

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
R2 Space, Inc.)	File No. SAT-LOA-2020____ - ____
)	
Application for Authority to Launch)	
and Operate a Non-Geostationary)	
Satellite Orbit System in the Earth-)	
Exploration Satellite Service)	

To: The Managing Director

PETITION FOR WAIVER, FEE DETERMINATION AND DEFERRAL OF PAYMENT

R2 Space, Inc. (“R2 Space”), by counsel, hereby petitions the FCC for a temporary waiver of the application filing fee in connection with its contemporaneously filed application seeking authority to launch and operate up to eight microsatellites in low-Earth, non-geostationary (“NGSO”). The application describes a network of micro-satellites with characteristics that are fully consistent with streamlined licensing procedures governing small satellites that the Commission adopted nearly nine months ago, on August 2, 2019.¹ Unfortunately, these rules have not yet been made effective, although the new regulations have completed, as of February 27, 2020, the Office of Management & Budget review process under the Paperwork Reduction Act as well as the notice period under the Congressional Review Act.

¹ See *Streamlining Licensing Procedures for Small Satellites*, 34 FCC Rcd 13077 (2019) (“*SmallSat R&O*”), adopting a new rule to be codified as 47 C.F.R. 25.122 (together with conforming rule change, the “SmallSat Rules”).

Summary of the Issue Presented

R2 Space's XR system is a small NGSO satellite network composed of just eight satellites. At the present time, the only application fee that covers such an NGSO network is the \$471,575 fee that was originally established (in a different amount) to cover large, communications satellite NGSO network's providing virtually global coverage for the delivery of voice and other services. In adopting the SmallSat Rules, the Commission explicitly concluded that the "existing fee for NGSO part 25 systems, \$471,575.00, is plainly not an appropriate fee for much-less-resource-intensive review required for these systems."² Instead, the Commission concluded that the initial application fee for small satellite networks should be \$30,000, as that amount was much more reflective of the FCC resources required to review and process requests to operate satellite networks consisting of less than ten small space stations.³

Although these determinations were made last summer, not all conditions precedent to the effectiveness of these rule changes have occurred to date, and the inappropriately high NGSO application fee remains nominally in effect even for proposals such as R2 Space's XR system that satisfy the requirements for processing as a small satellite network applicant. Because R2 Space needs to submit its application at this time in order to permit the FCC sufficient time to review and process it prior to the planned December 2020 launch date, it requests a waiver of the existing application fee requirement, a determination that \$30,000 is the correct fee for R2 Space to pay under these circumstances, and deferral of payment until the FCC's application processing system can accommodate the new fee amount.

² *SmallSat R&O*, 34 FCC Rcd at 13116 (¶ 101).

³ *Id.* (¶ 100).

The Commission's Waiver Standard

The Commission's Rules provide that application and other fees owed to the FCC "may be waived, reduced or deferred in specific instances, on a case-by-case basis, where good cause is shown and where waiver, reduction or deferral of such fees, interest charges and penalties would promote the public interest."⁴ Commission precedent further provides that the standard for obtaining a waiver is demonstration that the particular circumstances make strict compliance with a rule inconsistent with the public interest, such that a deviation from the general rule is appropriate, and that the requested waiver will not undermine the validity of the general rule."⁵ In determining whether waiver is appropriate, it is well-established that the Commission should "take into account considerations of hardship, equity, or more effective implementation of overall policy."⁶ All of these factors apply in this instance and the necessary criteria for grant are all squarely met, establishing good cause for grant of the requested waiver.

Justification for Grant of the Waiver

R2 Space seeks three interconnected determinations. It asks in the first instance that the requirement to pay a fee with the submission of its application be waived on an interim basis. Second, with respect to the amount of the fee owed, R2 Space seeks a fee determination that the appropriate fee to be paid is the \$30,000 small satellite fee established in the Commission's *SmallSat R&O*. Third, it asks that the timing of payment of the fee be deferred to a later date, until such time as there is an appropriate mechanism for payment of the proper fee.

⁴ 47 C.F.R. § 1.1166. See also 47 C.F.R. § 1.3.

⁵ *NetworkIP, LLC v. FCC*, 548 F.3d 116, 125-28 (D.C. Cir. 2008); *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969) ("WAIT Radio"), cert. denied, 409 U.S. 1027 (1972); *Northeast Cellular Tel Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

⁶ *WAIT Radio*, 418 F.2d at 1159.

