

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

In the Matter of	)	
	)	
The Boeing Company and	)	File Nos. SAT-AMD-20171206-00167
	)	SAT-AMD-20171206-00168
	)	SAT-LOA-20160622-00058
	)	SAT-LOA-20161115-00109
SOM1101, LLC	)	Call Signs: S2966 and S2977
	)	
Applications for	)	
NGSO-Like Satellite Systems in	)	
the Ka-band and V-band Frequencies	)	

**PETITION TO DENY OF O3B LIMITED**

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## TABLE OF CONTENTS

<b>I. INTRODUCTION AND SUMMARY .....</b>	<b>2</b>
<b>II. THE AMENDMENTS VIOLATE SECTION 25.159(B) AND THE PUBLIC INTEREST AND MUST BE DENIED.....</b>	<b>4</b>
<b>A. Because Mr. Wyler Controls Both SOM1101 and OneWeb,         Section 25.159(b) Bars Grant of the Amendments .....</b>	<b>4</b>
<b>B. The Parties Have Not Justified a Waiver of Section 25.159(b).....</b>	<b>10</b>
<b>i. A Waiver Would Directly Conflict with the Purpose of Section 25.159(b) .....</b>	<b>10</b>
<b>ii. Granting a Waiver Would Reward Speculation,             Contravening the Public Interest .....</b>	<b>15</b>
<b>III. FOLLOWING DENIAL OF THE AMENDMENTS, THE UNDERLYING APPLICATIONS MUST BE DISMISSED.....</b>	<b>17</b>
<b>IV. CONCLUSION .....</b>	<b>19</b>

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**PETITION TO DENY OF O3B LIMITED**

O3b Limited (“O3b”) submits this Petition to Deny the above-captioned amendments filed by the Boeing Company (“Boeing”) and SOM1101, LLC (“SOM1101,” and with Boeing, “the Parties”), which seek to substitute SOM1101 for Boeing as the applicant for authority to launch and operate systems of non-geostationary orbit (“NGSO”) satellites operating in Ka-band and V-band frequencies (“the Amendments”).<sup>1</sup> As discussed below, the proposed substitution would violate Section 25.159(b) of the Commission’s rules<sup>2</sup> because it would result in one individual, Greg Wyler, having attributable interests in multiple unbuilt NGSO systems in the same frequency bands. Because the Parties have not justified a waiver of this rule, the Amendments must be denied. Moreover, in light of the evidence that Boeing itself does not

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<sup>1</sup> Amendment of the Boeing Company, File No. SAT-AMD-20171206-00167 (the “Boeing V-Band Amendment”) to File No. SAT-LOA-20160622-00058, Call Sign S2966 (the “Boeing V-Band Application”); Amendment of the Boeing Company, File No. SAT-AMD-20171206-00168 (the “Boeing Ka-Band Amendment”) to File No. SAT-LOA-20161115-00109, Call Sign S2977 (the “Boeing Ka-Band Application”).

<sup>2</sup> 47 CFR § 25.159(b).

intend to pursue the underlying NGSO applications, the Boeing V-Band Application and the Boeing Ka-Band Application should both be dismissed.

## **I. INTRODUCTION AND SUMMARY**

O3b has a strong interest in the Amendments and underlying Boeing NGSO applications. O3b serves the United States through a Ka-band NGSO network that provides high-throughput, low-latency connectivity for enterprise, government, and mobility clients.<sup>3</sup> O3b currently operates twelve satellites in a Medium Earth Orbit configuration. To accommodate growing demand for O3b's high-performance connectivity, O3b has requested authority for additional spacecraft and spectrum in both the Ka-band and the V-band.<sup>4</sup> These Pending O3b Applications are being considered in processing rounds established by the Commission to evaluate competing requests for NGSO operations in the Ku/Ka-band and V-band frequencies.<sup>5</sup>

Through the Amendments, the Parties seek to allow SOM1101, an entity wholly owned and controlled by Greg Wyler, to step into Boeing's shoes as the applicant for Commission licenses to launch and operate NGSO constellations, one in Ka-band and one in V-band.<sup>6</sup> Like

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<sup>3</sup> O3b Limited, Call Sign S2935, File Nos. SAT-LOI-20141029-00118 & SAT-AMD-20150115-00004, grant-stamped Jan. 22, 2015, corrected and re-issued June 2, 2015.

<sup>4</sup> O3b Limited, Call Sign S2935, File Nos. SAT-MOD-20160624-00060; SAT-AMD-20161115-00116; SAT-AMD-20170301-00026 & SAT-AMD-20171109-00154 (collectively, the "Pending O3b Applications").

