Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Columbia Communications Corporation	)	
	)	
Petition to Revoke Authorization of Orion Satellite Corporation to Construct, Launch, and Operate an International Communications Satellite to be Located at 47° W.L.	)	File No. CSS-83-002-P-(M)
	)	
Application for Amendment to Pending Application to Construct, Launch, and Operate a Ku-band Satellite at 49° W.L.	)	File No. SAT-AMD-19990511-00052
	)	
Application for Modification of Authorization To Launch and Operate a Fixed-Satellite Service Geostationary Satellite at 47° W.L.	)	File No. SAT-MOD-19990511-00051

MEMORANDUM OPINION AND ORDER

Adopted: January 21, 2000 Released: January 21, 2000

By the Chief, International Bureau:

I. INTRODUCTION

1. By this Order, we deny Columbia Communications Corporation's (Columbia's) petition to revoke the authorization of Loral Space & Communications Ltd. (Loral)[1] to launch and operate a Ku-band fixed-satellite service (FSS) satellite at 47° W.L.[2] Further, because Loral is authorized to provide FSS service in the Ku-band at 47° W.L., we deny Columbia's request to add Ku-band capacity to its authorized C-band[3] FSS satellite at 47° W.L. We also deny

[1] Loral was formerly known as Orion. *See* Loral Space & Communication Ltd. and Orion Network Systems, Inc. International Private Satellite Partners, L.P. (d/b/a) Orion Atlantic, L.P., Application for the Transfer of Control of Various Space Station, Earth Station, and Section 214 Authorizations, Order and Authorizations, 13 FCC Rcd 4592 (Int'l Bur. 1998). For the sake of consistency, we refer to this company as "Loral" throughout this Order.

[2] The conventional Ku-band is 11.7-12.2 GHz and 14.0-14.5 GHz.

[3] The conventional C-band is 3700-4200 MHz and 5925-6425 MHz.

Columbia's request to toll Columbia's milestone requirements applicable to that satellite. Columbia's request to delay construction and launch of a C-band satellite at 47° W.L. as authorized is not due to "circumstances beyond its control" or to any other factor that would justify providing it with more time to hold this scarce orbital resource to the exclusion of others. Finally, we deny Columbia's request to change its current six-month special temporary authorization to lease capacity on the National Aeronautics and Space Administration (NASA) TDRS-6 satellite for C-band service to a grant of longer term authority because the TDRS-6 satellite does not meet the Commission's technical requirements.

II. BACKGROUND

2. In 1996, the Bureau granted Columbia Special Temporary Authority (STA) to lease C-band capacity on NASA's TDRS-6 satellite, located at 47° W.L., subject to coordination with adjacent satellite operators.[4] In January 1999, the International Bureau (Bureau) granted Columbia authority to launch and operate a C-band satellite at 47° W.L.[5] Columbia is required to commence construction of this satellite in April 2000, to complete construction in August 2003, and to launch it in August 2004.[6]

3. In 1991, the Commission granted Loral authority to construct, launch, and operate a satellite at 47° W.L. to provide international fixed-satellite service in the Ku-band in the United States.[7] The Commission did not impose any specific system implementation milestones on Loral in that license.[8] In 1997, the International Bureau granted Loral authority to add Ka-band capacity to this satellite,[9] and required Loral to commence construction of the hybrid satellite by

---

[4] Columbia Communications Corporation, Order, 11 FCC Rcd 8639 (Int'l Bur. 1996) (*Columbia STA Order*).

[5] Columbia Communications Corporation, Order and Authorization, 14 FCC Rcd 3318 (1999) (*Columbia Authorization Order*).

[6] Letter from Thomas S. Tycz, Chief, Satellite and Radiocommunication Division, International Bureau, to Raul R. Rodriguez, Counsel for Columbia (dated April 5, 1999) (*April 5 Letter*).

[7] Orion Satellite Corporation, Request for Final Authority to Construct, Launch, and Operate an International Communications Satellite System, Order, 5 FCC Rcd 4937 (1991) (*Loral Technical Requirements Order*); Orion Satellite Corporation, Request for Final Authority to Construct, Launch, and Operate an International Communications Satellite System, Order, 6 FCC Rcd 4201 (1991) (*Loral Final Authorization Order*).

