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**BY HAND**

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Mr. Don Abelson  
Chief, International Bureau  
Federal Communications Commission  
445 Twelfth Street, S.W., Room 6-C750  
Washington, D.C. 20554

**Re: Loral Space & Communications Ltd. Authorization for a Ku- and Ka-band Satellite at 47° W.L. (FCC File Nos. CSS-83-002-P-(M) and SAT-MOD-20000104-00045)**

**Columbia Communications Corporation Application for Authority to Construct, Launch And Operate a Trans-Atlantic Satellite System (FCC File Nos. SAT-LOA-19870331-00061; SAT-AMD-19990511-00052; and SAT-MOD-19990511-00051)**

Dear Mr. Abelson:

We are writing on behalf of our client, Orbital Resources, LLC ("Orbital Resources"), in response to the July 22<sup>nd</sup> letter to you from John Stern (the "Stern Letter"), the Deputy General Counsel of Loral Space & Communications Ltd. ("Loral"). Rather than refuting the showing made in Orbital Resources' July 8<sup>th</sup> letter, the Stern Letter merely confirms that Loral has failed to meet its milestones. Accordingly, Loral's license for a Ku-/Ka-band hybrid satellite at 47° W.L. is null and void pursuant to its own terms.

Nearly half of the Stern Letter is devoted to irrelevant and inaccurate procedural arguments. First, Loral asserts that Orbital Resources' July 8<sup>th</sup> letter was "unauthorized." See Stern Letter at 1-2. Orbital Resources made clear, however, that it was acting on its own behalf, thus no other entity was required to "authorize" its letter. Orbital Resources itself has previously participated in the proceedings relating to Loral's request for extension of its 47° W.L. construction milestones and is thus already a party to that proceeding. In any case, there is no FCC policy or rule that prevents any interested party from informing the FCC when a licensee has failed to comply with the terms of its authorization. Indeed, it would be poor public policy to discourage the reporting of such facts to the International Bureau – which has a particularly strong interest in enforcing the Commission's satellite milestone rules and policies.

Second, Loral asserts that Orbital Resources' letter was "untimely." *See* Stern Letter at 2. However, because the purpose of the Orbital Resources letter was simply to apprise the Bureau of important facts that had recently become apparent – *i.e.*, Loral's failure to meet its satellite completion and launch milestones, which occurred in April and May 2002 – the July 8<sup>th</sup> letter could scarcely have been more timely. While Orbital Resources would have liked to submit its findings within days of the missed May 31, 2002 launch deadline, some time was necessary to confirm Loral's failure to launch a satellite prior to the required date.

With respect to the substance of the Orbital Resources letter, the Stern Letter itself confirms the facts that Orbital Resources brought to the Bureau's attention. Rather than stating that it has complied with the terms of its 47° W.L. authorization, Loral instead notes that it has informed the Bureau that it will require an additional 36 months to build a satellite if its milestones are extended. *See* Stern Letter at 4.<sup>1</sup> Given the fact that 24-36 months is the average construction period for a geostationary satellite, this is effectively an admission by Loral that it will only begin physical construction of a satellite in the event that the Commission grants it a lengthy milestone extension. Over the last three years, Columbia Communications Corporation ("Columbia"), which is also a party to these proceedings, has repeatedly pointed out to the Bureau that Loral's assertions that it had commenced construction of the 47° W.L. satellite were false, and that Loral's authorization therefore should have been declared null and void as of June 1, 1998.<sup>2</sup> Loral's present admissions demonstrate that Columbia was correct.

There is absolutely no basis for granting Loral relief from the Commission's milestone rules and policies, which do not permit milestone extensions for elective technical modifications.<sup>3</sup> Indeed, were such inappropriate relief actually granted, Loral would then be accorded the unique and absurd indulgence of delaying implementation of Ku-band service **fully twenty years** from the time it was originally given conditional authorization for these resources.