<sup>5</sup> See *OneWeb Petition Accepted for Filing; IBFS File No. SAT-LOI-20160428-00041; Cut-Off Established for Additional NGSO-Like Satellite Applications or Petitions for Operations in the 10.7-12.7 GHz, 14.0-14.5 GHz, 17.8-18.6 GHz, 18.8-19.3 GHz, 27.5-28.35 GHz, 28.35-29.1 GHz, and 29.5-30.0 GHz Bands*, Public Notice, DA 16-804 (July 15, 2016); *Boeing Application Accepted for Filing; IBFS File No. SAT-LOA-20160622-00058; Cut-Off Established for Additional NGSO-Like Satellite Applications or Petitions for Operations in the 37.5-40.0 GHz, 40.0-42.0 GHz, 47.2-50.2 GHz and 50.4-52.4 GHz Bands*, Public Notice, DA 16-1244 (rel. Nov. 1, 2016).

<sup>6</sup> Boeing V-Band Amendment, Public Interest Statement at 1-2. Because the materials regarding the Boeing Ka-Band Amendment in the Commission's IBFS database do not include a comparable narrative describing the purpose of that amendment and its alleged public interest

the Pending O3b Applications, the Boeing applications that are the subject of the Amendments are part of the Commission's NGSO processing rounds.

In addition to controlling SOM1101, Greg Wyler also has a controlling interest in WorldVu Satellites Limited d/b/a OneWeb ("OneWeb") through his position as OneWeb's Founder and Executive Chairman and his *de facto* control over OneWeb.<sup>7</sup> OneWeb requested and received authority in the Commission's processing round for Ku- and Ka-band NGSO systems,<sup>8</sup> and the company also has submitted a request to serve the U.S. market in the V-band frequencies.<sup>9</sup>

The Commission has expressly prohibited control by a single person or entity of more than one pending NGSO application or grant for a licensed-but-unbuilt NGSO system in any frequency band, and the Amendments clearly violate this prohibition. Permitting SOM1101 to substitute for Boeing as applicant would reward speculative filings, increase uncertainty for other processing round applicants such as O3b, and jeopardize future investments in NGSO constellations. For the above reasons, the Amendments are contrary to the public interest and should be denied.

Once the Commission denies the Amendments, it must also dismiss the underlying applications. Whatever Boeing's intentions were when it initially filed for V-band and Ka-band

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benefits, O3b is assuming for purposes of this Petition that the description and public interest statement in the V-Band Amendment is applicable to both Amendments.

<sup>7</sup> OneWeb, Board of Directors, oneweb.net (last visited February 12, 2018), <http://www.oneweb.net/board/greg-wyler> (listing Greg Wyler as Founder and Executive Chairman).

<sup>8</sup> *WorldVu Satellites Limited, Petition for a Declaratory Ruling Granting Access to the U.S. Market for the OneWeb NGSO FSS System*, File No. SAT-LOI-20160428-00041, Order and Declaratory Ruling, FCC 17-77 (rel. June 23, 2017).

<sup>9</sup> *WorldVu Satellites Limited, Petition for a Declaratory Ruling Granting Access to the U.S. Market for the OneWeb V-Band System*, File No. SAT-LOI-20170301-00031.

authority, it is clear from the materials submitted in support of the Amendments that Boeing is not committed to building and operating the proposed NGSO constellations. Thus, allowing Boeing to continue as an applicant would enable warehousing of spectrum and orbital resources in violation of explicit Commission policies.

## **II. THE AMENDMENTS VIOLATE SECTION 25.159(b) AND THE PUBLIC INTEREST AND MUST BE DENIED**

The Parties' proposal to allow SOM1101 to take Boeing's place as applicant for V-band and Ka-band systems and participant in the pending Commission processing rounds is prohibited by regulatory provisions designed to prevent speculation and promote delivery of satellite services to the public. The Parties' belated request for waiver of the relevant rule is unavailing, as it is clear that grant of a waiver would reward precisely the type of behavior that the rule was intended to prohibit. Accordingly, the Commission must deny the Amendments.

