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November 30, 2000

DEC 06 2000

Satellite and  
Radio Communications Div  
FCC

WWW.LSL-LAW.COM  
WRITER'S DIRECT DIAL  
202-416-6782

WRITER'S DIRECT FAX  
202-429-4626

WRITER'S E-MAIL  
SBARUCH@LSL-LAW.COM

**VIA HAND DELIVERY**

Federal Communications Commission  
International Bureau - Earth Stations  
P.O. Box 358160  
Pittsburgh, PA 15251-5160

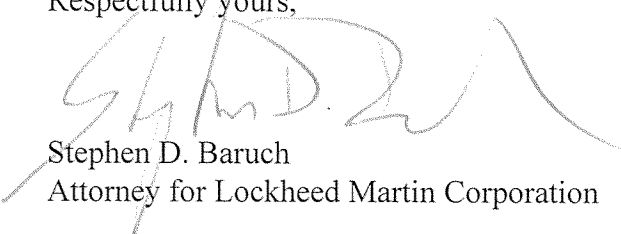
Re: **Application of Lockheed Martin Corporation to Modify Earth  
Station at Carpentersville, New Jersey (Call Sign E7541)**

Dear Sir or Madam:

On behalf of Lockheed Martin Corporation ("Lockheed Martin"), please find enclosed the original and two copies of Lockheed Martin's application on FCC Form 312 to modify its license for a fixed satellite service transmit/receive earth station at Carpentersville, New Jersey (Call Sign E7541) to receive additional frequencies in the 3650-3700 MHz band. Also enclosed, in triplicate, is a completed FCC Form 159 (FCC Remittance Advice), along with a check in the amount of \$145.00 in payment of the required filing fee.

The final enclosure is a "Return Copy" of the application and associated Remittance Advice Form. Please date stamp this copy, and return it to the courier delivering this package. Please contact me if there are any questions concerning this matter.

Respectfully yours,

  
Stephen D. Baruch  
Attorney for Lockheed Martin Corporation

Enclosures

29407

READ INSTRUCTIONS CAREFULLY BEFORE PROCEEDING  
(1) LOCKBOX #  
358160

FEDERAL COMMUNICATIONS COMMISSION  
REMITTANCE ADVICE

Approved by OMB 3060-0589  
Page No 1 of 1

SPECIAL USE  
FCC USE ONLY

FCC/MELLON NOV 30 2000

SECTION A - PAYER INFORMATION

(2) PAYER NAME (if paying by credit card, enter name exactly as it appears on your card)  
Leventhal, Senter & Lerman (3) TOTAL AMOUNT PAID (U.S. Dollars and \$145.00

(4) STREET ADDRESS LINE NO. 1  
Attention: Stephen D. Baruch

(5) STREET ADDRESS LINE NO. 2  
2000 K Street, N.W., Suite 600

(6) CITY Washington (7) STATE DC (8) ZIP CODE 20006

(9) DAYTIME TELEPHONE NUMBER (include area code) 202-429-8970 (10) COUNTRY CODE (if not in U.S.A.)

FCC REGISTRATION NUMBER (FRN) AND TAX IDENTIFICATION NUMBER (TIN) REQUIRED

(11) PAYER (FRN) 0004-0547-97

IF PAYER NAME AND THE APPLICANT NAME ARE DIFFERENT, COMPLETE SECTION B  
IF MORE THAN ONE APPLICANT, USE CONTINUATION SHEETS (FORM 159-C)

(13) APPLICANT NAME  
Lockheed Martin Corporation

(14) STREET ADDRESS LINE NO. 1  
Attention: Michael E. Usarzewicz

(15) STREET ADDRESS LINE NO. 2  
6801 Rockledge Drive

(16) CITY Bethesda (17) STATE MD (18) ZIP CODE 20817

(19) DAYTIME TELEPHONE NUMBER (include area code) (301) 897-6000 (20) COUNTRY CODE (if not in U.S.A.)