[8] *See Loral Technical Requirements Order*, 5 FCC Rcd 4937; *Loral Final Authorization Order*, 6 FCC Rcd 4201. The Commission generally did not require milestones for separate systems at that time.

[9] Orion Atlantic, L.P., Application for Modification of Authority to Add Ka-Band Capacity to its Ku-Band Orion F-2 Satellite, Order and Authorization, 13 FCC Rcd 1416 (Int'l Bur. 1997) (*Loral Modification Order*). For purposes of this Order, the Ka-band is 17.7-20.2 GHz and 27.5-30.0 GHz.

May 1998.[10] On March 19, 1999, Columbia filed a petition to revoke Loral's authorization at 47° W.L., alleging that Loral is warehousing this location.[11]

4. On May 11, 1999, Columbia filed a modification application to add Ku-band capability to its 47° W.L. C-band satellite by amending an application it filed in 1987 to construct, launch, and operate a Ku-band satellite at 49° W.L, and instead place that capacity at the 47° W.L. location.[12] In addition, Columbia seeks to toll the milestone obligations applicable to its C-band satellite at 47° W.L. for six months following Bureau action on its modification application.[13] Further, Columbia seeks to replace its existing STA to offer C-band service using the TDRS-6 satellite with a grant of regular authority. Loral filed a petition to deny Columbia's applications, arguing generally that granting Columbia's application would conflict with Loral's license to launch and operate a Ku-band satellite at 47° W.L. PanAmSat also filed a petition to deny Columbia's application, contending that Columbia has not demonstrated its financial qualifications to hold a space station license.

III. DISCUSSION

A. Revocation of Loral's Ku-band Authority

1. Warehousing

5. We conclude that Columbia has not provided sufficient reason for revoking Loral's authority to construct, launch, and operate a Ku-band satellite at the 47° W.L. orbit location. Columbia alleges that Loral is warehousing the 47° W.L. location because Loral has not yet launched a Ku-band satellite pursuant to its 1991 license.[14] The Commission did not, however, impose milestone requirements on Loral in its 1991 license. At that time, there were no milestone

---

[10] *Loral Modification Order*, 13 FCC Rcd at 1426 (para. 32).

[11] Although Columbia's petition has not been placed on public notice, Loral addresses the issues raised by this petition in its petition to deny Columbia's May 11 modification application.

[12] Columbia filed its Ku-band application after the Commission had announced a "freeze" on applications for satellites in the 30° W.L. to 60° W.L. portion of the orbital arc. Processing of Pending Applications for Space Stations to Provide International Communications Service, FCC 85-296 (released June 6, 1985) (*Freeze Order*). In the past few years, we have granted several waivers of the freeze. *See*, *e.g.* PanAmSat Licensee Corp., Order and Conditional Authorization, 11 FCC Rcd 22098 (Satellite and Radiocommunication Div., Int'l Bur. 1996); PanAmSat, L.P., Memorandum Opinion, Order and Authorization, 8 FCC Rcd 3905 (1993).

[13] Columbia Application at 2; Letter from Kenneth Gross, President of Columbia, to Thomas S. Tycz, Chief, Satellite and Radiocommunication Division, International Bureau (dated Nov. 12, 1999) (*November 12 Letter*); Letter from Raul R. Rodriguez, Counsel to Columbia, to Thomas S. Tycz, Chief, Satellite and Radiocommunication Division, International Bureau (dated Dec. 17, 1999) (*December 17 Letter*).

[14] Columbia Opposition at 4-5; Columbia Petition to Revoke at 6-7.

requirements in effect for separate systems such as Loral's. Rather, the Bureau imposed milestone requirements on Loral for the first time in 1997, when we granted Loral authority to modify its application to add a Ka-band payload to its Ku-band satellite.[15] At that time, neither Columbia nor any other entity questioned whether Loral had been "warehousing" the 47° W.L. location.[16]

6. Loral's 1997 authorization included a construction milestone requirement for May 1998. In this regard, Loral states that it commenced construction of its satellite by the required May 1998 date.[17] Columbia concedes this point.[18] Although we agree with Columbia that an unusually long time has passed since Loral received its original authorization for a Ku-band satellite at 47° W.L., Loral has met all the milestone conditions of its license to date.[19] Thus, there is no basis on which to revoke Loral's authority.[20]

