



U.S. Department of Justice

Federal Bureau of Investigation

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Office of the General Counsel

Washington, D.C. 20535

MAY 22 2001

May 17, 2001

Satellite Policy Forum  
International Bureau

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

By Hand Delivery

Ms. Magalie Roman Salas, Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Room TW-B204  
Washington, D.C. 20554

Re: *Petition to Defer in the Matter of IRIDIUM CONSTELLATION LLC, IRIDIUM SATELLITE LLC, and IRIDIUM CARRIER SERVICES LLC; Applications Pursuant to Section 214 for Consent to assignment of Authorizations pertaining to the Operation of the IRIDIUM Mobile Satellite Services System (File No. SAT-AGC-20010319-00025, SES-AGC-20010319-00585, and 86, SES-AGC-20010319-00600, and 01, SAT-LOA-1997-0926-00147, ITC-AGC-20010319-00166, and ISP-PDR-20010319-00015)*

Dear Ms. Salas:

Transmitted herewith, on behalf of the Department of Justice ("DoJ") and the Federal Bureau of Investigation ("FBI") are an original and four copies of a "Petition to Defer" in the above-referenced matter.

Sincerely,

James G. Lovelace  
Office of the General Counsel  
935 Pennsylvania Ave., N.W., Room 7435  
Washington, D.C. 20535  
(202) 324-5640

Enclosures

cc: International Transcription Service, Inc.  
International Reference Room, International Bureau

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MAY 22 2001

Before the ~~Communications Policy Branch~~  
Federal Communications Commission  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
IRIDIUM CONSTELLATION LLC,	)	File No. SAT-AGC-20010319-00025
IRIDIUM SATELLITE LLC, and	)	SES-AGC-20010319-00585
IRIDIUM CARRIER SERVICES LLC	)	SES-AGC-20010319-00586
	)	SES-AGC-20010319-00600
Applications Pursuant to Section 214 for	)	SES-AGC-20010319-00601
Consent to Assignment of Authorizations	)	SAT-LOA-1997-0926-00147
Pertaining to the Operation of the IRIDIUM	)	ITC-AGC-20010319-00166
Mobile Satellite Services System	)	ISP-PDR-20010319-00015

**PETITION TO DEFER**

The United States Department of Justice ("DOJ") and the Federal Bureau of Investigation ("FBI"), through their attorneys, respectfully request that the Federal Communications Commission ("Commission") (a) accept this Petition and (b) defer grant of the above-captioned applications pending a resolution by the applicant and the Department of Justice of those aspects of the applications that the FBI and DOJ believe may raise potential national security, law enforcement, and public safety issues.

Iridium Holdings LLC, Iridium Satellite LLC (ISLLC), Iridium Constellation LLC, and Iridium Carrier Services, LLC, collectively referred to as "New Iridium," have filed applications pursuant to Section 214 for assignment of authorizations pertaining to the operation of the Iridium Mobile Satellite Services System from affiliates or wholly-owned subsidiaries of Motorola, Inc. According to the applications, foreign corporations incorporated in, and owned

by citizens of Australia, Brazil, Panama, and Saudi Arabia hold stock in New Iridium. The applicants acknowledge that the level of indirect foreign ownership exceeds 25 percent.

As the Commission is aware, the DOJ and the FBI have previously availed themselves of the opportunity under Sections 214 and 310 of the Act, and implementing regulations, to comment regarding the public interest concerns raised by transactions in which foreign entities will own or operate a part of the U.S. communications system, or in which foreign-located facilities will be used to provide domestic communications services to U.S. customers. These concerns are based on the potential negative impact of such transactions on the ability of government agencies to satisfy their obligations to protect the national security, to enforce the laws and preserve the safety of the public. It is the position of the DOJ and the FBI that foreign involvement in the provision of U.S. communications must not be permitted to impair the U.S. government's ability to satisfy its obligations to U.S. citizens to: (1) carry out lawfully-authorized electronic surveillance of domestic U.S. calls or calls that originate or terminate in the United States; (2) prevent and detect foreign-based espionage and electronic surveillance of U.S. communications, which would jeopardize the security and privacy of such communications, and could foreclose prosecution of individuals involved in such activities; and (3) satisfy the National Security Emergency Preparedness Act and U.S. infrastructure protection requirements.

