

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
The Boeing Company)	SAT-AMD-20171206-00167
)	S2966
)	
)	SAT-AMD-20171206-00168
)	S2977
)	

REPLY OF TELESAT CANADA

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SUMMARY

The Amendments at issue in this proceeding violate Section 25.159(b) of the rules by giving Greg Wyler a prohibited interest in multiple NGSO-like constellations – *i.e.*, the V-band and Ka-band NGSO constellations of SOM1101 and OneWeb. Mr. Wyler, as the sole owner of SOM1101, obviously has an attributable interest in that company. Further, in adopting Section 25.159, the Commission incorporated its “controlling interest” standard from its designated entity rules (Section 1.2110(c)(2)) as part of its determination of whether a party has an attributable interest. Under the “controlling interest” standard, officers and directors of any entity are considered to have a controlling interest in the entity; thus, Mr. Wyler, as a OneWeb Director, has a controlling interest (and, therefore, an attributable interest) in OneWeb. Boeing and SOM1101 largely ignore this Commission precedent.

Moreover, even if a more general, case-specific and fact-based *de facto* control analysis were necessary, the Commission would also find that Mr. Wyler has a controlling interest in OneWeb. Mr. Wyler is much more than simply a director of OneWeb; he is the Founder and Executive Chairman of the company and has been presented as actively involved in OneWeb’s management. Indeed, when OneWeb sought Commission approval for its Ka-/Ku-band NGSO constellation, it described “Mr. Wyler’s experienced leadership” as being critical to achieving its business plans.

The Applicants provide no basis for a waiver of the Commission’s multiple ownership rule and no such basis exists. The multiple ownership rule serves important policy goals that would be undermined by a waiver, including deterring speculation,

ensuring that no party has access to a greater share of spectrum during in-line events than other parties in the same frequency band, and promoting competitive markets. Grant of a waiver would also harm the integrity of the Commission's rules and undercut those parties that follow the rules and applicable processing round cutoff dates.

Finally, while the Commission amended its rules in 2003 such that it no longer considers all Part 25 transfers of control to be major amendments, it has not suggested that replacing one applicant with another, when not part of a merger or transfer of control of an operating business, would be exempted from treatment as a major amendment. The Commission's purpose in amending its rules was to avoid deterring "legitimate business transactions," such as those involving "larger transactions, such as the acquisition of one entity by another entity" or those transactions that "involve other assets and [allow] the new company [to be] better positioned to compete in the marketplace." No larger transaction or other such justification exists here. The only justification offered for seeking to substitute SOM1101 as the Applicant is conclusory and insufficient. Indeed, the Applicants' request to substitute SOM1101 for Boeing in the pending applications appears to be a textbook example of the sort of speculative transactions the Commission always has endeavored to prohibit.

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REPLY OF TELESAT CANADA

Telesat Canada (“Telesat”), pursuant to Section 25.154 of the Commission’s rules, hereby replies to the Oppositions filed by the Boeing Company¹ (“Boeing”) and SOM1101, LLC² (“SOM1101”) (collectively, the “Applicants”) concerning the above-captioned amendments (the “Amendments”) that seek to substitute SOM1101 for Boeing as the applicant in pending applications for V-band and Ka-band NGSO constellations.

As discussed below, notwithstanding the Applicants’ arguments, (1) the Amendments violate the Commission’s multiple ownership rules and policies for NGSO systems, (2) there is no basis for waiving these rules and policies, and (3) the Amendments are major amendments that require the Applications to be treated as newly filed. Accordingly, the Commission should either reject the Amendments or

¹ *Opposition of the Boeing Company*, IBFS File Nos. SAT-AMD-20171206-00167 & SAT-AMD-20171206-00168 (filed Feb. 27, 2018) (“Boeing Opposition”).