### **A. Because Mr. Wyler Controls Both SOM1101 and OneWeb, Section 25.159(b) Bars Grant of the Amendments**

The applicant substitution proposed in the Amendments would result in a violation of the FCC's limits on pending applications and unbuilt satellite systems. Section 25.159(b) of the Commission's rules states that:

Applicants with an application for one NGSO-like satellite system license on file with the Commission in a particular frequency band, or one licensed-but-unbuilt NGSO-like satellite system in a particular frequency band, will not be permitted to apply for another NGSO-like satellite system license in that frequency band.<sup>10</sup>

For the purpose of this rule, "if an applicant has an attributable interest in one or more other entities seeking one or more space station licenses, the pending applications and licensed-

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<sup>10</sup> 47 CFR § 25.159(b).

but-unbuilt satellite systems filed by those other entities will be counted as filed by the applicant.”<sup>11</sup> An applicant is deemed to have an attributable interest in another entity if its aggregate equity and debt interests, fully diluted, exceed thirty-three percent of the total asset value of that entity, or the applicant “holds a controlling interest in that entity, or is the subsidiary of a party holding a controlling interest in that entity, within the meaning of 47 CFR 1.2110(b)(2).”<sup>12</sup>

Section 1.2110(b)(2) of the Commission’s rules explains that an entity is considered to have a controlling interest in another where the two companies are “affiliates of each other or have an identity of interests identified in §1.2110(c)(5)(iii).”<sup>13</sup> The FCC treats affiliated entities “as though they were one person or entity.”<sup>14</sup> The Commission has explained that “affiliation may arise from a number of circumstances and relationships, including having a controlling interest in or power to control the applicant, which in turn can arise from a number of circumstances and relationships.”<sup>15</sup> To determine control, the Commission looks at either positive or negative control, which can arise through a variety of relationships, including:

occupancy of director, officer or key employee positions; contractual or other business relations; or combinations of these and other factors. A key employee is an employee who, because of his/her position in the concern, has a critical influence in or substantive control over the operations or management of the concern.<sup>16</sup>

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<sup>11</sup> 47 CFR § 25.159(c).

<sup>12</sup> 47 CFR § 25.159(c)(1)&(2).

<sup>13</sup> 47 CFR § 1.2110(b)(2).

<sup>14</sup> *Id.*

<sup>15</sup> *Northstar Wireless, LLC and SNR WirelessCo, LLC, Applications for New Licenses in the 1695-1710 MHz, and 1755-1780 MHz and 2155-2180 MHz*, Memorandum Opinion and Order, 29 FCC Rcd 8887, 8909 ¶ 49 (2015); 47 CFR § 1.2110(c)(5)(i)(A)-(C).

<sup>16</sup> 47 CFR § 1.2110(c)(5)(ii)(B).

Applying these standards here, it is clear that Greg Wyler holds a controlling interest in both SOM1101 and OneWeb. As a result, given that OneWeb has a licensed but unbuilt Ka-band NGSO system and a pending application for a V-band NGSO system, Section 25.159(b) bars SOM1101 from being an applicant for either a Ka-band or V-band NGSO network.

Mr. Wyler has sole control of SOM1101. Specifically, he owns 100% of the membership interests of 1010 Holdings LLC, which in turn owns 100% of the membership interests of SOM1101.<sup>17</sup> Mr. Wyler is also the Operating Manager of SOM1101.<sup>18</sup> Mr. Wyler therefore holds a controlling interest in SOM1101.

Although Mr. Wyler has only an 11.84% ownership interest in OneWeb, his leadership position in the company gives him a controlling interest within the meaning of Section 25.159(b). The Parties acknowledge that Mr. Wyler is Executive Chairman of the Board and a Director of OneWeb.<sup>19</sup> This title alone is sufficient to confer control under the applicable Commission provisions. As discussed above, Section 25.159 incorporates by reference the terms of Section 1.2110(b)(2) with respect to determining whether a party has a controlling interest.<sup>20</sup> The definitions for applying Section 1.2110(b)(2) in the following portion of that rule make clear that “[o]fficers and directors of the applicant shall be considered to have a controlling interest in the applicant.”<sup>21</sup>

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<sup>17</sup> Boeing V-Band Amendment, FCC Form 312 for SOM1101, Response to Question 40.

<sup>18</sup> *See id.*

<sup>19</sup> *See* The Boeing Company and SOM1101, LLC, Request for Waiver of Section 25.159(b) at 1 (“Section 25.159(b) Waiver Request”).

<sup>20</sup> 47 CFR § 25.159(c)(2).

<sup>21</sup> 47 CFR § 1.2110(c)(2)(ii)(F).



The Parties attempt to avoid this clear language by arguing that Section 1.2110(c)(2) does not apply outside the context of competitive spectrum auctions because it is not explicitly cross referenced in Section 25.159.<sup>22</sup> This suggestion cannot be squared with common sense or with clear Commission precedent. As noted above, subsection (c) of rule 1.2110 provides the definitions of the terminology regarding commonality of interest necessary to apply Section 1.2110(b)(2). Moreover, when it established the attribution provisions in Section 25.159, the Commission explained that it was adopting “the ‘controlling interest’ standard” from its competitive bidding procedures.<sup>23</sup> Subsection (c) gives meaning to the controlling interest standard.

