Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	File Nos.
	)	SAT-AMD-20171206-00167 and
The Boeing Company	)	SAT-AMD-20171206-00168
	)	
	)	Call Signs:
For Amendment of NGSO Applications	)	S2966 and S2977

OPPOSITION OF SOM1101, LLC TO PETITIONS TO DENY

Ronald W. Del Sesto Jr.
Timothy L. Bransford
Catherine Kuersten

MORGAN, LEWIS & BOCKIUS LLP
1111 Pennsylvania Ave, NW
Washington, DC 20004
(202) 739-3000
(202) 739-3001 (Fax)

Counsel to SOM1101, LLC

Ryan Gardner
Manager
SOM1101, LLC

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EXECUTIVE SUMMARY

SOM1101, LLC ("SOM1101") files this opposition in response to Petitions to Deny filed by Space Exploration Holdings, LLC, Iridium Satellite, LLC, O3b Limited, and Telesat Canada (collectively, "Petitioners"). Petitioners seek to deny Amendments filed by the Boeing Company ("Boeing") to substitute SOM1101 as the applicant for pending NGSO satellite constellations, alleging that the Amendments violate Sections 25.159(b) and 25.116(c) of the Commission's rules. Petitioners further argue that waiver of the relevant Commission's rules would not serve the public interest. Petitioners are wrong on all counts.

Grant of the Amendments is consistent with Section 25.159(b). Section 25.159(b) prohibits one entity from holding attributable interests in two pending NGSO systems. Petitioners wrongly assert that Mr. Wyler, who has an attributable interest in SOM1101, also holds an attributable interest in OneWeb. Mr. Wyler holds neither a "controlling interest," as defined in the Commission's *2003 Report and Order*, nor enjoys *de facto* control of OneWeb. Petitioners misinterpret Section 25.159(b) and the definition of "controlling interest" under this rule by attempting to employ irrelevant and superseded code sections into the new attribution rule adopted by the Commission in the *2003 Report and Order*.

Lacking evidence of Mr. Wyler's control over OneWeb, Petitioners erroneously point to Mr. Wyler's position on the Board, ownership interests, and public representation of OneWeb as dispositive of his control of the company. Closer scrutiny of Mr. Wyler's role at OneWeb demonstrates that he does not effectuate control over the company. Mr. Wyler holds a small percentage of voting shares and occupies a Board position along with a number of other representatives of influential entities holding nearly twice as many voting shares in OneWeb. Public representations made on behalf of a company are not indicative of control.

Petitioners also err when alleging that the Amendments qualify as "major" under Section 25.116(c), placing faulty reliance on prior Commission review of rules applicable exclusively to GSO-like satellite systems. The instant substitution, which furthers legitimate business interests, represents the exact type of transaction the Commission contemplated to exclude from Section 25.116(c). Petitioners submit unsubstantiated speculation that SOM1101 is essentially buying a place in a nonexistent line as an attempt to game inapplicable Commission rules in order to derive an unidentified advantage over other processing round applicants. No such advantage exists due to the differences in the Commission's rules associated with the GSO- and NGSO-like application processes. Moreover, Boeing is not seeking to merely substitute SOM1101 as an applicant, it is transferring the entirety of the system to SOM1101.

In the alternative, if the Commission determines that the Amendments are subject to Sections 25.159(b) and 25.116(c), it should waive these rules in furtherance of the public interest as well as the Commission's longstanding goal of promoting connectivity and efficient use of spectrum. The Petitioners' arguments against such waiver are based on fallacious grounds. Specifically, Petitioners rely on rule sections and Commission precedent developed exclusively concerning rules adopted to address harms that arise solely with respect to the GSO-like space station application process. These rules and Commission findings are irrelevant to the Amendments which, of course, concern an NGSO-like space station application.

In addition, waiving the applicable rules if necessary would further important public interests identified both by the Commission and the administration. SOM1101 intends to use the system to offer broadband internet services to Americans in areas that desperately require such access, thus providing a necessary solution to a grave problem that continues to plague the United States. Substituting the parties as proposed in the Amendments is the legal equivalent of a transfer

effectuated after grant of the licenses, but the latter would only incur avoidable administrative costs and delay provision of necessary services made possible by SOM1101's ownership of the systems. Furthermore, contrary to Petitioners' assertions, the Amendments do not encourage speculation and do not pose any harm to other NGSO operators or applicants – nor to the licensing process as a whole. To the contrary, grant of the Amendments is consistent with the Commission's policy of letting market forces drive regulation of spectrum resources.

The Amendments allow for enormous public benefits to Americans in rural areas, Tribal lands, and U.S. territories who may not otherwise have adequate access to broadband services. Accordingly, the Commission should grant the Amendments.

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OPPOSITION OF SOM1101, LLC TO PETITIONS TO DENY

SOM1101, LLC ("SOM1101") hereby submits its opposition to the Petitions to Deny (the "Petitions")[1] filed by Space Exploration Holdings, LLC ("SpaceX"), Iridium Satellite, LLC ("Iridium"), O3b Limited ("O3b"), and Telesat Canada ("Telesat") (collectively, "Petitioners") on February 12, 2018, in the above-captioned licensing dockets and the amendments (the "Amendments") filed thereto.

I. INTRODUCTION

For the reasons detailed herein, SOM1101 submits that as a threshold matter, the Commission need not waive Sections 25.159 and 25.116 to grant the Amendments. The Amendments do not implicate the Commission's prohibition against applicants having more than one application for a non-geostationary satellite orbit ("NGSO")-like satellite system on file with the Commission in a particular frequency band even when accounting for the attribution rules

[1] *See Petition to Deny of Space Exploration Holdings, LLC*, IBFS File Nos. SAT-AMD-20171206-00167 & SAT-AMD-20171206-00168 (Feb. 12, 2018) ("*SpaceX Petition,*"); *Petition to Deny of Iridium Satellite LLC*, IBFS File Nos. SAT-AMD-20171206-00167 & SAT-AMD-20171206-00168 (Feb. 12, 2018); ("*Iridium Petition*") *Petition to Deny of O3b Limited*, IBFS File Nos. SAT-AMD-20171206-00167 & SAT-AMD-20171206-00168 (Feb. 12, 2018) ("*O3b Petition*"); *Petition to Deny and Opposition of Telesat Canada*, IBFS File Nos. SAT-AMD-20171206-00167 & SAT-AMD-20171206-00168 (Feb. 12, 2018) ("*Telesat Petition*").

established by the Commission in the *2003 Report and Order*.[2] Nor would granting the Amendments constitute a major amendment under Section 25.116.[3] Should the Commission find otherwise, and it should not, waiving rules that would prohibit the Commission from granting the relief sought in the Amendments would serve the public interest.

Although terminal flaws doom the Petitioners' Part 25 rule-based arguments, SOM1101 nevertheless feels compelled to correct the record with respect to certain disingenuous and irreconcilable positions taken by the Petitioners concerning the basic principles of satellite communications regulation. First, the Petitioners repeatedly misapply geostationary satellite orbit ("GSO")-centric concerns to the instant NGSO-like processing round in an effort to conflate and confuse. For example, and as discussed in greater detail in Section III.A.,[4] relative technical and operational simplicity make valuation of GSO-orbital positions straightforward, and more fungible subjecting them to speculation during the application round where there are real advantages to an applicant that files first. Speculation does not represent a similar concern in the application round for spectrum and orbital rights associated with vastly more complex NGSO-like satellite systems that require bespoke engineering efforts and many rocket launches to bring into service. The Commission is well-aware of these differences and adopted two different sets of rules for GSO- and NGSO-like satellite systems precisely for these reasons.

Second, the Petitioners cannot credibly argue that coordination between NGSO-like satellite networks can be effortlessly achieved when it suits their own interests, but also that it represents an insurmountable technical challenge when it creates competition for their respective

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[2] 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, 10849-51, ¶¶ 234-239 (2003) ("*2003 Report and Order*").

[3] *See supra* Section III.A.

[4] *Id.*

business plans. SpaceX in particular argued in July 2017 that its own network, a proposed massive constellation, was designed to "achiev[e] unprecedented levels of spectral efficiency and coordination flexibility" and that concerns about its ability to coordinate "fail to acknowledge that SpaceX has designed its system precisely to improve its sharing capabilities."[5] Yet a few scant months later, SpaceX views SOM1101's substitution for Boeing as an issue that would "exacerbate an already complex coordination landscape among NGSO systems."[6] SpaceX cannot have its MoonPie and eat it too.[7]

Moreover, compelling public interest benefits support the grant of the Amendments. It is well-settled that although the overall objectives of a general rule may be in the public interest, the application of the rule to a specific case does not necessarily inherently serve the public interest.[8] Accordingly, the Commission may waive its rules when an applicant demonstrates that good cause exists for such action, historically doing so "where particular facts would make strict compliance inconsistent with the public interest."[9] In addition, the Commission must ensure that the "underlying purpose of the rule(s) would not be served or would be frustrated" if applied in a particular case.[10]

That standard is easily met by the Amendments. Section 706 provides ample basis for waiving any rules that would further delay the deployment of broadband infrastructure to those Americans in rural areas, Tribal lands, and the U.S. Territories (collectively, "Underserved

[5] Consolidated Opposition and Response to Comments of Space Exploration Holdings LLC, IBFS File No. SAT-LOA-20161115-00118 (filed July 7, 2017).

[6] *SpaceX Petition*, at 12.

[7] *See* https://moonpie.com/ (last visited Feb. 27, 2018).

[8] *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969).

[9] 47 C.F.R. § 1.3*; Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); *WAIT Radio v. FCC*, 418 F.2d 1153, 1157-59.

[10] 47 C.F.R. § 1.925(3)(i).

Americans") that desperately need it. Even if that were not enough – and it is – the Trump administration has also made the goal of removing barriers to infrastructure investment a top priority, especially for purposes of deploying broadband internet access facilities in rural areas. Certainly any rules that could be interpreted – wrongly, in the view of SOM1101 – as preventing billions of dollars of investment in a satellite system that promises to address issues of grave concern to the Nation should not stand in the way. Accordingly, and if necessary, the Commission should waive Sections 25.159(b) and 25.116(c) and grant the relief sought in the Amendments as relief that would be consistent with serving the public interest.

SOM1101 intends to offer broadband internet services through a constellation of NGSO-like satellite space stations, which would provide enormous benefits to the public both domestically and abroad. Indeed, the lack of broadband internet access for Underserved Americans is particularly acute. The recently released plan by the White House for legislation that would address rebuilding infrastructure in America devotes an entire section to the urgent need to address inadequacies in rural infrastructure, including reforms aimed at increasing the availability of rural broadband services.[11] Underserved Americans will benefit tremendously from SOM1101's planned satellite-based broadband internet access services.