² *Opposition of SOM1101, LLC*, IBFS File Nos. SAT-AMD-20171206-00167 & SAT-AMD-20171206-00168 (filed Feb. 27, 2018) (“SOM1101 Opposition”).

deny the Applications as amended, or, at a minimum, remove the Applications from the current processing rounds.

I. THE AMENDMENTS VIOLATE SECTION 25.159(b) BY GIVING GREG WYLER A PROHIBITED INTEREST IN MULTIPLE NGSO-LIKE CONSTELLATIONS

A. The Amendments Give Mr. Wyler an Attributable Interest in Multiple NGSO Systems

Under Section 25.159(b) of the rules, a party may not have an “attributable interest” in more than one NGSO-like satellite system application or authorized but unbuilt NGSO-like satellite system in the same frequency band. Mr. Wyler would doubly violate this rule if the Amendments were accepted because he would have an attributable interest in SOM1101’s Ka-band and V-band NGSO applications, OneWeb’s V-band NGSO application, and OneWeb’s authorized but unbuilt Ku/Ka-band NGSO system.

Mr. Wyler is the sole owner of SOM1101, obviously an attributable interest. Although Applicants deny that Mr. Wyler has an attributable interest in OneWeb, the Commission’s rules establish that he does. As explained below, Mr. Wyler’s position as a member of the Board of Directors of OneWeb gives him a “controlling interest” as defined by the Commission and, therefore, an attributable interest in OneWeb.

1. As a Director of OneWeb, Mr. Wyler Has a Controlling Interest in the Company

Under Section 25.159(c)(2) of the Commission’s rules, a party has an attributable interest in a space station license applicant if it has a “controlling interest” in the

applicant.³ For this purpose, the Commission applies the controlling interest standard it adopted in its designated entity rules, codified in Section 1.2110(c)(2) of the rules, which is distinct from the *Intermountain* control test it applies in other contexts. As the Commission stated in the *2003 Space Station Licensing Reform Order* when it adopted Section 25.159 and thereby established that an “attributable interest” includes a “controlling interest”:

Specifically, we adopt here the “controlling interest” standard the Commission adopted in Amendment of Part 1 of the Commission’s Rules – Competitive Bidding Procedures, *Order on Reconsideration of the Third Report and Order, Fifth Report and Order, and Fourth Further Notice of Proposed Rule Making*, WT Docket No. 97-82, 15 FCC Rcd 15293, 15323-27 (paras. 59-67) (2000) (“*Part 1 Fifth Report and Order*”).⁴

The paragraphs in the *Part 1 Fifth Report and Order* referenced by the Commission above establish the “controlling interest” standard set forth in Section 1.2110(c)(2) of the rules. More specifically, in para. 63 of the *Part 1 Fifth Report and Order*, the Commission noted that “under the controlling interest standard, the officers and directors of any applicant will be considered to have a controlling interest in the applicant.”⁵ The Commission later explained the rationale for the rule that officers and directors of an

³ 47 C.F.R. § 25.159(c)(2).

⁴ *Amendment of the Commission’s Space Station Licensing Rules and Policies*, IB Docket No. 02-34, First Report and Order and Further Notice of Proposed Rulemaking, FCC 03-102, 18 FCC Rcd 10760, 10850, ¶ 237 n.564 (2003) (“*2003 Space Station Licensing Reform Order*”).

⁵ *Amendment of Part 1 of the Commission’s Rules – Competitive Bidding Procedures*, WT Docket No. 97-82, Order on Reconsideration of the Third Report and Order, Fifth Report and Order, and Fourth Further Notice of Proposed Rule Making, FCC 00-274, 15 FCC Rcd 15293, 15325, ¶ 63 (2000).

entity are deemed to have a “controlling interest” in that entity, noting that “section 1.2110(c)(2)(ii)(F) reflects the corporate reality that business decisions and corporate policy are established by a corporation’s board of directors and officers.”⁶ Simply put, the Commission’s rules are clear: by virtue of his being a director of OneWeb, Mr. Wyler has a controlling interest and, therefore, an attributable interest, in OneWeb.