Even if his title alone were not conclusive, the facts confirm that Mr. Wyler plays a critical role in directing the policies and operations of OneWeb and therefore has *de facto* control over OneWeb. For example, Mr. Wyler frequently addresses the press on behalf of OneWeb, discussing the scheduling of OneWeb’s satellite production, agreements between OneWeb and foreign countries, and the direction of the company. When asked about his own vision for OneWeb, Mr. Wyler frequently speaks in terms of OneWeb’s interests, using terms such as “we believe” and “our mission.”<sup>24</sup>

Mr. Wyler’s public statements indicate that he is privy to or engaged in high-level decisions within OneWeb, including the failed merger between OneWeb and Intelsat.<sup>25</sup> After

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<sup>22</sup> Section 25.159(b) Waiver Request at 1-2.

<sup>23</sup> *Amendment of the Commission’s Space Station Licensing Rules and Policies*, First Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 10760, 10850, ¶ 237 n. 564 (2003) (“First Space Station Reform Order”).

<sup>24</sup> *Wyler: OneWeb ready to solve the ultimate connectivity problem*, VIA SATELLITE, <http://interactive.satellitetoday.com/via/september-october-2017/wyler-oneweb-ready-to-solve-the-ultimate-connectivity-problem/>.

<sup>25</sup> *See id.*

the proposed merger was terminated, Mr. Wyler outlined the conditions under which OneWeb would seek other acquisitions or partnerships.<sup>26</sup> Mr. Wyler similarly signed a Memorandum of Understanding with the Kingdom of Saudi Arabia, forming an official relationship between OneWeb and the Kingdom.<sup>27</sup> Mr. Wyler also testified to the Senate Commerce Committee on behalf of OneWeb, laying out OneWeb's plans for service.<sup>28</sup> In that testimony, Mr. Wyler demonstrated his active involvement with OneWeb's strategic decisions, summarizing OneWeb's strategic plans through 2027.<sup>29</sup>

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<sup>26</sup> Irene Klotz, *OneWeb open to other acquisitions after Intelsat merger tanks*, REUTERS (June 1, 2017), <https://www.reuters.com/article/us-oneweb-intelsat-m-a-acquisitions/oneweb-open-to-other-acquisitions-after-intelsat-merger-tanks-idUSKBN18S665> (“Satellite builder OneWeb Ltd will look for other acquisitions or partnerships after a proposed takeover of Intelsat SA (I.N) fell through, OneWeb founder and Executive Chairman Greg Wyler said on Thursday”).

<sup>27</sup> Kendal Russell, *OneWeb to Help Bridge Digital Divide in Saudi Arabia*, VIA SATELLITE (Oct. 30, 2017), <http://www.satellitetoday.com/telecom/2017/10/30/oneweb-help-bridge-digital-divide-saudi-arabia/>.

<sup>28</sup> *OneWeb's Greg Wyler: our new high-performance satellite technologies put us on “cusp of bridging the digital divide,”* <https://www.prnewswire.com/news-releases/onewebs-greg-wyler-our-new-high-performance-satellite-technologies-put-us-on-cusp-of-bridging-the-digital-divide-300543570.html>; see also Shieber, Jonothan, *OneWeb is a step closer to bringing its global, satellite-based internet services to Earth*, TECHCRUNCH, <https://techcrunch.com/2017/11/07/oneweb-is-a-step-closer-to-bringing-its-global-satellite-based-internet-services-to-earth/>.

<sup>29</sup> Before the Committee on Commerce, Science, and Technology, U.S. Senate, Testimony of Greg Wyler, <https://www.commerce.senate.gov/public/cache/files/d6735b38-52d3-4ae7-a21d-22585eeb7f74/84FB36BD346E9B400D5ECF3DFD629407.october-25---u.s.-sentate-committee-hearing---wyler-testimony-final-.pdf>, (Oct. 2017) (summarizing OneWeb's plans for a second constellation in 2021, a third constellation in 2023, and OneWeb's target investment goals by 2027).

