

**LORAL**

Space &amp; Communications Ltd.

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John P. Stern  
Deputy General Counsel

July 22, 2002

Mr. Don Abelson  
Chief, International Bureau  
Federal Communications Commission  
445 Twelfth Street, SW, Room 6-C750  
Washington, DC 20554

Re: Loral Space & Communications Ltd. Authorization for a Ku- and Ka-band Satellite at 47° W.L. (FCC File Nos. CSS-83-002-P-(M) and SAT-MOD-20000104-00045)

Columbia Communications Corporation Application for Authority to Construct, Launch and Operate a trans-Atlantic Satellite System (FCC File Nos. SAT-LOA-19870331-00061; SAT-AMD-19990511-00052; and SAT-MOD-19990511-00051)

Dear Mr. Abelson:

I write on behalf of Loral Space & Communications Ltd. (Loral) in response to a letter to you from counsel for Orbital Resources, LLC (Orbital) dated July 8, 2002 regarding Loral's Ku-band authorization at 47° W.L. (Rodriguez Letter).<sup>1</sup> Orbital lacks authority to request that the International Bureau vacate an order that denied an application by Columbia Communications Corporation (Columbia) to operate Ku-band capacity at 47° W.L. Moreover, the request is untimely and it lacks any basis or merit.

First, Orbital, not Columbia, sent this letter requesting that the Commission vacate an order denying Columbia's application for Ku-band authority at 47° W.L. and asking the Commission to "reinstate [Columbia's] application for consideration on its merits, and expeditiously grant Columbia authority to operate Ku-band capacity at 47° W.L. as

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<sup>1</sup> Letter from Raul R. Rodriguez and David S. Keir, Counsel to Orbital Resources, LLC, to Don Abelson, Chief, International Bureau, Federal Communications Commission Re Loral Space & Communications Ltd. Authorization for a Ku- and Ka-band Satellite at 47° W.L. (FCC File Nos. CSS-83-002-P-(M) and SAT-MOD-20000104-00045), Columbia Communications Corporation Application for Authority to Construct, Launch And Operate a Trans-Atlantic Satellite System (FCC File Nos. SAT-LOA-19870331-00061; SAT-AMD-19990511-00052; and SAT-MOD-19990511-00051), dated July 8, 2002 (Rodriguez Letter).

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part of a C-/Ku-band hybrid spacecraft, consistent with its 1999 modification application.<sup>2</sup> As the Rodriguez Letter notes, in September 2000 control of Columbia was transferred to GE Americom (now SES Americom).<sup>3</sup> Orbital and its principals -- Mr. Clifford Laughton and Mr. Kenneth Gross -- the former sole shareholders of Columbia -- no longer own or control Columbia. Mr. Rodriguez and Mr. Keir no longer represent Columbia. In response to the filing of the Rodriguez Letter, counsel for Columbia stated: "The former owners of Columbia don't speak for Columbia in proceedings at the FCC or elsewhere."<sup>4</sup>

The Rodriguez Letter explains that Mr. Laughton and Mr. Gross "retained rights to future payments in the event that additional authority is granted to Columbia as a result of the applications that were pending in September 2000, including the request for Atlantic Ku-band authority."<sup>5</sup> Regardless of the financial interests of Columbia's former owners in reviving a closed and settled issue in an application filed by Columbia, the Commission should evaluate the type of request made by the Rodriguez Letter only if it comes from Columbia.

Second, Columbia has made no such request and it would have been untimely had it done so. Indeed, Columbia's most recent filing with respect to adjusting its construction milestones at 37.5° W.L. and 47° W.L. for its C-band authorizations makes no mention of the hybrid C-band/Ku-band satellite at 47° W.L. that the Rodriguez Letter posits, nor does it reference any request for reinstatement of Columbia's rejected application for Ku-band at 47° W.L.<sup>6</sup> This is for good reason: On May 22, 2001 the Commission rejected Columbia's petition for reconsideration of the original order that denied Columbia's request to use 47° W.L. for Ku-band.<sup>7</sup> Columbia's pending petition for reconsideration,<sup>8</sup> referred to repeatedly and misleadingly in the Rodriguez letter, only seeks reconsideration of the portion of the Reconsideration Order in which the Commission clarified that it had also rejected Columbia's 1987 application for Ku-band authority at 49° W.L. (which Columbia had subsequently amended to request 47° W.L.)<sup>9</sup> Columbia's right to appeal the denial of Ku-band authority at 47° W.L. is now exhausted.