Applicants largely ignore this clear Commission precedent. Boeing argues that “controlling interests” are necessarily determined by a “case-specific, fact-based inquiry,”⁷ but its argument is inconsistent with the specific definition of controlling interest in Section 1.2110(c)(2) that Section 25.159(c)(2) applies to NGSO systems. Boeing also argues that Section 1.2110(c)(2)(ii)(F) refers to officers and directors *collectively* rather than individually, but this interpretation would render Section 1.2110(c)(2)(ii)(F) meaningless.⁸ More significantly, Boeing’s argument is contradicted by precedent in which the Commission has interpreted Section 1.2110(c)(2)(ii)(F) to apply to *individual* officers and directors.⁹

⁶ *Amendment of Part 1 of the Commission’s Rules – Competitive Bidding Procedures*, WT Docket No. 97-82, Second Order on Reconsideration of the Third Report and Order and Order on Reconsideration of the Fifth Report and Order, FCC 03-98, 18 FCC Rcd 10180, 10194 ¶ 20 (2003).

⁷ Boeing Opposition at 4-5.

⁸ *Id.* at 5.

⁹ See *Leap Wireless Int’l, Inc. et al; Applications for Consent to the Assignment of Licenses Pursuant to Section 310(d) of the Communications Act*, WT Docket No. 03-263, Memorandum Opinion and Order, FCC 04-2480, at 11-14, ¶¶ 19-25 (rel. Aug. 5, 2004) (denying a request for waiver of Section 1.2110(c)(2)(ii)(F) requested because of “attributable interests of three individuals designated to be members of New Leap’s board of directors). In *Leap*, the Commission applied what it termed the “*Director*

SOM1101 questions the relevance of Section 1.2110(c)(2)(ii)(F), claiming the “Commission did not reference Section 1.2110(c)(2)(ii)(F) in Section 25.159(c)(2)” and “there is no reference to Section 1.2110(c)(2)(ii)(F) in the relevant portion of the 2003 Report and Order [in which Section 25.159 was enacted].”¹⁰ This is plainly wrong — as explained above, the Commission *did* refer to the *Part 1 Fifth Report and Order* in the relevant portion of the 2003 Order in which it adopted Section 25.159, citing the specific paragraphs in which the Commission discussed the “controlling interest” standard of Section 1.2110(c), including the rule pertaining to officers and directors found in Section 1.2110(c)(2)(ii)(F).

SOM1101 also argues that the Commission *must have* adopted an entirely new “controlling interest” standard in Section 25.159 because that rule includes a 33 percent of total asset value standard, in Section 25.159(c)(1), that is not employed in Section 1.2110(c)(2)(i).¹¹ This argument is a *non sequitur*, because Section 25.159(c)(1) sets forth a standard for *attributable* interests, not *controlling* interests. Under Section 25.159, one can have an *attributable* interest in an NGSO system *either* by having an interest that exceeds

Attribution Rule” (emphasis added) and made clear that Section 1.2110(c)(2)(ii)(F) applies to individual directors:

The Commission determined that *each director* and all entities in which they have a controlling interest should be automatically attributed to the applicant. The Commission did not qualify that the entity had to be affiliated through more than one director.

Id. at 13, ¶ 23 (emphasis added).

¹⁰ SOM1101 Opposition at 10.

¹¹ See 47 C.F.R. § 25.159(c)(1); 47 C.F.R. § 1.2110(c)(2)(i).