In short, Mr. Wyler oversees the day-to-day operations of OneWeb.<sup>30</sup> Mr. Wyler is actively involved in obtaining financing,<sup>31</sup> signing agreements on behalf of OneWeb,<sup>32</sup> and determining the strategic and operational direction of the company.<sup>33</sup> By virtue of both his title and his actions, it is clear that Mr. Wyler exercises *de facto* control over OneWeb. This control makes it impermissible under Section 25.159(b) for Mr. Wyler’s wholly-owned company SOM1101 to be an applicant for Ka-band or V-band NGSO authority given OneWeb’s existing authorization and application in those bands.

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<sup>30</sup> For example, Mr. Wyler publicly described the planned working relationship with OneWeb’s new investor, SoftBank. See Caleb Henry, *OneWeb gets \$1.2 billion in SoftBank-led investment*, SPACENEWS (Dec. 19, 2016), <http://spacenews.com/oneweb-gets-1-2-billion-in-softbank-led-investment/> (“Wyler said the SoftBank investment does not constitute a commitment on OneWeb’s part to build or source materials for its constellation from Japan. However, given SoftBank’s portfolio of tech-companies, Wyler said OneWeb will be working with them ‘to learn and gain all the support we can.’”).

<sup>31</sup> See *id.* (quoting Greg Wyler: “The plan was that the \$500 million raised in June of 2015 would last us about 18 months... Then, in that time, we would raise another \$500 million, and about a year after that we would raise another \$500 million. With SoftBank we raised the B round and compressed the B and the C rounds together... We planned for \$1.5 billion in total funding, and we have exceeded that, so there are no current plans to go into the markets to raise more money.”).

<sup>32</sup> Ministry of Communications Inks MOU with OneWeb to Bridge Digital Divide in Saudi Arabia, CISION (Oct. 26, 2017) <https://www.prnewswire.com/news-releases/ministry-of-communications-inks-mou-with-oneweb-to-bridge-digital-divide-in-saudi-arabia-300544292.html> (explaining that Wyler signed a Memorandum of Understanding as a representative of OneWeb).

<sup>33</sup> Kyree Lyree, *With Hundreds of New Low-Orbit Satellites, OneWeb Promises to Bridge the Digital Divide*, FUTURISM (Dec. 29, 2017) <https://futurism.com/oneweb-launch-satellites-2018-broadband/> (quoting Greg Wyler: “Our second constellation planned, for 2021, will enable ultra-high speeds beyond 2.5 gigabits per second — faster than fiber — direct to every rural home using a small lightweight antenna.”).

## **B. The Parties Have Not Justified a Waiver of Section 25.159(b)**

Seemingly recognizing that the requested Amendments violate the Commission's rules, the Parties belatedly requested a waiver of Section 25.159(b).<sup>34</sup> The Commission should reject this request as contrary to Commission precedent and the public interest.

The test for a rule waiver is well established:

The Commission may waive a rule for good cause shown. Waiver is appropriate if special circumstances warrant a deviation from the general rule and such deviation would better serve the public interest than would strict adherence to the general rule. Generally, the Commission may grant a waiver of its rules in a particular case if the relief requested would not undermine the policy objective of the rule in question and would otherwise serve the public interest.<sup>35</sup>

Because it is clear that the Parties have not met this test, their request must be rejected.

### **i. A Waiver Would Directly Conflict with the Purpose of Section 25.159(b)**

Granting a waiver here would clearly violate the Commission policies reflected in Section 25.159(b). The Commission established the prohibition against affiliated entities controlling more than one NGSO application in each frequency band to discourage speculative NGSO filings and to prevent NGSO applicants from warehousing orbital and spectrum resources.<sup>36</sup> Specifically, the Commission determined that imposing a limit of "one NGSO satellite system per frequency band will restrain speculation without restricting applicants' business plans."<sup>37</sup> The Commission noted that the application restriction would give "licensees an incentive to turn in licenses for satellite systems that they do not intend to build." Imposing

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<sup>34</sup> Section 25.159(b) Waiver Request at 1.

<sup>35</sup> *PanAmSat Licensee Corp.*, 17 FCC Rcd 10483, 10492 (Sat. Div. 2002) (footnotes omitted).

<sup>36</sup> First Space Station Reform Order, 18 FCC Rcd at 10847, 10849-10851, ¶¶ 230, 234-239.