The Commission is similarly well aware of the dire situation that Underserved Americans face. The Commission's most recent broadband progress report found that 39 percent of Americans living in rural areas, and 41 percent of Americans living in Tribal lands, lack access to advanced telecommunications services, as compared to 4 percent of Americans living in urban

[11] LEGISLATIVE OUTLINE FOR REBUILDING INFRASTRUCTURE IN AMERICA, THE WHITE HOUSE (rel. Feb. 12, 2018), *available at* https://www.whitehouse.gov/wp-content/uploads/2018/02/INFRASTRUCTURE-211.pdf. Specifically, Section II is devoted to the "Rural Infrastructure Program" which includes efforts to increase investment in broadband infrastructure.

areas.[12] Americans living in the U.S. Territories fare even worse than rural Americans: 66 percent lack access to advanced telecommunications capability as compared to 10 percent of the U.S. population as a whole.[13] There is also a dearth of competition among providers of advanced telecommunications services with only 13 percent of Americans living in rural areas having more than one option, as compared to 44 percent of Americans living in urban areas.[14]

As highlighted in the *Broadband Progress Report*, the lack of access to mass market broadband services "disproportionately impacts the ability of small businesses operating in rural areas to successfully compete in the 21st century economy."[15] High-speed wireless services are also largely unavailable to rural Americans. LTE services with a speed of 10 Mbps/1 Mbps are unavailable to 87 percent of rural Americans, while only 45 percent of Americans living in urban areas lack such access.[16] Schools in rural areas fare no better. While 21 percent of schools located in rural areas do not have a fiber connection, 5 percent of schools in urban areas, and 10 percent in suburban areas, lack such a connection.[17]

All of this data led the Commission to conclude that "broadband is not being deployed to all Americans in a reasonable and timely fashion."[18] As part of the Commission's mandate under Section 706 of the Telecommunications Act, the Commission can take action to accelerate the

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[12] *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act*, 2016 Broadband Progress Report, GN Docket No. 15-191, 31 FCC Rcd 669, 701, ¶ 4 (2016) ("*Broadband Progress Report*").

[13] *Id.* at 731, ¶ 79.

[14] *Id.* at 702, ¶ 7.

[15] *Id.* at 701, ¶ 4.

[16] *Id.* at 734-5, ¶ 83.

[17] *Id.* at 741, ¶ 95.

[18] *Broadband Progress Report*, 31 FCC Rcd at 750, ¶ 121.

deployment of advanced telecommunications by removing barriers to investment and promoting competition in the telecommunications market.[19] Services offered by NGSO satellite constellation operators promise to address these very issues. Indeed, Chairman Pai recently observed that to bridge America's digital divide, it would be necessary to use "innovative technologies" and multiple non-geostationary satellite orbit systems to help reach Americans living in rural or hard to serve places.[20]

As the Commission is aware, commercial endeavors in space involve tremendous risks. The best laid plans most often go awry, and eliminating a dynamic and innovative potential new operator such as SOM1101 at this early juncture in the development of NGSO-based platforms for delivery of high throughput fixed-satellite services harms the public interest, and would provide a short-term benefit solely to those parties opposed – SOM1101's potential competitors. Favorable action on the Amendments is consistent with the Commission's approach to free market regulation of space and radiofrequency resources.[21] At this early juncture in the development of large-scale NGSO networks for broadband services, the Commission should remain hands off and allow market forces to drive business decisions and NGSO network architecture.

[19] 47 U.S.C. § 1302.

[20] Statement from the FCC, "Chairman Pai Statement on SpaceX Satellite Broadband Application" (Feb. 14, 2018).

[21] The FCC has long aimed to "minimize[] unnecessary government intervention and allow[] market forces to continue working to spur entry, innovation, and competition." *Business Data Services in an Internet Protocol Environment et al.*, 32 FCC Rcd 3459, 3462, ¶ 5 (2017). *See also id.* at 3653 ("Micromanagement can thwart competition. It can stifle investment. It can prevent us from ever achieving long-term results that benefit consumers.") (Statement of FCC Chairman Ajit Pai); Remarks of FCC Chairman Ajit Pai at CATO Institute Policy Perspectives 2017, New York, NY, at 2-3 (Nov. 17, 2017) ("Across the board, we are reviewing our regulations to make sure that they reflect current market conditions…In all cases, it means getting government out of the way as much as possible in order to encourage private initiative.").

II. SECTION 25.159(B) IS INAPPLICABLE BECAUSE MR. WYLER DOES NOT HAVE AN ATTRIBUTABLE INTEREST IN MORE THAN ONE PENDING NGSO SYSTEM

Contrary to Petitioners' assertions,[22] Mr. Wyler's involvement in OneWeb does not violate Section 25.159(b), which prohibits Applicants from having two pending applications for NGSO-like systems in one frequency band before the Commission.[23] The rule extends to: (1) "attributable interests" which includes either an equity interest that exceeds 33 percent; or (2) or a "controlling interest" in another applicant in a particular frequency band.[24] In interpreting what constitutes a "controlling interest" in another applicant, the Commission relies on Section 1.2110(b)(2).[25]

A number of opposing parties, operating on mistaken assumptions about Mr. Wyler's relationship with OneWeb, have additionally misinterpreted the Commission's rules to argue that Mr. Wyler's interests in OneWeb, coupled with his ownership interest in SOM1101, result in a violation of Section 25.159(b).[26] Recognizing that Mr. Wyler's fully diluted equity interest in OneWeb falls far short of the 33 percent threshold,[27] these parties instead argue that Mr. Wyler's

[22] *See Iridium Petition*, at 2-3; *O3b Petition* at 4-9; *SpaceX Petition*, at 4-6; *Telesat Petition*, at 6-10.

[23] Section 25.159(b) provides 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." 47 C.F.R. § 25.159(b).

[24] Amendment of Commission's Space Station Licensing Rules and Policies and Mitigation of Orbital Debris, *First Report and Order and Further Notice of Proposed Rulemaking*, 18 FCC Rcd 10760 (2003) ("*2003 Report and Order*") at 10850, ¶237. *See also*, 47 C.F.R §. 25.159(c). To evaluate whether an ownership interest exceeds the 33 percent threshold, the FCC determined it would calculate ownership interest on a "fully diluted basis" as defined in Section 1.2110(c)(2)(ii)(A). *2003 Report and Order*, 18 FCC Rcd at 10850, ¶237, ¶237 n.565. *See also*, 47 C.F.R. §. 25.159(c)(3).

[25] *2003 Report and Order*, 18 FCC Rcd at 10850, ¶237, ¶237 n.564. *See also*, 47 C.F.R. §. 25.159(c)(2) (citing Section 1.2110(b)(2)).

[26] *See O3b Petition* at 4-9; *SpaceX Petition*, at 4-6; *Telesat Petition*, at 6-10.

[27] Mr. Wyler's equity ownership in OneWeb is 11.84%. *See* Officers, Directors, and Ten Percent or Greater Shareholders, Application of WorldVu Satellites Limited for Satellite Space Station Authorizations, IBFS File No. SAT-AMD-20180104-00004 (filed Jan. 4, 2018) ("*OneWeb Ownership Filing*").

formal role in OneWeb constitutes a "controlling interest" in that company.[28] Additionally, some Petitioners assert that by virtue of his voting shares and position on the Board, Mr. Wyler has *de facto* control of OneWeb.[29] These opposing parties wrongly assert that as a result, the Commission should deny the Amendments on the basis that Mr. Wyler has a "controlling interest" in two applicants for NGSO-like satellite system licenses in a particular frequency band, *i.e.*, OneWeb and SOM1101. Inspecting the details of Mr. Wyler's relationship with OneWeb, details which none of the opposing parties have reason to know, and analyzing that truth against the rules demonstrates that Mr. Wyler clearly does not meet the threshold of a "controlling interest."

A. Mr. Wyler Does Not Have a Controlling Interest in OneWeb as an "Affiliate"

O3b asserts that "Mr. Wyler is Executive Chairman of the Board," while SpaceX assigns the title of "Chairman of the Board and Executive Director of OneWeb" to Mr. Wyler.[30] Mr. Wyler's actual title is "Founder and Executive Chairman" of OneWeb.[31] As will be shown, this title is honorary and confers no control, given that an honorary title can just as easily be changed without effectuating the non-control of Mr. Wyler. O3b argues that Mr. Wyler's "title alone is sufficient to confer control under the applicable Commission provisions."[32] SpaceX also claims that in adopting the competitive bidding rules in the *2003 Report and Order*, the Commission applied a pre-existing rule that "officers and directors of an applicant 'shall be considered to have a controlling interest in the applicant.'"[33] Additionally, Iridium and Telesat allege that Mr. Wyler's

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[28] *See Iridium Petition*, 2-3; *O3b Petition*, 4-9; *SpaceX Petition*, 4-6; *Telesat Canada*, at 8.

[29] *Telesat Petition*, at 8; *O3b Petition*, at 3, 7

[30] *O3b, Petition*, at 6; *SpaceX Petition*, at 5.

[31] *See* OneWeb Board of Directors, available at http://www.oneweb.world/#board (last visited Feb. 26, 2018).

[32] *O3b Petition*, at 6.

[33] *SpaceX Petition*, at 5.

title alone is enough to establish that he has a controlling interest in two applicants in violation of Section 25.159(b).[34]

O3b observes that Section 25.159(c)(2) references Section 1.2110(b)(2) as the relevant rule the Commission will use when determining whether a party has a controlling interest.[35] O3b mistakenly suggests that the definition of "affiliate," provided for in Section 1.2110(c)(2)(ii)(F), is relevant for purposes of determining whether an applicant has a "controlling interest" when interpreting Section 1.2110(b)(2).[36] Iridum, SpaceX, and Telesat simply cite to Section 1.2110(c)(2)(ii)(F) for the proposition that title alone is enough to implicate the prohibition enshrined in Section 25.159(b) with no further explanation or argument.[37]

Central to all opposing parties' position that the Amendments would violate Section 25.159(b) is the definition of "affiliate" provided for in Section 1.2110(c)(2)(ii)(F).[38] O3b's convoluted argument that the Amendments violate Section 25.159(b) is as follows: (1) Section 25.159(b) prohibits an applicant from having more than one application for an NGSO-like space station on file for the same frequency band; (2) Section 25.159(c)(2) defines what constitutes a "controlling interest" for purposes of the attribution rule adopted in the *2003 Report and Order*; (3) Section 25.159(c)(2) explicitly references Section 1.2110(b)(2); (4) that the definition of "affiliate" found in Section 1.2110(c)(2)(ii)(F) is incorporated into Section 1.2110(b)(2) even though it is not referenced in the *2003 Report and Order*, nor in Section 25.159 itself, nor in Section 1.2110(b)(2); and (5) since the definition of "affiliate" provided for in 1.2110(c)(2)(ii)(F)

[34] *Iridium Petition*, at 2-3; 3 n.8; *Telesat Petition*, at 8, 8 n.21.

