

**March 21, 2018**

*VIA ELECTRONIC FILING*

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 Twelfth Street, SW  
Washington, DC 20554

**Re: IBFS File Nos. SAT-AMD-20172106-00167; SAT-AMD-20172106-00168  
Call Signs S2966 & S2977**

Dear Ms. Dortch:

With this letter, the Boeing Company (“Boeing”) responds to certain inaccuracies in the Opposition Parties’ replies in the licensing dockets referenced above (“Opponents”).<sup>1</sup>

**The Proposed Assignment is Not a “Disavowal” and the Commission Cannot and Should Not Dismiss the underlying Applications.**

On December 6, 2017, Boeing requested a waiver of the rules – to the extent that the Commission deems a waiver necessary – for the proposed assignment of the NGSO satellite system applications referenced above to SOM1101. The request to amend was made in good faith due to a change in business plans. By the amendments, Boeing seeks to effectuate the same basic goal of its original applications: to provide low-latency, high-speed satellite broadband services in underserved areas in the United States. Boeing filed the initial application that triggered the public notice and current processing round for NGSO satellite systems operating in the V-band. Boeing’s applications were filed for legitimate purposes, and not for spectrum warehousing or speculation. The burden is on Opponents to produce evidence to the contrary.<sup>2</sup>

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<sup>1</sup> Reply of O3b Limited to Oppositions to Petitions to Deny, File Nos. SAT-AMD-20171206-00167; SAT-AMD-20171206-00168; SAT-LOA-20160622-0058; SAT-LOA-20161115-00109; Call Signs S2966 and S2977 (filed Mar. 9, 2018) (hereinafter “*O3b Reply*”); Consolidated Reply of Space Exploration Holdings, LLC, Call Signs S2966 and S2977; File Nos. SAT-AMD-20171206-00167 and SAT-AMD-20171206-00168 (filed Mar. 9, 2018) (hereinafter “*SpaceX Reply*”); Reply of Iridium Satellite LLC, File Nos. SAT-AMD-20171206-00167; SAT-AMD-20171206-00168; SAT-LOA-20161115-00109; SAT-LOA-20160622-00058; SAT-AMD-20170301-00030 (filed Mar. 9, 2018) (hereinafter “*Iridium Reply*”); Reply of Telesat Canada, File Nos. SAT-AMD-20171206-00167; SAT-AMD-20171206-00168; Call Signs 2966 and 2977 (filed Mar. 9, 2018) (hereinafter “*Telesat Reply*”).

<sup>2</sup> Amendment of the Commission’s Space Station Licensing Rules and Policies, *First Report and Order*, 18 FCC Rcd 10760, ¶ 222 and n.528 (2003) (explaining that “bald allegations or weakly supported claims of speculation will not be afforded this weight in our public interest determination”).

In its reply, O3b in particular, appears to equate Boeing's proposed assignment with an "explicit disavowal of any intent to pursue the construction and launch of the NGSO facilities [Boeing] originally proposed..."<sup>3</sup> Tellingly, Ob3 cites nothing for this proposition.<sup>4</sup>

In any event, Boeing's underlying applications are not subject to dismissal.<sup>5</sup> This proceeding is limited to the issue of Boeing's amendments to assign its applications.<sup>6</sup>

### **Section 25.159 Does Not Preclude the Proposed Transfer.**

Boeing and SOM1101's interpretation of the Controlling Interest standard in Section 25.159(c)(2) is based on the most common sense reading of the Commission's rules.