Third, even if the Commission were to consider the request by Orbital appropriate and deem it timely, the Rodriguez Letter provides no basis or additional facts that support the request. Orbital asserts both that Loral has failed to meet its construction completion

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<sup>2</sup> Rodriguez Letter, p. 8

<sup>3</sup> Rodriguez Letter, p. 2.

<sup>4</sup> *Orbital Resources Urges FCC To Reassign Loral License*, Communications Daily (11 July 2002) at para. 6, Attachment 1.

<sup>5</sup> Rodriguez Letter, p. 2.

<sup>6</sup> In the Matter of Columbia Communications Corporation, Application for Modification of Authorization to launch and Operate a C-band Satellite at 47° W.L., SAT-MOD 20020517-00079 (May 10, 2002).

<sup>7</sup> Order and Order on Reconsideration, Columbia Communications Corporation, 16 FCC Rcd. 10867 (IB 2001)(Reconsideration Order).

<sup>8</sup> In the Matter of Columbia Communications Corporation, Application for Authority to Construct Launch and Operate a Trans-Atlantic Satellite System Positioned at 49° W.L., Petition for Reconsideration of Columbia Communications Corporation, File No. SAT-LOA-19870331-00061 (June 21, 2001) at pp. 2, 10.

<sup>9</sup> Reconsideration Order at paras. 30-32.

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and launch milestones for its Ka-band authorization at 47° W.L. and that Loral's separate Ku-band and Ka-band authorizations at that location have been automatically cancelled for such alleged failure. In the Rodriguez Letter, Orbital omits key facts and gets other ones wrong. Its argument fails.

Neither Loral's Ku-band license at 47° W.L. nor its Ka-band license at that location have been cancelled or revoked, either automatically, as the Letter proclaims,<sup>10</sup> or by Commission action. In the Reconsideration Order the Commission restated that the Ku-band license it granted to Loral's predecessor in interest, Orion Satellite Corporation (Orion), at 47° W.L. "did not require [the licensee] to meet specified deadlines for beginning construction, completing construction and launching its satellite. It contained no other conditions allowing us to revoke the license on the basis of the construction status."<sup>11</sup> After the Commission issued this license it awarded a Ka-band license to Orion for a Ku-/Ka-band hybrid satellite in a separate order, and imposed construction milestones, including a launch milestone of May 2002, with respect to the Ka-band payload on that satellite.<sup>12</sup> The Commission has repeatedly found that the commencement of construction milestone for Loral's Ka-band license at 47° W.L. was met.<sup>13</sup>

Following Loral's subsequent acquisition of Orion, Loral requested modification of the Orion Ka-band satellite licenses to add inter-satellite links (ISLs) and requested extensions of the launch milestone of May 2002 commensurate with milestones that had yet to be established for other Ka-band licensees that had requested ISLs.<sup>14</sup> The Commission has repeatedly said that Ka-band licensees that had requested ISLs, as Loral did, could not be required to proceed with construction until the Commission acted on such requests.<sup>15</sup> This is the reason that the Commission assigned milestone construction completion/launch milestones to those licensees only after its January 2001 orders granting ISL requests and assigning ISL spectrum to Loral and other first round Ka-band licensees. In May 2001 the Commission denied Loral's associated Ka-band milestone extension request.<sup>16</sup> Loral's petition for reconsideration of that denial has been pending at the Commission since June 2001.<sup>17</sup>

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<sup>10</sup> Rodriguez Letter, p. 7.

<sup>11</sup> Reconsideration Order at para. 8.

<sup>12</sup> 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, 1426 (para. 32) (IB 1997).

<sup>13</sup> Reconsideration Order at paras. 9-16; *Columbia Modification Order*, 15 FCC Rcd. at 15569, para. 6.

<sup>14</sup> Loral CyberStar, Inc. Applications for Modification, File Nos. SAT-MOD-20000104-00042/43/44/45 (January 4, 2000).

<sup>15</sup> In re Loral Space & Communications Ltd. Application for Authority to Construct, Launch, and Operate a Ka-band Satellite System in the Fixed-Satellite Service, Order and Authorization, 13 FCC Rcd 4592 (1998) at para. 27.