[35] *See O3b Petition* at 6 n.20, 6.

[36] *O3b Petition* at 6.

[37] *See Iridium Petition*, at 2-3; 3 n.8; *SpaceX Petition*, at 4-5, 5 n.19; *Telesat Petition*, at 8, 8 n.21.

[38] *See Iridium Petition*, at 2-3; *O3b Petition*, at 6-7; *SpaceX Petition*, at 5; *Telesat Petition*, at 6.

is incorporated into 1.2110(b)(2) – again, this proposition is not supported by any rule section or the *2003 Report and Order* but based simply on O3b's conjecture – it is also incorporated by extension into Section 25.159(c)(2). Steps 4 and 5 of O3b's argument are fundamentally flawed as O3b fails to point to any legal support in *2003 Report and Order*, or any of the Commission's rules cited to in *2003 Report and Order*, for support of this interpretation. Instead, O3b relies on "common sense"[39] and suggests that there is also "clear Commission precedent" in support of this interpretation, but provides none.[40] Iridium, SpaceX and Telesat offer no argument or explanation, only citations.[41]

These arguments are flawed. The Commission did not reference Section 1.2110(c)(2)(ii)(F) in Section 25.159(c)(2) and there is no internal cross-reference to Section 1.2110(c)(2)(ii)(F) in Section 1.2110(b)(2). Moreover, the Commission was adopting a new attribution rule in the *2003 Report and Order* to support the new rules governing the GSO- and NGSO-like application process established in the same *2003 Second Report and Order*.[42] If there was a section critically important to interpreting the new attribution rule, the Commission would have cited to it. But there is no reference to Section 1.2110(c)(2)(ii)(F) in the relevant portion of the *2003 Report and Order*.[43]

Turning back to O3b's interpretation of the Commission's attribution rule adopted in the *2003 Report and Order*, O3b alleges that there is "clear Commission precedent" supportive of reading Section 1.2110(c)(2)(ii)(F) into the *2003 Report and Order's* new attribution rule but fails

[39] *O3b Petition,* at 7.

[40] *O3b Petition,* at 7.

[41] *Iridium Petition*, at 2-3; *SpaceX Petition*, at 5; *Telesat Petition*, at 8.

[42] *2003 Report and Order*, 18 FCC Rcd at 10849-50; ¶¶ 236-37.

[43] *2003 Report and Order*, 18 FCC Rcd at 10849-51; ¶¶ 236-39.

to cite to such precedent.[44] O3b's naked assertion of "clear Commission precedent," is followed by an argument and not precedent. O3b claims that Section 1.2110(c) "provides the definitions of terminology regarding the commonality of interest necessary to apply Section 1.2110(b)(2)." O3b also argues that when the Commission "established the attribution provisions in Section 25.159, the Commission explained that it was "adopting 'the 'controlling interest' standard' from its competitive bidding procedures. Subsection (c) gives meaning to the controlling interest standard."[45] Unfortunately for O3b, this argument proves too much.

If in fact O3b is correct that 1.2110(b)(2) imports the definitional Section 1.2110(c) such that Section 25.159 incorporates the rules found in "Subsection (c), [so as to] give[] meaning to the controlling interest standard"[46] established in the *2003 Report and Order* and codified in 25.159(c)(2), [47] then O3b must explain why, in giving meaning to the interpretation of 25.159(c)(2)'s controlling interest standard, the only definition imported is that of "affiliate" and not the remainder of the terms defined in 1.2110(c). For example, 1.2110(c) also includes a definition of "controlling interests" in Section 1.2110(c)(2). Among other material differences, the definition of "controlling interest" in Section 1.2110(c)(2) is 50 percent not the 33 percent threshold established by the Commission in the *2003 Report and Order*.[48] If O3b is correct – that Section 1.2110(c) "provides the definitions of terminology regarding the commonality of interest necessary to apply Section 1.2110(b)(2,)" then "common sense"[49] would also dictate that Section

[44] *O3b Petition*, at 7.

[45] *O3b Petition*, at 7.

[46] *O3b Petition*, at 7.

[47] Section 25.159(c)(2) reads as follows: "It 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 C.F.R. 1.2110(b)(2)." (emphasis supplied).

[48] *2003 Report and Order*, 18 FCC Rcd at 10850, ¶¶ 237-38.

[49] *O3b Petition*, at 7.

1.2110(c)(2) must be used when determining "controlling interest." And if the definition of "controlling interest" in Section 1.2110(c)(2) was not to be used when applying the new attribution rule adopted by the *2003 Report and Order*, but the definition of "affiliate" in Section 1.2110(c)(2)(ii)(F) was, the Commission would have made clear that it was picking and choosing from the definitional subparts of Section 1.2110(c). Under O3b's interpretation, a "controlling interest" analysis pursuant to the new standard established in the *2003 Report and Order* would proceed by examining 1.2110(b)(2) to the exclusion of 1.2110(c)(2) but an "affiliate" analysis would require consideration of Section 1.2110(c)(2)(ii)(F). If Subsection (c) remained relevant to the newly adopted attribution rule in the *2003 Report and Order*, the Commission would have made that explicit – yet it did not.

O3b's purported explanation ignores the fact that the Commission was establishing a new attribution rule in the *2003 Report and Order* based on specific provisions of existing rules but not all such rules.[50] A more consistent and defensible analysis of the *2003 Report and Order* is that the Commission was altering the definition of "controlling interests" for purposes of establishing an attributable interest rule for both the GSO- and NGSO-like application process. In so doing, it was *rejecting and not incorporating* the definition of "controlling interest" found in Section 1.2110(c)(2). The Commission established a lower threshold of 33 percent ownership for purposes of its newly adopted attributable interest rule in the context of GSO- and NGSO-like application process.[51] It established new rule sections and specifically cited to rules that were part of the new attribution rule.[52] Additionally, the Commission broadened the new "controlling interest" standard

[50] *See 2003 Report and Order*, 18 FCC Rcd at 10850, ¶ 237 ("Therefore, to provide additional protection against speculation, we adopt two *new* provisions") (emphasis supplied).

[51] *See 2003 Report and Order*, 18 FCC Rcd at 10850, ¶ 237.

[52] *See 2003 Report and Order*, App B; *see, e.g.*, 47 C.F.R. § 25.159.

adopted in the *2003 Report and Order* to include "controlling interest, *and any other subsidiaries of that controlling interest*."[53] As such, the "controlling interest" standard adopted by the Commission in the *2003 Report and Order* bears no relationship whatsoever to that found in Section 1.2110(c)(2). Due to the Commission's fundamental revision of what constitutes a "controlling interest" for purposes of the new attribution rule adopted in the *2003 Report and* Order, all of the rules dependent on the different standard set out in Section 1.2110(c)(2), including that applicable to officers and directors found in 1.2110(c)(2)(ii)(F), became not only irrelevant, but also superseded by the Commission's explicit reference to Section 1.2110(b)(2) as the basis for interpreting the newly adopted "controlling interest" standard. Casual perusal of Section 1.2110(c) makes this clear as the defined terms relate to terms used in 1.2110(c)(2), which are wholly absent from the "controlling interest" standard adopted in the *2003 Report and Order* and, in some cases, superseded by the new "controlling interest" standard.[54]

Further support for this interpretation of the *2003 Report and Order* can be found when considering the rule adopted by the Commission concerning computation of ownership interests.[55] When calculating whether an ownership interest exceeds 33 percent, the Commission explicitly references Section 1.2110(c)(2)(ii)(A), highlighting its continued relevance of this Section to ownership analysis under the new attribution rule.[56] There would be no need for the Commission to specifically reference this particular rule for determining ownership interests if the Commission

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[53] *2003 Report and Order*, 18 FCC Rcd at 10850, ¶ 237 (emphasis supplied).

[54] For example, Section 1.2110(c)(ii)(G) addresses how to calculate ownership interests in one or more intervening corporations. *See* 47 C.F.R. § 1.2110(c)(ii)(G). The attribution rule adopted in the *2003 Report and Order* applies the controlling interest standard to "controlling interest and any other subsidiaries of that controlling interest" negating the need for this Section. *2003 Report and Order*, 18 FCC Rcd at 10850, ¶ 237.

[55] *2003 Report and Order*, 18 FCC Rcd at 10850, ¶ 237.

[56] *2003 Report and Order*, 18 FCC Rcd at 10850, ¶ 238 n. 565 (citing to 47 C.F.R § 25.2110(c)(2)(ii)(A)).

intended to leave all of the rules found in Subsection (c) of Section 1.2110 in place when interpreting the new "controlling interest" standard established by the *2003 Report and Order*. It also demonstrates that the Commission would have referenced the definition of "affiliate" in Section 1.2110(c)(2)(ii)(F) if the Commission wanted it to apply to the newly adopted attribution rule. And the Commission certainly would have cited to Section 1.2110(c)(2)(ii)(F) if it had the significance that the Petitioners attempt to bestow upon it in their oppositions.

Most significantly, there is no need to rely on the definition of "affiliate" found in Section 1.2110(c)(2)(ii)(F). In extending the new attribution rule to include "controlling interest, and any other subsidiaries of that controlling interest,"[57] the Commission fundamentally altered the definition of controlling interest as compared to the definition found in Section 1.2110(c)(2). With respect to the definition of "affiliates," Section 1.2110(b)(2) – a section specifically referenced by the Commission in the *2003 Report and Order* and which is also referenced in Section 25.159(c)(2)[58] – has an internal cross-reference to Section 1.2110(c)(5)(iii). Section 1.2110(c)(5) of this section provides for the definition of an "affiliate." As such, the Commission must engage in case-by-case *de facto* analysis to determine whether Mr. Wyler's role in OneWeb constitutes "control" for purposes of the attribution rule adopted in the *2003 Report and Order*. Given that Section 1.2110(b)(2) is specifically referenced by the Commission in both the *2003 Report and Order* and in Section 25.159(c)(2), coupled with Section 1.2110(b)(2)'s cross-reference to a code section with a definition of "affiliate," it is unreasonable to assume that the definition of "affiliate" should instead come from a different code section that defines terms associated with a standard

[57] *2003 Report and Order*, 18 FCC Rcd at 10850, ¶ 237.

