

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the matter of

MAY 1 2 2003

Loral SpaceCom Corporation and
Loral Space & Communications Corporation

Policy B File Nos. 123/124-SAT-MP-96;
International OBFS Nos. SAT-MOD-19960610-00082/83

Applications for Modification of Fixed-Satellite
Service Space Station Authorizations

SAT-MOD-19991102-00106;
SAT-MOD-19991101-00108/109
Call Signs: S2159, S2160, S2205, T402

Applications for Extension of Milestone Dates

File Nos. SAT-MOD-19991101-00107
SAT-MOD-20020408-00060; Call Sign: S2160

Request for Extension of Time to Construct,
Launch, and Operate a Ka-band Satellite
System in the Fixed-Satellite Service

File Nos. SAT-MOD-20000104-00042/43/44/45

OPPOSITION TO MOTION FOR IMMEDIATE PARTIAL VACATUR

Loral Space & Communications Corporation and Loral Orion, Inc. (collectively "Loral"), by its attorneys, submits this Opposition to the April 21, 2003, Motion for Immediate Partial Vacatur ("Motion") filed by Orbital Resources LLC ("Orbital Resources") in the above-referenced proceeding. Orbital Resources demands that the Commission immediately vacate portions of the International Bureau's April 1, 2003, Order relating to the validity of Loral's Ku-band authorization at 47° W.L.¹ However, Orbital Resources has established no basis for its "emergency" Motion. Contemporaneously with its Motion, Orbital Resources filed an Application for Review, requesting that the Commission vacate the same provisions of the Order. The Motion is merely a repetition of the proposition set out in the Application for Review which will be

¹ In re Loral SpaceCom Corporation and Loral Space & Communications Corporation, Applications for Modification of Fixed-Satellite Service Space Station Authorizations; Applications for Extension of Milestone Dates; Request for Extension of Time to Construct, Launch and Operate a Ka-band Satellite System in the Fixed-Satellite Service, Memorandum Opinion, Order and Authorization, DA 03-1045 (rel. April 1, 2003) ("Order").

addressed thoroughly by Loral in its Opposition, which is due May 6, 2003. Orbital Resources' Motion is legally deficient and should not be granted.

In 1991, the Commission authorized Loral's predecessor-in-interest, Orion Satellite Corporation ("Orion"), to use Ku-band frequencies at 47° W.L.² Consistent with its separate systems licensing policies, the Commission did not impose implementation milestones on Orion's authorization. In 1995, Orion applied for authority to modify its Ku-band authorization to add a Ka-band payload. Orion's application was granted in 1997 in the first Ka-band processing round.³ In that proceeding, the Commission established Ka-band construction and launch milestones. Following its acquisition of Orion,⁴ Loral filed a request to modify its authorization to add inter-satellite links (ISLs) and to extend the Ka-band milestones at 47° W.L. to be commensurate with those of other first round Ka-band licensees with ISL authority.⁵ Although the International Bureau granted Loral's ISL modification, it denied Loral's milestone extension request.⁶ Loral filed a petition for reconsideration of that decision but the Bureau affirmed its decision in the instant Order.

² In re Orion Satellite Corporation Request for Final Authority to Construct, Launch and Operate an International Communications Satellite System, Order, 6 FCC Rcd. 4201 (1991).

³ In re Orion Atlantic, L.P. Application for Modification of Authority to Add Ka-band Capacity to its Ku-band Orion F-2 Satellite, Order and Authorization, 13 FCC Rcd. 1416 (1997) ("Ka-band Order").

⁴ In re Application of Loral Space & Communications Ltd. and Orion Network Systems, Inc., International Private Satellite Partners, L.P. (d/b/a) Orion Atlantic, L.P., Order and Authorization, 13 FCC Rcd. 4592 (1998). The term "Loral" will now be used to refer to all Loral-affiliated entities for purposes of this pleading, except where explicitly noted.

⁵ File Nos. SAT-MOD-20000104-00042/42/44/45.

⁶ In re Loral Space & Communications Corp. Request for Extension of Time to Construct, Launch and Operate a Ka-band Satellite System in the Fixed-Satellite Service, Order, 16 FCC Rcd. 11044 (2001).

In the Order, the Bureau clearly and accurately explained that although it was nullifying Loral's Ka-band authorization at 47° W.L. for failure to meet the Ka-band milestones established in 1997, such action did not affect the underlying Ku-band authorization at that orbital location.⁷ As noted, when the Ku-band payload was originally authorized, the Commission did not impose any specific implementation milestones in that license. In its Ka-band Order, the Commission merely modified the original license, with a second license, which imposed milestones on the Ka-band portion of a hybrid satellite.

