

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

Received
JUN 30 1999

Satellite Policy Branch
International Bureau

In the Matter of)
)
COLUMBIA COMMUNICATIONS)
CORPORATION)
)
Application For Modification Of)
Authorization To Launch And Operate)
A C-Band Satellite At 47 Degrees W.L.)
)
Amendment To Application To)
Construct, Launch And Operate)
A Ku-band Satellite at 49 Degrees W.L.)
)

File Nos. SAT-MOD-19990511-00051
SAT-AMD-19990511-00052

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JUN 28 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

PETITION TO DENY OR REQUIRE A FINANCIAL SHOWING

PanAmSat Corporation ("PanAmSat"), by its attorneys, hereby requests that the Commission either deny the above-referenced application of Columbia Communications Corporation ("Columbia") or require Columbia to demonstrate that it is financially qualified.

BACKGROUND

The 47° W.L. orbital location is underutilized, and has been for some time. At Ku-band, Loral Orion has held an unused authorization for 47° W.L. for more than fourteen years.¹ Indeed, the United States may be at risk of losing its rights to this slot internationally due to Loral Orion's long-term failure to bring a Ku-band satellite into use at 47° W.L. At C-band, pursuant to special temporary authority, Columbia has operated a limited, 12-transponder payload on NASA's TDRS-6 since 1996.² Earlier this year Columbia was licensed to launch a new, replacement C-band satellite at this orbital location.³ To date, however, it does not appear that Columbia has made meaningful progress towards this end.⁴

¹ Orion Satellite Corp. (now Loral Orion, Inc.) was granted conditional authority to launch and operate a Ku-band satellite at 47° W.L. in 1985 and received final authority in 1991. *Orion Satellite Corp.*, File No. CSS-83-002-P, Mimeo No. 6871 (released Sept. 6, 1985); *Orion Satellite Corp.*, 6 FCC Rcd 4201 (1991).

² See *Columbia Communications Corp.*, 11 FCC Rcd 8639 (Int'l Bur. 1996).

³ *Columbia Communications Corporation*, DA 99-134 (released January 11, 1999).

⁴ See *Columbia Application at 11* (Columbia has not yet executed a construction contract for its 47° W.L. satellite or finalized the design of that satellite).

In its application, Columbia asks the Commission to expand in three respects its existing rights to the 47° W.L. orbital location. First, it asks the Commission to grant it permanent authority to operate the TDRS-6 satellite at 47° W.L. for the remainder of the satellite's useful life. Second, Columbia requests authority to modify its current authorization to launch and operate a C-band satellite at 47° W.L. to add operations in Ku-band. Finally, Columbia asks that the Commission toll the implementation milestones for its authorized 47° W.L. satellite until the Commission acts on Columbia's modification request.

There are a number of threshold issues associated with Columbia's Ku-band modification request. In order to grant Columbia's application, the Commission first would need to revoke Loral Orion's authorization to launch and operate a Ku-band satellite at 47° W.L.⁵ Second, it would need to permit Columbia to amend its application to construct, launch and operate a Ku-band satellite at 49° W.L., which Columbia filed in 1987, in order to locate the satellite at 47° W.L. and revise its technical characteristics. Third, the Commission would need to determine that Columbia's request to add a Ku-band payload to its 47° W.L. C-band satellite properly can be achieved via an amendment to Columbia's 49° W.L. application and, thus, is not subject to competing applications under the policies announced in the DISCO I Report and Order.⁶ Fourth, the Commission would need to waive the freeze on Atlantic Ocean Region satellite applications to the extent required to process Columbia's application as amended.⁷ Finally, the Commission would need to waive its financial qualification requirements or require Columbia to make a full financial showing for its proposed hybrid satellite.⁸

⁵ Columbia filed a petition in March of this year asking the FCC to revoke Loral Orion's authorization. Columbia Petition to Revoke Authorization, File No. CSS-83-002-P-(M) (filed Mar. 19, 1999).

⁶ Under the policies announced in DISCO I, separate system applications that were pending at the time the DISCO I Report and Order was adopted are to be processed outside of processing rounds, while applications filed after the adoption date of the DISCO II Report and Order are to be considered in consolidated FSS processing rounds. *Amendment of the Communications Regulatory Policies Governing Domestic Fixed Satellites and Separate International Satellite Systems*, 11 FCC Rcd 2429 (1996) at ¶ 44. Columbia has argued that its application for Ku-band authority at 47° W.L. is not subject to competing applications because its 49° W.L. application was filed prior to adoption of the DISCO I Report and Order. Columbia Application at n.15. The Commission must determine the status that should be afforded to Columbia's 49°/47° Ku-band application under DISCO I in order to determine whether Columbia's application is subject to competing applications.

⁷ See Processing of Pending Applications for Space Stations to Provide International Communications Service, FCC 85-296 (released June 6, 1985).

⁸ See Columbia Application at 11 (failing to submit financial qualifications for the proposed hybrid satellite).

In ruling on Columbia's application for 47° W.L. and deciding each of the associated threshold issues, the Commission should take into account the public interest considerations favoring full utilization of this long-underused orbital location. PanAmSat wants to make the Commission aware, therefore, that Columbia is not alone in desiring a Ku-band license for 47° W.L. In fact, PanAmSat is preparing an application of its own for a Ku-band satellite at this location and plans to file its application in the near future. If the Commission decides to cancel Loral Orion's authorization, and if it determines that Columbia's request for Ku-band authority at 47° W.L. is subject to competing applications, PanAmSat stands ready to prosecute an application for 47° W.L. and, if authorized, to place a Ku-band satellite into service promptly at this orbital location.

