

DESCRIPTION OF TRANSACTION AND PUBLIC INTEREST STATEMENT
(Response to Questions 43 & A21)

Pursuant to Section 25.119 of the Commission’s rules, and subject to prior Commission approval, Electro Optic Systems Holdings Ltd (“EOS”) proposes to acquire control of the license to launch and operate a non-geostationary orbit (“NGSO”) satellite system currently held by Audacy Corporation (“Audacy”).¹ As discussed herein, approval of the Proposed Transaction (as defined below) is consistent with the Commission’s rules and will serve the public interest.

I. DESCRIPTION OF THE PARTIES AND THE PROPOSED TRANSACTION

A. Electro Optic Systems Holdings Ltd

EOS is a leading Australian technology company operating in the space and defense markets, whose shares are publicly traded on the Australian Securities Exchange. Its products incorporate advanced electro-optic applications based on EOS core technologies in operating and tracking software, laser ranging, optronics, and precision gimbals mechanisms. EOS has a global presence, with two research centers and a significant production facility in Australia and other business, development, and production facilities in the United States. EOS also has wholly owned subsidiaries in Germany and Singapore and operates a defense systems facility in the United Arab Emirates through a local joint venture.

EOS has been actively involved in the space industry for decades. Its EOS Space Systems division is a global leader in the design, manufacture, delivery, and operation of sensors and systems for space situational awareness and space control. For over 35 years, EOS has been directing energy beams to space objects for applications including tracking, characterization, identification, communications, remote maneuver, and missile defense, and has developed a

¹ See *Audacy Corp.*, 33 FCC Rcd. 5554 (2018) (“Audacy License”).

significant private data base/3D map of satellites and other objects in orbit around the Earth. In September 2019, EOS established EOS Communication Systems as a new business segment designed to capitalize on EOS's investment of approximately \$250 million to achieve several technology breakthroughs required for next-generation space communications. The company continues to look for opportunities to expand its space-related activities, and as a publicly traded company has ready access to capital markets.

EOS Defense Systems USA, Inc. ("EOSDS USA") is an indirectly wholly-owned U.S. subsidiary of EOS that is headquartered in Huntsville, Alabama. It is engaged in business and development in the defense sector, primarily with the U.S. Department of Defense, and is also the EOS operating subsidiary for its Space Communications business in the United States.

Information regarding ownership and management of EOS is provided in Exhibit 1 to this application, and a chart showing the ownership structure of the Audacy License before and after consummation of the proposed transaction is provided in Exhibit 2.

B. Audacy Corporation

Audacy is a Delaware corporation that received a license through the Commission's recent NGSO processing rounds. The Audacy License authorizes the construction, deployment, and operation of three satellites in medium-Earth orbit ("MEO") using certain V-band spectrum for feeder links between its spacecraft and Earth and using certain Ka- and V-band spectrum for inter-satellite service ("ISS") links with other spacecraft.² As conceived and depicted in Fig. 2, below,³

² Audacy is authorized to use the 37.5-42.0 GHz, and 47.2-50.2 GHz bands for feeder links and the 22.55-23.18 GHz, 23.38-23.55 GHz, 24.45-24.75 GHz, 32.3-33.0 GHz, 54.25-56.9 GHz, 57.0-58.2 GHz, and 65.0-71.0 GHz bands for ISS operations. Audacy also is authorized to use the 19.7-20.2 GHz and 29.5-30.0 GHz bands for back-up telemetry, tracking, and command functions.

³ See, e.g., Application, IBFS File No. SAT-LOA-20161115-00117, at 2-3 (filed Nov. 11, 2016).

this constellation will establish a space-based data relay platform to provide always-on, low latency, seamless connectivity to other operators in space. Potential users of the network include operators of Earth observation satellites seeking real-time photographic and video data, launch providers needing continuous telemetry from onboard sensors, and operators of large Low Earth Orbit (“LEO”) NGSO constellations who require continuous command and control of every satellite, wherever they are in their orbit.