33 percent of total asset value (Section 25.159(c)(1)) *or* by having a *controlling* interest (Section 25.159(c)(2)). Accordingly, the total asset value standard cited by SOM1101 is irrelevant to the applicable controlling interest standard.¹²

SOM1101 also claims the Commission's statement in the *2003 Space Station Licensing Reform Order* that it was adopting "two *new* provisions" must mean that the Commission was establishing a new attribution rule unrelated to Section 1.2110(c)(2).¹³ But the Commission held precisely the opposite. In the very next sentence of the *2003 Space Station Licensing Reform Order*, the Commission stated that the first of the new provisions "revise[s] [its] proposed attribution rule to include a controlling interest, and any other subsidiaries of that controlling interest" based on the *Part 1 Fifth Report and Order* that adopted Section 1.2110(c)(2)'s "controlling interest" standard.¹⁴

2. Even if a Case-by-Case De Facto Control Analysis Were to Apply, Mr. Wyler Would Be Found to Have a Controlling Interest in OneWeb

As discussed above, the Commission's rules establish that Mr. Wyler has a controlling interest in OneWeb based on his position as a OneWeb Director. Even if a more general, case-specific and fact-based *de facto* control analysis were necessary, the Commission should also find that Mr. Wyler has a controlling interest in OneWeb. As

¹² Moreover, the threshold of 33 percent of total asset value used in Section 25.159(c)(1) is distinct from the 50 percent threshold cited in Section 1.2110(c)(2)(i) because the former measures equity (including all voting and nonvoting stocks whether common or preferred) and debt taken in the aggregate whereas the latter measures only voting stock (or general partnership shares).

¹³ SOM1101 Opposition at 12 n.50 (citing *2003 Space Station Licensing Reform Order*, 18 FCC Rcd at 10850, ¶ 237) (emphasis supplied by SOM1101).

¹⁴ *2003 Space Station Licensing Reform Order*, 18 FCC Rcd at 10850, ¶ 237.

Telesat explained in its Petition to Deny and Opposition, Mr. Wyler is much more than simply a director of OneWeb; he is the Founder and Executive Chairman of the company, and has been presented as actively involved in OneWeb's management.¹⁵

Indeed, when OneWeb sought Commission approval for its Ka-/Ku-band NGSO constellation, it described Mr. Wyler's leadership as being critical to OneWeb's business plans:

OneWeb was founded by legendary communications entrepreneur Greg Wyler and is designed first and foremost to be a technological and commercial success. In a field where many others have struggled to bring their grand ideas to fruition, Mr. Wyler has unparalleled success in conceiving, designing, funding, implementing, and commercially deploying NGSO FSS systems that break boundaries and create new services and competition. . . . OneWeb starts with an impressive group of strategic partners and shareholders that support Mr. Wyler's vision With financing well underway, *OneWeb is now poised to deliver global, satellite-based broadband connectivity under Mr. Wyler's experienced leadership.* Mr. Wyler does not just dream big dreams; he makes them reality.¹⁶

Notwithstanding OneWeb's description of itself as poised to achieve its business plans "under Mr. Wyler's experienced leadership," Applicants attempt to minimize Mr. Wyler's involvement in OneWeb by claiming that he has a "relatively small equity interest,"¹⁷ is not involved in management of the company,¹⁸ and is little more than a

¹⁵ Telesat Petition to Deny at 8-9.

¹⁶ *Opposition and Response of WorldVu Satellites Ltd.*, IBFS File No. SAT-LOI-20160428-00041, at 3 (filed Aug. 25, 2016) (emphasis added).

¹⁷ Boeing Opposition at 4

¹⁸ SOM1101 Opposition at 17.

spokesperson.¹⁹ It is common knowledge that Mr. Wyler manages OneWeb's operations. Indeed, less than three months ago, he was voted "Most Powerful Executive" in the telecom industry for his executive role in OneWeb.²⁰ It is also curious to see SOM1101 and Boeing attempt to minimize Mr. Wyler's role in OneWeb while at the same time justifying the Amendments and SOM1101's late entrance into the NGSO processing rounds with little more than appeals to Mr. Wyler's experience and track record in the industry – a significant part of which is his leadership role in OneWeb.