<sup>16</sup> In re Loral Space & Communications Corporation Request for Extension of Time to Construct, Launch, and Operate a Ka-band Satellite System in the Fixed-Satellite Service, File Nos. SAT-MOD SAT-MOD-20000104-00042/43/44/45, Order, DA 01-1287 (IB 2001).

<sup>17</sup> In the Matter of Loral Space & Communications Corporation, Request for Extension of Time to Construct, Launch and Operate a Ka-band Satellite System in the Fixed-Satellite Service, File Nos. SAT-MOD-2000104-00042/43/4/45, Petition For Reconsideration (June 25, 2001).

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In the interim, Loral has informed the Commission that it has halted construction pending Commission action on its Petition for Reconsideration and that it anticipates that it can complete construction of its Ku-band/Ka-band hybrid at 47° W.L. within 36 months of a Commission order granting its Petition for Reconsideration.<sup>18</sup>

Even if the Commission's Ka-band milestone extension denials are affirmed in an order on reconsideration and upon appeal, Loral will retain its Ku-band authorization at 47° W.L., which has never had milestones, and Loral would redesign the satellite to eliminate the Ka-band payload and proceed with construction of a Ku-band-only satellite.

In sum, Orbital's request is unauthorized by Columbia, the company whose rejected application Orbital seeks to revive long after the application proceeding and Columbia's – not Orbital's – right to appeal has been exhausted. Orbital has neither ownership nor control of Columbia and cannot stand in Columbia's shoes. It seeks here only to enrich its principal owners. As discussed above, the substance of the Rodriguez Letter's request is wholly without merit. The Commission should summarily reject this unauthorized, untimely and unsupported request.

Sincerely,



John P. Stern

cc: Raul R. Rodriguez  
David S. Keir  
Stephen Bell  
Philip Spector  
David Lidstone  
Tara Guinta  
Thomas Tycz  
Cassandra Thomas  
Jennifer Gilsenan  
Howard Griboff  
Clifford Laughton  
Kenneth Gross

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<sup>18</sup> Letter from John Stern to Jennifer Gilsenan, Chief Satellite Policy Branch, International Bureau, Federal Communications Commission, Re Ku- and Ka-band Authorizations at 47° W.L., dated March 12, 2002, Attachment 2.

Mr. Don Abelson  
July 22, 2002

ATTACHMENT 1

## ORBITAL RESOURCES URGES FCC TO REASSIGN LORAL LICENSE

523 words

11 July 2002

Communications Daily

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English

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FCC should reassign Loral license for Ka-band and Ku-band service at 47 W to Columbia Communications because Loral has failed to meet May milestone to launch satellite, Orbital Resources said in letter Mon. to International Bureau (IB) Chief Don Abelson. It said Loral's failure to put satellite in service had direct impact on Columbia application to provide Ku-band service in Atlantic Ocean Region. Loral license at 47 W was primary reason Commission rejected Columbia application. Columbia petition for reconsideration is pending at FCC, Orbital said: Commission has set precedent for action by suspending EchoStar license under similar circumstances (CD July 2 p4). Loral spokesman had no comment.

There's no valid license for 47 W so Commission should grant Columbia Ku-band application and allow company to modify license to operate C-band satellite at location as well, Orbital said. It's pushing FCC for decision because principal shareholders Clifford Laughton and Kenneth Gross still have "financial interest" in Columbia, which was sold to GE Americom, which later was acquired by SES Astra. Laughton and Gross own rights to future payments from SES Americom if Columbia receives authority for Atlantic Ku-band satellite, filing said.

Loral has had 17 years to bring satellite into operation and "the day of reckoning has finally arrived," Orbital filing said. Commission should consult Quarterly Launch Reports (QLR) published by Futron Corp. for FAA to determine whether satellite had been launched or scheduled to be launched between July 1, 2001 to June 4, 2002, Orbital said, and QLR Reports in Jan., April, July and Oct. didn't list any Loral spacecraft. Loral's request to extend milestones in June/July 2001 for completion and launch beyond April/May 2002 make it obvious company doesn't "have any near-term plans," filing said.

Orbital said Columbia recently filed applications to re-order timing of launches in region, including new satellite into 37.5 W orbital slot to meet immediate need for follow-on capacity and recommencing procurement for replacement satellite at 47 W that won't be required to provide service for several more years, it said. Columbia projects Nov. 2002 milestone for construction. Prompt grant of Columbia's previously rejected modification request would allow it to launch hybrid C-band/Ku-band satellite in advance of milestone, Orbital said, supporting Commission policies recognizing technical and operational benefits of hybrid satellites.