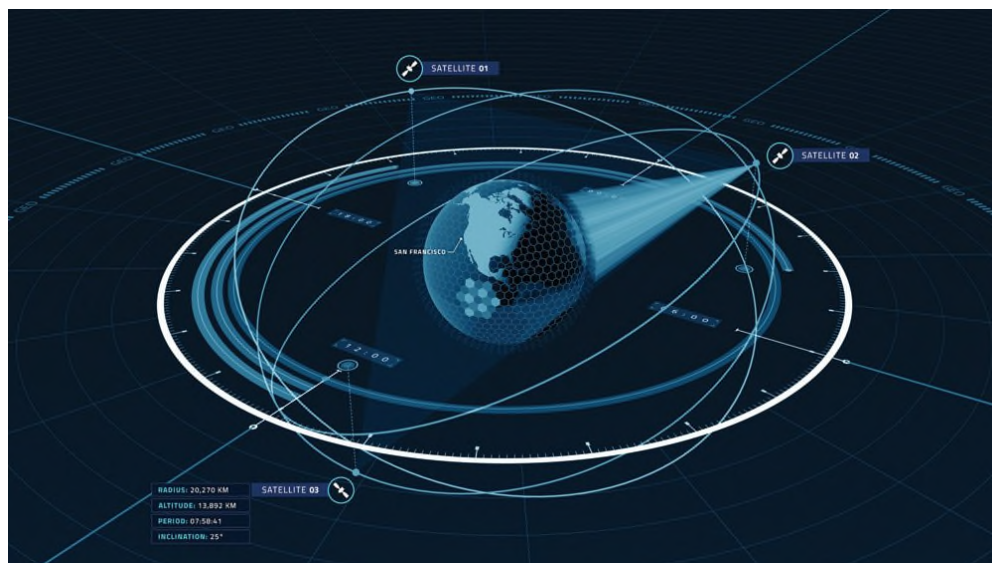


Fig. 1. Audacity Proposed Constellation

After receiving its license, Audacity proceeded diligently with development of its NGSO system. For example, it reportedly raised over \$11 million to fund its operations,⁴ and launched its first satellite, a cubesat technology demonstrator called Audacity Zero, in December 2018 under an experimental authorization.⁵ In its first years of operation, Audacity was required to raise additional funds in order to implement its business concept, which it did through the

⁴ See Debra Werner, *Audacity customer MOUs top \$100 million*, SPACENEWS (Oct. 1, 2018), available at <https://spacenews.com/audacity-mous/>.

⁵ See Debra Werner, *Audacity and Iceye explore cooperation*, SPACENEWS (Mar. 11, 2019), available at <https://spacenews.com/audacity-and-iceye-explore-cooperation/>; Experimental Authorization, ELS File No. 0127-EX-CN-2017 (Oct. 3, 2017).

issue of preferred shares and convertible debt. In 2018, still needing funds, Audacy created Audacy Spectrum, LLC (“Audacy Spectrum”), a Delaware limited liability company, to hold the Audacy License as a vehicle for obtaining a secured loan from Horizon Technology Finance Corporation (“Horizon”), a Delaware corporation.⁶ Even so, Audacy continued to be underfunded, and therefore was ultimately unable to continue implementing its business plan. Although Audacy attempted to obtain additional equity and debt financing during the first half of 2019, by early 2019 it began to lay off staff, and, by September 2019, all of its officers and directors had resigned and the company had effectively ceased operations. Audacy currently has no officers or directors.

C. Description of the Proposed Transaction

Audacy’s precarious financial condition has placed the Audacy License at risk and essentially halted all progress toward deployment of its NGSO system. In fact, it is currently in default on the secured note held by Horizon. EOS has the capital necessary to fund the development, launch, and operation of the Audacy system, and is eager to assume the responsibility for resuscitating the Audacy business concept and implementing the Audacy system.

Accordingly, pursuant to an Asset Purchase and Transfer of Control Agreement dated December 26, 2019 (the “Agreement”), EOSDS USA and Horizon, as Audacy’s senior secured creditor, have agreed on the proposed sale of certain tangible and intangible assets of Audacy, including the membership interests of Audacy Spectrum (the “Audacy Assets”), to EOSDS USA (the “Proposed Transaction”) – provided that the Commission grants its consent. Specifically, if the Commission grants consent to the Proposed Transaction, Horizon intends to exercise its

⁶ See Description of the Transaction and Public Interest Statement, IBFS File No. SAT-ASG-20180619-00047, at 1 (filed June 19, 2018).

contractual and other legal rights as the senior secured creditor to engage in a private foreclosure sale to EOSDS USA under Article 9 of the Uniform Commercial Code (“UCC”) of the Audacy Assets in which Horizon has a security interest. As an intermediate step in the Proposed Transaction, Audacy will, upon approval by the Commission, effect a *pro forma* assignment of the Audacy License to Audacy Spectrum that had previously been authorized by the Commission but not formally consummated.⁷

Provided that the Commission has granted its consent, and contemporaneously with the consummation of the Proposed Transaction, Horizon will take the actions necessary to convey the Audacy License from Audacy to Audacy Spectrum, and then convey the Audacy assets, including its membership interests in Audacy Spectrum, to EOSDS USA through a UCC private sale process. Together with the conveyance of the Audacy Assets, Horizon will separately transfer its 1% equity interest in Audacy Spectrum to EOSDS USA. Once the Proposed Transaction is consummated, EOS will indirectly own 100% of the equity interest in Audacy Spectrum, which will hold the Audacy License. EOS will also indirectly own certain of the other assets of Audacy that had been developed or acquired by Audacy in support of Audacy’s NGSO system.

II. THE PROPOSED TRANSFER OF CONTROL WILL SERVE THE PUBLIC INTEREST

Pursuant to Section 310(d) of the Communications Act, the Commission assesses a proposed license transfer by weighing the public interest benefits against any public interest harms and determining, on balance, whether the transfer will serve “the public interest, convenience and necessity.”⁸ Where the potential harms (if any) are small or limited, the potential benefits need

⁷ The Commission granted consent for a *pro forma* assignment of the Audacy License from Audacy to Audacy Spectrum LLC. *See* Consent to Assignment, IBFS File. No. SAT-ASG-20180619-00047 (granted June 22, 2018). EOS and Horizon understand that Audacy and Audacy Spectrum did not formally consummate the assignment of the Audacy License within 180 days of the grant of Commission consent, as required under the Commission’s rules. *See* 47 C.F.R. § 25.119(f).