Consistent with the terms of its Ka-band Order, the Bureau clearly states that "those milestone deadlines *were not intended* to apply to the Ku-band portion of that satellite."⁸ When the Bureau revoked the Ka-band license, it was left with the underlying Ku-band license, which remains valid. The Bureau stated that it will address milestone enforcement of the Ku-band payload once the Commission has developed a mechanism to enforce such requirements on separate system satellites that do not have milestone requirements.⁹ Such action would have to occur through a rulemaking and not this proceeding.

Orbital Resources argues that the Bureau's Order concludes, "without a scintilla of evidence" that Loral's Ku-band authorization remains valid despite concluding that the authorization for a Ka-band payload is null and void.¹⁰ Contrary to Orbital Resources' allegations, the Bureau's decision was consistent with the terms of Loral's

⁷ Order at ¶¶ 26.

⁸ Id.

⁹ Id.

¹⁰ Motion at 2.

authorizations as well as the public interest. The Bureau should be accorded significant deference when interpreting its own decisions.¹¹

While the parties clearly differ as to the sustainability of the Bureau's Order, the matter can be addressed through the normal Commission process. Indeed, the sense of urgency conveyed by Orbital Resources does not really stem from concerns that "licensees might well be encouraged to game the FCC's processes."¹² The public interest is not at stake here. Rather, the purely private, pecuniary interests of Clifford Laughton and Kenneth Gross, the principals of Orbital Resources and the former owners of Columbia Communications Corp. ("Columbia"), are at stake. Laughton and Gross are currently engaged in litigation concerning various provisions of their agreement to sell Columbia to GE American Communications, Inc. (which was subsequently acquired by SES Global, S.A., now SES Americom, Inc.) under which Laughton and Gross will receive a \$10,000,000 windfall if they are able to obtain for SES Americom Loral's Ku-band authorization at 47° W.L.¹³ To fulfill its part of the contract, Orbital Resources apparently must, by September 1, 2003, convince the FCC that it should (1) revoke Loral's Ku-band 47° W.L. license; and (2) grant Columbia (an entity with no affiliation to Orbital Resources) authority to construct, launch and operate a Ku-band satellite at that location. Orbital Resources holds no FCC space station licenses nor does it appear to have any plans to build a satellite at 47° W.L. or elsewhere. Columbia, which also has no pending application for the Ku-band at 47°

¹¹ See e.g., Capital Network System, Inc. v. FCC, 307 U.S. App. D.C. 334, 28 F.3d 201 (1994)

¹² Motion at 3. Indeed the Commission has adopted rules since separate systems to ensure the timely construction and launch of commercial satellites. Orbital Resources' fears of harm to the public interest are illusory.

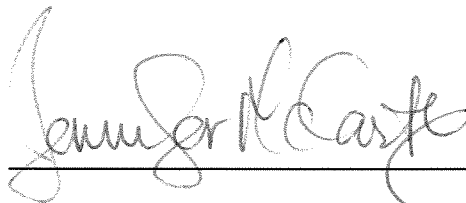
¹³ See Complaint ¶ 26, Gross v. SES Americom, Inc., Civil Action No. AW 03 CV 102 (D. Md.).

W.L., does not support Orbital Resources' Motion or Application for Review. Indeed, Orbital Resources' interest in this proceeding is so tenuous as to amount to a lack of standing.

In short, there is a bounty on the 47° W.L. Ku-band orbital slot and Orbital Resources is the one trying to "game the FCC's processes" to collect that bounty. There is no public interest in that. The Commission should steadfastly avoid being caught in the middle of a commercial dispute that has nothing to do with the launching of satellites.

Orbital Resources provides no basis for the Commission to vacate the provisions of the Bureau's Order validating Loral's 47° W.L. Ku-band authorization - - immediately or otherwise. The Commission's decision was rational and consistent with prior orders and should be upheld.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Jennifer D. McCarthy", written over a horizontal line.

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May 1, 2003

CERTIFICATE OF SERVICE

I, Dennette Manson, do hereby certify that on this 1st day of May, 2003 copies of the foregoing Loral Space & Communications Corp. and Loral Orion, Inc. Opposition to Motion for Immediate Partial Vacatur were delivered by hand, unless otherwise indicated, to the following parties:

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