[58] *See 2003 Report and Order*, 18 FCC Rcd at 10850, ¶ 237, n.564; 47 C.F.R. § 25.159(c)(2) ("It 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 C.F.R. 1.2110(b)(2).").

that is irrelevant to, and was superseded by, the attribution rules adopted by the Commission in the *2003 Report and Order*.[59]

B. Mr. Wyler Does Not Have *De Facto* Control of OneWeb

Some Petitioners incorrectly assert that Mr. Wyler has *de facto* control of OneWeb. Pursuant to the definition of "affiliate" found in Section 1.2110(c)(5), or alternatively the actual cross-reference to Section 1.2110(c)(5)(iii), the Commission should employ a case-by-case analysis to determine whether Mr. Wyler has such alleged *de facto* control of OneWeb pursuant to relevant Commission precedent.[60] Telesat argues that Mr. Wyler has *de facto* control over OneWeb because he is a director, and O3b argues that Mr. Wyler directs the "policies and operations of OneWeb and therefore has *de facto* control of OneWeb."[61] Yet the opposing parties proffer only vague conjecture to bolster their assertions. Well-settled Commission precedent simply does not allow for a conclusion that Mr. Wyler has *de facto* control of OneWeb.

The Commission determines *de facto* control on a case-by-case basis.[62] Historically, the Commission has applied the six *Intermountain Microwave*[63] factors when assessing whether *de*

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[59] An agency rule is generally interpreted by its plain language. *See, e.g., INS v. Cardoza-Fonseca,* 480 U.S. 421, 432 (1987) (reversing agency decision as inconsistent with the "plain language of the Act"); *United States v. John Doe, Inc. I*, 481 U.S. 102, 102–03 (1987) (interpreting a Rule "by its plain language"); *Bourjaily v. United States*, 483 U.S. 171, 184–85 (1987) (holding that an alternate reading of a Rule was "foreclosed by the plain language of the Rule").

[60] *See, e.g., Northstar Wireless, LLC,* 30 FCC Rcd 8887, 8889, ¶ 55 (2015) ("*Northstar"*); *Application of Baker Creek Commc'ns, L.P.*, 13 FCC Rcd 18709, 18713-14, ¶ 7 (1998); *Auction of 700 Mhz Band Licenses Scheduled for July 19, 2011 Notice & Filing Requirements, Minimum Opening Bids, Upfront Payments, & Other Procedures for Auction 92,* 26 FCC Rcd 3342, 3359, ¶ 69 (2011) ("*700 MHz Order"*).

[61] *Telesat Petition*, at 8; *O3b Petition*, at 7-9.

[62] *See supra* n.60.

[63] *Intermountain Microwave*, 24 Rad. Reg. 983, 984 (1963); Public Notice, Nonbroadcast and General Action Report No. 1142, 12 FCC 2d 559, 24 (1963). *See also Implementation of Sections 11 & 13 of the Cable Television Consumer Prot. & Competition Act of 1992*, wherein the FCC noted that an analysis of *de facto* control looks at "whether the entity can determine the "manner or means of operating [a] license and determining the policy that licensee will pursue." 88 FCC Rcd 6828, 6832, ¶ 25 (1993).

facto control exists. The factors are: (1) who controls daily operations; (2) who is in charge of employment, supervision, and dismissal of personnel; (3) whether the licensee has unfettered use of all facilities and equipment; (4) who is in charge of the payment of financing obligations, including expenses arising out of operating; (5) who receives monies and profits from the operation of the facilities; and (6) who determines and carries out the policy decisions, including preparing and filing applications with the Commission.[64] More recently, the Commission has also ruled that common indicia of *de facto* control include: when an entity constitutes or appoints more than 50% of the board of directors or partnership management committee; the entity has authority to appoint, promote, demote and fire senior executives that control the day-to-day activities of the licensees; and the entity plays an integral role in major management decisions.[65]

The factors which have previously led the Commission to conclude that *de facto* control exists are not present here. In *Northstar,* the Commission analyzed whether DISH had *de facto* control over two entities, each 85% indirectly owned and capitalized by DISH, and that otherwise had no operating management and technical personnel for day-to-day operations but for under DISH's purview.[66] The Commission ruled that DISH had the power to control the applicants "via a variety of controlling mechanisms, including but not limited to: significant ownership interest; excessive investor protections; control over policy decisions; domination of financial matters; control of financial decisions; control over build-out plans; control over business plans; . . .

[64] *See Northstar*, 30 FCC Rcd at 8911, ¶ 56.

[65] *See, e.g., Broadband Personal Communications Services (Competitive Bidding Rules for Entrepreneur's Blocks*, Fifth Memorandum Opinion and Order, 10 FCC Rcd 403, 447, ¶ 80 (1994); *Ellis Thompson Corporation*, 9 FCC Rcd 7138, 7140-7143, ¶¶ 16-39 (1994) (identifying factors used to determine control of a business).

[68] *O3b Petition*, at 7-8.

inadequate working capital; and control of employment decisions."[67] Unsurprisingly, Petitioners have not shown that Mr. Wyler possesses these mechanisms, as he simply does not. Management decisions are not made by Mr. Wyler, but instead by the CEO of OneWeb, Eric Béranger, who additionally manages the employment, dismissal and supervision of senior executives and managers. The Chief Financial Officer oversees payment of financing obligations, subject to approval by the CEO and/or Board for certain threshold amounts. And, while Mr. Béranger ultimately reports to the Board, on which Mr. Wyler sits, and where Mr. Béranger too holds a seat, Mr. Wyler has no more control than any other Board member.

Lacking evidence to satisfy the *Intermountain Microwave* factors, Petitioners instead make a number of vague and irrelevant assertions to demonstrate Mr. Wyler's purported control. For example, O3b argues the fact that Mr. Wyler speaks on behalf of OneWeb to media and government entities using pronouns such as "we" indicates his control of OneWeb, going so far as to argue that Mr. Wyler has demonstrated "active involvement with OneWeb's strategic decisions" merely by summarizing and relaying OneWeb's decisions to a third party.[68] Here, O3b mistakenly conflates public representation of a company with control of the company. By this same reasoning, a lizard has a controlling interest in insurance giant Government Employees Insurance Company ("GEICO").

Mr. Wyler's minority ownership in OneWeb and position on Board are similarly unpersuasive. In reviewing the proposed Charter/Time Warner merger, the Commission looked to whether John Malone could cause the post-merger entity (New Charter) to engage in anti-

[68] *O3b Petition*, at 7-8.

[68] *O3b Petition*, at 7-8.

competitive behavior through control of its distributors and prices.[69] There, the Commission took into consideration Mr. Malone's extensive "ability to influence" New Charter's decision through his "significant voting interest," control of New Charter's largest shareholder, and ability to nominate three of New Charter's 13 Board members – one of whom would likely be Mr. Malone himself.[70] Ultimately, the Commission concluded that Mr. Malone was not "likely to be able to cause" such behavior, finding that although Mr. Malone's ownership, voting interests, and board memberships met the Commissions' attribution standard, it did not "inevitably lead to a conclusion" that Mr. Malone could control the distributors or pricing.[71]

In the instant case, Mr. Wyler's has substantially less control over OneWeb than Mr. Malone would have of New Charter. Through 1110 Ventures, LLC, Mr. Wyler holds 11.84% of OneWeb's undiluted shares. To begin with, this ownership and voting interest are insufficient to even meet the Commission's quantitative attributable interest standard articulated in Section 25.159(c)(1). Where Mr. Malone exercised control over New Charter's largest shareholder, Mr. Wyler represents the second smallest shareholder of those with a reportable interest under relevant Commission rules with respect to percentage ownership of OneWeb – edging out the smallest by a mere 0.23%.[72] More importantly, the remainder of OneWeb's shares are held by formidable entities such as Airbus, Qualcomm, and SoftBank, all of whom exceed Mr. Wyler's interest and the latter two of which *each* hold nearly twice as much voting interest as Mr. Wyler.[73] Interestingly, Petitioners appear to believe that SOM1101 and OneWeb will be acting in anti-

[69] *Charter Communications, Time Warner Cable Inc., and Advance/Newhouse Partnership*, 31 FCC Rcd 6327, 6424, ¶ 200 (2016).

[70] *Id.*, 31 FCC at 6417, ¶ 186.

[71] *Id.*, 31 FCC at 6424, ¶ 200.

[72] *See OneWeb Ownership Filing*, *supra* n.27.

[73] *Id.*

competitive concert under Mr. Wyler's direction, and simultaneously that SOM1101 is in collusion with Boeing to defraud the Commission for monetary gain. SpaceX in particular has asserted that Boeing stands to benefit "millions, if not billions, of dollars" from its transfer of the system to SOM1101.[74] Yet, while they focus on Mr. Wyler's 11.84% interest in OneWeb and position as director, they conveniently neglect to address that Airbus, Boeing's direct competitor, holds 13.34% *and* a seat on the Board[75] – making it highly unlikely they are acting in concert to deliver the aforementioned "millions, if not billions of dollars" to Boeing through such a "collusion."[76]

Mr. Wyler's position on the Board is ultimately immaterial as well. Mr. Wyler holds a Board seat as of right by virtue of the shares held by 1110 Ventures, LLC. Unlike Mr. Malone, Mr. Wyler does not have the power to appoint other Board members. Furthermore, he shares the title of Director with several powerful parties, many of whom represent greater equity interests than Mr. Wyler himself, including Paul E. Jacobs, Executive Chairman of Qualcomm; Thomas Enders, CEO of Airbus; Eric Béranger, CEO of OneWeb; Ohad Finkelstein, Co-Founder and Partner of Marker-LLC; Ricardo Salinas, Founder and Chairman of Salinas Group; and Alex Clavel, who heads M&A and Corporate Finance at SoftBank Group.[77] In other words, Mr. Wyler shares his position with representatives of influential entities holding nearly twice as many voting shares in OneWeb.[78] Nor does Mr. Wyler's title of Executive Chairman confer upon him additional

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[74] *SpaceX Petition*, at 9-10; *O3b Petition*, at 16.

[75] *See OneWeb Ownership Filing*, *supra* n.27.

[76] *SpaceX Petition*, at 9-10; *O3b Petition*, at 16.

[77] *See* OneWeb Board of Directors, available at http://www.oneweb.world/#board (last visited Feb. 27, 2018); *see also, e.g.*, Thomas Enders, Chief Executive Officer of Airbus SE, available at http://www.airbus.com/company/corporate-governance/thomas-enders.html (last visited Feb. 27, 2018); Eric Bérange, CEO OneWeb, available at http://www.oneweb.world/board/eric-b%C3%A9ranger-1 (last visited Feb. 27, 2018); Ricardo Salinas, Profile, available at http://www.gruposalinas.com/en/ricardo-salinas (last visited Feb. 27, 2018).

[78] *See OneWeb Ownership Filing*, *supra* n.27.

influence over OneWeb. Under Jersey law, the board chooses a Chairman at each meeting; thus, the position is often occupied by different members of the OneWeb Board. As Chairman, Mr. Wyler is one of many Board members who, at a particular meeting, is elected by the rest of the Board to preside. Thus, the assertion that Mr. Wyler has *de facto* control of One Web because of his stock ownership and Board position, despite his voting interests being dwarfed by multiple parties and his shared position with other prominent entities, is neither grounded in common sense nor consistent with Commission precedent.

