SheppardMullin

Sheppard, Mullin, Richter & Hampton LLP
2099 Pennsylvania Avenue, NW, Suite 100
Washington, D.C. 20006-6801
202.747.1900 main
202.747.1901 fax
www.sheppardmullin.com

Brian D. Weimer
202.747.1930 direct
bweimer@sheppardmullin.com

July 9, 2019

VIA IBFS

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Re: **WorldVu Satellites Limited**
IBFS File No. SAT-LOI-20160428-00041 (Call Sign S2963)
Space Exploration Holdings, LLC, IBFS File Nos. SAT-LOA-20161115-00118 and SAT-MOD-20181108-00083 (Call Signs S2983/3018)
Kepler Communications Inc.
IBFS File No. SAT-PDR-20161115-00114 (Call Sign S2981)

Dear Ms. Dortch:

In June 2017, the Federal Communications Commission (the "Commission") granted WorldVu Satellites Limited ("OneWeb") U.S. market access for its non-geostationary, fixed-satellite service ("NGSO FSS") system in the Ku- and Ka-bands (the "OneWeb System").[1] OneWeb successfully launched the first six satellites of the OneWeb System on February 27, 2019 ("OneWeb Launch").[2] On April 29, 2019, OneWeb notified the Commission that the OneWeb System had satisfied the requirement to be "launched and capable of operating" in the bands defined in that grant.[3] With regard to subsequently-launched NGSO FSS systems, OneWeb asserted its priority to choose home spectrum in the Ku-band.

On June 12 and 13, 2019, SpaceX submitted letters notifying the Commission of the launch of the first NGSO FSS satellites in the Starlink system in May 2019 ("Starlink Launch") and purporting to demonstrate that SpaceX has "first choice to select Ku-band frequencies during in-

[1] *See WorldVu Satellites Limited*, *Petition for a Declaratory Ruling Granting Access to the U.S. Market for the OneWeb NGSO FSS System*, Order and Declaratory Ruling, 32 FCC Rcd 5366 (2017).

[2] *See, e.g.,* Jackie Wattles, *OneWeb Launches First Batch of Internet Satellites*, CNN (Feb. 28, 2019, 7:02 PM), https://www.cnn.com/2019/02/27/tech/oneweb-internet-satellite-launch/index.html.

[3] *See* Letter from Brian D. Weimer, Counsel to WorldVu Satellites Limited, to Marlene H. Dortch, Secretary, FCC, IBFS File No. SAT-LOI-20160428-00041 (Apr. 29, 2019).

line events in the United States."[4] SpaceX's correspondence relies on an incorrect reading of Section 25.261 of the Commission's rules to erroneously conclude that the Starlink Launch bestows home spectrum selection priority upon SpaceX.[5] SpaceX's interpretation of Section 25.261 is irreconcilable with the plain language of the rule and improperly reads requirements into the rule that do not exist.

Section 25.261(c)(1) of the Commission's Rules Makes No Reference to Communications with Earth Stations

Section 25.261(c)(1) of the Commission's rules sets forth the criteria for determining the selection order for home spectrum priority: "[t]he selection order for each satellite network will be determined by the date that the first space station in each satellite system is launched and capable of operating in the frequency band under consideration."[6] Nowhere in Section 25.261(c)(1) is there any reference to communications with earth stations, whether U.S.-licensed or not.[7] Section 25.261(c) contains three elements that must be met for a space station to satisfy the selection order criteria:

- The space station must be part of the relevant "satellite system";
- The space station must be "launched"; and
- The space station must be "capable of operating in the frequency band under consideration,"—*i.e.*, a space station containing only a Ka-band payload cannot qualify for Ku-band home spectrum selection purposes.

