *See SBC PacTel* at 2637 (citing DOJ Merger Guidelines).

C. *The proposed transaction will guarantee the continued operation of the Globalstar System.*

Despite its financial difficulties, Globalstar continues to offer a variety of unique telecommunications services to niche and underserved markets in the U.S. and globally and serves a steadily-increasing number of subscribers. With an additional cash influx, the Committee is confident that Globalstar will be able to substantially improve its market standing. In an effort to preserve its cash resources, Globalstar has pared back its operational expenses to the very minimum necessary and almost completely refrained from marketing over the past year. Despite having cut its staff and operating budgets to the minimum possible levels, however, Globalstar still must spend close to \$2 million each month in order to sustain the operations of the Globalstar System.¹⁸ Globalstar's financial statements make clear that Globalstar will be completely reliant on the ICO loan for operating capital by the end of September, 2003.¹⁹ Globalstar's recent \$2 million per month average burn rate represents a substantial reduction in Globalstar's already minimal burn rate of \$3.361 million per month in 2002.²⁰ Although these efforts thus far have prevented Globalstar from having to entirely cease operations, they also have prevented Globalstar from developing its business to fully exploit market opportunities.

¹⁸ Globalstar's net decrease in cash and cash equivalents was \$1.814 million for the first quarter of 2003. Removing from consideration the \$4.026 million that Globalstar drew from the ICO loan, Globalstar's average monthly burn rate during the quarter was \$1.946 million. *See March 31 10-Q* at 12, *supra* note 5.

¹⁹ Globalstar had \$13.470 million in cash and cash equivalents on hand as of March 31, 2003. \$4.026 million of that cash was drawn from the ICO loan. Therefore, not including debt financing, Globalstar had only \$9.444 million on hand at the end of the first quarter of 2003 to support its operations. Assuming that Globalstar's average monthly burn rate has remained at approximately \$2 million during the second quarter and not setting aside any funding to wind down Globalstar's operations in the event that Globalstar is unable successfully to emerge from bankruptcy, Globalstar will be completely reliant on the ICO loan for operating cash on a going forward basis by the end of September, 2003. *See March 31 10-Q, supra* note 5 at 12.

²⁰ *See* Globalstar Telecommunications Limited and Globalstar, L.P., Form 10-K, filed March 31, 2003 at 25 (*March 31 10-Q*).

Emergence from bankruptcy will enable Globalstar to quickly increase its revenues and fully realize its market potential. By contrast, if Globalstar is unable to emerge from bankruptcy under its current bankruptcy plan as approved by the Bankruptcy Court, Globalstar's ability to continue to operate the Globalstar System will be thrown into serious question. Failure to secure Commission grant of the Applications will force Globalstar to repay the ICO loan—a task that may not be possible given Globalstar's current financial situation. Further, Globalstar would have to locate a new investor, negotiate a new financing arrangement acceptable to both parties, gain Bankruptcy Court approval for the new arrangement, and then reapply for Commission approval to transfer the necessary licenses and authorizations—a process likely to take far longer than Globalstar can afford given its current financial situation.

In short, the proposed transaction is Globalstar's best, and perhaps last, hope to access the capital it needs to emerge from bankruptcy as a vibrant competitor capable of fully realizing the potential public interest benefits of MSS service. The Commission should therefore grant the Applications without delay.

III. Conclusion.

As set forth herein, the public interest supports Commission approval of Globalstar's proposed reorganization plan to enable the preservation and enhancement of the Globalstar System as an effective competitor in the MSS market, and the Applications do not pose any anti-competitive concerns. To enable Globalstar to preserve and expand the very important services that Globalstar offers to the public, and in particular to public safety and homeland security organizations, the Committee respectfully requests the Commission expeditiously to approve New Globalstar's Applications.

Respectfully submitted,

OFFICIAL CREDITORS' COMMITTEE OF
GLOBALSTAR, L.P.

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