Petitioners, citing Section 1.2110(c)(2)(ii)(F), would have the Commission imbue Mr. Wyler with control over OneWeb, solely by virtue of the fact that he is one of a number of directors on its Board. In addition to being inconsistent with the text and structure of the regulations,<sup>7</sup> Petitioners' view would render Section 1.2110(c)(2)(i)(A) and 1.2110(c)(5)(vii) superfluous. As stated plainly in Section 1.2110(c)(2)(i)(A), a *de facto* controlling interest can be generated only when, at minimum, an "entity constitutes or appoints *more than 50 percent* of the board of directors or management committee."<sup>8</sup> And, in relevant part, an affiliation can only even potentially arise when "officers, directors, or key employees serve as *the majority or otherwise as the controlling element of the board of directors* and/or management of another entity."<sup>9</sup> Yet as Petitioners would have it, a mere single or minority board member "shall be considered" to have a controlling interest.<sup>10</sup> Logic and basic principles of statutory construction render Petitioners' view untenable. Moreover, Petitioners' "automatic attribution" rule of single directorships could have ripple effects throughout the telecommunications and satellite industries, where executives may sit on other corporate boards in advisory roles.

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<sup>3</sup> O3b Reply at 2.

<sup>4</sup> Boeing Ka-Band Public Interest Statement, at 2-3; Boeing V-Band Public Interest Statement at 2-3.

<sup>5</sup> See, e.g., Application of DIRECTV Enters., LLC, *Memorandum Opinion and Order*, 24 FCC Rcd 9408, 9408 (Int. Bureau, 2009) (declining to permit Directv to substitute Pegasus Development DBS Corp. in the geostationary application queue for its 17/24 GHz broadcasting-satellite service application, but not dismissing the underlying application); see also Public Notice, *Policy Branch Information, Actions Taken*, Report No. SAT-00620, DA 09-1724 (July 31, 2009) (reporting the license grant for the same satellite application to DirecTV on July 28, 2009).

<sup>6</sup> Administrative Procedure Act, 5 U.S.C. § 701, *et. seq.*

<sup>7</sup> Opposition of The Boeing Company, File Nos. SAT-AMD-20171206-00167; SAT-AMD-20171206-00168; SAT-LOA-20160622-0058; SAT-LOA-20161115-00109; Call Signs S2966 and S2977, at 4-5 (filed Feb. 27, 2018); Opposition of SOM1101, LLC to Petitions to Deny, File Nos. SAT-AMD-20171206-00167; SAT-AMD-20171206-00168; SAT-LOA-20160622-0058; SAT-LOA-20161115-00109; Call Signs S2966 and S2977, at 9-14 (filed Feb. 27, 2018).

<sup>8</sup> 47 C.F.R. § 1.2110(c)(2)(i)(A).

<sup>9</sup> 47 C.F.R. § 1.2110(c)(5)(vii).

<sup>10</sup> See *SpaceX Reply* at 5-6; *O3b Reply* at 8-9; *Telesat Reply* at 4-5; *Iridium Reply* at 6-8.

In sum, Petitioners' replies reinforce, rather than refute, a blatant effort to exclude a potential competitor and undermine competition in the NGSO FSS service, to the detriment of Commission policy objectives and consumers. The proposed transfers are not a major amendment,<sup>11</sup> and the Opponents would not be harmed from such an assignment, which could just as easily occur via a lease of capacity or as a licensee.

Accordingly, the Commission should grant Boeing's proposed amendments and allow SOM1101 to proceed as the applicant in the above-referenced licensing proceedings, including, if necessary, by issuing a waiver of Section 25.159(b) and/or an exception under Section 25.116(c)(2).

Respectfully submitted,

**THE BOEING COMPANY**

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<sup>11</sup> Boeing anticipated SpaceX's attempt to cite a forty year old Commission decision for the proposition that transfers of control were to be treated as substantial amendments. *SpaceX Reply* at 13. As previously explained, when the Commission removed transfers of control from the scope of major amendments in 2003, it effectively did so for substantial amendments.

## CERTIFICATE OF SERVICE

I, Bruce A. Olcott, hereby certify that I caused a copy of the foregoing *Ex Parte* Letter of The Boeing Company to be served by U.S. first-class mail, postage paid, upon each of the following:

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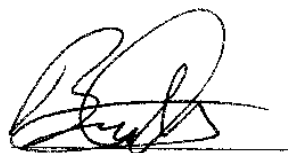
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