

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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

PETITION TO DENY AND OPPOSITION OF TELESAT CANADA

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I. INTRODUCTION AND SUMMARY

Telesat Canada (“Telesat”), pursuant to Section 25.154 of the Commission’s rules, hereby petitions to deny the above-captioned amendments (the “Amendments”) in which The Boeing Co. (“Boeing”)¹ and SOM1101 LLC (“SOM1101”) (collectively, the “Applicants”): (1) seek to substitute SOM1101 for Boeing as the Applicant seeking to launch and operate NGSO constellations in the V-band and Ka-band;² and (2) request a waiver of Section 25.159(b) of the rules.³

¹ Boeing was among several companies, including Telesat, that filed applications to launch and operate NGSO constellations as part of the Commission’s Ka- and V-band processing rounds. *See* SAT-LOA-20161115-00109, SAT-LOA-20160622-00058 & SAT-AMD-20170301-00030.

² SAT-AMD-20171206-00167, SAT-AMD-20171206-00168 (the “Amendments”).

³ Waiver of Section 25.159(b), IBFS File Nos. SAT-LOA-20160622-00058, SAT-LOA-20161115-00109, and SAT-AMD-20170301-00030 (filed Dec. 29, 2017) (“Waiver Request”).

The Amendments present clear violations of the Commission’s policies and rules addressing speculation and multiple ownership of space station applications. Because the Amendments are major amendments, the underlying applications (the “Applications”) no longer are eligible for consideration in the current processing round. While the Commission no longer considers mergers or transfers of control that are part of a larger transaction to be major amendments, it has never suggested that replacing one applicant with another, when not part of a merger or transfer of control of an operating business, could avoid classification as a major amendment or was the type of “legitimate business transaction” that the Commission does not want to deter.

Moreover, the Applications as amended by the Amendments violate Section 25.159(b) of the Commission’s rules, because they give Greg Wyler, the sole owner of SOM1101 and the Founder and Executive Chairman of OneWeb, an attributable interest in multiple NGSO-like applications in the same frequency band. The Applicants fail to justify their request for a waiver beyond conclusory statements regarding Mr. Wyler’s experience as a satellite entrepreneur that do not address the rationale of the Commission’s policies prohibiting multiple ownership and speculation. The amended Applications, therefore, would be ineligible for consideration in any processing round. Accordingly, the Commission either should dismiss the Amendments or deny the Applications as amended.

II. THE AMENDMENTS ARE “MAJOR AMENDMENTS” THAT SHOULD BE TREATED AS NEWLY-FILED APPLICATIONS AND INELIGIBLE FOR CONSIDERATION IN THE CURRENT PROCESSING ROUNDS

Under Section 25.116(c) of the Commission’s rules, if a “major amendment” to an application for an NGSO-like satellite license is filed after the applicable cut-off date for a processing round, the application is treated as newly-filed and cannot be considered in the processing round.⁴ The Amendments filed by Boeing and SOM1101 LLC are major amendments. The Commission, therefore, should treat the Applications as newly-filed and ineligible for consideration in the current Ka- and V-band processing rounds.

Under Section 25.116(b) of the Commission’s rules, an amendment is major “[i]f the amendment, or the cumulative effect of the amendment, is determined by the Commission otherwise to be substantial pursuant to section 309 of the Communications Act.”⁵ While Section 309 of the Act does not define what constitutes a “substantial amendment,” the Commission has historically held that a substantial change in the ownership or control of an applicant is a major amendment.⁶ The proposal to substitute SOM1101 for Boeing as the applicant plainly satisfies this standard; it involves a new

⁴ 47 C.F.R. § 25.116(c).

⁵ *Id.* § 25.116(b)(4).

