

JUL - 5 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

DUPLICATE

In the Matter of

KaStarCom World Satellite, LLC

Received
JUL 10 2001
Satellite Policy Branch
International Bureau

) SAT-AMD-20010607-00050

) SAT-LOA-19980312-00018

PETITION TO DENY

Pegasus Development Corporation (“Pegasus”) hereby urges the Commission to dismiss or deny the above-referenced request of KaStarCom World Satellite, LLC (“KaStarCom”).¹ KaStarCom should not be permitted to amend its second-round application from one that proposed non-CONUS operations to one proposing full-CONUS operations. In any event, consistent with Commission policy, KaStarCom (and its affiliate) should not be permitted to hold assignments for more than two CONUS orbital locations.

Background

On December 22, 1997, KaStarCom filed an application to provide satellite services in the second Ka-band processing round.² In the Application, KaStarCom proposed to construct and launch two satellites at 52°E and 175°W. *See* Application, at 1. These slots would permit KaStarCom to provide satellite services to various Pacific Rim and European countries. *Id.*

KaStarCom’s principal owners are David Drucker and Walter Segaloff, who, along with various family members and related trusts, control in the aggregate a total of approximately 22%

¹ Pegasus is an applicant in the second processing round for Ka-band licenses. *See* SAT-LOA-19980403-00025 through 00029 (April 3, 1998).

² *See* SAT-LOA-19980312-00018 (March 12, 1998) (“Application”).

of the voting stock of WB Holdings 1, LLC (“Wildblue” or “WB”), a first-round licensee authorized to construct and launch satellites at 73°W and 109.2°W.³ In conjunction with Wildblue, KaStarCom proposed to deploy a combined satellite system that “would provide coverage to nearly all significant portions of the planet and serve the public interest by providing additional competition for global satellite service.” *See* Application, at 2. In its Application, KaStarCom argued, *inter alia*, that, despite common ownership with Wildblue, the Bureau should waive Section 25.140(f) of the Commission’s rules, limiting the number of unused orbital slots for any one applicant, because KaStarCom and Wildblue would be deploying satellites in entirely different portions of the geostationary orbital arc.⁴

With respect to the orbital locations KaStarCom proposed to use, no other second-round applicant requested 175°W. Lockheed Martin Corporation (“Lockheed”) requested the use of 52°E; no applicant requested the neighboring 50°E orbital slot. In March 1999, the Bureau placed all the second-round applications on public notice⁵ and, subsequently, urged the applicants to resolve any mutually exclusive requests voluntarily.

³ Through a series of transfers and name changes, Wildblue is the current holder of the license originally assigned to “KaStar Satellite Communications Corporation.” At the time of the Application, Wildblue and KaStarCom were owned and controlled by the same parties. *See* Application, Exhibit D-2, at 1; *see also* Request for Pro Forma Assignment of License of KaStar 73 Acquisition, LLC to WB Holdings 1 LLC, SAT-ASG-20010108-00004, Exhibit A, at 1 (January 8, 2001).

⁴ *See* Application, Exhibit D-2, at 1.

⁵ *See* Report No. SAT-00012 (March 16, 1999).

Since filing its application, KaStarCom has decided to seek wholly new orbital assignments, specifically the CONUS orbital slots at 73°W, 109.2°W,⁶ and 111°W.⁷ This proposal conflicts with those of other second-round applicants which, unlike KaStarCom, initially applied for CONUS orbital locations. For example, DirectCom, a second-round applicant which originally requested CONUS orbital locations at 93°W and 103°W,⁸ proposed that it be assigned, *inter alia*, the 500 MHz available at 109.2°W.⁹

On June 7, 2001, in response to a Bureau request, KaStarCom submitted a letter stating, *inter alia*, its “preference” for spectrum and orbital locations.¹⁰ In the letter, KaStarCom requested an orbital assignment at 111°W and the 500 MHz available at both 73°W and 109.2°W. *Id.* KaStarCom also noted that it “envisions that, as licensees of co-located Ka-band satellites at 73° W.L. and 109.2° W.L., WB and KaStarCom would jointly construct and own a

⁶ There is 500 MHz available at both 73°W and 109.2°W. The other 500 MHz at these locations is licensed to KaStarCom’s affiliate, Wildblue. *See* SAT-LOA-19950712-00085 (July 12, 1995); SAT-LOA-19950928-00108 (September 28, 1995).

⁷ *See* Letter to Magalie Roman Salas from CAI Data Systems, Inc., Pacific Century Group, Inc., TRW, Inc., Celsat America, Inc., Hughes Communications, Inc., Lockheed Martin Corporation, and KaStarCom World Satellite, LLC (August 11, 2000) (“Majority Plan”). The Majority Plan was subsequently revised to include PanAmSat Corporation. *See* Letter to Magalie Salas from CAI Data Systems, Inc., Pacific Century Group, Inc., TRW, Inc., Celsat America, Inc., Hughes Communications, Inc., Lockheed Martin Corporation, PanAmSat Corporation, and KaStarCom World Satellite, LLC (November 1, 2000).