Of course, as SOM1101 notes, neither Telesat nor any other party opposing the Amendments is aware of the full details of Mr. Wyler's relationship with OneWeb;²¹ the primary source of such information in the record is Mr. Wyler's self-serving description that minimizes his leadership role in OneWeb.²² If the Commission declines to deem Mr. Wyler to have a controlling interest by virtue of his Board seat and has any doubts as to who is running OneWeb, it should conduct a case-specific *de facto* control analysis and request detailed information to develop a more complete picture of OneWeb's governance and what voting rights or other *indicia* of control Mr. Wyler possesses. The Commission should require information about any agreements or understandings between Mr. Wyler (including entities controlled by Mr. Wyler) and OneWeb that gives

¹⁹ *Id.*

²⁰ <https://www.fiercewireless.com/wireless/oneweb-s-greg-wyler-voted-most-powerful-exec-telecom-for-2017>

²¹ SOM1101 Opposition at 8.

²² *Id.* at 16-20.

either OneWeb or SOM1101 the ability to influence the operations of the other.²³ It is telling that while all other significant parties that filed applications for NGSO-like constellations opposed the Amendments, OneWeb has remained silent, raising serious concerns about its independence *vis-à-vis* SOM1101 that the Commission should further investigate.

A case-specific review would also necessitate an inquiry into the relationship between OneWeb and SOM1101. The Amendments would violate Section 25.159(b) if OneWeb, or anyone with an attributable interest in OneWeb, has an option or other right to acquire a controlling interest in SOM1101. The Applicants have provided insufficient information to evaluate this potential.

B. There is no Basis for a Waiver of Section 25.159(b)

Waiver of the Commission's rules is justified only upon a showing of good cause, when strict compliance with a rule would be inconsistent with the public interest. Waivers are appropriate in limited circumstances when, for example, changes in technology or other circumstances make strict compliance with a rule unnecessary to serve the underlying purpose of the rules. Waiver of a rule is not justified when, as with the case of the above-captioned Amendments, the violation goes to the heart of both the letter and purpose of the rule, and when Applicants present no credible arguments for why a departure from the rules is necessary or appropriate.

²³ Telesat Petition to Deny and Opposition at 9-11.

Applicants attempt to justify their request for a waiver of Section 25.159(b) by arguing that: (1) the rule is outmoded and no longer serves its purpose;²⁴ (2) no other NGSO licensees or applicants would be harmed;²⁵ and (3) denying a waiver would harm legitimate business plans.²⁶ As discussed below, Applicants are wrong on all counts.

1. The Multiple Ownership Rule Serves Important Policy Goals, Which Would be Undermined by Accepting the Amendments

Boeing contends that Section 25.159(b) is no longer needed, arguing that the Commission got rid of a similar multiple ownership rule pertaining to GSO-like applications.²⁷ As Telesat explained in its Petition to Deny, however, this argument ignores key differences between Section 25.159(b) and the now-defunct Section 25.159(a) that applied to GSO-like applications.²⁸

In eliminating former Section 25.159(a)'s limit of five GSO orbit locations per frequency band, the Commission found that the prior limit restricted operators' ability to finance and implement fleet upgrades and expansion of large satellite fleets.²⁹ Such a limit, the Commission reasoned, could harm the growth and operations of GSO systems. In contrast, limiting an applicant to one NGSO-like satellite system license per

²⁴ Boeing Opposition at 7-11.

²⁵ Boeing Opposition at 12-15; SOM1101 Opposition at 27-32.

²⁶ SOM1101 Opposition at 32-36; Boeing Opposition at 11-12.

²⁷ Boeing Opposition at 7.

²⁸ Telesat Petition to Deny at 11.

²⁹ *Comprehensive Review of Licensing and Operating Rules for Satellite Services*, IB Docket No. 12-267, Second Report and Order, FCC 15-167, ¶¶ 335, 337 (rel. Dec. 17, 2015).

frequency band does not restrict operators in the same way because the limit is for a single constellation rather than a specific number of satellites. NGSO-like constellations are designed with numerous satellites and redundancies in network design and communications paths, and do not present the same concerns with respect to financing and launching of individual satellites or fleet upgrades.