DISCUSSION

I. THE COMMISSION SHOULD REQUIRE COLUMBIA TO MAKE A FULL FINANCIAL SHOWING FOR ITS PROPOSED HYBRID SATELLITE.

Columbia never has made a financial showing for its 47° W.L. satellite. At the time Columbia was issued its C-band license, there were no competing applications in this portion of the arc and, the Commission believed, other frequency bands could accommodate future entry. For these reasons, and because a grant to Columbia would enable it to continue serving its TDRS-6 customers, the Commission waived its financial qualification requirements.⁹

None of the considerations that led the Commission to waive its financial qualification requirements with respect to Columbia's C-band authorization applies to Columbia's Ku-band modification request. As noted above, PanAmSat also desires Ku-band authority at 47° W.L. More generally, as Columbia noted in its Application, very few Ku-band orbital locations remain available in the Atlantic Ocean Region, and access to frequencies outside the traditional Ku-band are not an effective substitute for an authorization in this "workhorse" band.¹⁰ Finally, the Commission's alternative justification for waiving the financial qualification requirement with respect to Columbia's C-band grant — enabling Columbia to continue serving its TDRS-6 customers — is inapplicable to Columbia's request to add a Ku-band payload to its satellite, because Columbia's existing TDRS-6 capacity operates solely in C-band.

⁹ *Columbia Communications Corporation*, DA 99-134 at ¶ 16.

¹⁰ Columbia Application at 15, 16.

Any decision involving the Ku-band frequencies at 47° W.L. thus presents a situation in which a grant to an under-financed applicant may preclude a fully capitalized applicant from implementing its plans, and may delay service to the public. When — as here — these circumstances exist, the Commission's policy is to require a financial showing.¹¹

Columbia should not be allowed to bypass the Commission's financial qualification requirements under the guise that it is merely requesting a change in an existing authorization, rather than applying for a new authorization. Columbia's modification request would expand substantially its spectrum rights and make it impossible for another qualified applicant to locate a Ku-band satellite at 47° W.L. The only reason Columbia did not have to make a Ku-band financial showing initially, moreover, is that it chose to bifurcate its C-band and Ku-band requests, applying originally for a C-band-only satellite and only now coming forward with a Ku-band proposal. Columbia could just as easily have requested authority to launch and operate a C/Ku-band hybrid satellite in the first instance, and the fact that Columbia elected not to do so should not entitle Columbia to evade the Commission's financial requirements.

For the foregoing reasons, the Commission should require Columbia to demonstrate its financial ability to meet construction, launch, and first-year operating costs for its proposed hybrid satellite. If it cannot do so, its request to add a Ku-band payload to its authorized C-band satellite should be denied.

II. THE COMMISSION SHOULD NOT ISSUE A LICENSE FOR COLUMBIA'S TDRS-6 OPERATIONS.

Columbia has been operating the TDRS-6 C-band capacity pursuant to a grant of special temporary authority for nearly three years, and the record indicates that this satellite has only a few months, or perhaps a year, remaining in its useful life.¹² Despite these facts, Columbia now requests that the Commission issue it a "license" to operate its TDRS-6 capacity for the satellite's remaining lifetime.

At this late date, it would not serve the public interest for the Commission to transform Columbia's STA into a license. Columbia cites no precedent for licensing a satellite that is rapidly approaching its end-of-life, and there is no public interest justification for doing so. Columbia's request, moreover, suffers from a series of

¹¹ E.g. *Columbia Communications Corporation*, DA 99-134 at ¶ 13.

¹² See *Columbia Communications Corporation*, DA 99-134 at ¶ 3 (according to Columbia, the TDRS-6 satellite is expected to reach the end of its useful life by the year 2000).

procedural deficiencies: most notably, it does not appear to have been placed on public notice,¹³ Columbia has not submitted an application for the TDRS-6 satellite that complies with Sections 25.114 and 25.140 of the Commission's rules, and there is no suitable license term for a satellite with so little usable life remaining. For all of these reasons, Columbia's request for a TDRS-6 license should be denied.

III. COLUMBIA'S APPLICATION RAISES INTERFERENCE CONCERNS.

At best, it will be difficult to coordinate Columbia's proposed satellite at 47° W.L. with PanAmSat's operations at 45° W.L., and PanAmSat is concerned that Columbia will cause interference to PanAmSat. Recognizing that the Commission's policies require that the parties in the first instance attempt to coordinate, PanAmSat is not filing a technical analysis at this time. PanAmSat did not, however, want to remain silent and have its silence be misconstrued as a lack of concern.

CONCLUSION

In view of the foregoing, the Commission should: (1) require Columbia to make a financial showing, and deny Columbia's request to launch and operate a new Ku-band payload if Columbia cannot demonstrate that it is financially qualified; and (2) deny Columbia's request for a license to operate the C-band payload on TDRS-6.

Respectfully submitted,

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June 24, 1999

¹³ See Report No. SAT-00018, "Satellite Policy Branch Information, Applications Accepted for Filing (May 27, 1999).

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Petition to Deny or Require a Financial Showing was sent by first-class mail, postage prepaid, this 28th day of June, 1999, to each of the following:

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