

ORIGINAL

BEFORE THE
Federal Communications Commission

WASHINGTON, D.C. 20554

Received

APR 23 2003

APR 21 2003

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
	)	Policy Branch
	)	International Bureau
Loral SpaceCom Corporation and	)	File Nos. 123/124-SAT-MP-96;
Loral Space & Communications	)	IBFS Nos. SAT-MOD-19960610-00082/83
Corporation	)	SAT-MOD-19991102-00106;
	)	SAT-MOD-19991101-00108/109
Applications for Modification of Fixed-	)	Call Signs: S2159, S2160, S2205, T-402
Satellite Service Space Station)	
Authorizations	)	File Nos. SAT-MOD-19991101-00107
	)	SAT-MOD-20020408-00060
Applications for Extension of Milestone	)	Call Sign: S2160
Dates)	
	)	File Nos. SAT-MOD-20000104-00042/43/44/45
Request for Extension of Time to Construct,)	
Launch, and Operate a Ka-band Satellite)	
System in the Fixed-Satellite Service)	

To: The Commission

MOTION FOR IMMEDIATE PARTIAL VACATUR

Orbital Resources LLC (“Orbital Resources”), by counsel, hereby moves that the Commission vacate immediately a portion of the International Bureau’s Memorandum Opinion, Order and Authorization in the above-captioned proceeding, released on April 1, 2003 (“*MOO&A*”).¹ Orbital Resources has filed contemporaneously herewith an Application for Review, In Part, of the *MOO&A* (“Application for Review”) and seeks via this Motion expedited relief through immediate vacatur of a small portion of that decision, contained in paragraphs 24 through 26, relating to the validity of the Ku-band portion of the authorization of Loral Space & Communications Corporation (“Loral) for a hybrid Ku-/Ka-band satellite at 47° West Longitude.

¹ See *Loral SpaceCom Corporation*, DA 03-1045, slip op. (IB, released April 1, 2001).

The basis for grant of this relief is provided in the Application for Review, which Orbital Resources incorporates here by reference. As shown in the Application for Review, the *MOO&A* is patently defective on its face. *See* Application for Review at 6-8. In the *MOO&A*, the International Bureau (the “Bureau”) has bluntly concluded, absent a scintilla of evidence in the record, that construction milestones that the Bureau had imposed six years ago² upon the single Ku/Ka-band satellite Loral was authorized to operate “were not intended to apply to the Ku-band portion of that satellite.” *MOO&A* at 15 (¶ 26). This determination is contrary to the explicit terms of the authorization and every previous Bureau statement concerning the application of the construction milestones. *See* Application for Review at 9-14. It is also wholly inconsistent with the position taken by Loral itself in this proceeding up until July of 2002. *See* Application for Review at 14-19.

As a consequence of its complete disregard for the record established in this proceeding over the past six years, the Bureau improperly construes Loral’s right to the Ku-band frequencies to be undisturbed by its own specific finding that Loral has failed to construct the hybrid Ku/Ka-band satellite as authorized, and its consequent nullification of the authorization, as modified. *See MOO&A* at 15 (¶ 26). On this point, the *MOO&A* could not be more capricious in its ultimate finding, nor more arbitrary in its complete failure to provide a justification for its actions.

This decision is also squarely contrary to the Commission’s long established policy of enforcing satellite construction milestones to prevent warehousing of orbital/spectrum resources, to which the Bureau has otherwise scrupulously adhered in all recent actions. *See* Application for Review at 21-23. If the Commission does not swiftly overrule the Bureau’s

² *See Orion Atlantic L.P.*, 13 FCC Rcd 1416, 1426 (¶ 32) (IB 1997).

failure to enforce fully the milestone requirement contained in Loral's May 1997 *Orion Atlantic License*, other licensees may well be encouraged to game the FCC's processes by creating novel arguments in an effort to maintain idle authorizations for as long as possible, thereby denying the use of these resources to companies ready and willing to offer new service to the public.

From a narrower standpoint of individual interest, Orbital Resources requires a quick decision in this matter because its interest in this proceeding is based on the application of Columbia Communications Corporation ("Columbia") for Ku-band authority at 47°/49° W.L.,³ an application that was denied premised solely on the continuing validity of Loral's authority to operate Ku-band at 47° W.L.⁴ Columbia's petition for further reconsideration of this denial has been pending for almost two years, and is thus ripe for action at any time.⁵ If the Commission quickly vacates the portion of the Bureau *MOO&A* that is the subject of the Application for Review, the sole basis for the Bureau's prior denial of Columbia's application will be removed, and the Bureau will be able to reconsider the application with the benefit of having the issue of Loral's 47° W.L. Ku-band authority correctly resolved, without compounding the error of the *MOO&A* by extending the impact of its errant ruling to another proceeding.

Although vacatur is a step that the Commission takes only on rare occasions, this step is appropriate in this instance, where the decision rendered is wholly unexplained,

³ In the *MOO&A*, the Bureau specifically acknowledges the existence of this interest, stating that the interest of Orbital Resources "stems from its principals' pecuniary interest in a then-pending application of Columbia Communications Corp. (CCC) for Ku-band use of the 49° W.L. orbit location and CCC's related request to modify that application for the 47° W.L. orbit location." *MOO&A* at 13-14 (¶ 24). Although the Bureau construes this application to have been rejected, it separately acknowledges that Columbia ("CCC") has filed a Petition for Reconsideration [*see MOO&A* at 14 n.89 (noting "*further recon. pending*," with respect to this matter)], so that this matter remains a live issue before the FCC.

⁴ *See, e.g., Columbia Communications Corp.*, 15 FCC Rcd 15566, 15571 (¶ 10) (IB 2000) ("Because we conclude that Loral's authorization for a Ku-band satellite at 47° W.L. is valid, we deny Columbia's application to add Ku-band capability to its authorized C-band satellite at 47° W.L.").

⁵ *See* Petition for Reconsideration of Columbia Communications Corp., FCC File No. SAT-LOA-19870331-00061 (filed June 21, 2001).

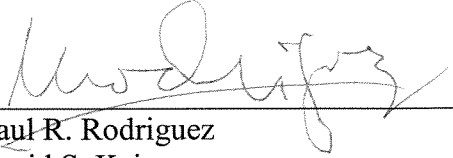
inconsistent with prior Bureau decisions, contrary to the record created by the parties, and in conflict with fundamental Commission policies. Where so many deficiencies exist in one order, the most appropriate course is swift vacatur in order to prevent any unnecessary confusion or undermining of Commission policy. Indeed, the Commission has vacated portions of even its own orders under circumstances where reflection has caused it to conclude that its conclusions were in some manner lacking.⁶

Accordingly, based on the premises stated herein and in the contemporaneously filed Application for Review, Orbital Resources hereby moves that the Commission vacate immediately paragraphs 24, 25 & 26 of the above-captioned *MOO&A*, and declare that the subject authorization originally granted to Orion Satellite Corp. in 1985, finalized in 1991, modified in 1997, and transferred to Loral in 1998 is NULL AND VOID in its entirety.

Respectfully submitted,

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April 21, 2003

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⁶ See, e.g., *WQED Pittsburgh et al.*, 15 FCC Rcd 2534 (2000) (vacating a portion of a prior adjudicatory order consisting of two paragraphs that provided additional guidance to non-commercial educational broadcast licensees concerning their obligations to air a sufficient amount of educational programming).

CERTIFICATE OF SERVICE

I, Sharon Krantzman, hereby certify that a true and correct copy of the foregoing Motion for Immediate Vacatur was sent by electronic mail and by first-class, postage prepaid mail this 21st day of April, 2003, to the following:

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