⁶ See *Amendment of Parts 2, 22 and 25 of the Commission's Rules to Allocate Spectrum for and to Establish Other Rules and Policies Pertaining to the Use of Radio Frequencies in a Land Mobile Satellite Service for the Provision of Various Common Carrier Services; Applications of Hughes Communications Mobile Satellite, Inc. MCCA American Satellite Service Corporation McCaw Space Technologies, Inc. Mobile Satellite Corporation North American Mobile Satellite, Inc. Satellite Mobile Telephone Co. Skylink Corporation Transit Communications, Inc., Memorandum Order and Authorization*, 4 FCC Rcd 6041, ¶ 34 (1989).

owner coming into the processing round after the applicable cut-off dates for the Applications.

The Commission has carved out an exception to this principle for amendments to Part 25 satellite applications, but the exception is irrelevant to the Boeing/SOM1101 Amendments. In 2003, the Commission amended its rules such that it no longer considered all Part 25 transfers of control to be major amendments. The purpose of this change was to permit mergers or transfers of control of operating businesses to go forward without risk that a pending application would be treated as newly filed and lose its place in a GSO application queue or NGSO processing round.⁷ In this way, the Commission could avoid deterring “legitimate business transactions.”⁸

There was no suggestion, however, that replacing one applicant with another, when not part of a merger or transfer of control of an operating business, could avoid classification as a major amendment or was the type of “legitimate business transaction” that the rule change was designed to protect. To the contrary, the Commission left intact the provision in the rules that defines a major amendment to include amendments that are substantial under Section 309 of the Act.⁹ The Commission also left in place Section 25.116(c)(2) of the rules under which it may exempt an application that is the subject of a major amendment from being deemed a

⁷ *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, 10814, ¶ 140 (2003) (“2003 Space Station Licensing Reform Order”).

⁸ *2003 Space Station Licensing Reform Order*, 18 FCC Rcd at 10814, ¶ 137.

⁹ 47 C.F.R. § 25.116(b)(4).

new application if “[t]he amendment reflects only a change in ownership or control found by the Commission to be in the public interest and, for which a requested exemption from a ‘cut-off’ date is granted.” That provision would have no purpose if all transfers of applications were deemed minor amendments under Section 25.116(b).

A subsequent Commission statement, in a decision applying the rule prohibiting GSO applicants from selling their place in a first-come, first-served application queue, confirms this interpretation. The case involved a request by DIRECTV to substitute Pegasus as the applicant in DIRECTV’s then-pending GSO space station application.¹⁰ In response to an argument from DIRECTV, the Commission explained that merely substituting one applicant for another is not the kind of legitimate business transaction that may avoid classification as a major amendment:

The Commission eliminated the rule classifying transfer of control applications as “major amendments” [causing them to be treated as newly filed] because it did not want to discourage certain larger transactions, such as the acquisition of one entity by another entity The substitution of Pegasus for DIRECTV is not part of a larger transaction envisioned by the Commission when it eliminated the rule classifying transfer of control applications as “major amendments.”¹¹

¹⁰ *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 (2009) (“DIRECTV”).

¹¹ *Id.* at 9413, ¶¶ 11-12. See also *Amendment of the Commission's Space Station Licensing Rules and Policies*, Second Order on Reconsideration, 31 FCC Rcd 9398, 9405, ¶ 19 (2016) (the rule preventing GSO applicants from selling their place in the queue “was not to discourage companies from merging with other companies in legitimate business transactions, especially when those transactions involve other assets and the new company is better positioned to compete in the marketplace.”).

In the case of the Boeing/ SOM1101 Amendments, there is no “larger transaction” involving the acquisition of an operating business.¹² There is only a substitution of one applicant for another and the parties’ conclusory statement that “[a]fter careful consideration, SOM1101 and Boeing have concluded that 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.”¹³ Under the Commission’s rules and precedents, this constitutes a major amendment, and should cause the Applications to be treated as newly filed.