Boeing also argues that NGSO-like applications do not have the same speculative potential as GSO applications because of the differences between first-in-time application queues and processing rounds, and that this argues in favor of elimination of Section 25.159(b) for NGSO systems since the Commission has already done away with the analogous rule for GSO systems.³⁰ However, just because the speculative value for NGSO systems is different does not mean there is no value to a speculator in being included in a processing round. Once the cut-off date for processing round passes, new parties cannot file for new NGSO-like constellations and jeopardize their future access to the spectrum covered in the processing round – in this instance, for example, SOM1101 did not have the option of simply filing an application for a proposed system in December 2017.

Given these differences, it is no surprise that the Commission retained the anti-speculation provisions for NGSO systems in Section 25.159(b) when it did away with the corresponding provisions for GSO systems in Section 25.159(a). The Commission made a conscious distinction. Indeed, the proceeding in question was titled

³⁰ Boeing Opposition at 10.

Comprehensive Review of Licensing and Operating Rules for Satellite Services and addressed numerous rules pertaining to NGSO operations.³¹

Section 25.159(b) continues to serve other important policy goals. As Telesat has explained, Section 25.159(b)'s limit of one NGSO-like satellite system application per frequency band ensures that no applicant has access to a greater share of spectrum during in-line events than other applicants in the same frequency band.³² In addition, as with all multiple ownership rules, Section 25.159(b) serves the Commission's goal of promoting competitive markets by ensuring that multiple NGSO-like satellite systems compete with one another instead of acting in concert in the market. In this case, Mr. Wyler's leadership role in and fiduciary responsibilities toward OneWeb raise serious doubts as to whether SOM1101 and OneWeb would act independently in the market.³³

2. Granting the Amendments Would Harm Telesat and Other NGSO Operators/Applicants

As Telesat explained in its Petition to Deny, if the Amendments were granted and Section 25.159(b) were not enforced, one party (Mr. Wyler) would have access to twice the amount of spectrum during in-line interference events, which will be frequent, as other V- and Ka-band NGSO operators.³⁴ In other words, Telesat or any other

³¹ *Comprehensive Review of Licensing and Operating Rules for Satellite Services*, IB Docket No. 12-267, Second Report and Order, FCC 15-167 (rel. Dec. 17, 2015).

³² See 47 C.F.R. § 25.157.

³³ It would be interesting for the Commission and the public to see if there are any "no compete" agreements between Mr. Wyler and OneWeb's investors that would prevent SOM1101 from competing with OneWeb.

³⁴ Telesat Petition to Deny at 12.

similarly-situated NGSO-like system operator would be harmed because they would have access to half the amount of shared spectrum as one of their competitors at those times.

Boeing claims that Telesat (or another NGSO operator) would not be harmed because it would still have access to the same amount of spectrum as before.³⁵ That is true but irrelevant, because its competitors would have access to more spectrum than they would absent the Amendments.³⁶ Any company is harmed when its competitors are given an unfair advantage. Boeing's argument is akin to saying that in a market with three participants with equal market shares, Company A is not harmed if Company B and C are allowed to merge because Company A would retain a 33 percent market share.

Boeing also argues that any "operator of an NGSO system could lease all or a portion of its capacity" to another operator, "thereby producing the same result – the operator that controls one system and leases capacity on a second would have access to

³⁵ Boeing Opposition at 13. Meanwhile, SOM1101 responds to Telesat's argument about spectrum sharing during in-line events by arguing that all NGSO operators are required to coordinate spectrum use. SOM1101 Opposition at 31-32. SOM1101 appears to misunderstand Telesat's argument, which has to do with the anticompetitive impact of allowing one party access to twice as much spectrum as Telesat or other competitors rather than the obligation of all NGSO operators to coordinate with other NGSO operators.