FCC REGISTRATION NUMBER (FRN) AND TAX IDENTIFICATION NUMBER (TIN) REQUIRED

(21) APPLICANT (FRN) 0002-1493-59 (22) APPLICANT (TIN) 0952693884

COMPLETE SECTION C FOR EACH SERVICE, IF MORE BOXES ARE NEEDED, USE CONTINUATION SHEET

(23A) CALL SIGN/OTHER ID E7541 (24A) PAYMENT TYPE CODE CGX (25A) QUANTITY 1

(26A) FEE DUE FOR (PTC) \$145. (27A) TOTAL FEE \$145. FCC USE ONLY

(28A) FCC CODE 1 (29A) FCC CODE 2

(23B) CALL SIGN/OTHER ID (24B) PAYMENT TYPE CODE (25B) QUANTITY

(26B) FEE DUE FOR (PTC) (27B) TOTAL FEE FCC USE ONLY

(28B) FCC CODE 1 (29B) FCC CODE 2

SECTION D - CERTIFICATION

(30) CERTIFICATION STATEMENT  
I, Stephen D. Baruch, certify under penalty of perjury that the foregoing and supporting information is true and correct to the best of my knowledge, information and belief. SIGNATURE [Signature] DATE 11/30/2000

SECTION E - CREDIT CARD PAYMENT INFORMATION

(31) MASTERCARD/VISA ACCOUNT NUMBER: [Box] EXPIRATION [Box]  
 MASTERCARD

VISA I hereby authorize the FCC to charge my VISA or MASTERCARD for the service(s)/authorization herein described.  
SIGNATURE \_\_\_\_\_ DATE \_\_\_\_\_

LOCKHEED MARTIN CORPORATION  
Lockheed Martin Lincing Systems  
CARPENTERSVILLE, NJ WARREN

App  
Est. Avg.  
Per Resp

**FEDERAL COMMUNICATIONS COMMISSION**  
**APPLICATION FOR SATELLITE SPACE AND EARTH STATION AUTHORIZATIONS**

**APPLICANT INFORMATION**

1. Legal Name of Applicant Lockheed Martin Corporation		2. Voice Telephone Number (301) 897-6000	
3. Other Name Used for Doing Business (if any)		4. Fax Telephone Number (301) 897-6083	
5. Mailing Street Address or P.O. Box 6801 Rockledge Drive ATTENTION: Michael Usarzewicz, Alpha Earth Station		6. City Bethesda	8. Zip Code 20817
9. Name of Contact Representative (if other than applicant) Stephen D. Baruch		7. State / Country (if not U.S.A.) Maryland	10. Voice Telephone Number 202-416-6782
11. Firm or Company Name Leventhal, Senter & Lerman		12. Fax Telephone Number 202-293-7783	
13. Mailing Street Address or P.O. Box 2000 K Street, N.W., Suite 600 ATTENTION: Stephen D. Baruch		14. City Washington	16. Zip Code 20006
		15. State / Country (if not U.S.A.) DC	

**CLASSIFICATION OF FILING**

17. Place an "X" in the box next to the classification that applies to this filing for both questions a. and b. Mark only one box for 17a and only one box for 17b.

<input checked="" type="checkbox"/> a1. Earth Station	<input type="checkbox"/> b1. Application for License of New Station	<input type="checkbox"/> b6. Transfer of Control of License or Registration
<input type="checkbox"/> a2. Space Station	<input type="checkbox"/> b2. Application for Registration of New Domestic Receive-Only Station	<input type="checkbox"/> b7. Notification of Minor Modification
	<input type="checkbox"/> b3. Amendment to a Pending Application	<input type="checkbox"/> b8. Application for License of New Receive-Only Station Using Non-U.S. Licensed Satellite
	<input checked="" type="checkbox"/> b4. Modification of License or Registration	<input type="checkbox"/> b9. Letter of Intent to Use Non-U.S. Licensed Satellite to Provide Service in the United States
	<input type="checkbox"/> b5. Assignment of License or Registration	<input type="checkbox"/> b10. Other (Please Specify):

18. If this filing is in reference to an existing station, enter:  
Call sign of station: E7541

19. If this filing is an amendment to a pending application enter:  
(a) Date pending application was filed:  
(b) File number of pending application:

**TYPE OF SERVICE**

20. NATURE OF SERVICE: This filing is for an authorization to provide or use the following type(s) of service(s): Place an "X" in the box(es) next to all that apply.

- a. Fixed Satellite
- b. Mobile Satellite
- c. Radiodetermination Satellite
- d. Earth Exploration Satellite
- e. Direct to Home Fixed Satellite
- f. Digital Audio Radio Service
- g. Other (please specify) Transfer Orbit Operations

21. STATUS: Place an "X" in the box next to the applicable status. Mark only one box.

- a. Common Carrier
- b. Non-Common Carrier
- c. Using U.S. licensed satellites
- d. Using Non-U.S. licensed satellites

23. If applicant is providing INTERNATIONAL COMMON CARRIER service, see instructions regarding Sec. 214 filings. Mark only one box. Are these facilities:

- a. Connected to the Public Switched Network
- b. Not connected to the Public Switched Network

