

Waiver of Section 25.159(b)

The Boeing Company (“Boeing”) and SOM1101, LLC (“SOM1101”), hereinafter the “Applicants,” jointly request a waiver of Section 25.159(b) of the Federal Communications Commission’s (“FCC” or “Commission”) rules if the Commission concludes that this rule section is applicable to Gregory T. Wyler, who indirectly holds 100 percent of the membership interests in SOM1101.¹

Section 25.159(b) prohibits a party from applying for an NGSO-like satellite system authorization from the Commission if that party has an “attributable interest” in another entity that has a pending application for or an authorized-but-unbuilt NGSO-like system involving the same frequency band.² Section 25.159(c) defines attributable interest for these purposes as either: (1) aggregate equity or debt interests in excess of 33 percent in the other entity, or (2) a controlling interest in the other entity, “within the meaning” of Section 1.2110(b)(2) of the Commission’s rules.³ Section 1.2110(b)(2) addresses aggregation of affiliate interests.⁴

The parties maintain that Mr. Wyler’s ownership of SOM1101 does not implicate Section 25.159(b). As the Commission is aware, Greg Wyler is the Chairman of the Board and a Director of WorldVu Satellites Limited (“OneWeb”) and indirectly holds an 11.84

¹ 47 C.F.R. § 1.3.

² 47 C.F.R. § 25.159(b) & (c).

³ 47 C.F.R. § 25.159(c)(1) & (2).

⁴ 47 C.F.R. § 1.2110(b)(2).

percent equity interest in OneWeb through 1110 Ventures, LLC. OneWeb holds an authorization from the Commission for U.S. market access for an NGSO satellite system operating in the Ku- and Ka-bands.⁵ OneWeb also has filed an application for U.S. market access for another NGSO satellite system that would operate in the V-band.⁶ Section 25.159 does not apply to this situation because Mr. Wyler holds in the aggregate significantly less than 33 percent of the equity and debt interests in OneWeb, and the provision in Section 1.2110 related to affiliate interests is inapplicable.

Although granting SOM1101 and Boeing's application would not violate Section 25.159, it has been suggested that Section 1.2110(c)(2) is relevant to the application of this rule. Section 1.2100(c)(2) governs eligibility for competitive bidding credits as a designated entity in FCC spectrum auctions and defines "controlling interests" as including both *de jure* and *de facto* control, with detailed definitions provided for each. Unlike Section 1.2110(b)(2), Section 1.2110(c)(2) is not cross-referenced in Section 25.159. Even if 1.2110(c)(2) were to be read into Section 25.159, the present transfer application is not implicated because Mr. Wyler, as a minority and one of many shareholders, does not have *de jure* or *de facto* control over OneWeb.

⁵ See In the Matter of WorldVu Satellites Limited, Petition for a Declaratory Ruling Granting Access to the U.S. Market for the OneWeb NGSO FSS System, IBFS File No. SAT-LOI-20160428-00041, *Order and Declaratory Ruling*, FCC 17-77 (June 23, 2017).

⁶ See In the Matter of WorldVu Satellites Limited, Petition for a Declaratory Ruling Granting Access to the U.S. Market for the OneWeb V-Band System, IBFS File No. SAT-LOI-20170301-00031 (filed March 1, 2017).

Section 1.2110(c)(2) also includes subsection 1.2110(c)(2)(ii)(F), which states that the officers and directors of a licensee or applicant “shall be considered to have a controlling interest in the licensee or applicant.”⁷ To the extent the Commission sought to apply this subsection to this application, notwithstanding that Mr. Wyler does not have *de facto* control over OneWeb under the subfactors listed in 1.2110(c)(2)(i), Mr. Wyler’s position as a director of OneWeb could be construed as giving him a controlling interest in OneWeb, necessitating a waiver of Section 25.159(b) of the Commission’s rules.

The Commission may waive its rules “for good cause shown.”⁸ Good cause exists here to waive Section 25.159(b) to the extent required, for several reasons. First, waiver serves the underlying purposes of Section 25.159(b). Second, other applicants for NGSO-like systems would not be harmed. Third, enforcing Section 25.159(b) in this case would unnecessarily hamper the development plans for the proposed NGSO FSS system.

Waiver of Section 25.159(b) in the instant case is consistent with the policies behind this rule. First, the Commission’s reason for adopting a presumptive restriction on more than one application—preventing speculation and trafficking in spectrum⁹—does not apply here and in fact is no longer necessary. Indeed, in the context of GSO applications,

⁷ 47 C.F.R. § 1.2100(c)(2)(ii)(F).

⁸ 47 C.F.R. § 1.3. *See also National Broadcasting Co. v. U.S.*, 319 U.S. 190, 225 (1943) (“[i]f time and changing circumstances reveal that the ‘public interest’ is not served by application of the Regulations, it must be assumed that the Commission will act in accordance with its statutory obligations”).

⁹ Amendment of the Commission’s Space Station Licensing Rules and Policies, *First Report and Order*, 18 FCC Rcd 10760, ¶ 230 (2003) (“2003 License Reform Order”).

the Commission has eliminated the rule entirely, explicitly acknowledging that, “in light of the bond and milestone requirements and other safeguards,” a prohibition on multiple pending applications is unnecessary “to deter warehousing of spectrum and orbital resources.”¹⁰ NGSO applications are subject to the same kinds of “bond and milestone requirements and other safeguards” that exist for GSO applications to prevent speculation. Waiver of this rule therefore would not raise speculation concerns.

Second, waiver of Section 25.159(b) will not negatively impact other NGSO applicants. The change of applicant does not affect the underlying nature of the proposed NGSO system.

Third, a waiver of Section 25.159(b) is justified because prohibiting the proposed transfer would be contrary to the Commission’s policy with regard to applicants’ business plans. As discussed above, when the Commission adopted Section 25.159, it made clear its intent to deter speculation “without restricting applicants’ business plans” and without precluding “legitimate applications from consideration.”¹¹ Given the tremendous success that Mr. Wyler has experienced developing NGSO satellite systems, it would be contrary to the public interest to preclude an entity in which Mr. Wyler is involved from maintaining its own NGSO system applications. Mr. Wyler’s involvement and support of multiple, increasingly larger NGSO satellite system proposals reflects a legitimate business strategy and public interest goal of presenting yet additional opportunities to bridge the digital

¹⁰ Comprehensive Review of Licensing and Operating Rules for Satellite Services, IB Docket No. 12-267, *Second Report and Order*, FCC 15-167, ¶ 337 (Dec. 17, 2015).

¹¹ *2003 License Reform Order*, ¶ 230.

divide by offering consumers additional access to increasingly fast broadband communications services regardless of their location.¹²

In summary, because the Commission's reasons for adopting the presumptive restriction on more than one application do not apply here, and because the grant of a waiver will not harm other NGSO FSS system spectrum applicants, there is good cause to permit the proposed application transfer to SOM1101 and grant the requested waiver of Section 25.159(b) of its rules, if deemed necessary.

¹² To the extent the Commission determines that this application requires a waiver under Section 25.159(b), it effectively serves to supplant Boeing's request for a waiver of the same section, which was included in Section IV.F. of the NGSO FSS application that Boeing filed with the Commission on March 1, 2017. *See* The Boeing Company, Application for Authority to Launch and Operate a Non-Geostationary Satellite Orbit System in the Fixed-Satellite Service (call sign S2993), IBFS File No. SAT-LOA-20170301-00028 (filed March 1, 2017). By filing this application, and upon transfer, Boeing will no longer require a waiver of Section 25.159(b) for its March 1, 2017 application.