

WAIVER REQUEST

Pursuant to Section 1.3 of the Commission’s rules, the Commission may waive its rules for good cause.¹ “Waiver is appropriate if special circumstances warrant a deviation from the general rule and such deviation would better serve the public interest than would strict adherence to the general rule.”² In determining whether waiver is appropriate, the Commission should “take into account considerations of hardship, equity, or more effective implementation of overall policy.”³ As shown below, SpaceX has demonstrated good cause for the Commission to grant a waiver to its modified processing round requirement.

Under Section 25.157 of the Commission’s rules, applications for authority to launch and operate an NGSO-like system are processed under a “modified processing round” framework, which would use a band-splitting mechanism to divide spectrum among competing applicants.⁴ The purpose of the processing round procedure is to establish a sharing environment among NGSO systems that prevents one applicant from unreasonably precluding entry by other satellite operators in the same frequency band.⁵ The Commission, however, has often waived the processing round requirement and allowed NGSO systems access to frequencies when doing so

¹ 47 C.F.R. § 1.3. *See also* *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972); *Northeast Cellular Telephone Co., LP v. FCC*, 897 F.2d 1164 (D.C. Cir. 1990).

² *GE American Communications, Inc.*, 16 FCC Rcd. 11038, ¶ 9 (IB 2001).

³ *WAIT Radio*, 418 F.2d at 1159.

⁴ 47 C.F.R. § 25.157.

⁵ *Amendment of the Commission’s Space Station Licensing Rules and Policies*, 18 FCC Rcd. 10760, ¶ 25 (2003); *see also* *Update to Parts 2 and 25 Concerning Non-Geostationary, Fixed-Satellite Service Systems and Related Matters*, 32 FCC Rcd. 7829, ¶ 61 (2017).

will not preclude additional entry and sharing.⁶ The Commission has good cause to do so here and to authorize SpaceX to access the 137-138 MHz and 148-150.05 MHz bands.

The Commission is currently conducting a processing round in the VHF spectrum used by the Gen2 beacons.⁷ The Commission has waived Section 25.157 on numerous occasions where it found that authorization of a satellite licensee would not prevent other licensees from operating in the band, nor cause harmful interference to existing licensees.⁸ In doing so, the Commission has remained cognizant of the policy objectives behind the processing round procedure, noting that its purpose is not frustrated where an applicant's proposed system is designed to afford additional entry into the frequency band by other operators.⁹

In this case, the Gen2 beacons will be used only to enhance space sustainability, creating special circumstances that make grant of a waiver both justified and appropriate. SpaceX plans to begin launching Gen2 satellites by the end of December 2022, and conducting a processing round would delay deployment of technology that will enhance space sustainability. Because SpaceX proposes to operate a fairly limited number of beacons that will only intermittently transmit in short bursts of information, operation of these beacons would not preclude use of the spectrum by other NGSO operators, including those participating in the current processing

⁶ See, e.g., *Iridium Constellation LLC*, 31 FCC Rcd. 8675, ¶ 41 (IB & OET 2016) (waiving processing round requirements for an NGSO system because access will not preclude additional entry); *Northrop Grumman Space & Mission Systems Corporation*, 24 FCC Rcd. 2330, ¶¶ 23-34 (IB 2009) (“*Northrop Grumman*”) (same); *Space Imaging, LLC*, 20 FCC Rcd. 11964, ¶ 10 (IB 2005) (“*Space Imaging*”) (same); *Lockheed Martin Corporation*, 20 FCC Rcd. 11023, ¶ 15 (IB 2005) (same).

⁷ See Public Notice, *Myriota Pty. Ltd. Petition Accepted for Filing, Cut-Off Established for Additional NVNG MSS Applications or Petitions for Operations in the 137-138 MHz and 148-150.05 MHz Bands*, 35 FCC Rcd. 1972 (IB 2020).

⁸ See footnote 6, *supra*.

⁹ *Northrop Grumman* ¶ 6.

round. The Commission has recognized that such intermittent operations enable other operators to share spectrum and thus support waiver of the processing round rule.¹⁰

Grant of a waiver from the processing round procedure of Section 25.157 in the instant situation also serves the public interest by allowing SpaceX to expeditiously deploy beacons that will enhance the operational safety of its Gen2 constellation without precluding future entry by other operators in the band. The beacons will enable SpaceX to track and maintain contact with Gen2 satellites during rare and highly unpredictable space weather events and during the orbit raising process when satellites are moving through orbital altitudes and precise positional information is most essential. In the absence of a waiver, SpaceX's request would be relegated to a second processing round that presumptively would have to await conclusion of the current round, significantly delaying consideration of the application and thereby precluding realization of the significant space safety benefits the beacons would provide.

Accordingly, SpaceX requests that the Commission waive Section 25.157 and proceed to authorize radiofrequency beacons for SpaceX's Gen2 satellites without conducting a processing round.

¹⁰ See, e.g., *DigitalGlobe, Inc.*, 20 FCC Rcd. 15696, ¶ 6 (IB 2005) (granting waiver based on fact that "EESS operators can operate on the same spectrum by downloading data from the satellites at different times or by downloading to earth stations in different geographic areas"); *Space Imaging* ¶¶ 10-11 (same).