III. THE AMENDMENTS GIVE GREG WYLER A PROHIBITED INTEREST IN MULTIPLE NGSO-LIKE APPLICATIONS IN THE SAME FREQUENCY BAND

A. The Substitution of SOM1101 as the Applicant Violates Section 25.159(b)

Under Section 25.159(b) of the rules,¹⁴ parties may not apply for more than one NGSO-like satellite system license in a particular frequency band. It is a violation of this rule to have an “attributable interest” in more than one NGSO-like satellite system license application in the same band. Having a controlling interest, as defined below, in an NGSO-like system constitutes an attributable interest for purposes of Section

¹² The Commission’s requirement that transfers of control be part of a “larger transaction” in order to be exempt from being treated as major amendments is consistent with the Commission’s longstanding policies against the sale of bare space station applications and, more generally, speculation in such applications, as well as the Commission’s policies in favor of maintaining the integrity of the processing round regime.

¹³ SAT-AMD-20171206-00167, SAT-AMD-20171206-00168, Public Interest Statement at 3.

¹⁴ 47 C.F.R. § 25.159(b).

25.159.¹⁵ So does having a more than thirty-three percent interest in the total asset value (equity plus debt) of the system on a fully-diluted basis.¹⁶

It would be a violation of Section 25.159(b), therefore, for the same person or entity to have an attributable interest in both the above-captioned NGSO-like Applications and the NGSO-like applications filed by WorldVu Satellites Limited (“OneWeb”) in the Ku/Ka- and V-band processing rounds.¹⁷ The Amendments violate this limitation because they give Greg Wyler a controlling interest in the above-captioned Applications while he already has a controlling interest in OneWeb’s NGSO-like applications (the “OneWeb Applications”). The Amendments also would violate the limitations imposed by 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 and should be required to supplement their filing.

1. Greg Wyler has controlling interests in both the Applications and the OneWeb Applications in violation of Section 25.159

Having a controlling interest as defined in Section 1.2110 of the Commission’s rules constitutes an attributable interest for purposes of Section 25.159.¹⁸ The definition of controlling interest in Section 1.2110 includes *de jure* control (*i.e.*, having more than

¹⁵ *Id.* § 25.159(c)(2).

¹⁶ *Id.*

¹⁷ IBFS File Nos. SAT-LOI-20160428-00041 (Ku-/Ka-band), SAT-LOI-20170301-00031 (V-band).

¹⁸ 47 C.F.R. § 25.159(c)(2).

50% of the voting interests) and *de facto* control.¹⁹ The definition of *de jure* control for this purpose is broad,²⁰ and includes serving as an officer or director of the applicant.²¹

Under these standards, Greg Wyler has a controlling interest, and therefore an attributable interest, in both the above-captioned Applications and the OneWeb Applications. Mr. Wyler has *de jure* control of the Applications because he is the sole owner of SOM1101, which the Amendments have substituted for Boeing as the applicant. He also has *de facto* control of One Web, because he is a director of that company and directors are deemed to have *de facto* control.²² Mr. Wyler, therefore, has prohibited interests in multiple applications in the same processing rounds.

Mr. Wyler is also much more than simply a director of OneWeb. He is the Founder and Executive Chairman of the company, and the face and voice of OneWeb to the World. Mr. Wyler holds himself out, and OneWeb holds Mr. Wyler out, as OneWeb's leader and directing mind. News reports and other articles about OneWeb's mission and business plans invariably feature Mr. Wyler as OneWeb's spokesperson

¹⁹ *Id.* § 1.2110(c)(2).

²⁰ Although Section 25.159(c)(2) includes a reference to 47 C.F.R. 1.2110(b)(2), which refers to aggregation of affiliate interests, the FCC made clear when it adopted Section 25.159 that it was incorporating Section 1.2110's definition of "controlling interest." *2003 Space Station Licensing Reform Order* at 10850, ¶ 237 n.564 (citing *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, 15323-27, ¶¶ 59-67 (2000)).

²¹ 47 C.F.R. § 1.2110(c)(2)(ii)(F) ("Officers and directors of the applicant shall be considered to have a controlling interest in the applicant.").