Columbia has sought Ku-band orbital slot in Atlantic Region since 1983 to compete for international satellite services, Orbital said, and it wouldn't cause interference to other operators and would serve public interest by providing "long-promised, but never

developed" Ku-band service. It said FCC should act on license request by Nov. 1 to promote fastest introduction of "long-delayed" Ku-band service at 47 W.

Orbital Resources letter "wasn't authorized by Columbia Communications or parent SES Americom," SES attorney Phil Spector said: "The former owners of Columbia don't speak for Columbia in proceedings at the FCC or elsewhere." Spector refused comment on whether he supported suspension of Loral license. — Bruce Branch

Mr. Don Abelson  
July 22, 2002

## ATTACHMENT 2



# LORAL

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John P. Stern  
Deputy General Counsel

March 12, 2002

Jennifer Gilsenan  
Chief, Satellite Policy Branch  
Satellite Division  
International Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Re: Ku- and Ka-band Authorizations at 47° W.L.

Dear Ms. Gilsenan:

At your request I write regarding the launch schedule for Loral's hybrid Ku/Ka-band satellite for 47° W.L. As you know, the Commission first authorized Loral's predecessor in interest, Orion Satellite Corporation, at this location to use Ku-band frequencies only.<sup>1</sup> The Commission did not impose any construction or launch milestones with respect to the Ku-band authorization.

Subsequently, in the first Ka-band processing round, the Commission granted Orion's request to modify the authorization to add a Ka-band payload and it established construction completion and launch milestones - April 2002 and May 2002 respectively - associated with the Ka-band authorization.<sup>2</sup> Following its acquisition of Orion,<sup>3</sup> 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. commensurate with the milestones that would be set for other Ka-band licensees once the Commission authorized the use of ISLs and designated ISL spectrum. Design work on Loral's satellite at 47° W.L. was suspended pending the Commission's consideration of whether to grant Loral authorization to add ISLs and, if so, at what frequencies. Indeed, the International Bureau had early on recognized that until it identified and assigned ISL spectrum for Ka-band licensees that

<sup>1</sup> 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).

<sup>2</sup> In re Orion Atlantic, L.P. Application for Modification of Authority to Add Ka-band Capacity to its Ku-band Orion F-2 Satellite, 13 FCC Rcd. 1416 (1997).

<sup>3</sup> Loral Space & Communications Ltd. And Orion Network Systems, Inc. et. al., Order and Authorization, 13 FCC Rcd. 4592 (1998).

had requested ISLs, those licensees could not proceed with design and construction of their satellites.<sup>4</sup>

The Commission granted Loral's ISL modification request early last year, just sixteen months before the original launch milestone. Then just four months later, in May 2001, the Commission denied Loral's associated milestone extension request, leaving Loral exactly one year in which to complete design, construction and launch of its satellite, an impossible task. In June 2001, Loral filed a currently pending petition for reconsideration of the milestone extension denial.

Work on the hybrid satellite for 47° W.L. remains suspended pending Commission consideration and resolution of the petition for reconsideration. Because the design and construction of a Ku-/Ka-band hybrid satellite is substantially different from that of Ku-band satellite it is not possible to proceed with construction of a dedicated Ku-band satellite and simply add on the Ka-band payload should the Commission grant Loral's petition for reconsideration. Should the Commission grant Loral's reconsideration petition and extend Loral's Ka-band construction completion and launch milestone, Loral anticipates completing construction and launching and operating a hybrid Ku-/Ka-band satellite at 47° W.L. within 36 months of the Commission's decision. Last year the Commission established in-operation milestones of mid-2005 for other Ka-band licensees that have been authorized to use ISLs, giving them more than 48 months to launch and operate their satellites.

Please contact me if you have any additional questions with regard to 47° W.L.

Sincerely,



John Stern

cc: Howard Griboff

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<sup>4</sup> See In re Loral Space & Communications Ltd. Application for Authority to Construct, Launch and Operate a Ka-Band Satellite System in the Fixed-Satellite Service, Order and Authorization, 13 FCC Rcd. 4592 (1998) paragraph 27.