To the extent that Loral contests some parts of Orbital Resources' showing, its assertions are baseless. First, Loral either carelessly misconstrues or deliberately misrepresents the terms of its license when it asserts that the Ku-band portion of its license "has never had milestones" and would remain in effect regardless of the nullification of its Ka-band authority. Stern Letter at 3 & 4. In fact, the Ka-band authority was secured through a modification of the

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1 *Citing* Letter from John Stern to Jennifer Gilseman, Chief, Satellite Policy Branch, International Bureau, FCC, re: Ku- and Ka-band Authorizations at 47° W.L., dated March 12, 2002 (Attachment 2 to Stern Letter).

2 *See* Columbia Petition to Revoke Authorization, File No. CSS-83-002-P-(M), filed March 19, 1999; Columbia Petition for Partial Reconsideration, File Nos. CSS-83-002-P-(M), *et al.*, filed February 22, 2000; Columbia Petition to Deny, File No. SAT-MOD-20000104-00045, filed March 9, 2000; Supplement to Petition for Partial Recon., File Nos. CSS-83-002-P-(M), *et al.*, filed July 14, 2000.

3 *See, e.g., PanAmSat Licensee Corp.*, 16 FCC Rcd 11534, 11538 (¶ 13) (2001) ("The Commission has determined on more than one occasion that mergers, modification applications, and decisions to incorporate additional technological capabilities into a satellite are business decisions within the control of the licensee, and therefore cannot justify a milestone extension").

licensees' circumstances do not favor Loral. Whereas PanAmSat sought a modification contemporaneously with the occurrence of its first milestone, and never maintained that it had actually commenced satellite construction, Loral's request to add ISLs came 18 months later, and only after Loral had represented both that it had entered into a construction contract for a Ku-/Ka-band hybrid satellite not including ISLs and that it was proceeding in accordance therewith.

PanAmSat's Ka-band authorization that was subject to its request for ISLs was declared null and void more than two years ago because it failed to meet its milestones and provided no basis that would justify a waiver of the requirement.<sup>10</sup> The orbital locations that PanAmSat forfeited have now been reassigned. Conversely, Loral continues to hold its 47° W.L. license despite the fact that, at the end of its five-year construction timetable, it has made no more actual construction progress than PanAmSat had, and has offered only the same unacceptable justifications for waiver that PanAmSat did. Allowing Loral to retain its 47° W.L. authorization while PanAmSat has been stripped of its Ka-band license would be outrageously discriminatory. Moreover, such action would encourage licensees to abuse the Commission's processes by entering into sham construction contracts that are never honored, but nominally meet the commencement of construction milestone.<sup>11</sup>

Loral's 47° W.L. authorization has expired pursuant to its own terms. It is time for the Bureau to administer the last rights and make the resources so long warehoused by Loral available for prompt reassignment. Columbia is the only pending FSS applicant seeking authority to provide new trans-Atlantic Ku-band service, and this application must be considered, pursuant to DISCO I, prior to processing of any new FSS applications. Immediate reassignment to Columbia of these Ku-band rights would therefore be proper, efficient and in the public interest. Orbital Resources notes that, because Loral has no claim upon these resources against the regulatory power of the United States (47 U.S.C. § 304), such a reassignment can and should

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10 See, e.g., *PanAmSat Licensee Corp.*, 16 FCC Rcd at 11538 (¶ 13).

11 Among other things, the non-contingent construction contract requirement contemplates that there will be neither significant delays between the execution of the construction contract and the actual commencement of construction, nor conditions precedent to construction. See *Norris Satellite Communications, Inc.*, 12 FCC Rcd 22299, 22303-04 (¶ 9) & n.29 (1997), citing Letter from Chief, Domestic Facilities Division, to Hughes Communications Galaxy, Inc. (June 7, 1990) ("Hughes Letter").

Mr. Don Abelson

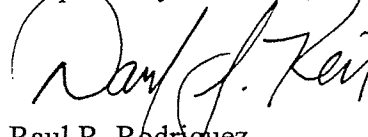
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occur regardless of whether Loral continues to pursue futile appeals relating to its unjustified milestone extension request; continued legal maneuvering should not be permitted to delay any longer the provision of new Ku-band satellite service to the public.

Respectfully submitted,



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