III. THE COMMISSION SHOULD WAIVE SECTION 25.159 BECAUSE THE TRANSFER OF THE SYSTEM TO SOM1101 WOULD NOT HARM OTHER NGSO APPLICANTS OR OPERATORS

If the Commission finds that Mr. Wyler has an attributable interest in two applicants for NGSO-like space stations in violation of Section 25.159 – and it should not for all of the reasons detailed in Section II – then the Commission should waive Section 25.159 and grant the Amendments. The opposing parties attempt to assert that waiving Section 25.159(b) would not serve the public interest, essentially arguing that SOM1101's potential development of the NGSO system under review would not serve the public interest. As further detailed herein, the majority of these arguments are based on rules adopted to prevent potential harms associated with the unique aspects of the GSO-like application process. Accordingly, the parties provide no credible basis for denial of the Amendments as applied to the NGSO-like application process generally, nor with respect to the specific relief sought by Boeing and SOM1101 in the Amendments.

A. Rule 25.158(c) Is Inapplicable to NGSO-Like Satellite Application Process

The Commission recognized that the satellite industry is not static in its *2015 Report and Order*,[79] when it eliminated a restriction similar to Section 25.159(b), *i.e.*, Section 25.159(a)[80] which was a rule applicable only to GSO-like space stations. Some parties in opposition[81] assert wrongly that the Commission did so due to "an additional safeguard that specifically prohibits GSO-like satellite applicants from assigning or otherwise permitting any other party to assume their place in a processing queue."[82] Citing to Section 25.158(c)[83] as support for this proposition, SpaceX claims that this "additional safeguard," *i.e.*, Section 25.158(c), provides a "clear sign that the Commission intended a different approach in the NGSO context."[84] Likewise, O3b alleges that Section 25.158(c) "guards against the possibility of speculative applications."[85] This is inaccurate.

In the first instance, Section 25.158(c) is inapplicable to NGSO systems. The purported "additional safeguard" of not allowing another party to assume the place in a processing queue of a different applicant is clearly not the *sine qua non* of the Commission's reasoning to repeal Section 25.159(a) in the *2015 Report and Order* for numerous reasons. Perhaps most importantly, Section

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[79] *See generally Comprehensive Review of Licensing and Operating Rules for Satellite Services*, Second Report and Order, 30 FCC Rcd 14713 (2015) ("*2015 Report and Order*").

[80] *See 2003 Report and Order*, at 18 FCC Rcd at 10899. Section 25.159(a) was deleted in the FCC's *2015 Report and Order*. *See 2015 Report and Order*, 30 FCC Rcd at 14818, ¶337. Section 25.159(a) provided, in relevant part "Applicants with a total of five applications for GSO-like space station licenses on file with the FCC in a particular frequency band, or a total of five licensed-but-unbuilt GSO-like space stations in a particular frequency band, or a combination of pending GSO-like applications and licensed-but-unbuilt GSO-like space stations in a particular frequency band that equals five, will not be permitted to apply for another GSO-like space station license in that frequency band."

[81] *See, e.g.*, *O3b Petition*, at 12-13; *SpaceX Petition*, at 7-8.

[82] *SpaceX Petition*, at 8.

[83] "A license applicant for ***GSO-like*** satellite operation must not transfer, assign, or otherwise permit any other entity to assume its place in any queue." 47 C.F.R. § 25.158(c) (emphasis supplied).

[84] *SpaceX Petition*, at 8.

[85] *O3b Petition*, at 13.

25.158(c) was not even referenced in the portion of the Commission's *2015 Report and Order* devoted to repeal of Section 25.159(a). Instead, the Commission found that rule 25.159(a) was (and is) no longer needed due to the fact it is no longer necessary "to deter warehousing of spectrum and orbital resources, in light of the bond and milestone requirements and other safeguards."[86] If the Commission found that Section 25.158(c) was critical to its reasoning for repealing Section 25.159(a), as claimed by SpaceX, the Commission certainly would reference it when it repealed Section 25.159(a) and identify Section 25.158(c)'s persistence as a safeguard against speculation in GSO-like application process. It did not. For that reason alone, it is clear that the existence of Section 25.158(c) was not an important factor, or even a factor, in the Commission's decision to repeal Section 25.159(a).

SpaceX's erroneous elevation of Section 25.158(c) as a critical safeguard important to the repeal of Section 25.159(a) and critical to guaranteeing the integrity of the NGSO-like application process is further undermined by the fact that Section 25.158(c) has no place in the NGSO-like space station application process. In the *2003 Report and Order*, the Commission agreed with certain parties that it was a "very good point" that "different kinds of satellite applications raise different kinds of issues," making it reasonable to adopt different procedures to address the issues raised by each kind of satellite application.[87] This led the Commission to distinguish between GSO- and NGSO-like space station application procedures. With respect to the NGSO-like application process, the Commission found that a procedure primarily focused on filing priority could discourage market entry as the "first qualified applicant could request authority to operate in so much of the orbit-spectrum resource that additional market entry would be

[86] *2015 Report and Order*, 30 FCC Rcd at 14818, ¶ 337.

[87] *2003 Report and Order*, 18 FCC Rcd at 10773, ¶ 20.

precluded." [88] Conversely, the Commission noted that for "GSO-like satellite applications, however, licensees are usually authorized to operate throughout the frequency band."[89] As such "large spectrum requests as part of a GSO-like satellite application do not by themselves preclude additional market entry."[90]

The Commission found that the GSO-like satellite application process as set out in the *2003 Report and Order* made sense due to inherent technical differences with respect to GSO-like space stations as compared to NGSO-like space stations. Among other significant technical distinctions:

- Whereas NGSO-like systems share spectrum and are typically placed in unique orbits, GSO-like systems enjoy exclusive spectrum rights at discrete, stationary positons in geostationary or Clarke's orbit.[91]
- Whereas NGSO-like systems are entirely bespoke and in most instances involve unique satellite architectures, most "bent pipe" GSO-like satellites are made by one of a handful of established aerospace companies using 3-axis stabilized platforms developed over decades.[92]
- Whereas NGSO-like systems may require many launches to deliver a constellation of satellites to orbit, and many subsequent launches to replenish an in-orbit fleet to prevent gaps in network coverage, GSO-like systems involve a single rocket launch.

[88] *2003 Report and Order*, 18 FCC Rcd at 10773, ¶ 20.

[89] *2003 Report and Order*, 18 FCC Rcd at 10773-74, ¶ 22.

[90] *2003 Report and Order*, 18 FCC Rcd at 10774, ¶ 22.

[91] A satellite in Clarke's orbit maintains an orbital period that matches Earth's rotation on its axis without inclination at an altitude of approximately 35,786 km (22,236 mi) above mean sea level.

[92] For example, Space Systems/Loral LLC's SSL-1300 3-axis stabilized GSO platform is actually a derivative of the Ford Aerospace FS-1300, developed in the 1980s.

These terminal distinctions make the process of valuing the orbital position and spectrum rights associated with a GSO-like satellite straightforward, and make geostationary orbital positions fungible and ripe for speculation. In contrast, the bespoke nature of NGSO-like satellite networks and the tremendous costs associated with engineering, constructing and launching a network make speculation far less of a real-world problem.

The substitution prohibition enshrined in Section 25.158(c) reflects the realities of the differences in the application process adopted by the Commission due to the technical, operational differences between GSO- and NGSO-like space stations. As a result, the Commission's rules do not prevent the substitution of one applicant for another in an NGSO-like application processing round. In fact, if the Commission wanted to preclude a change in the applicant for a pending NGSO-like application it would have done so explicitly—as it did in Section 25.158(c) for GSO-like applications. The absence of a comparable rule for NGSO-like applications is proof positive that the request to substitute SOM1101 for Boeing is absolutely permissible. SpaceX's attempt to repurpose Section 25.158(c) as an important protection against speculation and warehousing when considering whether to waive rules applicable to the NGSO-like space station application process utterly fails because Section 25.158(c) was never applied to the NGSO-like space station application process.

O3b's arguments are equally unpersuasive. O3b postulates that Section 25.158(c) protects "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*."[93] Left glaringly unaddressed by O3b's argument is what relevance filing position has to do with an application process where priority of filing date does not immediately results in marketable

[93] *O3b Petition*, at 13 (emphasis supplied).

economic value? The answer is obvious – none. There is no analog to Section 25.158(c) in the NGSO-like application process because there is no marketable economic benefit associated with filing first. Why have an anti-substitution rule that addresses line cutting when there is no line to cut?[94]

Seemingly undeterred by the fundamental differences between the GSO- and NGSO-like application processes, O3b speculates that "[g]iven 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."[95] But if that were the case, why did the Commission repeal Section 25.159(a) for GSO-like applicants?

There are two distinct timeframes applicable to the satellite application process, application and pending application. Retaining Section 25.158(c) clearly addresses the potential harm of parties filing speculative applications when the date of filing matters. But it does nothing to address potential harms that may occur during the post-application process. Instead, the Commission found that the bonding and milestone obligations adequately address speculation and warehousing concerns for pending GSO-like applications.[96] It would be incorrect as a matter of law to claim that a rule that applies only to the filing date timeframe associated with the GSO-like application process – Section 25.158(c) – prevents substitution of parties once the application stage has closed.

[94] Given the bespoke nature of NGSO-like satellite systems, a first-in-time, first-served queue for license applications remains infeasible. Instead, when a new application is filed seeking use of frequencies allocated for satellite service, the Commission initiates a processing round. The original filer is treated as the "lead applicant" in the processing round but is not otherwise given preferential treatment, and a cut-off date is established for other interested parties to file competing applications for use of the same spectrum resources. Spectrum resources will thereafter be divided equally between all applicants deemed legally, technically otherwise qualified. See 47 CFR §§25.156 and 25.157.

[95] *O3b Petition*, at 13.

[96] *2015 Report and Order*, 30 FCC Rcd at 14818, ¶337.

Since the bonding and milestone rules apply equally to both the GSO- and NGSO-like application processes during the same timeframe, *i.e.,* after filing, it is unclear why the bonding and milestone rules would not serve the same purpose in the NGSO-like application process.

While it is true that the Commission left Section 25.159(b) in place for NGSO-like applicants, O3b correctly observes that there was no record developed upon which the Commission could base such repeal.[97] The lack of a record to support repeal, however, does not by extension support O3b's argument that the absence of a rule preventing substitution of a party at the application stage reaches the NGSO-like application process when the Commission never adopted such a rule applicable to the NGSO-like application process. The better explanation is that the issue was never raised during the relevant proceeding. As such, the Commission could not repeal the rule in the absence of a record.[98]

SOM1101 submits that this is yet another reason the Commission should, if required, grant waiver of Section 25.159(b). The Commission has provided its safeguards – bonding and milestone obligations – to prevent speculation and warehousing in the NGSO-like application process. Moreover, the existence of Section 25.158(c) in the GSO-like application process serves a significant purpose for process where there is marketable value associated with an early-in-time application but is inapplicable to a process where such harms are inherently not present, further explaining why Section 25.158(c) has never been part of the NGSO-like application process.