24. FREQUENCY BAND(S): Place an "X" in the box(es) next to all applicable frequency band(s).

- a. C-Band (4/6 GHz)
- b. Ku-Band (12/14 GHz)
- c. Other (Please specify) 3650-3700 MHz (Extended C-Band, space-to-Earth)

**TYPE OF STATION**

25. CLASS OF STATION: Place an "X" in the box next to the class of station that applies. Mark only one box.

- a. Fixed Earth Station
- b. Temporary-Fixed Earth Station
- c. 12/14 GHz VSAT Network
- d. Mobile Earth Station
- e. Space Station
- f. Other (Specify) \_\_\_\_\_

26. TYPE OF EARTH STATION FACILITY: Mark only one box.

- a. Transmit/Receive
- b. Transmit-Only
- c. Receive-Only

**PURPOSE OF MODIFICATION OR AMENDMENT**

27. The purpose of this proposed modification or amendment is to: Place an "X" in the box(es) next to all that apply.

- a -- authorization to add new emission designator and related service
- b -- authorization to change emission designator and related service
- c -- authorization to increase EIRP and EIRP density
- d -- authorization to replace antenna
- e -- authorization to add antenna
- f -- authorization to relocate fixed station
- g -- authorization to change assigned frequency(ies)
- h -- authorization to add Points of Communication (satellites & countries)
- i -- authorization to change Points of Communication (satellites & countries)
- j -- authorization for facilities for which environmental assessment and radiation hazard reporting is required
- k -- Other (Please Specify) \_\_\_\_\_

**ENVIRONMENTAL POLICY**

28. Would a Commission grant of any proposal in this application or amendment have a significant environmental impact as defined by 47 CFR 1.1307?

If YES, submit the statement as required by Sections 1.1308 and 1.1311 of the Commission's rules, 47 C.F.R. §§ 1.1308 and 1.1311, as an exhibit to this application.

- YES
- NO

A Radiation Hazard Study must accompany all applications as an exhibit for new transmitting facilities, major modifications, or major amendments. Refer to OET Bulletin 65.

**ALIEN OWNERSHIP**

29. Is the applicant a foreign government or the representative of any foreign government?	<input type="checkbox"/> YES	<input checked="" type="checkbox"/> NO
30. Is the applicant an alien or the representative of an alien?	<input type="checkbox"/> YES	<input checked="" type="checkbox"/> NO
31. Is the applicant a corporation organized under the laws of any foreign government?	<input type="checkbox"/> YES	<input checked="" type="checkbox"/> NO
32. Is the applicant a corporation of which more than one-fifth of the capital stock is owned of record or voted by aliens or their representatives or by a foreign government or representative thereof or by any corporation organized under the laws of a foreign country?	<input type="checkbox"/> YES	<input checked="" type="checkbox"/> NO
33. Is the applicant a corporation directly or indirectly controlled by any other corporation of which more than one-fourth of the capital stock is owned of record or voted by aliens, their representatives, or by a foreign government or representative thereof or by any corporation organized under the laws of a foreign country?	<input type="checkbox"/> YES	<input checked="" type="checkbox"/> NO
34. If any answer to questions 29, 30, 31, 32 and/or 33 is Yes, attach as an exhibit, the identification of the aliens or foreign entities, their nationality, their relationship to the applicant, and the percentage of stock they own or vote.		