Section 25.261(c)(1) contains no other requirement or qualification as to determination of the home spectrum selection order. Common sense and principles of statutory and regulatory

---

[4] Letter from Patricia Cooper, Vice President, Satellite Government Affairs, Space Exploration Technologies Corp., to Marlene H. Dortch, Secretary, FCC, IBFS File Nos. SAT-LOA-20161115-00118, SAT-MOD-20181108-00083 (Jun. 12, 2019) ("Notification Letter"); *see* Letter from Patricia Cooper, Vice President, Satellite Government Affairs, Space Exploration Technologies Corp., to Marlene H. Dortch, Secretary, FCC, IBFS File Nos. SAT-LOI-20160428-00041, SAT-LOA-20161115-00118, SAT-MOD-20181108-00083 (Jun. 13, 2019) ("Clarification Letter").

[5] *See* Notification Letter; *see also* Clarification Letter. OneWeb is not alone in pointing out that SpaceX's interpretation of Section 25.261 is fatally flawed. *See* Letter from Joseph A. Godles, Counsel to Telesat Canada, to Marlene H. Dortch, Secretary, FCC, IBFS File Nos. SAT-LOA-20161115-00118, *et. al.*, at 1 (Jun. 20, 2019) (Telesat "believe[s] SpaceX has misread the Commission's rules").

[6] 47 C.F.R. § 25.261(c)(1).

[7] *Id*.

interpretation demand that Section 25.261(c)(1) means simply what Section 25.261(c)(1) says.[8] The rule contains three discrete elements, none of which involve a requirement that the space station in question "must also communicate with a U.S.-licensed earth station in the specific frequency band."[9] The OneWeb Launch satisfied the three elements in Section 25.261(c)(1) with regards to the Ku- and Ka-bands, as the 6 satellites were:

- part of the OneWeb System;
- launched; and
- capable of operating in the Ku- and Ka- frequency bands.

According to the plain language of Section 25.261(c)(1), the OneWeb Launch met the applicable criteria for determining home spectrum selection order.

SpaceX's Attempt to Apply the Geographic Scope of the Commission's Jurisdictional Limits to the Selection Order Criteria is Misguided

SpaceX attempts to use Section 25.261(a) (which sets out the geographic scope of the Commission's spectrum sharing rules) as a vehicle for reading requirements into Section 25.261(c)(1) that simply do not exist.[10] SpaceX's interpretation of Section 25.261(a) runs contrary to the public record and common sense.

When the Commission revised the current NGSO spectrum sharing regime in the NGSO Order, SpaceX expressed a desire for the Commission to clarify the geographic scope of the Commission-mandated spectrum sharing regime, requesting not only that "the in-line events spectrum sharing methodology should apply with respect to two U.S.-licensed NGSO systems operating anywhere in the world," but that "non-U.S. licensed systems that choose to serve the U.S. market should also be bound by the Commission's spectrum sharing rules no matter where

[8] *See, e.g.*, *Limtiaco v. Camacho*, 549 U.S. 483, 488 (2007) ("As always, we begin with the text").

[9] Notification Letter at 2.

[10] *See* 47 C.F.R. § 25.261(a). Although Section 25.261(a) refers to NGSO FSS systems operating with "directional antennas," the Commission has clarified that this limitation is related to the ability of NGSO FSS systems utilizing directional antennas to share spectrum in accordance with the Commission's prescribed avoidance of in-line interference mechanism, *not* any requirement that NGSO FSS systems communicate with or operate earth stations in order to obtain home spectrum selection priority. *See In re Update to Parts 2 and 25 Concerning Non-Geostationary, Fixed-Satellite Service Systems and Related Matters*, Report and Order and Further Notice of Proposed Rulemaking, 32 FCC Rcd 7809, 7827-28 at n.118 (2017) ("We also clarify that section 25.261 applies only to NGSO FSS systems using directional earth station antennas, which are generally necessary for co-frequency operation") ("NGSO Order").

they are operating."[11] Nowhere in SpaceX's filings did SpaceX indicate that the Commission was defining anything other than the jurisdictional limits of its mandated spectrum sharing.[12]