²² *Id.* § 1.2110(c)(2)(ii)(F).

and leader.²³ Indeed, just a few weeks before the Amendments were filed, Mr. Wyler testified in a Senate Commerce Committee hearing, describing OneWeb's mission and business plans in detail.²⁴

If Mr. Wyler's position as director, architect, and voice of OneWeb is not sufficient for the Commission to determine that SOM1101's acquisition of the Applications is prohibited, the Commission should seek additional information to assess Mr. Wyler's *de facto* control of OneWeb. The Applicants have not disclosed the governance of OneWeb and what voting rights or other indicia of control Mr. Wyler possesses. As Founder and Executive Chairman of the Board of OneWeb, it seems likely that Mr. Wyler "plays an integral role in management decisions."²⁵ The Applicants also have not disclosed whether there is any agreement between Mr. Wyler (including indirectly via entities owned by Mr. Wyler) and OneWeb that gives Mr. Wyler the authority to determine or significantly influence the nature or types of

²³ See, e.g., Jonathan Shieber, *OneWeb Is a Step Closer to Bringing its Global, Satellite-Based Internet Services to Earth*, Nov. 7, 2017, at <https://techcrunch.com/2017/11/07/oneweb-is-a-step-closer-to-bringing-its-global-satellite-based-internet-services-to-earth/> (quoting OneWeb Founder and Executive Chairman Wyler regarding OneWeb's deployment and launch plans); Mathew Richardson, *2018 Gamechanger: OneWeb's Greg Wyler Talks Digital Divide, 900 Satellites*, Orlando Business Journal, Dec. 29, 2017, at <https://www.bizjournals.com/orlando/news/2017/12/29/2018-gamechanger-onewebs-greg-wyler-talks-digital.html> (quoting Wyler responding to questions about numerous aspects of OneWeb's business plans for 2018 and beyond).

²⁴ *OneWeb's Greg Wyler: Our New High-Performance Satellite Technologies Put Us On "Cusp of Bridging Digital Divide"*, Press Release, Oct. 25, 2017, available at <http://www.oneweb.world/press-releases/2017/onewebs-greg-wyler-our-new-high-performance-satellite-technologies-put-us-on-cusp-of-bridging-the-digital-divide>.

²⁵ 47 C.F.R. § 1.2110(c)(2)(i)(C).

services offered by OneWeb, or the terms on which those services are offered, that would implicate Section 1.2110(c)(2)(ii)(H).²⁶ Nor have the Applicants disclosed whether there is any agreement that gives OneWeb the authority to influence the services offered by SOM1101 or any joint marketing agreement between OneWeb and SOM1101/Mr. Wyler that implicates Section 1.2110(c)(2)(ii)(I).²⁷ Should SOM1101's acquisition of the Applications not be deemed *per se* prohibited, these matters should be investigated further. The Commission has conducted similar fact-finding in analogous circumstances.²⁸

2. The information provided by the Applicants is insufficient

It also would violate Section 25.159 if OneWeb, or a person or entity that has an attributable interest in OneWeb, has an option, warrant, or other convertible interest that upon conversion would give OneWeb or the person or entity an interest in more than thirty-three percent of the total asset value (all equity plus all debt) of the Applications.²⁹ The Applicants have not provided the information required to evaluate this possibility. They are silent as to any convertible or contingent interest, and they make no mention of the debt structure. If the Applications or the Amendments are not

²⁶ *Id.* § 1.2110(c)(2)(ii)(H).

²⁷ *Id.* § 1.2110(c)(2)(ii)(I).

²⁸ See, e.g., *Northstar Wireless, LLC; SNR Wireless LicenseCo, LLC*, File Nos. 0006670613, 0006670667, Order on Remand, DA 18-70 (Jan. 24, 2018); *Northstar Wireless, LLC; SNR Wireless LicenseCo, LLC*, FCC 15-104, 30 FCC Rcd 8887, 8909-8940 (2015); *Baker Creek Communications, LLC, Memorandum Opinion and Order*, 13 FCC Rcd 18709, 18712-18726 (1998)..

²⁹ See 47 C.F.R. § 25.159(b)(1).

dismissed or denied for other reasons, the Applicants should be required to provide this information.

