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November 18, 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);
Telesat Canada,
IBFS File No. SAT-PDR-20161115-00108 (Call Sign S2976)

Dear Ms. Dortch:

On September 27, 2019, Space Exploration Holdings, LLC ("SpaceX") filed yet another letter with the Commission advocating for a flatly incorrect interpretation of the Commission's rules regarding "home spectrum" selection.[1] SpaceX appears desperate to convince the Commission that it possesses "home spectrum" priority over other non-geostationary, fixed-satellite service ("NGSO FSS") operators such as WorldVu Satellites Limited ("OneWeb") who launched satellites before SpaceX did. Fundamentally, the SpaceX Letter is merely the latest installment—specifically, the fourth by OneWeb's count—in a series of correspondence that relies on an assortment of flawed arguments and rhetorical flourishes in an effort to establish that an NGSO FSS operator must operate U.S.-licensed earth stations in order to claim "home spectrum" selection priority. In prior submissions, OneWeb and multiple other NGSO FSS operators have comprehensively refuted SpaceX's indefatigably erroneous arguments.[2] OneWeb

[1] *See* Letter from David Goldman, Director of Satellite Policy, SpaceX, to Marlene H. Dortch, Secretary, FCC, IBFS File Nos. SAT-LOA-20161115-00118, *et. al*., (Sep. 27, 2019) ("SpaceX Letter").

[2] *See, e.g.*, Letter from Brian D. Weimer, Counsel to OneWeb, to Marlene H. Dortch, Secretary, FCC, IBFS File Nos. SAT-LOI-20160428-00041, *et. al*., (Jul. 9, 2019); *see also* Letter from

nevertheless submits the instant correspondence to address three specific flaws at the core of the SpaceX Letter.

OneWeb's *Example A* Demonstrates That SpaceX's Interpretation of Section 25.261 Cannot Be Correct

In its August Home Spectrum Letter, OneWeb presented an example of two U.S.-licensed NGSO FSS operators providing initial service offerings outside the United States ("Example A").[3] In this scenario, the two operators would be subject to Section 25.261's spectrum sharing rules and would need to select home spectrum in the absence of a coordination agreement. However, neither operator would possess U.S.-licensed earth stations. Under SpaceX's flawed interpretation of Section 25.261, neither U.S. operator would be entitled to choose home spectrum, even though their operations would be subject to Section 25.261—an absurd outcome. In addition to the plain language of Section 25.261 and the insurmountable evidence presented in previous filings,[4] OneWeb's Example A demonstrates that SpaceX's interpretation cannot be correct. Notably, the SpaceX Letter utterly fails to address Example A. Apparently, SpaceX realized that doing so would illustrate the illogical and inherently unworkable framework that would result if the Commission adopted SpaceX's flawed interpretation of Section 25.261.

SpaceX's Attempt To Now Argue NGSO License Conditions Dictate "First to Operate" Status Demonstrates The Mutable Nature Of Its Arguments

In the SpaceX Letter, SpaceX now asserts (for the first time) that "ability to commence operations within the band in compliance with the conditions of [an operator's] authority" is an "obvious criterion" for home spectrum selection.[5] To the contrary, the only thing "obvious" about the Commission's home spectrum criterion is that the plain language of the rule specifies a single requirement: launch of a space station capable of operating in the frequency band under consideration.[6] SpaceX's reference to NRAO's legally incorrect claim regarding a "first to operate" requirement does not withstand even minimal scrutiny. As an initial matter, Section

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Brian D. Weimer, Counsel to OneWeb, to Marlene H. Dortch, Secretary, FCC, IBFS File Nos. SAT-LOI-20160428-00041, *et. al*., (Aug. 15, 2019) ("August Home Spectrum Letter").

[3] *See* August Home Spectrum Letter at 3-5.

[4] *See* 47 C.F.R. § 25.261; *see also, e.g.*, Letter from Henry Goldberg and Joseph A. Godles, Attorneys for Telesat Canada, to Marlene H. Dortch, Secretary, FCC, IBFS File Nos. SAT-LOA-20161115-00118, *et. al.*, (Aug. 15, 2019) ("Telesat August Letter").

[5] SpaceX Letter at 2.

[6] *See* 47 C.F.R. § 25.261(c).

