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July 9, 2019

FILED ELECTRONICALLY VIA IBFS

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

Re: Notice of *Ex Parte* Communication
Space Exploration Holdings, LLC, File Nos. SAT-LOA-20161115-
00118 and SAT-MOD-20181108-00083
WorldVu Satellites Limited, File No. SAT-LOI-20160428-00041
Kepler Communications Inc., File No. SAT-PDR-20161115-00114

Dear Ms. Dortch:

On behalf of Telesat Canada (“Telesat”), this letter supports the filing of WorldVu Satellites Limited (“OneWeb”)¹ responding to Space Exploration Holdings, LLC (“SpaceX”) filings in the above-captioned proceedings, dated June 12 and 13, 2019.²

¹ Letter dated July 9, 2019 from Brian D. Weimer, Counsel for OneWeb to Marlene H. Dortch, Secretary, Federal Communications Commission, re WorldVu Satellites Limited, File No. SAT-LOI-20160428-00041, and Space Exploration Holdings, LLC, File Nos. SAT-LOA-20161115-00118 and SAT-MOD-20181108-00083.

² Letter dated June 12, 2019 from William M. Wiltshire, Counsel for SpaceX to Marlene H. Dortch, Secretary, Federal Communications Commission, re Space Exploration Holdings, LLC, File Nos. SAT-LOA-20161115-00118 and SAT-MOD-20181108-00083; see also Letter dated June 13, 2019 from William M. Wiltshire, Counsel for SpaceX to Marlene H. Dortch, Secretary, Federal Communications Commission, re WorldVu Satellites Limited, File No. SAT-LOI-20160428-00041, Space Exploration Holdings, LLC, File Nos. SAT-LOA-20161115-00118 and SAT-MOD-20181108-00083 (the “June 12 Letter” and the “June 13 Letter,” collectively the “SpaceX Letters”).

In those filings, SpaceX claimed its NGSO FSS system is entitled to first choice of “home base” Ku-band frequencies because to date only its system is communicating with a U.S.-licensed earth station in the band.³ Telesat demonstrates below that SpaceX has misread the Commission’s rules concerning which satellite operator is entitled to first choice of “home base” frequencies.

SpaceX has conflated two separate provisions of the Commission’s rules, only one of which establishes the standard for selecting home-base frequencies. That provision, Section 25.261(c)(1), states that in the absence of coordination “[t]he [home base frequency] 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.”

The plain meaning of this language contradicts SpaceX’s position that the operation of a U.S.-licensed earth station is a determining factor. Section 25.261(c) bases frequency selection order solely on when each operator’s first space station is launched and capable of operating. There is no mention of communication with a U.S.-licensed earth station, and one does not need a U.S.-licensed earth station to have a space station that is launched and capable of operating.

The other provision cited by SpaceX, Section 25.261(a), does have an earth station component, but that provision has nothing to do with who is entitled to first choice of home base frequencies. Rather, Section 25.261(a) identifies which NGSO FSS operations are subject to the coordination and sharing procedures specified in the rule. Section 25.261(a) states these procedures apply “to NGSO FSS operation with earth stations with directional antennas anywhere in the world under a Commission license, or in the United States under a grant of U.S. market access.”

The Commission added this language to limit the rule to earth stations with directional antennas⁴ and, in response to requests by SpaceX and SES/O3b, to “clarify the geographic scope of our NGSO FSS sharing method as it relates to non-U.S.-licensed satellite systems granted U.S. market access.”⁵ The Commission never suggested that adding this language was intended to affect the first to launch rule.

³ *Id.*

⁴ *Update to Parts 2 and 25 Concerning Non-Geostationary, Fixed-Satellite Service Systems and Related Matters*, Notice of Proposed Rulemaking, IB Docket No. 16-408, FCC 16-170 (rel. Dec. 15, 2016) (“NGSO NPRM”) at ¶ 23.

⁵ *Update to Parts 2 and 25 Concerning Non-Geostationary, Fixed-Satellite Service Systems and Related Matters*, Report & Order and Further Notice of Proposed Rulemaking, IB Docket 16-408, FCC 17-122, 32 FCC Rcd

The “legislative” history of Section 25.261(c) further undercuts SpaceX’s position. The Commission revised the pertinent portion of Section 25.261(c) in its 2017 rewrite of the rule to change the requirement for selecting frequencies from “the date that the first space station in each satellite network is launched and operating” to the current “the date that the first space station in each satellite system is launched and capable of operating”, which makes clear that there is no need for an operational earth station in addition to a deployed space station.

SpaceX’s interpretation also conflicts with the Commission’s stated objectives. In the 2 GHz context, the Commission determined that basing frequency selection on order of launch advances important policies, because

“allowing the first system that launches to select its spectrum, and each subsequent system to do so sequentially provides market-based incentives to launch systems. Thus, this approach furthers the Commission’s strong policies favoring competition, efficient use of spectrum resources and quick deployment of services for the benefit of U.S. consumers.”⁶

Rather than advancing these policies, making the possession of an operating earth station in the United States a determining factor could make who selects frequencies first dependent on more arbitrary factors such as who can complete coordination more quickly with the federal government, whose earth station application is opposed, whose earth station application requires waivers, how long it takes to nail down desired earth station locations, what the weather is like during earth station construction, and how quickly one’s earth application is processed.

In furtherance of these considerations, the Commission in multiple contexts has determined that “who picks frequencies first” should be based on order of launch of a first satellite, without regard to licensing and operation of earth stations. Thus, in the Commission’s *2 GHz MSS Band Report and Order*, the Commission decided to allow spectrum selection “at the time the first satellite in a system reaches its intended orbit.”⁷

7809 (rel. Sep 27, 2017)(“NGSO R&O”) at ¶ 53; see also Reply Comments of Space Exploration Technologies Corp., *Update to Parts 2 and 25 Concerning Non-Geostationary, Fixed-Satellite Service Systems and Related Matters*, IB Docket 16-408, filed Apr 10, 201 at pp 9-11..

⁶ *Report and Order, In the Matter of The Establishment of Policies and Service Rules for the Mobile Satellite Service in the 2 GHz Band*, 15 FCC Rcd 1612 (2000) (“2 GHz MSS Band Report and Order”), at ¶ 28.

⁷ *Id.* at ¶ 16.

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Similarly, under Section 25.157(f)(1) of the rules,⁸ which governs NGSO-NGSO sharing in cases in which Section 25.261 does not apply, “[e]ach licensee ... [is] allowed to select the particular band segment it wishes to use no earlier than 60 days before they plan to launch the first satellite in its system, and no later than 30 days before that date, by submitting a letter to the Secretary of the Commission.”

In sum, SpaceX’s proposed interpretation runs counter to the plain language of the Commission’s rules, their underlying history, similar Commission policies and rules, and the public interest. The International Bureau, therefore, should reject SpaceX’s interpretation.

Please direct any questions regarding this matter to the undersigned.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "H. Goldberg", written over a horizontal line.

Henry Goldberg
Joseph A. Godles
Attorneys for Telesat Canada

cc: Karl Kensinger, FCC
William M. Wiltshire, counsel for SpaceX
Brian Weimer, counsel for OneWeb
Nicholas Spina, Kepler Communications

⁸ 47 C.F.R. § 25.157(f)(1).