The Commission must therefore reject all O3b and SpaceX arguments based on Section 25.158(c). The Commission adopted Section 25.158(c) for reasons wholly unrelated to the NGSO-

[97] *O3b Petition*, at 12.

[98] The Administrative Procedure Act requires a notice and comment period to repeal a rule. *See* 5 U.S.C § 553; *see also* 5 U.S.C § 553 (defining a "rule making" as the agency process "for formulating, amending, or repealing the rule.").

like satellite application process; specifically, due to the unique technical attributes of GSO-like satellite systems that, in turn, create certain potentials for abuse that must be addressed by rules limited to such systems. Regardless of what purpose it serves in that environment, it has no significance in the NGSO-like satellite application process. Put differently, the potential harm Section 25.158(c) addresses in the GSO-like application process is either not present or already addressed due to the technical differences associated with the NGSO-like application process. Therefore, referencing Section 25.158(c) as a reason not to grant waiver for an NGSO-like satellite application is inapposite and has no place for consideration in this proceeding or any other devoted to the NGSO-like space station application process.

B. The Amendments Do Not Harm Other NGSO Operators or Applicants

No party has identified any harm that they would suffer by grant of the Amendments. O3b attempts to argue that "[t]he 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."[99] Iridium raises a similar argument: "As any responsible satellite operator must, Iridium spends significant resources to monitor industry developments, and closely evaluates proposals to launch satellites near its constellation's orbit and to operate in spectrum upon which its constellation relies."[100] The implication seems to be that monitoring the Commission's docket and evaluating other proposed uses for the NGSO-like satellite constellations is a considerable burden. But as Iridium admits "This burden is entirely appropriate for genuine applications filed with the Commission."[101] Neither O3b nor Iridium explain why substituting one party for another, by itself, transforms a

[99] *O3b Petition*, at 14.

[100] *Iridium Petition to Deny*, at 5-6.

[101] *Iridium Petition*, at 6.

legitimate application into an illegitimate one.[102] Therefore, these empty claims of harm fail. Moreover, it would be disingenuous for any party to argue that adjusting plans are more expensive than creating such plans in the first instance. The test of whether the public interest is met by granting the Amendments is not whether other parties to this proceeding also offering NGSO-like services are inconvenienced but instead whether the American people would benefit by the offering of additional services like those SOM1101 would offer. As described in Section I, NGSO-like services promise to address a critical problem facing Undeserved Americans.

The remainder of O3b's objections with respect to waiver are empty statements, like grant of the waiver "would set a precedent that condones speculative filings . . ." Why? Or it would "potentially deter legitimate new entrants from seeking, or effectively blocking legitimate applicants from obtaining [] authorization to operate an NGSO constellation." How? These unsupported, speculative statements are without merit. Launching an NGSO constellation requires billions of dollars in investment, engineering plans, business plans, etc. In short, substantial investment of time and money by serious people underlie every applicant. Are all of these potential applicants or even a small subset deterred by other applications for NGSO-like space stations? Such an argument flies in the face of the current processing round where there are numerous applicants already. And if a party were so easily deterred from participating based on potential incremental changes required due to the plans of another operator, the Commission should question that applicant or potential applicant were in fact a serious contender to launch an NGSO-

[102] Oddly, O3b previously argued that its particular system is "inherently well-isolated from in-line interference events with respect to other types of NGSO FSS system orbits," and argued in favor of relaxing in-line interference rules and authorizing new NGSO entrants. Comments of SES S.A. and O3B Limited, IB Docket No. 16-408, at 24 (filed Feb. 27, 2017). If O3b has fundamentally altered its outlook with respect to in-line interference, it may want to re-consider prior pleadings which downplay the need for such protection in the first place. *See id.* at 25 (arguing that the definition of an "in-line event could be narrowed to cover only angular separations of less than ten degrees.").

like satellite constellation. I we were to accept this on face value, merely because it was stated by an opposing party, would the substitution of one party for another, as proposed by Boeing and SOM1101, even be a good example of these baseless and speculative harms? SOM1101 submits that the answer is obvious – of course not!

SpaceX has also failed to identify any disadvantage it or others would suffer as the result of the Commission granting the relief sought in the Amendments. Belying its argument of disadvantage to other NGSO applicants, SpaceX's true concern is the trouble it would go through if the Commission were to grant the relief sought in the Amendments. Specifically, SpaceX argues that: "If instead Boeing were to withdraw its NGSO system applications, there simply would be two fewer licenses from the V-band and Ka-band processing rounds with which other licensees would have to coordinate the use of spectrum and orbital resources."[103] SpaceX continues by complaining that grant of the waiver would "exacerbate an already complex coordination landscape among NGSO systems."[104] SpaceX both argues *for* more constellations (when it is their constellation), but *against* more constellations when it might promote competition.

Unfortunately for SpaceX, its convenience is not part of the public interest test when the Commission evaluates waiver requests. SpaceX's hollow claim of disadvantage would suggest that somehow the public interest would be served by fewer offerings of NGSO-like space station operators.[105] The fewer NGSO-space station operators, the less effort SpaceX must expend in order to coordinate. Regardless, the Commission has consistently made clear that satellite spectrum and

[103] *SpaceX Petition*, at 12.

[104] *SpaceX Petition*, at 12.

[105] Despite its desire to limit prospective competitors from using NGSO resources, SpaceX was not the lead applicant in the Ka-band or V-band NGSO processing rounds. WorldVu Satellites Limited, d/b/a OneWeb was the lead applicant in the Ka-band processing round. *See* IBFS File No. SAT-LOI-20160428-00041. The Boeing Company was the lead applicant in the V-band processing round. *See* IBFS File No. SAT-LOA-20160622-00058.

orbital resources are *to be used* for the benefit of American consumers.[106] As detailed in Section I, granting the Amendments serves important public interests by promoting the deployment of NGSO-space-station-delivered services consistent with the goal of expanding broadband internet access to Underserved Americans.

The balance of SpaceX's comments regarding this issue speculate that a change in applicant could create additional complications with respect to coordinating NGSO systems.[107] SpaceX ignores that the applications are being transferred "as is." Regardless, the complexities and the difficulties in coordinating the service offerings of NGSO-like space station operators simply comes with the territory. While orbital prioritization would make this much easier as everyone would know exactly which prior systems would require protection, SpaceX haphazardly both supports and opposes such orbital prioritization based solely on its own short term interests.

Regardless of whether there is any orbital-specific prioritization, there will be the need for coordination. That coordination is difficult is no reason to deny the waiver request. Instead, complex coordination efforts serve the public interest in allowing the deployment of additional services through NGSO-like space station operators. Also, coordination provides for efficient use of spectrum which is a scarce public resource. And the fact that parties may have to make adjustments to their planned offerings to account for additional future NGSO-like space station operators is not a reason to deny the relief sought in the Amendments, especially since the opposing

[106] The FCC's rationale when promulgating rules for NGSO fixed satellite services was to "allow expeditious deployment of NGSO FSS in the United States…so that services can be provided to consumers and by allowing market forces to play a role in the implementation of these systems." *Establishment of Policies and Service Rules for the Non-Geostationary Satellite Orbit, Fixed Satellite Service in the Ku-Band*, Notice of Proposed Rulemaking, 16 FCC Rcd 9680, 9701, ¶ 69 (2001). Similarly, in the *2003 Report and Order* promulgating Sections 25.159 and 25.116, the FCC noted that "the procedures we adopt today will ensure that satellite spectrum and orbital resources will be used efficiently, to the benefit of American consumers." *2003 Report and Order*, 18 FCC Rcd at 10765, ¶ 4.

[107] *SpaceX Petition*, at 12-14.

parties are also in favor of allowing additional NGSO-like space station operators. At this point in the Nation's history of space exploration and the delivery of satellite-based services, it is self-evident that difficulty and complexity are not reasons to avoid such efforts and certainly do not provide a basis for denying the relief sought in the Amendments.

Further, SOM1101 doubts that the Commission would reject the Amendments on the basis that one party would like to avoid complicated and difficult coordination efforts. But if the Commission were inclined to use this as the basis for rejecting the waiver request, the difficulties complained of by SpaceX would still remain, whether with Boeing or other applicants. Rejection of the Amendments changes nothing for SpaceX.

Finally, Telesat argues that the Applicants "would have access to twice the amount of spectrum as other V- and Ka-band NGSO licensees" during incidence of in-line events and this outcome would harm other applicants in the processing round.[108] First, all applicants in the V- and Ka-band processing rounds were aware that such spectrum would likely not be available on an exclusive basis and that cooperation with other NGSO constellations would be a prerequisite for operation when they filed their respective applications. Second, a good faith coordination obligation exists for all NGSO operators under the Commission's rules,[109]and should coordinating operators not reach a good faith agreement they can appeal to the Commission to intercede and address the dispute.[110] Substituting SOM1101 for Boeing in no way increases these obligations or advantages vis-à-vis any other participant in the processing round. No party can credibly claim it

[108] *Telesat Petition*, at 12.

[109] *See* 47 C.F.R. § 25.261(b).

[110] *See, e.g., Assignment of Orbital Locations to Space Stations in the Domestic Fixed–Satellite Service*, 5 FCC Rcd 179, 183,¶ 32 (1990) ("If a coordination agreement cannot be reached after exhaustive good faith effort, the parties may then request that we intervene."); *Orion Satellite Corp*., 5 FCC Rcd 4937, 4938, ¶ 14 (1990) ("If a coordination agreement cannot be reached after an exhaustive good faith effort, [the parties] may then request Commission intervention").

was not aware of a good faith coordination obligation at this juncture, or argue that compliance with such an obligation harms its individual interests. Should, as Telesat seems to suggest, there be in-line interference which cannot be coordinated between three operators, even after Commission intervention and band-splitting is mandated as a worst-case outcome, each operator will be entitled to a *pro rata* share of spectrum. In such a scenario, Telesat would be entitled to a one-third share of the spectrum regardless of whether the application is approved or not.[111]

C. Denying the Application Deters Legitimate Business Plans

SOM1101 and Boeing filed the Amendments to pursue legitimate business plans. The Commission should not entertain faulty arguments to the contrary. Specifically, both O3b and SpaceX misconstrue the Commission's rules. Again, relying on rules exclusively applicable to GSO-like applicants,[112] O3b claims that 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 seek to allow a third party to take an applicant's processing position."[113] SpaceX alleges that the "Commission has been careful to distinguish between transactions in which control over the applicant changes hands as the result of a larger transaction (such as a merger or acquisition) as opposed to those in which all that changes hands is the application

[111] For the record, if the FCC were to remove the band-splitting rule and fall back to the certainty afforded by orbital specific prioritization / protection of other systems, SOM1101's design would ultimately be unaffected. SOM1101 would still develop the system with a design to ensure protection of any prior in time operators since orbital specific prioritization / protection of other systems is a requirement outside of the U.S.. While operating within the U.S. the system would operate according the rules of the FCC, which may include band-splitting as the FCC sees fit.

