



International Bureau

Federal Communications Commission
Washington, DC 20554

Via Hand Delivery and Telefax

October 11, 2001

Thomas P. Van Wazer, Esq.
Counsel for Iridium Carrier Services LLC
and Iridium Satellite LLC
Sidley & Austin
1722 Eye Street, N.W.
Washington, DC 20006

Re: Iridium U.S., L.P. Applications for Assignment of Licenses, Lead File
No. SAT-ASG-20010319-00025

Dear Applicants:

On March 19, 2001, the Commission received applications to assign common carrier and non-common carrier licenses from wholly-owned subsidiaries and affiliates of Motorola, Inc. to wholly-owned subsidiaries of Iridium Carrier Holdings LLC and Iridium Holdings LLC ("Applications"). On September 25, 2001, Commission staff issued a written request that you provide additional information clarifying aspects of your application ("September 25 Letter"). You responded by letter on October 1, 2001.¹

Based on our review of your response and the new information it presents, we are stopping the 180-day clock for our review of these Applications, effective Monday, October 1, 2001, the date of your response. Furthermore, in order for the Commission to complete its analysis and make the necessary public interest findings under section 310(b)(4) of the Communications Act, we request, pursuant to section 308(b) of the Act,² that you provide written responses to the questions set forth below. Your responses should be filed with

¹ See Letter from Thomas P. Van Wazer, Counsel for Iridium Carrier Services LLC and Iridium Satellite LLC to Magalie Roman Salas, Secretary, Federal Communications Commission, October 1, 2001 ("Iridium October 1 Response").

² 47 U.S.C. §308(b); see also 47 C.F.R. §1.65.

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Magalie Roman Salas, Secretary, Federal Communications Commission and reference Lead File No. SAT-ASG-20010319-00025.

1. In your response to Question 3 of the September 25, 2001 Letter you represented that Baralonco N.V. ("Baralonco") holds a 20 percent voting interest in Iridium Carrier Holdings. You further represented that "[c]ertain typically extraordinary actions specified in Section 6.2 [of the Iridium Carrier Holdings LLC Agreement ("LLC Agreement")] require the unanimous consent of all the Carrier Holdings' Class A members."³

As you know, under the *Foreign Participation Order*, the Commission "will deny an application if we find that more than 25 percent of the ownership of an entity that controls a common carrier radio licensee is attributable to parties whose principal place(s) of business are in non-WTO Member countries that do not offer effective competitive opportunities to U.S. investors . . . , unless other public interest considerations outweigh that finding."⁴ Therefore, we question whether the provisions of sections 6.2 (b) and (c) of the LLC Agreement—which require unanimous consent for corporate actions that materially affect the capitalization and financial structure of the company (including borrowing) and for corporate decisions to enter into *any* contract with non-affiliated entities—are consistent with this standard, as the provisions appear to afford Baralonco 100 percent negative voting control over certain day-to-day operations.

Please explain how the provisions of sections 6.2 (b) and (c) of the LLC Agreement operate. In addition, please address whether sections 6.2 (b) and (c) of the LLC Agreement conform to Commission precedent concerning acceptable investor protections, citing relevant case law as appropriate.

2. Your response to Question 5 of the September 25 Letter indicates for the first time that the merger between Bareana Holdings Pty, Ltd. and Quadrant Australia Limited closed in June, 2001. Consequently, please provide the following information for each of Quadrant's shareholders, to the extent practicable:⁵

- (i) the identity and percentage voting and equity interests of any non-U.S. investors in Quadrant, as well as any non-U.S. investment in those entities;

³ Iridium October 1 Response, at 3.

⁴ See *Foreign Participation Order*, at para. 131.

⁵ See *Foreign Participation Order*, at para. 115 (noting that "we decline . . . to disregard investments by non-carriers held as publicly traded securities. We accept the concerns of Executive Branch agencies that even small investments in publicly traded securities could, if aggregated, nevertheless create a degree of control or influence over a licensee that would be contrary to U.S. national security or law enforcement interests. When applications and licensees seek Commission approval under Section 310(b)(4) for a particular amount of indirect foreign ownership, they should indicate how much of that amount is attributable to each identified shareholder and how much of that amount is an allowance for fluctuations in publicly traded shares." (footnotes omitted)).

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- (ii) the investors' nationality (in the case of individual investors), or the principal place of business (in the case of institutional investors), using the five-factor test for determining the nationality or "home market" of foreign investors as set forth in the *Foreign Carrier Entry Order*,⁶ and
- (iii) the non-U.S. investors, if any, that are from non-WTO member countries, and, if such ownership interests, when aggregated with other ownership interests in Iridium Carrier Holdings attributable to non-WTO members, would exceed 25 percent, information that would allow the Commission to conduct the required effective competitive opportunities analysis.

3. In connection with the Bareena/Quadrant merger, you stated in your application that, "Michael Boyd would retain overall control of the merged company and would own a majority of Quadrant stock." Please confirm whether these assertions remain accurate.

4. In Exhibit 3 of your response to the September 25, 2001 Letter, you indicated that Motorola (INA) now has an equity interest in Iridium Carrier Holdings. Accordingly, please identify any foreign investors in Motorola that are not from WTO member countries. In addition, if such ownership interests, when aggregated with other ownership interests in Iridium Carrier Holdings attributable to non-WTO member countries, would exceed 25 percent, provide information that would allow the Commission to conduct the required effective competitive opportunities analysis.

5. Please describe, in detail, any direct or indirect interest of 10 percent or more in any firm that provides telecommunications service in, to, or from the United States held by any of the following: Baralonco N.V., Khalid bin Abdullah bin Abdulrahman, Michael Boyd, Quadrant Australia Ltd., and Dan A. Colussy.

6. Please identify the date or dates on which the Syncom companies, Baralonco and Millport, increased their capital commitments to Iridium Carrier Holdings LLC through the options referenced in Exhibit B of the space station assignment application.

Given the new information and material clarifications provided in your response to the September 25 Letter, we draw your attention to section 1.65 of the Commission's rules, which states in pertinent part that each "applicant is responsible for the continuing accuracy and *completeness* of information furnished in a pending application or in a Commission proceeding involving a pending application."⁷ Consequently, we encourage you to thoroughly and periodically review the factual assertions in the Applications and the amendments thereto, to ensure that they remain accurate and to remedy any failures to

⁶ See *Market Entry and Regulation of Foreign Affiliated Entities*, Report and Order, 11 FCC Rcd 3873, 3948-52, paras. 199-208 (1995); see also *Global Crossing Ltd. And Frontier Corporation*, 14 FCC Rcd 15911, 159918-19, para 15-17 (WTB, IB and CCB 1999) (applying the five-factor "principal place of business" test).

⁷ 47 C.F.R. §1.65.

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provide or update relevant information. In this regard, we specifically note your continuing obligation to disclose *any* additional direct or indirect foreign ownership, including foreign government ownership, which may be relevant to the determination required under section 310(b)(4) of the Act and a principal place of business showing for these investors.

Finally, we note that under Commission rules this is a restricted proceeding and therefore any written communications must be made part of the record and served on all parties.

Sincerely,



Jacquelyn Ruff
Associate Chief, Telecommunications Division
International Bureau

cc: Philip Malet, Steptoe & Johnson
William D. Wallace, Crowell & Moring LLP
James G. Lovelace, Federal Bureau of Investigation
Richard P. Salgado, U.S. Department of Justice