Because R2 Space has a planned launch date for its XR-1 satellite prior to year's end, it has become critical for it to submit its satellite network application at this time in order to provide International Bureau staff with sufficient time to review and process the application consistent with R2 Space's launch schedule. Under the Commission's Rules, however, the only fee category that could apply currently to its application for a new license is the \$471,575 fee applicable to large NGSO networks. Payment of that high NGSO fee by a small satellite applicant has already been determined by the Commission in the *SmallSat R&O* to be "plainly not an appropriate fee," and therefore contrary to the public interest, but there is no other current category and fee code that would be applicable and/or specify an appropriate fee amount.

Typically, an applicant seeking a fee waiver for any reason other than financial hardship would be required to submit the full amount of the fee subject to the waiver request,⁷ and then await review of and action on the request before it might receive a full or partial refund. This would not be appropriate in the current circumstances for several interrelated reasons. In addition to the threshold fact that there is a dramatic disparity in the fee provided for under the rules currently in effect and the lower fee that the Commission has already determined is much more consistent with the public interest, full payment would generate additional costs and inefficiencies over and above the excessive cost of the upfront payment. The applicant would incur additional legal and opportunity costs engendered by the process of seeking and prosecuting to conclusion a request for refund. This process would also occupy FCC resources involved in considering and processing refund requests.

More importantly, at a time of historic economic disruption and uncertainty, a large upfront payment of nearly half a million dollars would arbitrarily deprive R2 Space of a

⁷ See 47 C.F.R. § 1.1166(c).

significant amount of operating capital that could be put to much better use growing the company and refining its technology. Encumbering funds in this manner would be particularly inappropriate at a time when the federal government has been forced to take extraordinary measures in an effort to ensure that businesses have sufficient liquidity to maintain operations and pay employees during the COVID-19 crisis.⁸ Accordingly, a determination that the previously adopted \$30,000 small satellite NGSO fee is appropriately applied to this application is fundamentally consistent with the decisions made in the *SmallSat R&O* and with the public interest.

Under these unprecedented circumstances, deferral of the fee payment is entirely appropriate and will affirmatively promote the public interest. A proper fee for the type of network R2 Space seeks to operate has been established that is substantially lower than the fee currently on the books. Indeed, this determination was made nine months ago and is not yet in effect only because certain ministerial actions remain to be taken to implement it fully. In the *SmallSat R&O*, the Commission identified several conditions precedent for the rules to become effective. First, the application fee rules cannot become effective until 90 days after notification to Congress under the Congressional Review Act, a period that appears to have elapsed in November 2019 based on an August 15, 2019 notice date.⁹ Second, statutory requirements mandate that the information collection requirements under the new rules must have Office of Management and Budget approval under the Paperwork Reduction Act, an approval that was

⁸ See, e.g., Coronavirus Aid, Relief and Economic Security (“CARES”) Act, Pub. L. 116–136, § 1102 *et seq.* (2020).

⁹ See *SmallSat R&O*, 34 FCC Rcd at 13127 (¶ 125); 5 U.S.C. § 801(a)(1)(A), 47 U.S.C. § 159A(b)(2) and GAO Website at <https://www.gao.gov/fedrules/196425>.

provided on February 27, 2020.¹⁰ Third, the Commission stated that the rules would only become effective “after the Commission publishes a notice in the Federal Register announcing such approval and the relevant effective date.”¹¹

Accordingly, as of today, the only remaining step required for the rules that the Commission adopted last August to become effective and for the \$30,000 application fee to be effective for small satellite network applicants is for the Commission itself to publish a Public Notice establishing the effective date of the rules thirty days following publication in the Federal Register. Under these circumstances, it is virtually certain that the application R2 Space has filed today can be processed under the new SmallSat Rules. Once the appropriate electronic filing mechanisms have been established and the rules are effective, R2 Space would be able to file the appropriate fee, a step that could be taken either as a supplement to the application or as a post-grant condition, payable within a specified number of days following FCC action.¹²

In the past, the Commission has granted fee waivers for the purpose of more fairly aligning the fee charged to a particular applicant with the content and circumstances specific to its application.¹³ A recent example is the Commission’s 2018 action to provide relief for a broad category of applicants by allowing companies seeking to register large numbers of geographically diverse C-band receive-only earth stations to file a single, blanket application,

¹⁰ See *SmallSat R&O*, 34 FCC Rcd at 13127 (¶ 125); 44 U.S.C. §3507 and Office of Information and Regulatory Affairs, OMB Website at https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201912-3060-009.