[112] *O3b Petition*, at 15 (citing *Amendment of the Commission's Space Station Licensing Rules and Policies*, Second Order on Reconsideration, 31 FCC Rcd 9398, 9405, ¶¶ 18-19 (2016) ("*2016 Second Order on Reconsideration*") (addressing why the FCC adopted rule 25.158(c) which exclusively applicable to the GSO-like application process defined by its first-come, first-served rule)).

[113] *O3b Petition*, at 15.

itself."[114] For support of these propositions, both O3b and SpaceX cite to the Commission's *2016 Second Order on Reconsideration*.[115] O3b's and SpaceX's reliance on this portion of the *2016 Second Order on Reconsideration* is inapposite for several reasons.

In the *2016 Second Order on Reconsideration*, the Commission was responding to a Petition for Reconsideration filed by the Satellite Industry Association in 2003.[116] The subject matter of this portion of the *SIA Petition* was ***GSO-like space stations***, not NGSO.[117] This portion of the *SIA Petition* was arguing against the prohibition the Commission adopted in *2003 Report and Order* where ***GSO-like applicants*** may not substitute another party in the queue, codified in 47 C.F.R. Section 25.158(c).[118] In fact, the only references to NGSO-like application rules in this portion of the *SIA Petition* were to support the proposition that NGSO-like application rules should also apply to the GSO-like application process.[119] To the extent there is any doubt about the substance of this portion of the *SIA Petition*, the Commission itself references that it is addressing potential harms that may be present when a party may be selling a place in the queue, *i.e.*, Section 25.158(c), which applies exclusively to GSO-like applicants.[120] For the reasons already detailed in Section III.A., arguments based on the Commission's rules relevant to the first-come, first-serve

[114] *SpaceX Petition*, at 14.

[115] *2016 Second Order on Reconsideration*, 31 FCC Rcd at 9405, ¶ 19.

[116] Petition for Reconsideration and Clarification and Comments of the Satellite Industry Association, *Amendment of the Commission's Space Station Licensing Rules and Policies*, IB Docket No. 02-34 (filed Sept. 26, 2003) ("*SIA Petition*").

[117] *Second Order on Reconsideration*, 31 FCC Rcd at 9405, ¶ 19.n.54 (citing to pages 9-12 of the *SIA Petition*).

[118] This portion of the *SIA Petition* is devoted to arguing that the merits of the FCC rules adopted in paragraphs 240-243 of the *2003 Report and Order* where the FCC adopted rules prohibiting GSO-like applicants from allowing other parties to obtain a place in the queue. *See SIA Petition*, at 9, 9 n.27.

[119] *See, e.g., SIA Petition*, at 10-11 (arguing for expansion for the applicability of certain NGSO-like application rules to GSO-like application rules).

[120] *2016 Second Order on Reconsideration*, 31 FCC Rcd at 9405, ¶ 19.

process that is limited to GSO-like applications are not informative of how the Commission should act with respect to the Amendments which concern an NGSO-like application.

It is on this fundamentally-flawed basis that O3b asserts that SOM1101 and Boeing "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*."[121] But the GSO queue is very purposefully *not* the NGSO queue. Furthermore, O3b once again leaves unaddressed a key point. O3b never explains why Section 25.158(c), a rule that only exists in the GSO-like application process and adopted to address a harm exclusively associated with the GSO-like application process, *i.e.*, the potential marketplace for priority application filings, should apply to an application process where there is no similar marketable value associated with an early in time application. It should not.

Additionally, it is a *non-sequitur* for O3b to attempt to equate a "spot in the processing round," *i.e.*, a "spot" in the NGSO-like application process where there is no analog to Section 25.158(c), with a prohibited outcome "in the context of the geostationary queue," *i.e.*, a GSO-like application process where there is a rule addressing priority filing. One simply has nothing to do with the other. An application process with a first-come, first-served rule – the GSO-like application process – has a meaningful queue and rules meant to enforce such a queue. In contrast, an application process without a first-come, first-served rule – the NGSO-like application process – has no need for a prohibition addressing application priority.

Likewise, SpaceX's reliance on the Commission's rejection of substituting Pegasus for DIRECTV is not instructive of anything with respect to the Commission's consideration of the

[121] *O3b Petition*, at 15 (emphasis supplied).

Amendments.[122] In the *DIRECTV Order*, the Commission considered the request of DIRECTV Enterprises, LLC to substitute Pegasus Development DBS Corporation as an applicant for a GSO-like application.[123] And it involved, among many other issues, consideration of whether to waive Section 25.158(c), which is applicable only to GSO-like applicants.[124]

Casual review of that decision illustrates SpaceX's folly of suggesting it as precedent when considering the Amendments. The Commission was not simply evaluating the substitution of one party for another but, among other things, considering a "Three-Party Agreement," waiver of bonding requirements, waiver of Section 25.158(c), a finding that the application was a "major" amendment, and support for a process that would involve other parties withdrawing and submitting pending applications for other orbital locations.[125] The complexity of the facts leading to the *DIRECTV Order* alone are enough for the Commission to reject it as anything close to what is proposed by the Amendments. The analysis that the Commission employed in the *DIRECTV Order* is also irrelevant to the Amendments. The inequities that may be attendant with substituting one party for another when application grants are based on a first-come, first served basis are irrelevant to the NGSO-like application process that does not have such a rule.

GSO-like services allow only one provider at a particular frequency to offer service in a particular orbital slot. This is yet another important distinction as compared to the NGSO-like marketplace where there is no such scarcity. Perhaps parties seeking waiver of Section 25.158(c) should be subject to a high burden given that the grant of a GSO-like application results in

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[122] *SpaceX Petition*, at 14-15 (*citing DIRECTV Enterprises, LLC*, 24 FCC Rcd 9408, ¶ 11 (IB 2009)) ("*DIRECTV*").

[123] *DIRECTV*, 24 FCC Rcd at 9408, ¶1.

[124] *Id.*, 24 FCC Rcd at 9408, ¶14.

[125] *DIRECTV*, 24 FCC Rcd at 9408, ¶¶ 3-8.

exclusive use of an orbital slot at a particular frequency. But the main point is that neither SpaceX nor O3b has provided any reasoned analysis as to why the Commission should look to rules limited to the GSO-like space station application process due to unique technical aspects of GSO-like satellite systems and related precedent based on such differences for guidance on a waiver request of NGSO-like rules. One can only conclude that both O3b and SpaceX are attempting to confuse the appropriate approach for evaluating the Amendments.

IV. THE AMENDMENTS ARE NOT SUBJECT TO SECTION 25.116; ALTERNATIVELY, WAIVER SERVES THE PUBLIC INTEREST

The Amendments do not represent a "major" amendment under the Commission's Part 25 Rules. The Part 25 rules were expressly revised in 2003 to make license applicant transfers and assignments of control, which involve a comparable conveyance of prospective orbital and spectrum rights akin to the instant substitution, minor amendments by default. Alternatively, the Commission should find that a waiver of Section 25.116 in the instant situation serves the public interest.

A. The Amendments Are Not "Major" Under Commission Rules

Notwithstanding the assertions of the Petitioners, the replacement or substitution of an applicant to launch an NGSO system does not by itself constitute a "major amendment" requiring further notice and comment. Section 25.116(b) provides bright line rules for "major" technical changes to an application. For example, changes that increase the potential for interference into other systems are by default "major."[126] With respect to non-technical changes, no bright line is provided. Instead, changes are major only "[i]f the amendment, or the cumulative effect of the

[126] *See* 47 C.F.R. § 25.116(b)(1).

amendment, is determined by the Commission to otherwise be substantial pursuant to section 309 of the Communications Act."[127]

Prior to 2003, Section 25.116(b)(3) of the rules stated that a change in the ownership or control of a satellite system applicant would be treated as a "major" amendment.[128] In 2003, however, based on evidence that treating assignments and transfers of control as major amendments might "deter legitimate business transactions," the Commission definitively clarified that such transactions were "no longer considered major amendments" with respect to both GSO and NGSO-like license applicants and eliminated Section 25.116(b)(3).[129]

The instant situation represents both a legitimate business transaction and a conveyance of prospective orbital and spectrum rights akin to an assignment or transfer of control, exactly the scenario that the Commission contemplated when it eliminated Section 25.116(b)(3). In fact, SOM1101 and Boeing could achieve the same objective through a *pro forma* assignment or transfer of the license application to another Boeing entity, and a subsequent transfer of control of that entity to SOM1101. Effectuating a complex multi-stage transaction rather than replacing SOM1101 as the system applicant provides no additional discernable benefit to Petitioners or the public. Instead, this approach would only delay provision of the system's services to consumers while increasing the Commission's administrative costs and burdens which, inevitably, are borne by the consumer as well. Moreover, doing so would contravene the Commission's long-standing objectives of its space station licensing process. The Commission has long held that these policies and procedures intend to "accommodate as many applicants as is efficiently possible with a

[127] 47 C.F.R. § 25.116(b)(4).

[128] *2003 Report and Order*, 18 FCC Rcd at 10814, ¶ 140.

[129] *Id.*

minimum of administrative costs or delays," in recognition of the fact that the satellite industry "has served the public interest through the timely implementation of facilities and services."[130]

The Petitioners' arguments that the instant substitution represents a major amendment are inconsistent with Commission precedent and objectives, and unpersuasive. Telesat cites to a decision from the 1980's where the Commission determined, under the now defunct Section 25.116(b)(3), that the transfer of control of a satellite applicant was a major amendment. However, Telesat never reconciles this decision with the Commission's express elimination of Section 25.116(b)(3) in 2003.[131] Iridium argues that because the Commission already placed Boeing's affected application on public notice, the Amendments are substantial by default under Section 309 of the Act.[132] Section 309, however, makes no such proclamation. Section 309 only prohibits grant of substantial amendments without public notice. It does not prohibit the Commission from placing minor amendments on public notice, nor does it confer any indicia of substantiality to amendments that the Commission chooses to place on public notice.

B. The Amendments Are Not a Mere "Substitution" of Applicants

Petitioners argue that "replacing one applicant with another, when not part of a merger or transfer of control of an operating business," is not the type of amendment the Commission's *2003 Report and Order* was designed to protect when it eliminated Section 25.116(b)(3).[133] In support of this position, Petitioners rely on the Commission's *Pegasus-DIRECTV* decision as instructive as to why the Commission should treat the Amendments as creating a newly filed application.[134]

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[130] *Processing of Pending Space Station Applications in the Domestic Fixed-Satellite Service*, 93 FCC 2d 832, 839-40, ¶ 19 (1983).