In response to these arguments, the Commission ultimately decided to restrict the jurisdictional contours of its mandated spectrum sharing:

> "Sharing between systems of different administrations internationally is subject to coordination under Article 9 of the ITU Radio Regulations. We believe this international regime is the appropriate forum to consider NGSO FSS radiofrequency operations that fall outside the scope of a grant of U.S. market access. Because ITU coordination procedures do not apply between two U.S. systems, our spectrum splitting sharing mechanism triggered when a ΔT/T threshold of 6 percent is exceeded will govern such operations both within and outside the United States."[13]

The Commission's language describing the reasoning behind the revisions to Section 25.261 establishes that Section 25.261(a) applies to *when* and *where* the Commission's spectrum-sharing regime applies and imparts no qualifications on 25.261(c)(1)'s home spectrum selection order determination related to the operation of or communication with U.S.-licensed earth stations.

SpaceX attempts to read elements of the jurisdictional limit on the Commission's spectrum sharing rules into additional requirements in Section 25.261(c)(1)'s selection order determination, unilaterally—and mistakenly—declaring that "capable of operating" includes a requirement to actively communicate with Commission-licensed earth stations in the United States. Specifically, SpaceX incorrectly asserts that an NGSO FSS operator "must also communicate with a U.S.-licensed earth station in the specific frequency band."[14] Similarly, SpaceX repeated this flawed analysis in the Clarification Letter by questioning whether Kepler

---

[11] Reply Comments of Space Exploration Technologies, IB Dkt. No. 16-408 at 9-11 (filed Apr. 10, 2017) ("SpaceX Reply").

[12] *See id*.; *see also* Comments of Space Exploration Technologies, IB Dkt. No. 16-408 (filed Feb. 27, 2017).

[13] NGSO Order at ¶ 53. This paragraph in the NGSO Order is notably titled "Geographic Area."

[14] Notification Letter at 2. SpaceX's argument that home spectrum selection priority requires communication with or operation of a U.S.-licensed earth station is particularly odd given that a search of IBFS reveals that SpaceX does not appear to meet its self-created requirement of "Ku-band earth stations operating in the United States under a valid Commission license." Clarification Letter at 2. SpaceX merely possesses special temporary authority (expiring July 22, 2019) to operate gateway earth stations in the United States, but holds no earth station licenses issued by the International Bureau. *See, et. al.,* SpaceX Services, Grant of Special Temporary Authority, IBFS File No. SES-STA-0410-00518 (May 15, 2019).

or OneWeb have "communicated with Commission-licensed earth stations."[15] However, SpaceX's novel interpretation of Section 25.261 is plainly erroneous and inconsistent with the rule itself, as it misapplies the meaning of Section 25.261(a). As such, the Commission must not accept SpaceX's interpretation of Section 25.261.[16]

*****

Therefore, the Commission should reject SpaceX's critically flawed interpretation of the home spectrum selection rule in Section 25.261 of the Commission's rules.

Please kindly contact the undersigned with any questions regarding this submission.

Very truly yours,

/s/ Brian D. Weimer

Brian D. Weimer
for SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

cc: Jose Albuquerque, Chief, Satellite Division
Stephen Duall, Satellite Division

[15] Clarification Letter at 2. It is unclear that SpaceX itself has communicated with U.S.-licensed earth stations; *see* n. 14, *supra.*

[16] *See Kisor v. Wilkie*, 139 S. Ct. 2400, 2415 (2019). *Kisor* notes that for regulations with unambiguous meanings, "[t]he regulation then just means what it means…if there is only one reasonable construction of a regulation—then a court has no business deferring to any other reading." As Section 25.261(c)(1) is unambiguous, the Commission is prohibited from adopting a conflicting interpretation, such as SpaceX's, as this would impermissibly "permit the agency, under the guise of interpreting a regulation, to create *de facto* a new regulation." *Christensen v. Harris County*, 529 U.S. 576, 588 (2000).