7. Further, Columbia maintains that we should revoke Loral's license because its failure to launch a satellite almost caused the United States to lose its international "priority" for the 47° W.L. orbit location.[21] Under International Telecommunications Union (ITU) procedures, the United States was required to launch a Ku-band satellite at the 47° W.L. orbital location by 1998. Loral, the U.S. licensee at that location, had not done so by that date. Commission launch requirements, however, are not the same as ITU launch deadlines. Moreover, the ITU status of the 47° W.L. location is irrelevant to the validity of Loral's U.S. license at 47° W.L. Loral's license was not conditioned on it maintaining ITU priority. Rather, Loral's license was conditioned on it beginning construction in May 1998, and Loral has met that milestone. Columbia concedes that Loral has met this license condition.[22]

---

[15] *Loral Modification Order*, 13 FCC Rcd at 1426 (para. 32).

[16] Columbia's claim is in fact a late-filed petition for reconsideration of the milestones established in the *Loral Modification Order.*

[17] Loral Petition at 3, *citing* 1998 Loral Annual Status Report at 15.

[18] Columbia Opposition at 3-4.

[19] Loral's construction completion deadline is April 2002, and its launch deadline is May 2002. Loral has requested an extension of its construction completion and launch deadlines. We will consider this request in a future Order.

[20] Columbia claims that we should disregard Loral's response to Columbia's warehousing arguments because Loral made such claims in its Petition to Deny Columbia's modification application, rather than in an "opposition" to Columbia's Revocation Petition. (Loral did not file an opposition.) Columbia Opposition at 3-4. Columbia, however, raised warehousing arguments in its Modification Application as well as its Revocation Petition. Accordingly, it is appropriate for Loral to address Columbia's warehousing contentions in its Petition to Deny Columbia's Modification Application.

[21] Columbia Petition to Revoke at 9-11.

[22] In any event, as Columbia acknowledges, a new U.S. Ku-band registration was filed with the ITU in August 1998 at Loral's request, which extends U.S. priority until at least 2003. Columbia Petition to Revoke at 10. Consequently, U.S. priority status at 47° W.L. is not currently at risk.

2. Orbit Assignment Policy

8. Columbia also argues that Loral's authorization at the 47° W.L. location should be revoked because Loral holds licenses for three satellites in the Atlantic Ocean Region (AOR) in contravention of the Commission policy limiting satellite operators to two satellites per region.[23] We reject Columbia's argument on procedural and substantive grounds. As to the procedural point, this is the first time Columbia has raised this issue, although the Commission licensed Loral's satellite at 47° W.L. almost ten years ago. If Columbia were concerned about the number of licenses Loral holds in the AOR, it should have raised this issue when we authorized Loral's *third* AOR satellite at 12° W.L. in 1995.[24] It did not do so. We will not consider revoking a ten-year-old license because of Columbia's belated argument concerning the number of licenses held by Loral.

9. As to the substantive issue, authorizing Loral to operate three satellites in the AOR does not, in itself, conflict with Commission policy. First, Loral observes that the Commission granted Loral authority to launch and operate a third satellite because of the limited amount of unused capacity available on its first two satellites.[25] The Commission's policy allows for additional authorizations if the licensee's two in-orbit satellites are essentially filled.[26] In addition, Commission policy allows authorizing satellites at more than two locations in cases where the applicant proposes to provide service to more than one region of the world.[27] This is the case here. Loral's satellites at the 37.5° W.L. and 47° W.L. orbit locations serve or will serve North America, Western Europe, and portions of Africa.[28] The third Loral AOR satellite will serve the Middle East, in addition to portions of Africa unserved by Loral's other AOR satellites.[29]

---

[23] Columbia Petition to Revoke at 7-9, *citing* Establishment of Satellite Systems Providing International Communications, Report and Order, CC Docket No. 84-1299, 101 FCC 2d 1046, 1174 (1985) (*Separate Systems Order*), *recon*. 61 R.R.2d 649 (1986), *further recon*. 1 FCC Rcd 439 (1986), 47 C.F.R. § 25.140(e); Columbia Application at 3-4, 15-16.