<sup>37</sup> *Id.* at 10847, ¶ 230.

the limit, the Commission found, would not “preclude legitimate applications from consideration” but would simply require “satellite operators to prioritize their business plans.”<sup>38</sup> The Commission acknowledged that the application limit in Section 25.159 would not “totally prevent speculation,” but together with strict milestone enforcement and application of the bond requirement adopted at that time would provide “some protection against speculation.”<sup>39</sup>

The Commission went on to recognize that an attribution rule was a necessary element of the regulatory approach in order to deter speculative applications – “[o]therwise, applicants could evade the limit simply through corporate restructuring.”<sup>40</sup> In implementing its protections against speculation, the Commission correctly recognized that an NGSO processing round applicant may use another entity it controls to block or otherwise disadvantage other NGSO systems in the processing round. Boeing itself has previously expressed concern that the Commission’s “affiliation restrictions – 33% – could be evaded easily by entities seeking to file multiple adversarial applications designed to block other operators.”<sup>41</sup> In response to Boeing’s arguments, and in order to “provide additional protection against speculation,” the Commission revised its initially proposed attribution rule to specifically encompass not just majority ownership but other forms of controlling interests and subsidiaries under common ownership with the controlling interest.<sup>42</sup> Ironically, it is Boeing that is now trying to evade the measures adopted to address a threat it originally identified.

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<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> *Id.* at 10849, ¶ 236.

<sup>41</sup> Comments of The Boeing Company, IB Docket Nos. 02-34, 00-248, filed June 3, 2002 at 7 (“Boeing Space Station Reform Comments”).

<sup>42</sup> First Space Station Reform Order, 18 FCC Rcd at 10850, ¶ 237.

The Parties' arguments seeking a waiver of Section 25.159(b) must be evaluated against this history in which the Commission explicitly set forth the policy rationale underlying the rule. Based on this analysis, each argument must be rejected.

First, the Parties falsely claim that "the Commission's reason for adopting a presumptive restriction on more than one [NGSO] application – preventing speculation and trafficking in spectrum – does not apply here and is no longer necessary."<sup>43</sup> The Parties observe that the Commission eliminated the limit on pending GSO satellite applications and licensed-but-unbuilt GSO systems that was formerly set forth in Section 25.159(a) based on a finding that the bond and milestone framework was sufficient to deter speculation and warehousing of spectrum and orbital resources.<sup>44</sup> From this premise, the Parties jump to the conclusion that since there are also bond and milestone requirements applicable to NGSO systems, the protections against speculation reflected in the Section 25.159(b) limits are unneeded.

As a threshold matter, the Parties cannot presume to know how the Commission would have decided a matter that was not before it in the Part 25 Order. Neither the Commission nor any other party proposed deletion of Section 25.159(b), notwithstanding the fact that elimination of the parallel provision in Section 25.159(a) was being discussed, and therefore no record was developed regarding the continued need for the NGSO application limit. The Parties' suggestion that the outcome of a debate that never occurred would have been a finding that Section 25.159(b) was no longer necessary is the purest conjecture.

Indeed, the Parties simply ignore differences between the GSO and NGSO regulatory frameworks that support maintaining the application limit for NGSO systems in order to prevent

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<sup>43</sup> Section 25.159(b) Waiver Request at 3 (footnote omitted).

<sup>44</sup> *Id.* at 4 & n.10, *citing* Comprehensive Review of Licensing and Operating Rules for Satellite Services, *Second Report and Order*, 30 FCC Rcd 14713, 14818, ¶ 337 (2015) ("Part 25 Order").

speculative filings. While it is true that both GSO and NGSO authorizations are subject to bond and milestone obligations designed to deter warehousing and trafficking in spectrum and orbital resources, those obligations do not come into effect until a grant is issued and thus cannot be relied on to discourage speculation at the application submission stage. In the GSO context, however, there is a specific prohibition designed to guard against the possibility of speculative applications. Section 25.158(c) provides that a GSO system applicant “must not transfer, assign, or otherwise permit any other entity to assume its place in any queue.”<sup>45</sup>

In other words, the substitution of one applicant for another proposed in the instant Amendments is explicitly forbidden in the GSO processing rules, protecting against the possibility that a party will file a satellite application with no intention of building out a system but solely to obtain a favorable filing position that it can later seek to transfer. Given the lack of a comparable prohibition on applicant substitution for NGSO filings, maintaining and enforcing the Section 25.159(b) limit on NGSO applications in a given band is necessary to provide an equivalent level of protection against speculation by parties seeking NGSO authority. As a result, grant of a waiver here would directly conflict with the express purpose of Section 25.159(b).

The Parties’ suggestion that a waiver will not negatively impact other NGSO applicants<sup>46</sup> is similarly without foundation. Boeing itself explicitly highlighted the risk that applicants would attempt to game the system by submitting multiple applications intended to pose obstacles to other possible systems.<sup>47</sup> In the current processing rounds, O3b and applicants for other

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<sup>45</sup> 47 CFR § 25.158(c).