³⁶ Boeing also ignores the fact that absent a waiver it would have had to relinquish one of its V-band applications in accordance with Section 25.259(b); by way of the Amendments, Boeing seeks to retain one of the applications and introduce a new applicant into the processing round.

two-thirds of the spectrum in a three-way in-line event.”³⁷ However, any such market transaction between competitors would be subject to market forces and would leave any NGSO operator with the ability to lease capacity on any other. In contrast, permitting the Amendments would give the two entities in which Mr. Wyler has a controlling interest the ability to act in concert to the detriment of other NGSO operators.

In addition, allowing the Applicants to skirt the Commission’s rules harms Telesat and other Ka- and V-band NGSO-like system applicants as well as the Commission’s own interest in the integrity of its rules. The Commission’s rules establish a cutoff date for processing rounds for Ka- and V-band NGSO-like systems, and a requirement that each NGSO-like system applicant apply for no more than one NGSO-like constellation in a given frequency band. Allowing Mr. Wyler to skirt these requirements and enter the processing round after the cut-off date would harm the integrity of the Commission’s rules and procedures and undercut those parties that follow the rules.

3. There is No Legitimate Justification for Ignoring the Commission’s Rules

Parties requesting a waiver of the Commission’s rules must demonstrate that strict compliance with the rule — *i.e.*, denial of the waiver — would harm the public interest. Applicants fail to make such a showing.

³⁷ Boeing Opposition at 13.

The Applicants' only argument justifying its waiver request appears to be that SOM1101 intends to serve the needs of underserved rural broadband users and that Mr. Wyler's involvement in an enterprise serving rural broadband needs "would clearly serve the public interest."³⁸ However, Applicants fail to demonstrate any unique characteristics of the Amendments that would require Mr. Wyler's participation in order to achieve these goals.

Eight parties filed applications for V-band NGSO-like systems, and an even higher number filed applications for Ka-/Ku-band NGSO-like systems. Providing high capacity broadband services to underserved rural users is a key aspect of the business plans of any of the next generation NGSO systems given their potential to reach users in remote areas not easily served by terrestrial wired and wireless networks. Indeed, Boeing itself emphasized its plans to serve rural, underserved populations.³⁹ It makes no difference to the public interest whether rural broadband needs are satisfied by Boeing or by SOM1101. Accordingly, grant of the Amendments and substitution of SOM1101 as the applicant is irrelevant for this purpose.

Moreover, the mere involvement of Mr. Wyler in SOM1101 provides no justification for allowing Applicants to skirt rules that apply to all other parties. In any event, Mr. Wyler already plays a leadership role in implementing OneWeb's vision to

³⁸ Boeing Opposition at 12; *see also* SOM1101 Opposition at 3-6.

³⁹ *See, e.g., The Boeing Co., Application for Authority to Launch and Operate a Non-Geostationary Low Earth Orbit Satellite System in the Fixed Satellite System*, File No. SAT-LOA-20160622-00058, at 44-47 (filed June 22, 2016).

bridge the digital divide and deliver high-speed broadband service to underserved populations around the globe.⁴⁰ In short, Applicants have not identified any way in which the substitution of SOM1101 for Boeing as the applicant for Boeing's NGSO-like constellations advances the public interest and justifies a departure from a straightforward application of the Commission's multiple ownership rule for NGSO-like satellite systems.