**BASIC QUALIFICATIONS**

35. Does the applicant request any waivers or exemptions from any of the Commission's Rules? If Yes, attach as an exhibit, copies of the requests for waivers or exceptions with supporting documents.	<input checked="" type="checkbox"/> YES	<input type="checkbox"/> NO
36. Has the applicant or any party to this application had any FCC station authorization or license revoked or had any application for an initial, modification or renewal of FCC station authorization, license, or construction permit denied by the Commission? If Yes, attach as an exhibit, an explanation of the circumstances.	<input type="checkbox"/> YES	<input checked="" type="checkbox"/> NO
37. Has the applicant, or any party to this application, or any party directly or indirectly controlling the applicant ever been convicted of a felony by any state or federal court? If Yes, attach as an exhibit, an explanation of the circumstances.	<input type="checkbox"/> YES	<input checked="" type="checkbox"/> NO
38. Has any court finally adjudged the applicant, or any person directly or indirectly controlling the applicant, guilty of unlawfully monopolizing or attempting unlawfully to monopolize radio communication, directly or indirectly, through control of manufacture or sale of radio apparatus, exclusive traffic arrangement or any other means or unfair methods of competition? If Yes, attach as an exhibit, an explanation of the circumstances.	<input type="checkbox"/> YES	<input checked="" type="checkbox"/> NO
39. Is the applicant, or any person directly or indirectly controlling the applicant, currently a party in any pending matter referred to in the proceeding two items? If Yes, attach as an exhibit, an explanation of the circumstances.	<input type="checkbox"/> YES	<input checked="" type="checkbox"/> NO
40. If the applicant is a corporation and is applying for a space station license, attach as an exhibit the names, addresses, and citizenship of those stockholders owning of record and/or voting 10 percent or more of the Filer's voting stock and the percentages so held. In the case of fiduciary control, indicate the beneficiary (ies) or class of beneficiaries. Also list the names and addresses of the officers and directors of the Filer.		N/A
41. By checking Yes, the undersigned certifies, that neither the applicant nor any other party to the application is subject to a denial of Federal benefits that includes FCC benefits pursuant to Section 5301 of the Anti-Drug Act of 1988, 21 U.S.C. Section 862, because of a conviction for possession or distribution of a controlled substance. See 47 CFR 1.2002(b) for the meaning of "party to the application" for these purposes.	<input checked="" type="checkbox"/> YES	<input type="checkbox"/> NO
42a. Does the applicant intend to use a non-U.S. licensed satellite to provide service in the United States? If yes, answer 42b and attach an exhibit providing the information specified in 47 C.F.R. § 25.137, as appropriate. If no, proceed to question 43.	<input type="checkbox"/> YES	<input checked="" type="checkbox"/> NO
42b. What administration has licensed or is in the process of licensing the space station? If no license will be issued, what administration has coordinated or is in the process of coordinating the space station?		

43. Description. (Summarize the nature of the application and the services to be provided).

Lockheed Martin seeks authority to modify its existing earth station license to incorporate the ability to provide FSS services (including TT&C) to all authorized points of communication using spectrum in the extended C-band frequency range (i.e., 3650-3700 MHz) in the space-to-Earth direction.

Exhibit No.	Identify all exhibits that are attached to this application.
1	Requests for Waiver of Commission Rules (Question 35)
2	Adjudicatory Matters Involving Applicant (Question 37)

**CERTIFICATION**

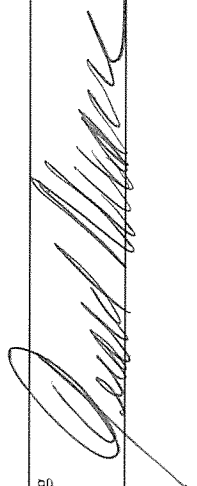
The Applicant waives any claim to the use of any particular frequency or of the electromagnetic spectrum as against the regulatory power of the United States because of the previous use of the same, whether by license or otherwise, and requests an authorization in accordance with this application. The applicant certifies that grant of this application would not cause the applicant to be in violation of the spectrum aggregation limit in 47 CFR Part 20. All statements made in exhibits are a material part hereof and are incorporated herein as if set out in full in this application. The undersigned, individually and for the applicant, hereby certifies that all statements made in this application and in all attached exhibits are true, complete and correct to the best of his or her knowledge and belief, and are made in good faith.

44. Applicant is a (an): (Place an "X" in the box next to applicable response.)

- a. Individual  
  b. Unincorporated Association  
  c. Partnership  
  d. Corporation  
  e. Governmental Entity  
  f. Other (Please specify) \_\_\_\_\_

45. Typed Name of Person Signing

Gerald Musarra



46. Title of Person Signing

Vice President, Trade and Regulatory Affairs

48. Signature

48. Date

November 30, 2000

**WILLFUL FALSE STATEMENTS MADE ON THIS FORM ARE PUNISHABLE BY FINE AND/OR IMPRISONMENT (U.S. Code, Title 18, Section 1001), AND/OR REVOCATION OF ANY STATION AUTHORIZATION (U.S. Code, Title 47, Section 312(a)(1)), AND/OR FORFEITURE (U.S. Code, Title 47, Section 503).**











**FEDERAL COMMUNICATIONS COMMISSION  
SATELLITE EARTH STATION AUTHORIZATIONS  
FCC Form 312 - Schedule B: (Technical and Operational Description)**

If VSAT Network, provide the SITE-ID (Item B1b) of the station that B8-B13 are in response to (HUB, REMOTE1, etc.): \_\_\_\_\_

- B8. If the proposed antenna(s) operate in the Fixed Satellite Service (FSS) with **geostationary** satellites, do(es) the proposed antenna(s) comply with the antenna gain patterns specified in Section 25.209(a) and (b) as demonstrated by the manufacturer's qualification measurements? If NO, provide as an exhibit, a technical analysis showing compliance with two-degree spacing policy.  YES  NO
- B9. If the proposed antenna(s) do not operate in the Fixed Satellite Service (FSS), or if they operate in the Fixed Satellite Service (FSS) with **non-geostationary** satellites, do(es) the proposed antenna(s) comply with the antenna gain patterns specified in Section 25.209(a2) and (b) as demonstrated by the manufacturer's qualification measurements?  YES  NO  N/A
- B10. Is the facility operated by remote control? If YES, provide the location and telephone number of the control point.  YES  NO