25.261 contains no reference to "commencement" of operations, instead requiring that an operator be "capable of operating."[7] Moreover, this new criterion—debuting in SpaceX's fourth filing on the subject—reflects the ever shifting basis of SpaceX's home spectrum priority claim. A brief review of the chronology here is instructive:

- SpaceX's initial Notice of Operation was quite explicit that the "scope of this rule makes clear that to be considered 'capable of operating,' an operator must not only launch satellites but must also communicate with a U.S.-licensed earth station in the specific frequency band."[8]

- The Notice of Operation also claimed that SpaceX was "the first NGSO system to have satisfied *both of the conditions of this rule* with respect to the Ku-band," making it apparent that even in SpaceX's flawed interpretation of Section 25.261 there was no requirement beyond those two conditions.[9]

- In SpaceX's third filing, SpaceX introduced new "public policy" arguments supposedly supporting its phantom "earth station requirement," stating that an "NGSO operator that does not have earth stations authorized by the Commission—either gateways or user terminals—*is patently unable to provide service for American consumers and has no need to choose its home spectrum* unless or until that authorization and capability exist."[10] However, SpaceX neglected to mention that its authority to communicate with its earth stations explicitly precludes "*the provision of commercial services.*"[11]

Now, SpaceX's bespoke interpretation of Section 25.261 has evolved yet again. Until now, SpaceX has based its home spectrum selection priority claim on a nonexistent requirement that an NGSO FSS operator must possess a Commission-licensed earth station (which, interestingly,

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[7] *Id.*

[8] Letter from Patricia Cooper, Vice President, Satellite Government Affairs, SpaceX, to Marlene H. Dortch, Secretary, FCC, IBFS File Nos. SAT-LOA-20161115-00118 and SAT-MOD-20181108-00083 at 2 (Jun. 12, 2019) ("Notice of Operation").

[9] *Id.* (emphasis added).

[10] Letter from David Goldman, Director of Satellite Policy, SpaceX, to Marlene H. Dortch, Secretary, FCC, IBFS File Nos. SAT-LOA-20161115-00118, *et. al.*, at 6 (Jul. 19, 2019) (emphasis added).

[11] *Space Exploration Holdings, LLC, Request for Special Temporary Authority*, Grant, IBFS File No. SAT-STA-20190405-00023 at 2 (May 9, 2019) (emphasis added).

SpaceX itself has not satisfied).[12] However, as OneWeb has demonstrated that such an earth station requirement would be impossible to reconcile with the scope of Section 25.261, SpaceX's arguments appear to be venturing even further afield from what should be dispositive: the plain language of Section 25.261. The Commission should reject SpaceX's perpetually evolving and unsupportable claims.

SpaceX Continues To Obfuscate The Record Regarding Inter-Operator Coordination

In the SpaceX Letter, SpaceX alleges that OneWeb has "breached" the privacy that typically governs inter-operator coordination and hints that OneWeb has "refuse[d] to engage" in good faith coordination.[13] SpaceX similarly alleges that OneWeb "failed to provide even the most preliminary technical data needed for coordination analysis" and did so "only when prompted by government-to-government hosted coordination."[14] These allegations are simply false.

As an initial matter, OneWeb disclosed in the August Home Spectrum Letter merely the existence of prior coordination meetings, which is hardly a "breach" of existing protocol when good-faith inter-operator coordination is *required* by the Commission. Nor were the coordination meetings "prompted" by government-to-government coordination; representatives of OneWeb and SpaceX had long planned to formally meet to discuss coordination issues. Moreover, SpaceX provided its preliminary technical data merely two weeks before OneWeb shared its own technical data with SpaceX. In short, OneWeb plans to continue diligently engaging in good faith coordination discussions with all operators, including SpaceX.

Conclusion

OneWeb's previous submissions on this topic conclusively demonstrated that SpaceX's home spectrum priority claims are simply irreconcilable with the text and scope of Section 25.261. Both Kepler and Telesat have similarly highlighted SpaceX's erroneous interpretation of Section 25.261. The SpaceX Letter is rife with the same misleading assertions and faulty logic plaguing SpaceX's previous correspondence and should be rejected by the Commission.

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[12] Unsurprisingly, SpaceX has retreated from its prior emphasis on a requirement for "licensed earth stations" and OneWeb notes that SpaceX's new arguments instead reference earth stations "authorized" by the Commission, instead of "licensed earth stations" *See, e.g.*, SpaceX Letter at 3 (discussing an NGSO operator "communicating with a U.S. earth station *duly authorized* by the Commission" (emphasis added)).

[13] *Id*. at 2, 5.

[14] *Id*. at 5.

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