[131] *Telesat Petition*, at 3; *2003 Report and Order*, 18 FCC at 10814, ¶ 140.

[132] *Iridium Petition*, at 6.

[133] *See, e.g., Telesat Petition*, at 4 (internal quotations omitted).

[134] *SpaceX Petition*, at 15; *Telesat Petition*, at 5; *DIRECTV*, 24 FCC Rcd at 9413, ¶ 11.

Any similarities between the instant situation and the attempted replacement of the original license applicant in *Pegasus-DIRECTV*, however, are superficial and readily differentiated in a variety of aspects. First, the original and replacement systems in Pegasus-DIRECTV had different technical parameters, which in and of itself would independently trigger a "major" amendment under 25.116(b)(1).[135] The instant Amendments involve no technical revisions to the underlying NGSO constellation. The same system is being launched, just by a different entity.

Second, *Pegasus-DIRECTV* involved a replacement of GSO license applicants, and a patent attempt to sidestep Section 25.158(c) to obtain GSO orbital positions, which as discussed above in Section III.A., are more fungible than bespoke NGSO-like orbital rights and more susceptible to speculation due to the potential marketplace for priority, GSO-like application filings. The Commission noted that "the request to substitute Pegasus for DIRECTV as the applicant is an arrangement that would not have occurred but for the first-come, first-served licensing process."[136]

These facts are not present in the instant case. On the contrary, the decision to replace Boeing with SOM1101 was, and is, based solely on legitimate business interests. Where Pegasus and DIRECTV aimed to game Commission rules to their advantage, the rules here provide no such opportunity; instead, they are at best a hindrance to the timely and cost-effective transition of the system to SOM1101 and its subsequent deployment of services.

Also, there is no merit to irresponsible and baseless allegations that "SOM1101 proposes to buy Applications 1 and 2 from Boeing" or the implication that Mr. Wyler and Boeing have an

[135] 47 C.F.R. 25.116(b)(1); *see also DIRECTV*, 24 FCC Rcd at 9410, ¶ 5.

[136] *DIRECTV*, FCC Rcd at 9413, ¶ 12.

arrangement whereby Boeing can expect compensation from SOM1101 in the future.[137] SpaceX has selectively quoted from the Amendments to turn a statement of fact, *i.e.,* that "Boeing *remains available* to provide manufacturing and advisory services as needed[,]"[138] into a fantastical, undisclosed arrangement between SOM1101 and Boeing. There is no undisclosed or other financial arrangement between Boeing and SOM1101 other than that already disclosed in the Amendments with respect to reimbursement "for a portion of Boeing's expenses in maintaining its NGSO FSS application . . ." followed by an affirmative statement that Boeing will ***not*** "realize a profit from the transfer of this Application to SOM1101."[139]

C. Alternatively, Waiver of 25.116 Serves the Public Interest

Should the Commission treat the instant transaction as a "major" amendment, a waiver of Section 25.116 serves the public interest by promoting SOM1101's legitimate business interests and encouraging competition in the rapidly growing satellite-based broadband internet services market. The Commission's longstanding policy with respect to Section 25.116 has been to step aside, let free market mechanisms prevail, and avoid injecting itself in legitimate business transactions while "discourag[ing] entities who had no intention of building a system from filing applications merely to make a profit from a sale to an unrelated entity."[140] Moreover, the Commission presumes innocence and does not assume that an applicant has attempted to profit off the sale of an application absent evidence of it.[141]

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[137] *SpaceX Petition*, at 3-4; 9-10; *O3b Petition*, at 16.

[138] Amendments, at 3 (emphasis added).

[139] Amendment, at 3.

[140] *2016 Second Order on Reconsideration*, 31 FCC Rcd at 9405, ¶ 19.

[141] *See, e.g., In the Matter of Loral/Qualcomm Partnership, L.P.*, Order and Authorization, 10 FCC Rcd 2333, 2234, ¶ 12 (IB 1995).

Prior to 2003, the Commission codified any "substantial change in beneficial ownership or control" as a major amendment.[142] Even so, not every transfer of control or similar transaction was subject to Section 25.116(c) rules. Parties could and did regularly request an exemption.[143] In reviewing requests for exemption, the Commission applied a two-prong test: whether (1) the proposed transaction has a legitimate business purpose; and (2) the transaction serves the public interest.[144] The Commission has historically found changes in ownership to qualify for a "major" amendment exemption when the changes did not evidence any intent to traffic applications[145] and instead related to other objectives, for example "securing financial backing sufficient to facilitate prompt implementation of a competitive [NGSO] system." [146]

Here, no rule specifies that the instant transaction is a major amendment. Despite this, the transaction clearly satisfies the Commission's requirements for granting an exemption. Waiver of Section 25.116 in the instant situation is appropriate because, as discussed extensively in Section IV.A., the transaction represents the exact type of legitimate business interest that the Commission has long sought to encourage. Waiver also aligns with the Commission's objectives and policy by allowing SOM1101 to pursue the launch and operation of an innovative next generation NGSO constellation with support and knowledge of Mr. Wyler, who has been instrumental in refocusing

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[142] *2003 Report and Order*, 18 FCC Rcd at 10814, ¶ 140 (citing 47 C.F.R. 25.116(b)(3); *see also ICO-Teledesic Global Limited*, Memorandum Opinion, Order and Authorization, FCC Rcd 6403, 6408, ¶ 12 (IB 2001) ("*Teledesic*").

[143] *See, e.g, Loral Space & Communication Ltd. and Orion Network Systems, Inc. et al.*, Order and Authorization, 13 FCC Rcd 4592 (IB 1998) ("*Loral/Orion*"); *Satellite CD Radio, Inc.*, Declaratory Order, 12 FCC Rcd 8359 (IB 1997) ("*Satellite CD*"); *Starsys Global Positioning Inc.*, Order and Authorization, 11 FCC Rcd 1237 (IB 1995) ("*Starsys*").

[144] *See, e.g., Loral/Orion*, 13 FCC Rcd at 4598-99, ¶¶ 14-19 (IB 1998); *Satellite CD*, FCC Rcd at 8362-64, ¶¶ 7-13 (IB 1997); *Starysys*, 11 FCC Rcd 1237 at 1238, ¶¶ 8-11.

[145] *See, e.g., Teledesic*, FCC Rcd at 6408, ¶ 13; *In the Matter of Volunteers in Technical Assistance*, 11 FCC Rcd 1358, 1368, ¶ 31 (IB 1995) at ("*VITA*").

[146] *Starsys*, 11 FCC Rcd at 1238, ¶ 11; *see also VITA*, 11 FCC Rcd at 1358, ¶ 31.

the broader fixed-satellite industry on the potential for NGSO networks to provide a broadband transmission medium with fiber-like speed and low latency to underserved and unserved communities, including Underserved Americans.[147] Moreover, and as discussed above in Section IV.C., favorable action on a waiver that allows the substitution of SOM1101 will not result in harm, delay or uncertainty for other NGSO applicants. The Commission continues to process all applications sequentially when technical and other outstanding issues for these complex, bespoke systems are resolved on a case-by-case basis.

[147] *See, e.g., supra* n.12.

V. CONCLUSION

For the reasons elaborated herein, SOM1101 urges the Commission to expeditiously approve its substitution as the license applicant for FCC Call Signs S2966 and S2977. The relief sought by the Amendments are consistent with the NGSO-like satellite application processing rules as explained in this filing. Alternatively, if the Commission determines that waiver of the relevant rules is necessary to grant the Amendments, the Commission should grant waiver. The substitution of SOM1101 for Boeing serves critically important public interest goals of providing a promising alternative for the delivery of broadband internet access services to Underserved Americans.

Respectfully submitted,

/s/ Ronald W. Del Sesto Jr.

Ronald W. Del Sesto Jr.
Timothy L. Bransford
Catherine Kuersten
Morgan, Lewis & Bockius LLP
1111 Pennsylvania Ave, NW
Washington, DC 20004
(202) 739-3000
(202) 739-3001 (Fax)
ronald.delsesto@morganlewis.com
timothy.bransford@morganlewis.com
catherine.kuersten@morganlewis.com

Counsel to SOM1101, LLC

Dated: February 27, 2018

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	File Nos.
	)	SAT-AMD-20171206-00167 and
The Boeing Company	)	SAT-AMD-20171206-00168
	)	
	)	Call Signs:
For Amendment of NGSO Applications	)	S2966 and S2977
	)	

DECLARATION OF RYAN GARDNER
IN SUPPORT OF
OPPOSITION OF SOM1101, LLC TO PETITIONS TO DENY

I, Ryan Gardner, declare under penalty of perjury that the following is true and correct:

1. I am Manager of SOM1101, LLC.

2. I have reviewed the foregoing Opposition of SOM1101, LLC to Petitions to Deny. All statements made therein are true and correct to the best of my knowledge, information and belief.

/s/ Ryan Gardner

Ryan Gardner
SOM1101, LLC
P.O. Box 86
Hanover, NH 03755

Dated: February 27, 2018

CERTIFICATE OF SERVICE

I, Catherine Kuersten hereby certify that on this 27th day of February 2018, I served a true and complete copy of the Foregoing OPPOSITION OF SOM1101, LLC TO PETITIONS TO DENY, via first-class mail upon the following:

Tim Hughes
Patricia Cooper
Space Exploration Technologies Corp.
1030 15th Street, N.W., Suite 220E
Washington, D.C. 20005

William M. Wiltshire
Paul Caritj
Harris, Wiltshire & Grannis LLP
1919 M Street, N.W., Suite 800
Washington, D.C. 20036
Counsel to SpaceX

Suzanne Malloy
Vice President, Regulatory Affairs
O3B Limited
900 17th Street, NW, Suite 300
Washington, DC 20006

Karis Hastings
SatCom Law LLC
1317 F Street, N.W., Suite 400
Washington, DC 20004
Counsel to O3B Limited

Maureen C. McLaughlin
Vice President, Public Policy
Iridium Constellation LLC
1750 Tysons Boulevard, Suite 1400
McLean, VA 22102

Scott Blake Harris
V. Shiva Goel
Harris, Wiltshire & Grannis LLP
1919 M Street, N.W., Suite 800
Washington, D.C. 20036
Counsel to Iridium Satellite LLC

Leslie Milton
Senior Counsel, Regulatory Affairs
Telesat Canada
1601 Telesat Court
Ottawa, Ontario
Canada K1B 5P4

Henry Goldberg
Joseph A. Godles
Devendra T. Kumar
Goldberg, Godles, Wiener & Wright LLP
1025 Connecticut Avenue, Suite 1000
Washington, DC 20036
Counsel to TeleSat Canada

/s/ Catherine Kuersten
Catherine Kuersten