**Remote Control Point Location:**

B10a. Street Address		
B10b. City	B10c. County	B10d. State / Country
B10f. Telephone Number		B10e. Zip Code
B10g. Call Sign of Control Station (if appropriate)		

- B11. Is frequency coordination required? If YES, attach a frequency coordination report as an exhibit.  YES  NO See Ex. 1
- B12. Is coordination with another country required? If YES, attach the name of the country(ies) and plot of coordination contours as an exhibit.  YES  NO
- B13. FAA Notification - (See 47 CFR Part 17 and 47 CFR Part 25.113(c))  
Where FAA notification is required, have you attached a copy of a completed FCC Form 854 and/or the FAA's study regarding the potential hazard of the structure to aviation?  
**FAILURE TO COMPLY WITH 47 CFR PARTS 17 AND 25 WILL RESULT IN THE RETURN OF THIS APPLICATION.**  YES  NO  N/A  
N/A -- Existing Station

Requests for Waivers of Commission Rules

Lockheed Martin Corporation ("Lockheed Martin") requests the waiver of two Commission rules in connection with its instant modification of earth station license application. First, Lockheed Martin requests the Commission to waive the requirement of Section 2.108 of the Commission's Rules. Second, Lockheed Martin requests a waiver of Section 2.106, Footnote NG169, of the Commission's Rules. In addition, Lockheed Martin provides a statement with respect to the frequency coordination requirements of Section 25.203.

**1. Waiver of Section 2.108**

Section 2.108 of the Commission's Rules contains the Commission's current policy regarding the use of the fixed-satellite service ("FSS") allocations, *inter alia*, in the 3.6-3.7 GHz band. It makes use of the FSS in this band subject to footnote US245, which limits FSS to international inter-continental systems and requires case-by-case electromagnetic compatibility analyses. See 47 C.F.R. § 2.108. See also 47 C.F.R. § 2.106, footnote US245.

In its *First Report and Order and Second Notice of Proposed Rule Making* in ET Docket No. 98-237, *Amendment of the Commission's Rules with Regard to the 3650-3700 MHz Government Transfer Band*, FCC 00-363 (released October 24, 2000) ("*First R&O/Second NPRM*"), the Commission noted that the allocation to the FSS at 3600-3700 MHz was initially aimed narrowly at meeting future projected requirements of the international telecommunications system of INTELSAT. *Id.*, FCC 00-363, slip op. at ¶ 128. Despite the fact that it did not specifically propose to eliminate the restriction at an earlier point in the proceeding, the Commission now believes "that deletion of the footnote restriction should be considered for the 3650-3700 MHz band in order to provide for flexible and efficient use of FSS earth station sites[.]" and that it is not appropriate "to continue what amounts to a spectrum reservation for only one of several competitors." *Id.*

FCC 00-363 says  
"for consideration"  
"not to remove this footnote"

Not yet  
Lockheed Martin, which, though a subsidiary, is an owner of the INTELSAT system, intends to file comments next month containing its views on the Commission's tentative determination to delete or modify the footnote US245 (and consequently Section 2.108 of the Commission's Rules). Pending Commission action on its tentative determination, however, Lockheed Martin submits that it would be wasteful for it to incur the expense and effort to conduct an electromagnetic compatibility analysis with regard to its earth station facility at Carpentersville, New Jersey. Instead, Lockheed Martin requests that the Commission waive application of Section 2.108/footnote US245, and condition any authorization Lockheed Martin may be granted pursuant to the instant modification application on the outcome of the Commission's proposal in this regard in its *First R&O/Second NPRM*. Should the Commission determine that an electromagnetic compatibility analysis is required for applications submitted in the interval prior to final action on its proposal, Lockheed Martin stands prepared to comply with the Commission's determination,

and requests the opportunity to conduct such an analysis and supplement its application accordingly.

## 2. Waiver of Footnote NG169

In its *First R&O/Second NPRM*, the Commission adopted a new policy that would accord primary status only to earth stations that currently use the 3650-3700 MHz band (so-called “grandfathered sites”) and to applicants that apply prior to December 1, 2000 for authority to establish new or modified extended C-band facilities that are located within ten miles of an existing grandfathered extended C-band earth station receive site. The areas where new and modified earth stations were deemed permitted are located in just sixteen states plus Puerto Rico and Guam, and in some cases do not include the entire 50 MHz of spectrum at 3650-3700 MHz. This policy is reflected in new footnote NG169 to Section 2.106 of the Commission’s Rules, and in the associated portions of the Commission’s *First R&O/Second NPRM*.