¹¹ *SmallSat R&O*, 34 FCC Rcd at 13127 (¶ 125); see also 47 C.F.R. §1.427(a).

¹² Under this approach, R2 Space would willingly pay interest on the \$30,000 fee calculated from the date of the application’s filing to the date of payment.

¹³ See, e.g., *PanAmSat Corporation*, 19 FCC Rcd 18495, 18499-500 (¶ 9) (2004)(assessing the lower application fee for a space station modification instead of the full replacement application fee where a new satellite was required to replace a satellite that experienced “extensive power failures” shortly after launch that “severely reduced the satellite’s payload capacity”).

thereby reducing both the scope of the documentation required and the application fees due.¹⁴

Similarly, with respect to substantive technical rules, the Commission has often given the benefit of newly-adopted rules to applications filed prior to the effective date of the new rules based either on the post-application effectiveness of an updated rule or simply on the fact that a not-yet-effective rule expresses current Commission policy.¹⁵ These precedents are applicable here.

R2 Space notes that an apparently meritorious request for waiver and refund of the full NGSO fee by an applicant providing a demonstration of compliance with the new SmallSat Rules is already pending with the FCC.¹⁶ While that case raises some of the same issues that are present here, R2 Space notes that the timing of that request was quite different from this one. Loft Orbital filed its request just five days after the adoption of the *SmallSat R&O*, long before the expected effective date of the new rules. The instant petition is being submitted almost nine months later, after OMB approval of the new rules under the PRA has occurred, and in an environment where national economic conditions are dramatically altered, as outlined above. Accordingly, any assertion that upfront payment of the full amount of the NGSO application filing fee should be required would be inconsistent with both the facts and the public interest. Loft Orbital's fee waiver and refund request appears to be appropriate for grant on its own terms,

¹⁴ See Public Notice, "International Bureau Announces 90-Day Extension of Filing Window, to October 17, 2018, to File Applications for Earth Stations Currently Operating in 3.7-4.2 GHz Band; Filing Options for Operators with Multiple Earth Station Antennas," 33 FCC Rcd 6115 (2018).

¹⁵ See, e.g., *Telesat Canada*, 33 FCC Rcd 11469, 11477-78 (¶¶ 16, 18 & 20)(2018) and *Space Exploration Holdings, LLC*, 33 FCC Rcd 3391, 3394 & 3400-3402 (¶¶ 6, 21, 24 & 27)(2018) (both dismissing as moot several frequency use waiver requests in light of the post-application effectiveness of revised spectrum use rules); *Iridium Constellation LLC*, 31 FCC Rcd 8675, 8679-80 & 8686-87 (¶¶ 12 & 36) (IB/OET 2016) (waiving an existing rule prior to the effective date of a revision to the rule permitting mid-band TT&C operations based on the revised rule's expression of current Commission policy).

¹⁶ See Loft Orbital Solutions Inc. Application, IBFS File No. SAT-LOA-20190807-00072, at 12 (referencing a petition for waiver or reduction of the application fee to require payment of the \$30,000.00 SmallSat fee filed contemporaneously with payment of the \$471,575.00 NGSO fee at the time of submission pending consideration of the fee reduction request).

while R2 Space's fee waiver, deferral and fee determination request – filed almost nine months later, after completion of the Congressional Review Act period and OMB approval under the PRA – can be granted without the need for prepayment and a the lengthy processing of a refund request.

Conclusion

For all of the foregoing reasons, R2 Space respectfully requests that the Commission (1) grant it a waiver of the high current NGSO application fee, which it has already determined is an excessive processing fee for the type of authority it seeks, allowing acceptance of the application without an upfront fee payment; (2) determine that the appropriate fee for this application is \$30,000, as already adopted for small NGSO satellite networks in the *SmallSat R&O*, and (3) defer the requirement that such fee be paid until the Commission has established an appropriate mechanism and fee code to accept payment of a small satellite application fee in that amount.

Respectfully submitted,

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