

VIA ELECTRONIC FILING

July 15, 2019

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street S.W.  
Washington D.C. 20554

**Re. Notice of Erratum**

*Space Exploration Holdings, LLC, IBFS File Nos. SAT-LOA-20161115-00118 and SAT-MOD-20181108-00083; WorldVu Satellites Limited, IBFS File No. SAT-LOI-20160428-00041; Telesat Canada, IBFS File No. SAT-PDR-20161115-00108*

Dear Ms. Dortch:

In its letter dated July 10, 2019 Kepler Communications Inc. (Kepler) disputed the claim made by SpaceX that their Starlink constellation was the first in the OneWeb processing round to fulfill its requirements under 47 C.F.R §25.261, and that it was therefore entitled to the first selection of “home spectrum”, as described in §25.261(c).<sup>1</sup> Because the selection order is determined by the first satellite network to be “launched and capable of operating”, Kepler stated in its letter that it had “launched and began operating its first spacecraft on January 19th, 2019 – more than a year before any other claimant in Ku-band”. The date in the aforementioned sentence should read ‘January 19<sup>th</sup>, 2018’ – one year earlier than previously filed in its letter.

The Commission should note that even if Kepler *had* launched its first spacecraft at the time depicted by the erratum, it would *still* be the first Ku-band network within the processing round to have completed its obligations under §25.261 for home spectrum priority.

In accordance with this notice, Kepler has attached a revised version of its response letter.

Should you have any questions, please do not hesitate to contact me.

Sincerely,

*/s/ Nickolas G. Spina*

Nickolas G. Spina  
Director, Launch and Regulatory Affairs  
Kepler Communications Inc.

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<sup>1</sup> See Letter from Brian D. Weimer to Marlene H. Dortch, IBFS File No. SAT-LOI-20160428-00041 (Apr. 29, 2019).



**Kepler Communications Inc.**

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cc: Jose Albuquerque, Chief, Satellite Division

Stephen Duall, Satellite Division

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Re. **Space Exploration Holdings, LLC, IBFS File Nos. SAT-LOA-20161115-00118 and SAT-MOD-20181108-00083;**  
**WorldVu Satellites Limited, IBFS File No. SAT-LOI-20160428-00041;**  
**Telesat Canada, IBFS File No. SAT-PDR-20161115-00108**

Dear Ms. Dortch:

This letter is in response to SpaceX's recent correspondence with the Commission concerning its claim of home spectrum priority within the OneWeb processing round.<sup>1</sup> Previously, OneWeb submitted their own respective claim that they were the first licensee within the processing round to fulfill the conditions under 47 C.F.R. §25.261(c)(1) and were therefore entitled to first choice of home spectrum.<sup>2</sup> Kepler responded to OneWeb's letter clarifying that Kepler's system had in fact fulfilled these conditions in advance of their own deployment, and was therefore entitled to receive first choice.<sup>3</sup> Most recently, SpaceX filed its own claim in a set of two letters that the launch and operation of both Kepler and OneWeb's first satellites do not qualify for the selection procedure criteria outlined in §25.261(c)(1) as such actions were not performed within the scope of which that rule applies. Within the Starlink Letters, SpaceX makes

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<sup>1</sup> See Letters from Patricia Cooper to Marlene H. Dortch, IBFS File No. SAT-LOA-20161115-00118 and SAT-MOD-20181108-00083 (June 12 and 13, 2019) ("Starlink Letters"). See also Public Notice, *Cut-Off Established for Additional NGSO-Like Satellite Applications or Petitions for Operations in the 10.7-12.7 GHz, 14.0-14.5 GHz, 17.8-18.6 GHz, 18.8-19.3 GHz, 27.5-28.35 GHz, 28.35-29.1 GHz, AND 29.5-30.0 GHz Bands*, DA 16-804, (Jul. 15, 2016) (The OneWeb processing round).

<sup>2</sup> See Letter from Brian D. Weimer to Marlene H. Dortch, IBFS File No. SAT-LOI-20160428-00041 (Apr. 29, 2019).

<sup>3</sup> See Letter from Nickolas G. Spina to Marlene H. Dortch, IBFS File No. SAT-LOI-20160428-00041 (May 13, 2019).

an attempt to push an extraordinary interpretation of the §25.261 text to seize the home spectrum priority from those that have clearly fulfilled their obligations under the Commission's rules first. In addition to Kepler, Telesat Canada filed an *ex parte* in regard to a meeting between their counsel and the International Bureau, wherein they discussed their own view that SpaceX has improperly interpreted the rules.<sup>4</sup>

Specifically, the Starlink Letters contest the merit of Kepler and OneWeb's priority based on a flawed reading of §25.261(a); a rule that is clearly intended to define the geographic criteria for which 25.261(c) - *Default procedure* applies. To clarify, this rule simply outlines the jurisdictional limits of the implementation for the FCC's sharing procedure during in-line events. To apply the *scope* of the regulation to the conditions under §25.261(c)(1) for home spectrum priority is an unreasonable interpretation of the rule's express purpose and intent. Such a reading is plainly erroneous, as it would serve no purpose within the context of the sharing framework stipulated by the Section at large.

A plain reading of the Section clearly establishes that §25.261(c)(1) defines the selection process for home spectrum priority, stating that “[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”. The language of the rule is simple and its intent clear: the choice of first home spectrum priority is to be awarded to the first system to launch an authorized spacecraft and begin its authorized operations. In this regard, Kepler launched and began operating its first spacecraft on January 19<sup>th</sup>, 2018 – more than a year before any other claimant in Ku-band. Kepler continues to operate this spacecraft in accordance with the description given in its request for U.S. market access, which was granted by the Commission on November 19<sup>th</sup>, 2018.<sup>5</sup> Kepler subsequently launched its second spacecraft

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<sup>4</sup> See Letter from Joseph A. Godles to Marlene H. Dortch, IBFS File Nos. SAT-LOA-20161115-00118, SAT-MOD-20181108-00083, SAT-LOI-20160428-00041, and SAT-PDR-20161115-00114 (Jun. 20, 2019).

<sup>5</sup> See Kepler Communications Inc., *Petition for Declaratory Ruling to Grant Access to the U.S. Market for Kepler's NGSO FSS System*, Order and Declaratory Ruling, FCC 18-162 (Nov. 19, 2018).



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on November 29<sup>th</sup>, 2018 and began operations shortly thereafter. Both of these spacecraft remain authorized under the Commission's grant and each would independently meet the criteria listed under §25.261(c)(1).

Given the above, the Commission must reject SpaceX's illogical attempt to interpret 47 C.F.R. 25.261 of the Commission's rules in way that serves no interest other than to skew the home spectrum priority in its favor.

Should you have any questions, please do not hesitate to contact me.

Sincerely,

*/s/ Nickolas G. Spina*

Nickolas G. Spina  
Director, Launch and Regulatory Affairs  
Kepler Communications Inc.

cc: Jose Albuquerque, Chief, Satellite Division  
Stephen Duall, Satellite Division  
William M. Wiltshire, counsel for SpaceX  
Brian Weimer, counsel for OneWeb  
Henry Goldberg, counsel for Telesat