The Lockheed Martin earth station at Carpentersville, New Jersey, which is the subject of the instant modification application, is not one of the grandfathered sites, and is not located within 10 miles of a grandfathered site. Nevertheless, the Commission should waive the application of footnote NG169 (and associated policies) and treat the earth station facility authorized pursuant to the instant modification of license application as a grandfathered site.<sup>1</sup> In seeking this waiver, Lockheed Martin is limiting its assertions to the highly unusual, if not unique, factual circumstances that are associated with its Carpentersville facility. While Lockheed Martin has, as a member of the Extended C-Band Ad Hoc Coalition, moved for an emergency stay of the December 1 deadline for submission of applications to secure grandfathered status,<sup>2</sup> and intends to seek reconsideration of the *First R&O* in its own right next month, it is assuming *arguendo* herein that the rules and policies adopted in the *First R&O* are applicable.

Lockheed Martin’s Carpentersville, New Jersey site, once authorized for extended C-band service, should become a grandfathered site under footnote NG169. The facility itself is located in a very rural area. As can be seen from the attached site photographs, the two existing antennas that Lockheed Martin proposes to use to receive transmissions in the 3650-3700 MHz band are located deep within a working stone quarry, and thus the antenna used to receive FSS transmissions in the 3650-3700 MHz band will be shielded by terrain from terrestrial interference. The shielding, in fact, is increasing, as rubble from the quarrying activities is deposited on the top of the quarry ridges.<sup>3</sup> Indeed, the only practical way a terrestrial transmitter could interfere with

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<sup>1</sup> Lockheed Martin notes that it is seeking a waiver of a rule that, while final, has not yet gone into effect. In its *First R&O/Second NPRM*, the Commission ordered that the modifications it made to Part 2 of its Rules – including new footnote NG169 – would take effect 90 days after Federal Register publication. Federal Register publication occurred on November 17, 2000 (65 Fed.Reg. 65491), making the effective date of the rule February 15, 2001. *See First R&O/Second NPRM*, FCC 00-363, slip op. at ¶ 145. In light of the time-sensitive nature of the new footnote, Lockheed Martin believes that good cause is shown here for requesting waiver of a rule that, while not yet effective, would, unless stayed, immediately become applicable upon its entry into force. *See generally*, 47 C.F.R. § 1.3.

<sup>2</sup> *See* Extended C-Band Ad Hoc Coalition Emergency Motion for Stay Pending Reconsideration, ET Docket No. 98-237 (filed November 28, 2000).

<sup>3</sup> Since the attached photographs were taken, the thin line of trees located at the center of the first photograph has been replaced with a ridge of material removed during quarry operations. On the far side of the river adjoining the quarry is a high ridge that provides further terrain shielding.

the earth station's use of the 3650-3700 MHz band would be if the transmitter were installed on the rim of the quarry and pointed straight down into the earth station antennas.

As a further inhibition to the already scant likelihood that a terrestrial station could ever interfere, absent intent to do so, with the use of 3650-3700 MHz by Lockheed Martin's earth station arises from the fact that the site is located in the middle of a migratory bird flight path and at the edge of the Pohatcong Grasslands Project – both of which are vigorously defended by local advocacy groups that have for many years fended off attempts at wireless tower sitings and other forms of development. There are currently no wireless towers in any service located within the line of sight of the proposed 3650-3700 MHz antenna, and the local citizenry's firmly-held opposition to wireless towers is not viewed as likely to change anytime in the foreseeable future – regardless of what happens in response to the Commission's *Second NPRM*.

Under these circumstances, Lockheed Martin requests the Commission to waive footnote NG169 and the associated policy elements of the Commission's *First R&O/Second NPRM*, and grant grandfathered status to Lockheed Martin's proposed Carpentersville extended C-band facility – notwithstanding the fact that the facility is not proposed for location within 10 miles of any of the sites grandfathered in by the Commission. Terrain, wildlife, and local oppositions to wireless towers in or near the ecologically sensitive Pohatcong Grasslands Project are such that the grandfathering of the Carpentersville facility will not impose any new constraints on terrestrial services. On the other hand, grandfathering will provide Lockheed Martin and its customers with the security of knowing that they will be able to continue in the quiet enjoyment of their systems. As the frequencies proposed for addition to the existing authorization will be used to provide mission critical TT&C services, it is of paramount importance to Lockheed Martin and its customers that the use of the frequencies at the Carpentersville site be on a co-primary basis (as it will be for other stations with grandfathered status in the 3650-3700 MHz band) – without regard to the fact that the terrain shielding characteristics of the site make the prospect of terrestrial interference minimal.