⁸ On the Friday afternoon before the Monday cut-off date for second-round applications, the Bureau issued an order, *inter alia*, assigning the 93°W and 103°W orbital locations to Loral and PanAmSat, respectively. *See Assignment of Orbital Locations to Space Stations in the Ka-band*, 12 FCC Rcd 22004 (December 19, 1997). Pegasus has filed a Petition for Reconsideration challenging the Order explaining the reassignments. *See* Pegasus Development Corporation, Petition for Reconsideration, DA 01-949 (May 17, 2001).

⁹ *See* New Entrant Plan.

¹⁰ *See* Letter to Magalie Roman Salas from Stephen E. Coran (June 7, 2001).

single satellite at each such location.”¹¹ The Bureau placed the letter on public notice and invited comments on an expedited schedule. *See* Report No. SAT-00072 (June 19, 2001).

Discussion

By its June 7 letter, KaStarCom effectively seeks to amend its 1997 application. The orbital locations KaStarCom originally requested are available. However, KaStarCom has evidenced no interest in accepting those non-CONUS orbital locations. Instead, it now seeks to add another satellite and, together with its affiliate Wildblue, to obtain assignments for full use of three CONUS orbital locations.

Under the Commission’s rules, “[a]ny application will be considered to be a newly filed application if it is amended by a major amendment after a “cut-off” date applicable to the application.” 47 C.F.R. §25.116(c). “An amendment will be deemed to be a major amendment ... [i]f the amendment increases the potential for interference, or changes the ... orbital locations to be used.”¹² KaStarCom’s amendment does both. It specifically requests a change in orbital locations from the uncongested portion of the geostationary orbital arc to the already crowded CONUS-arc¹³--a distinction that KaStarCom itself has argued is significant under the Commission’s rules.¹⁴ The amendment also increases the potential for interference with operations of other second-round applicants, which, unlike KaStarCom, originally requested

¹¹ *Id.* at 1.

¹² 47 C.F.R. §25.116(b).

¹³ Although the Commission has consistently held that for assignment purposes requests for the same orbital locations do not result in mutual exclusivity, it has recognized the differences of orbital locations in different portions of the geostationary orbital arc. *See e.g., In the Matter of Assignment of Orbital Locations to Space Stations in the Domestic Fixed-Satellite Service*, 3 FCC Rcd 6972, at ¶3 (1988).

assignments in the CONUS-arc and proposed alternative orbital assignments only to resolve frequency and orbital conflicts. In contrast, KaStarCom's orbital request does not "resolve[] frequency conflicts with authorized stations or other pending applications [without] creat[ing] new or increased frequency conflicts," and is, thus, not exempt from the Commission's major modification rules.¹⁵

The cut-off date for second-round applications expired in December 1997. Thus, the Bureau should consider the amendment a major modification and process the newly filed application in the next Ka-band processing round.¹⁶

The Bureau should also deny the amendment because it would permit KaStarCom and its affiliate Wildblue to have full use of three CONUS orbital locations, one more than generally permissible under Commission policy.¹⁷

¹⁴ See Application, Exhibit D-2, at 1.

¹⁵ 47 C.F.R. §25.116(c)(1). Similarly, the amendment is not exempt under Section §25.116(c)(4) because it "create[s] new or increased frequency conflicts," and because KaStarCom has not shown that the amendment is "demonstrably necessitated by events which the applicant could not have reasonably foreseen." 47 C.F.R. §25.116(c)(4).

¹⁶ KaStarCom's proposal is also a major amendment because it requests to operate an additional satellite at an orbital location and on frequencies not originally requested. See *Volunteers in Technical Assistance*, 12 FCC Rcd 13995 (1997) (proposal to add an additional satellite to operate on frequencies not originally requested is a major amendment).

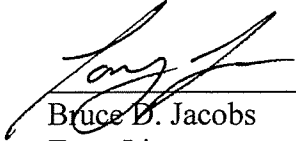
¹⁷ See e.g., *Satellite Transponder Leasing Corporation*, 3 FCC Rcd 6737, at ¶6 (1988); see also Letter to Thomas S. Tycz from Bruce D. Jacobs (May 9, 2001). KaStarCom's request for three orbital locations also appears to violate Section 25.140(e). See 47 C.F.R. §25.140(e) (limiting initial assignments to two orbital locations).

Conclusion

For the foregoing reasons, Pegasus Development Corporation urges the Bureau to deny the amendment of KaStarCom World Satellite, LLC.

Respectfully submitted,

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Dated: July 5, 2001

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Petition to Deny was sent by first-class mail or hand delivery (*) this 5th day of July 2001, to the following:

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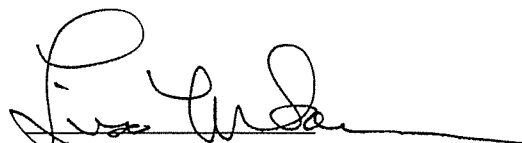
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