II. THE PROPOSED SUBSTITUTION OF SOM1101 FOR BOEING IS NOT PART OF A LARGER "LEGITIMATE BUSINESS TRANSACTION" THE COMMISSION HAS EXEMPTED FROM CONSIDERATION AS A MAJOR AMENDMENT

While the Commission amended its rules in 2003 such that it no longer considers all Part 25 transfers of control to be major amendments, it has not suggested that replacing one applicant with another, when not part of a merger or transfer of control of an operating business, would be exempted from treatment as a major amendment.⁴¹ The Commission's purpose in amending its rules was to avoid deterring "legitimate business transactions."⁴² In subsequent proceedings, the Commission has described such "legitimate business transactions" as involving "larger transactions, such as the acquisition of one entity by another entity"⁴³ and has suggested that such transactions

⁴⁰ *Opposition and Response of WorldVu Satellites Ltd.*, IBFS File No. SAT-LOI-20160428-00041, at 2-3 (filed Aug. 25, 2016).

⁴¹ See Telesat Petition to Deny at 4.

⁴² 2003 *Space Station Licensing Reform Order*, 18 FCC Rcd at 10814, ¶ 137.

⁴³ *Application of DIRECTV Enterprises, LLC to Amend its Pending Application for a 17/24 GHz BSS Authorization at the 107 [degrees] W.L. Orbital Location*, Memorandum Opinion and Order, 24 FCC Rcd 9408, 9413, ¶¶ 11-12 (2009).

“involve other assets and [allow] the new company [to be] better positioned to compete in the marketplace.”⁴⁴

Ultimately, Applicants’ attempt to substitute SOM1101 for Boeing as the NGSO-like constellation applicant is not the sort of “legitimate business transaction” the Commission intended to exempt from consideration as a major amendment. The proposed substitution is not part of a larger transaction or acquisition, and involves no assets other than bare applications.

SOM1101 attempts to distinguish the *Pegasus-DIRECTV* case cited by Telesat because of factual differences between that case and this one.⁴⁵ However, Telesat cited the case not because of its fact pattern but because of its legal principle. The Commission explained in *Pegasus-DIRECTV* that its revision of its major amendment rule was directed at transfers of control that are part of larger “legitimate business transactions,”⁴⁶ an element that is lacking here.

Boeing argues that the Commission’s rule change was meant to “allow application transfers in situations where business realities require a change in ownership of the application,” but it cites to a section of an Order that addressed

⁴⁴ *Amendment of the Commission's Space Station Licensing Rules and Policies, Second Order on Reconsideration*, 31 FCC Rcd 9398, 9405, ¶ 19 (2016).

⁴⁵ SOM1101 Opposition at 38-39.

⁴⁶ Telesat Petition to Deny at 5.

restrictions on the sale of bare *licenses* and not restrictions on the sale of bare *applications*, with respect to which speculation is a legitimate concern.⁴⁷

The only justification offered for seeking to substitute SOM1101 as the Applicant is conclusory and insufficient.⁴⁸ The Applicants merely state “it would be more appropriate to implement an arrangement in which SOM1101 serves as the licensee and Boeing remains available to provide manufacturing and advisory service as needed.”⁴⁹ This desired arrangement is a far cry from the “legitimate business transactions” envisioned by the Commission, and indeed appears to be a textbook example of the sort of speculative transactions the Commission has always endeavored to prohibit.

* * *

⁴⁷ Boeing Opposition at 17 n.50 (citing *2003 Space Station Licensing Reform Order*, 18 FCC Rcd at 10840, ¶ 212).

⁴⁸ SOM1101 argues that 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 and instead related to other objectives, for example “securing financial backing sufficient to facilitate prompt implementation of a competitive [NGSO system].” SOM1101 Opposition at 41 (citations omitted). However, Applicants fail to cite any such objectives here.

⁴⁹ SAT-AMD-20171206-00167, SAT-AMD-20171206-00168, Public Interest Statement at 3.

For the reasons discussed above, the Commission should either reject the Amendments or deny the Applications as amended, or, at a minimum, remove the Applications from the current processing rounds.

Respectfully submitted,

TELESAT CANADA

_____/s/_____

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CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of March, 2018, a copy of the foregoing Petition to Deny and Opposition of Telesat Canada was sent by electronic mail to the following:

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