Lockheed Martin notes further that even if a terrestrial system seeks to use the 3650-3700 MHz band within the vicinity of Carpentersville in the future, the terrain shielding considerations associated with the situation of the antennas within the stone quarry should substantially facilitate coordination. The Commission recognized in its *First R&O/Second NPRM*, that so-called “exclusion zones” are different for each FSS earth station site due to such factors as shielding, antenna orientation, and terrain elevation. Lockheed Martin submits that the unusual situation of the subject earth station deep within a stone quarry, where it is shielded from nearly all interferers and where local opposition would diminish the prospects for the siting of a tower at those few locations from which interference could be caused, are such that the grant of the requested waiver would not trigger the Commission's fears of “unrestrained deployment of FSS earth stations [that] could hinder or greatly inhibit the opportunities for terrestrial operations in the band.” FCC 00-363, slip op. at ¶ 18.

Grant of the requested waiver would, in short, maximize the use of spectrum at 3650-3700 MHz in this particular geographic location, would not be inconsistent with the objectives of the *First R&O/Second NPRM*, would provide Lockheed Martin and its customers with the assurance of knowing that their mission-critical services will enjoy protection under the Commission's rules during the lifetimes of the space stations with which the subject earth station facility will communicate. Accordingly, Lockheed Martin urges the Commission to determine that granting

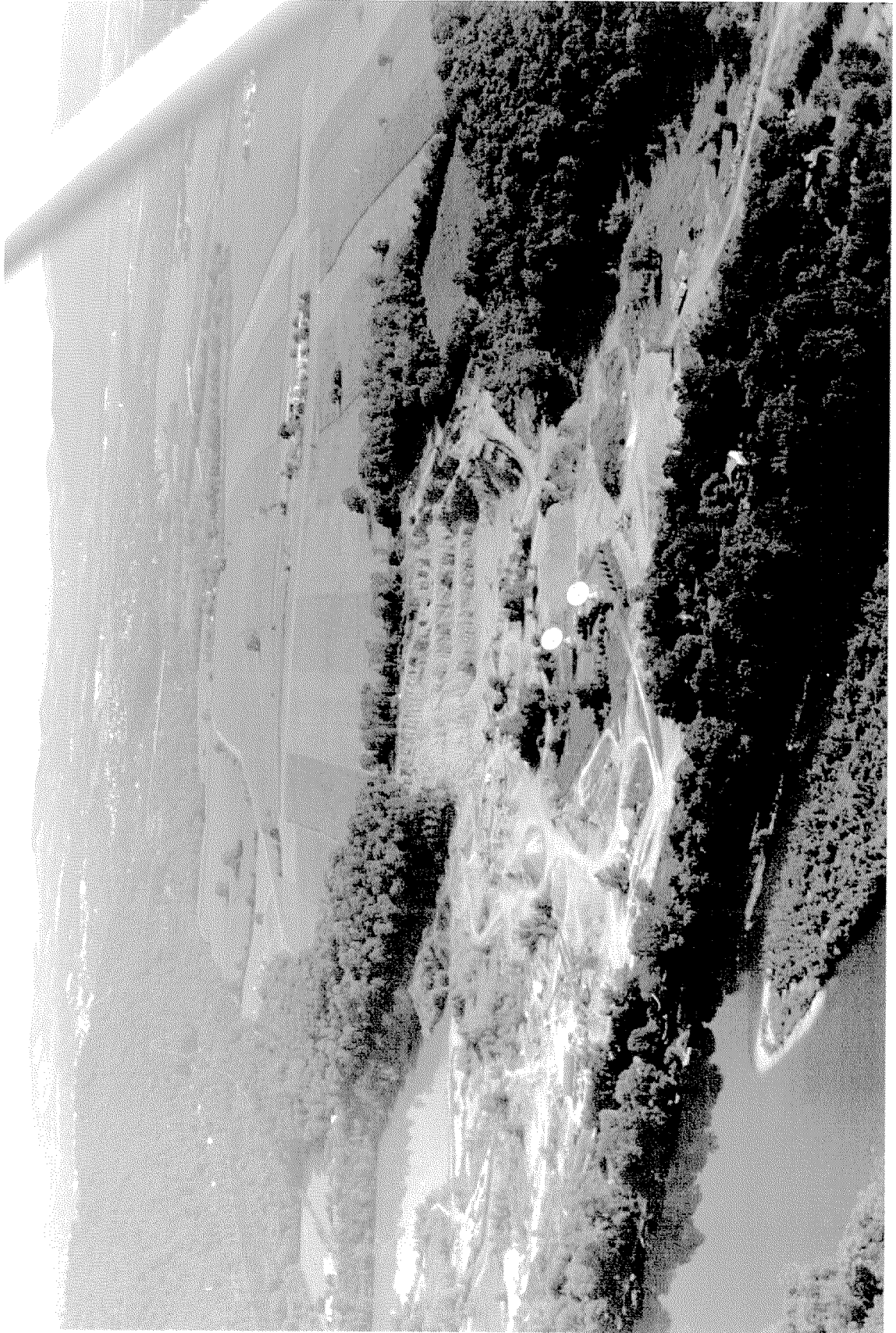
the waiver of footnote NG169 and the associated policies, and according grandfathered status to Lockheed Martin's incorporation of the 3650-3700 MHz frequencies at the Carpentersville facility, would advance the overall public interest, convenience, and necessity.