<sup>46</sup> Section 25.159(b) Waiver Request at 4.

<sup>47</sup> Boeing Space Station Reform Comments at 7.

NGSO systems have spent considerable time and financial resources to design their constellations to accommodate all other processing round applicants, including Boeing and OneWeb. The mere presence of speculative applications in a processing round inherently requires other processing round applicants to adjust their system designs in terms of power levels, number of satellites, elevation, orbits, and financing. Granting the Amendments would set a precedent that condones speculative filings and would encourage similar speculation in future processing rounds, potentially deterring legitimate new entrants from seeking, or effectively blocking such legitimate applicants from obtaining, authorization to operate an NGSO constellation. Thus, the harm to other NGSO applicants – both current and future – from allowing SOM1101 to acquire applications that Boeing does not intend to pursue could not be clearer.

Finally, the Parties’ assertion that a waiver is warranted to ensure that enforcement of Section 25.159(b) does not impede Mr. Wyler’s business plans<sup>48</sup> cannot be squared with the Commission’s findings when it adopted the rule in 2003. As discussed above, the Commission explicitly rejected arguments that limiting entities to a single pending application or unbuilt system per band “would preclude legitimate applications from consideration,” finding instead that the rule’s effect would require that satellite operators prioritize their business plans.<sup>49</sup> Here, Mr. Wyler is not being blocked from implementing his strategy for NGSO operations in Ka-band and V-band spectrum; he is simply being required to select a single vehicle through which to do so.

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<sup>48</sup> Section 25.159(b) Waiver Request at 4.

<sup>49</sup> First Space Station Reform Order, 18 FCC Rcd at 10847, ¶ 230.



**ii. Granting a Waiver Would Reward Speculation,  
Contravening the Public Interest**

Furthermore, waiving the rules to permit the Amendments would reward speculation and is therefore contrary to the public interest. As discussed above, in the GSO context the Commission has expressly prohibited the type of applicant substitution contemplated in the Amendments by forbidding an entity from transferring, assigning or otherwise allowing another party from acquiring the applicant's place in the geostationary satellite queue.<sup>50</sup> In 2016 the Commission rejected a proposal to eliminate that rule, explaining that its:

purpose in prohibiting sales of places in the satellite application processing queue was to discourage entities who had no intention of building a system from filing applications merely to make a profit from a sale to an unrelated entity. It was not to discourage companies from merging with other companies in legitimate business transactions, especially when those transactions involve other assets and the new company is better positioned to compete in the marketplace.<sup>51</sup>

Thus, the Commission distinguishes between changes to an applicant's ownership or control that are part of a legitimate business transaction, such as a merger, and arrangements that simply seek to allow a third party to take an applicant's processing position. Here, the change in applicants proposed in the Amendments is not the byproduct of a larger merger or other "legitimate business transaction." Instead, the companies seek to simply substitute SOM1101's name for that of Boeing so that the new entity can assume Boeing's spot in the processing round, an outcome that the Commission specifically prohibited in the context of the geostationary queue.

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<sup>50</sup> 47 C.F.R. § 25.158(c); First Space Station Reform Order, 18 FCC Rcd at 10851-52, ¶¶ 240-43.

<sup>51</sup> *Amendment of the Commission's Space Station Licensing Rules and Policies*, Second Order on Reconsideration, 31 FCC Rcd 9398, 9405, ¶¶ 18-19 (2016) (emphasis added).

The Parties suggest that the Amendments would be in the public interest because SOM1101, by virtue of Mr. Wyler's history of working with NGSO constellations, is in a better position to complete the constellations initially proposed by Boeing. But as discussed above, the public interest objective underlying the Section 25.159(b) limit on NGSO applications is the prevention of speculation, and achieving that goal requires denial of the Amendments, regardless of whether the proposed substitute applicant is qualified to build and launch a satellite system.

Boeing's claim that it is only receiving compensation for its expenses and is not profiting from the sale of its filing is not dispositive of whether the attempt to shift applications from Boeing to SOM1101 represents impermissible speculation. The rule that would apply if the Boeing applications were for GSO networks would prohibit any attempt to transfer, assign, or otherwise allow another party to take over Boeing's position as applicant,<sup>52</sup> regardless of whether the transaction involved compensation for the original applicant. There is no reason to assume that the Commission would apply a different standard to NGSO applications. Moreover, Boeing admits that it will provide manufacturing and other consulting services as needed to SOM1101,<sup>53</sup> giving Boeing an ongoing opportunity to continue to receive compensation from SOM1101 if the Amendments are granted. While the Commission clearly intended to discourage the sale of a filing for profit, such an action is not the only potential indication of speculative intent. Boeing's actions here – the submission of multiple applications for NGSO constellations, including two filings for the same frequency bands,<sup>54</sup> followed by a request to

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<sup>52</sup> 47 C.F.R. § 25.158(c).