B. The Applicants Fail to Demonstrate Good Cause That Would Justify a Waiver, and Grant of the Requested Waiver Would Be Contrary to the Public Interest

The Applicants attempt to demonstrate good cause for their request for waiver of Section 25.159(b) by arguing that their request serves the underlying purpose of the rules and would not harm other applicants for NGSO-like systems, and that “enforcing Section 25.159(b) would unnecessarily hamper the development plans for the proposed NGSO FSS system.”³⁰ As discussed below, each of Applicants’ contentions is wrong and/or does not justify the requested waiver.

The Applicants first argue that a waiver of Section 25.159(b) “is consistent with the policies behind this rule” because rules preventing speculative applications are “no longer necessary,” noting that the Commission recently did away with a requirement that limited applicants to five GSO orbit locations in a given frequency band.³¹ However, this argument ignores (1) the fact that the Commission retained the rule limiting applicants to one NGSO satellite system per frequency band, and (2) the differences between limits on GSO-like applications and those on NGSO-like system applications. In eliminating the limit of five GSO orbit locations per frequency band, the Commission found that the prior limit restricted operators’ ability to finance and

³⁰ Waiver Request at 3.

³¹ *Id.* at 3-4.

implement fleet upgrades and expansion of large satellite fleets.³² In contrast, limiting an applicant to one NGSO-like satellite system license does not restrict operators in the same way because the limit is for a single constellation rather than a specific number of satellites.

The Applicants also ignore an important aspect of Section 25.159(b), which is that its 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.³³ In this case, for example, if Section 25.159(b) is not enforced, one applicant (Mr. Wyler) would have access to twice the amount of spectrum as other V- and Ka-band NGSO licensees. This outcome directly contradicts Applicants' second argument that the requested waiver would not harm other applicants for NGSO-like systems, who would have access to half the amount of shared spectrum as one of their competitors. In addition, other NGSO applicants would be harmed if the waiver were granted because after they followed the Commission's established procedures for the V- and Ka-band processing rounds, they would watch Mr. Wyler skirt those same procedures if he were allowed to enter the processing round after the cut-off date.

In addition, the Applicants argue that denying their waiver request would be contrary to the Commission's purpose of deterring speculation without restricting

³² *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).

³³ See 47 C.F.R. § 25.157.

legitimate business plans,³⁴ but provide no explanation for what such business plans are beyond Mr. Wyler's track record in the industry or for why the Applicants' business plans changed necessitating the Amendments. The Applicants provide no explanation for why Mr. Wyler should be the only party permitted to have a controlling interest in two NGSO-like satellite systems in the Ka- and V-bands, or why Mr. Wyler/SOM1101 did not apply for authorization prior to the respective cut-off dates for Ka- and V-band NGSO systems. Simply stating that "Mr. Wyler's involvement and support of multiple, increasingly larger NGSO satellite system proposals reflects a legitimate business strategy and public interest goal ... to bridge the digital divide"³⁵ does not justify a waiver when such involvement and support of multiple NGSO satellite systems is precisely what is prohibited by the Commission's rules and policies.

Finally, Applicants state that their waiver request "effectively serves to supplant Boeing's request for waiver of the same section [in connection with] the NGSO FSS application that Boeing filed with the Commission on March 1, 2017,"³⁶ which left it with dual interests in NGSO-like applications. But this statement merely begs the question of whether Boeing was entitled initially to a waiver of Section 25.159(b). Boeing cannot transfer something it had no right to in the first instance. Boeing should not be permitted to apply for multiple NGSO-like satellite systems in the V-band in violation of Section 25.159(b) only to cure its violation by transferring its application to

³⁴ Waiver Request at 4.

³⁵ *Id.* at 4-5.

³⁶ *Id.* at 5 n.12.

another party. Indeed, this would appear to be a textbook case of exactly the kind of speculation the Commission sought to avoid when it adopted Section 25.159.

Respectfully submitted,

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February 12, 2018

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of February, 2018, a copy of the foregoing Petition to Deny and Opposition of Telesat Canada was sent by first-class, United States mail to the following:

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