In *the Foreign Participation Order*, the Commission said that, in reviewing license applications from foreign carriers under Sections 214 and 310(b)(4) of the Communications Act, it would: (1) continue to apply the public interest test, and (2) "continue to find national security, law enforcement, foreign policy and trade policy concerns relevant to our decision to

grant or deny Section 214 and 310(b)(4) applications from applicants from WTO Member[s].”<sup>1</sup>

The Commission elaborated by saying that:

[W]e realize that foreign participation in the U.S. telecommunications market may implicate significant national security or law enforcement issues uniquely within the expertise of the Executive Branch. . . .

We thus will continue to accord deference to the expertise of Executive Branch agencies in identifying and interpreting issues of concern related to national security, law enforcement, and foreign policy that are relevant to an application pending before us.<sup>2</sup>

To address the concerns presented by transactions in which foreign entities will own or operate a part of the U.S. communications system, or in which foreign-located facilities will be used to provide domestic communications services to U.S. customers, the DOJ and the FBI have negotiated agreements to ensure their ability to fulfill their responsibilities to protect the national security, to enforce the laws and preserve the public safety in the event that the proposed underlying mergers, transactions and ventures were successfully concluded. The agreements reached in the past have been filed by stipulation among the parties with the Commission, and the Commission has conditioned its authorizations on compliance with the terms of the agreements.<sup>3</sup>

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<sup>1</sup> *In the Matter of Rules and Policies of Foreign Participation in the U.S. Telecommunications Market*, 12 FCC Rcd 23,891, ¶ 61 (Nov. 1997). The presumption the Commission has adopted “in favor of entry for foreign participation applies only to competition concerns that may arise because of a foreign carrier's market power in a foreign market.” *Id.* at ¶ 57. Concerns relating to national security, law enforcement, and public safety are to be given consideration independent of any competitive concerns presented by the transaction.

<sup>2</sup> *Id.* at ¶¶ 62-63.

3. *See, e.g.*, Memorandum Opinion and Order, *Merger of MCI Communications Corp., and British Telecommunications plc*, 12 FCC Rcd 15,351 (1997) (agreement adopted by the Commission, but the merger did not take place); Memorandum Opinion and Order, *AirTouch Communications, Inc. and Vodafone Group, plc*, DA No. 99-1200, 1999 WL 413237 (rel. June 22, 1999); Memorandum Opinion and Order, *AT&T Corp., British Telecommunications, plc, VLT Co. L.L.C., Violet License Co., LLC and TNV [Bahamas]*, 14 FCC Rcd (Oct. 29, 1999); Memorandum Opinion and Order, *Vodafone AirTouch PLC and Bell Atlantic Corp.*, DA No.

It is the opinion of the FBI and the DOJ that granting the authority requested by the parties in the applications without sufficient conditions could present significant impediments to the ability of our government to meet its obligations to the citizens to preserve the national security, enforce the laws and protect the public safety. The FBI and DOJ are in contact with representative of the applicant and are working diligently and in good faith toward the execution of an agreement with the applicant to address potential threats posed to national security, law enforcement and public safety that the FBI and the DOJ believe are presented by the above-captioned applications. Accordingly, the FBI and the DOJ urge the Commission to defer considering or approving the applications absent such an agreement and the imposition of appropriate conditions.

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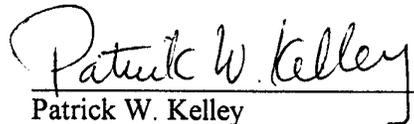
99-2451, 2000 WL 332670 (rel. Mar. 30, 2000); Memorandum Opinion and Order, *Aerial Communications, Inc. and VoiceStream Wireless Holding Corp.*, 15 FCC Rcd 10,089 (2000); Memorandum Opinion and Order, *DiGiPH PCS, Inc. and Eliska Wireless Ventures License Subsidiary I, L.L.C.*, No. 151639 (rel. Dec. 13, 2000).

WHEREFORE, in view of the foregoing, the FBI and the DOJ respectfully request that the Commission accept for filing the instant Petition to Defer with regard to the captioned applications and defer grant of the above-captioned applications pending an agreement to resolve the concerns addressed herein, and the imposition of the terms of such agreement as conditions to the authority and licenses granted.

Respectfully submitted,



Mary Ellen Warlow  
Acting Deputy Assistant Attorney General  
Criminal Division  
950 Pennsylvania Avenue, N.W.  
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Patrick W. Kelley  
Deputy General Counsel  
Federal Bureau of Investigation  
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Date: May 17, 2001

### Certificate of Service

I, Myla R. Saldivar-Trotter, Federal Bureau of Investigation, hereby certify that on this 17th day of May, 2001, I caused a true and correct copy of the foregoing **PETITION TO DEFER** to be served via hand delivery (indicated by \*) or by mail to the following parties:

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