### **3. Statement Regarding Section 25.203**

In its *First R&O/Second NPRM*, the Commission only first allocated the 3650-3700 MHz band to non-government terrestrial use, and provided that the allocation will not become effective until February 15, 2001 (90 days after Federal Register publication of the adopted rules). FCC 00-363, slip op. at ¶¶ 10, 145. According to the Commission, there are no non-government terrestrial fixed or mobile services in the 3650-3700 MHz band at this time (although some experimental use is apparently being made by the fixed service of the adjacent 3400-3600 MHz band). *Id.* at ¶ 10 & n.29.

Under these circumstances, Section 25.203(c), which provides that an earth station applicant, prior to the filing of its application, shall coordinate the proposed frequency usage with existing terrestrial users and with previously-filed applicants for terrestrial station authorizations, does not apply. Moreover, much of the rest of Section 25.203, which is made applicable to transmitting earth station applicants by Section 25.130(b), does not instant application to add only receive frequencies to Lockheed Martin's underlying authorization.

Because there are no current non-government terrestrial stations in the 3650-3700 MHz band, and because the particular terrain considerations that are associated with Lockheed Martin's quarry-situated earth station facility would minimize or eliminate most inter-service interference concerns, Lockheed Martin respectfully requests a waiver of any provisions of Section 25.203 that may be deemed applicable. In the alternative, Lockheed Martin respectfully requests that it be given the opportunity to supplement its application with any showing or analysis under this rule that the Commission may find necessary.





**Adjudicatory Matters Involving the Applicant**

Lockheed Martin Corporation ("Lockheed Martin"), a Maryland corporation, was formed in connection with the merger of Lockheed Corporation and Martin Marietta Corporation, a business combination which was consummated on March 15, 1995. Lockheed Martin has never been convicted of a felony by any state or federal court. Nonetheless, the following matters relating to predecessor companies are being reported to ensure the fullest possible disclosure in response to Question 37.

On January 27, 1995, Lockheed Corporation pleaded guilty in federal district court in Atlanta, Georgia, to a single count of conspiracy to violate the Foreign Corrupt Practices Act and conspiracy to falsify its books, records, and accounts. The plea was related to a 1989 contract between Lockheed Corporation and Egypt for the sale of C-130 aircraft. As part of the resolution of this litigation, Lockheed Corporation paid certain fines to the United States Government.

In March 1987, pursuant to an agreement entered into with the United States Attorney for Maryland, Martin Marietta Corporation pleaded guilty in federal district court in Maryland to two counts of mail fraud (18 U.S.C. § 1341) and one count of false statements (18 U.S.C. § 1001) in connection with activities of a subsidiary of Martin Marietta Corporation which provided travel-related services. As part of this agreement, Martin Marietta paid certain fines and reimbursed investigative costs to the United States Government.

Additionally, in April 1996, Loral Corporation became a wholly-owned subsidiary of Lockheed Martin by merging with a subsidiary of Lockheed Martin. The business units acquired by Lockheed Martin in this transaction were subsequently integrated into Lockheed Martin Corporation and Loral Corporation ceased to exist. On December 8, 1989, Loral Corporation pleaded guilty in federal district court in Virginia to charges of conspiracy, conversion of government property, and false statement. The please were related to the activities of Loral Defense Systems in obtaining competitor proprietary and government source selection information to assist it in securing certain defense contracts. As part of the resolution of this litigation, Loral Corporation paid certain fines, civil damages, penalties, and investigative costs to the United States Government.