⁸ 47 U.S.C. § 310(d).

only be of a similar scale.⁹ In addition, the Commission considers whether the proposed transferee is qualified to hold a Commission authorization and evaluates the impact of the proposed transaction on various Commission objectives.

The Commission's public interest evaluation necessarily encompasses the “broad aims of the Communications Act,” which include, among other things, a deeply rooted preference for preserving and enhancing competition in relevant markets, accelerating private sector deployment of advanced services, ensuring a diversity of information sources and services to the public, and generally managing the spectrum in the public interest. This public interest analysis may also entail assessing whether a transaction will affect the quality of communications services or will result in the provision of new or additional services to consumers. In conducting this analysis, we may consider technological and market changes, and the nature, complexity, and speed of change of, as well as trends within, the communications industry.¹⁰

As discussed below, the Proposed Transaction would promote each and every one of these objectives.

In granting the Audacy License, the Commission found that the proposed NGSO system would serve the public interest because its “service will enable operators of LEO satellites to have continuous access to their satellites using Audacy’s global line-of-sight visibility to those satellites, rather than using their own individual uplink and downlink frequencies at multiple, worldwide earth station locations.”¹¹ By offering a new platform providing connectivity for other NGSO satellite systems, the Audacy License would make efficient use of spectrum to facilitate transmission of information to and from in-orbit satellites and thereby enable more operators to provide more services in response to technologies and market conditions that continue to evolve

⁹ See, e.g., *TRW Inc.*, 17 FCC Rcd. 24625, ¶ 15 (2002) (“[W]e find no public interest harms, and thus, the Applicants’ demonstration of potential benefits need not be as great.”).

¹⁰ *XM Satellite Radio Holdings, Inc. and Sirius Satellite Radio Inc.*, 23 FCC Rcd. 12348, ¶ 31 (2008) (citations omitted).

¹¹ Audacy License ¶ 21.

rapidly. Unfortunately, Audacy no longer has the financial ability to deliver on the promise of its system.

EOS, by contrast, is a well-funded company with access to public capital markets for any additional financing that may be needed. EOS also has the substantial technical expertise necessary to develop the Audacy License and deploy a satellite system that can deliver the public interest benefits identified by the Commission. Accordingly, grant of this application would achieve the Commission's goals of accelerating private sector deployment of advanced services and fostering the provision of new or additional services to customers in the rapidly innovating satellite services market. The Proposed Transaction would "expedite[] provision of satellite service to the public by facilitating the transfer of licenses in the secondary market to those parties that have the greatest incentive and ability to construct a satellite system within the required time frame."¹² Moreover, the Proposed Transaction will enhance competition not only by rejuvenating a new entrant into the satellite services market, but also by providing a connectivity resource for a new generation of spacecraft that will enable them to offer a wider array of service offerings to customers in the U.S. and around the world.

EOS has the necessary qualifications to control a Commission authorization and to provide satellite services in the United States. Through the EOS Group, including EOS Space Systems and the newly-formed EOS Communications Systems business sectors, EOS has invested heavily to develop sophisticated tracking, space awareness, and communications technologies for use in space, and plans to expand those efforts still further. Accordingly, the Proposed Transaction will pair the Audacy License with EOS's financial strength and technical expertise to promote rapid

¹² *Amendment of the Commission's Space Station Licensing Rules and Policies*, 18 FCC Rcd. 10760, ¶ 217 (2003) ("2003 Licensing Rules Order").

deployment of a new NGSO platform. Although EOS is an Australian company, there are no foreign ownership limitations applicable to the Audacy License.¹³

Finally, approval of the Proposed Transaction is consistent with the Commission's policy objective in favor of transferring licenses to the entity that would put the spectrum to its highest value and best use.¹⁴ Regrettably, Audacy is no longer financially able to implement its original plan and deploy the system it originally proposed to the Commission. By authorizing a transfer of control over the Audacy License to EOS, the Commission will empower a party that is both financially and technically capable of achieving the public interest benefits envisioned when the Audacy License was granted and that has the overall experience and resources to bring the original Audacy vision to fruition.

Accordingly, EOS respectfully requests that the Commission approve the proposed transfer of the Audacy License expeditiously so that EOS may apply its financial and technical assets to developing the Audacy system as soon as possible.

¹³ Section 310(b)(4) of the Communications Act imposes certain limitations on foreign ownership and voting of common carrier and broadcast licenses. *See* 47 U.S.C. § 310(b)(4). By definition, these limitations do not apply to the non-common carrier, non-broadcast Audacy License.

¹⁴ *See, e.g., 2003 Licensing Rules Order*, ¶ 217 (eliminating the anti-trafficking rule to “enable satellite spectrum to move more efficiently to its highest and best use”).