<sup>53</sup> Boeing V-Band Amendment, Public Interest Statement at 3.

<sup>54</sup> In addition to the two applications underlying the Amendments, Boeing has an additional pending application for another NGSO constellation in the V-band frequencies that it has yet to withdraw or seek to reassign. *See* Application of The Boeing Company, Call Sign S2993, File Nos. SAT-LOA-20170301-00028 & SAT-AMD-20170929-00137.

reassign two applications once they have been accepted for filing – standing alone support a presumption that Boeing is engaged in speculation.

In short, waiving Section 25.159(b) to permit SOM1101 to take Boeing’s place in the pending processing rounds would undermine achievement of the anti-speculation and anti-trafficking objectives embodied in the rule and encourage future speculative filings. Such an outcome would violate the public interest in ensuring that scarce spectrum and orbital resources go to entities that are willing and able to deliver services to the public. Because the Amendments directly conflict with Commission policies designed to promote efficient use of spectrum and orbital resources, the Amendments must be denied.

### **III. FOLLOWING DENIAL OF THE AMENDMENTS, THE UNDERLYING APPLICATIONS MUST BE DISMISSED**

The same rationale requires the Commission to dismiss the underlying Boeing V-Band Application and Boeing Ka-Band Application. As explained above, Boeing’s actions here provide a sufficient basis to assume that the company is engaged in impermissible speculation. Based on that conclusion, Boeing must not be allowed to maintain its position as a participant in the V-band and Ku/Ka-band NGSO processing rounds.

Indeed, whatever Boeing intended when it initially filed the underlying applications, Boeing expressly suggests that it is not in a position to launch and operate the NGSO constellations it has proposed.<sup>55</sup> Specifically, the documentation submitted in support of the Amendments includes the claim that “SOM1101 is *uniquely* qualified to hold the requested authorization and bring the proposed services to market quickly and efficiently,” while Boeing is

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<sup>55</sup> Boeing V-Band Amendment, Public Interest Statement at 2.

more suited to design and manufacturing.<sup>56</sup> By disavowing its ability to pursue its applications to their conclusion and offer services to customers, Boeing has made clear that it is not entitled to retain its applications following denial of the Amendments. The Commission must also consider whether the second V-band NGSO application Boeing submitted last March should be dismissed given the indications that Boeing is engaged in impermissible speculation.

By both its actions and its statements, Boeing has provided evidence that it does not intend to launch and operate a V-band or Ka-band NGSO system. As a result, allowing Boeing to maintain its speculative applications would be contrary to the public interest because it would harm fellow processing round applicants and would encourage further speculation.

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<sup>56</sup> *Id.* (emphasis added).

#### IV. CONCLUSION

The Amendments seeking to allow substitution of SOM1101 for Boeing as the applicant for licenses to launch and operate Ka-band and V-band NGSO satellite systems violate Commission rules designed to deter the filing of speculative applications in NGSO processing rounds. Because Greg Wyler controls both SOM1101 and OneWeb, Section 25.159(b) prohibits the two entities from together holding more than a single application or granted-but-unbuilt NGSO system in any frequency band. Contrary to the claims of the Parties, a waiver of the rule would conflict with the Commission's clear policy rationale for imposing the limit, would disadvantage legitimate NGSO processing round applicants, and would encourage future speculative applicants to waste valuable spectrum and orbital resources. Under these circumstances, the Commission must deny the Amendments. Moreover, having engaged in impermissible speculation, Boeing must not be permitted to retain its underlying applications. Accordingly, the Boeing Ka-Band Application and the Boeing V-Band Application must be dismissed.

Respectfully submitted,  
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February 12, 2018

## **AFFIDAVIT**

1. I am Vice President, Regulatory for O3b Limited.
2. I have reviewed the foregoing Petition to Deny of O3b Limited. All statements made therein are true and correct to the best of my knowledge, information, and belief.

I declare under penalty of perjury that the foregoing is true and correct.

By: /s/ Suzanne Malloy

Date: February 12, 2018

## CERTIFICATE OF SERVICE

I, Noah Cherry, hereby certify that on this 12th day of February 2018, I caused to be served a true copy of the foregoing “PETITION TO DENY OF O3B LIMITED” by first class mail, postage prepaid, upon the following:

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