[24] *See* Orion Satellite Corp., Application for Authority to Construct, Launch, and Operate a Separate International Satellite Communications System, Order and Authorization, 10 FCC Rcd 12307 (Int'l Bur. 1995).

[25] Loral Petition at 6.

[26] 47 C.F.R. § 25.140(f); *Separate Systems Order*, 101 FCC 2d at 1174-75 (para. 261).

[27] *Separate Systems Order*, 101 FCC 2d at 1174 (para. 260).

[28] *Loral Technical Requirements Order*, 5 FCC Rcd at 4937 (para. 4). In a future Order, we will consider Loral's modification application seeking authority to add two new beams to the satellite to be launched to the 47° W.L. orbit location, to provide "extended Ku-band" service to South America.

[29] *Loral 12° Order*, 10 FCC Rcd at 12307 (paras. 3-4).

B. Application for Modification or Amendment of Ku-band Authority

10. Because we conclude that Loral's authorization for a Ku-band satellite at 47° W.L. is valid, we deny Columbia's application to add Ku-band capability to its authorized C-band satellite at 47° W.L. To do otherwise would cause harmful interference to Loral's authorized system in clear contravention of Commission rules.[30]

C. Tolling of Columbia's C-band Milestones

11. Columbia asks us to toll the milestone deadlines for its C-band satellite at the 47° W.L. orbit location, contending that it cannot proceed with construction until it knows whether it will be granted Ku-band authority at that location.[31] We deny Columbia's request. The milestone schedule, included as a condition of space station authorizations, is designed to ensure that licensees are moving forward with the construction and launch of their systems in a timely manner. Requiring licensees to make and fulfill realistic construction and launch commitments prevents increasingly scarce orbital resources from being warehoused by licensees. Such warehousing could hinder the availability of services to the public at the earliest possible date by blocking entry by other entities willing and able to proceed immediately with the construction and launch of their satellite systems.[32] Accordingly, extensions of the milestone schedule are granted only when delay in implementation is due to circumstances beyond the control of the licensee.[33]

12. The Commission has determined that filing a modification application does not warrant extension of milestone deadlines.[34] Decisions to seek modifications of licenses are business decisions wholly within the control of the licensee.[35] Further, extending milestones on

---

[30] Section 25.273(a)(3) prohibits transmissions that cause unacceptable interference to the authorized transmissions of another licensee. 47 C.F.R. § 25.273(a)(3). Because we deny Columbia's application, we need not reach Columbia's request for waiver of the *Freeze Order*, or PanAmSat's arguments regarding Columbia's financial qualifications. Columbia Application at 18-20, PanAmSat Petition at 1-5.

[31] Columbia Application at 11; *November 12 Letter* at 2.

[32] National Exchange Satellite, Inc., Memorandum Opinion and Order, 7 FCC Rcd 1990, 1991 (para. 8) (Com. Car. Bur. 1992) (*Nexsat Order*) *citing* MCI Communications Corporation, Memorandum Opinion and Order, 2 FCC Rcd 233 (1987) (*MCI Order*).

[33] *Nexsat Order*, 7 FCC Rcd at 1991 (para. 8) *citing MCI Order*, 2 FCC Rcd 233; Hughes Communications Galaxy, Order and Authorization, 5 FCC Rcd 3423, 3424 (Com. Car. Bur. 1990).

[34] Advanced Communications Corporation, Memorandum Opinion and Order, 10 FCC Rcd 13337, 13341 (para. 14) (Int'l Bur., 1995) (*Advanced Order*).

[35] *See*, *e.g.*, Advanced Communications Corporation, Memorandum Opinion and Order, 11 FCC Rcd 3399, 3417 (para. 45) (1995) (delays related to negotiations with potential investors do not constitute adequate justification for extension of milestones); MCI *Order*, 2 FCC Rcd at 234 (para. 7) (mergers do not justify extension of milestones); American Telephone and Telegraph Company and Ford

this basis would "allow permittees to 'extend indefinitely their nonperformance by repeated modifications of their proposals.'"[36] This in turn could facilitate warehousing of scarce orbital resources or, at a minimum, delay service to the public.

13. Columbia argues that it is not warehousing its orbital location or delaying service to the public because it is providing C-band service through leased capacity on TDRS-6 and can continue to do so until at least 2004.[37] We acknowledge that Columbia is providing service to the public through TDRS-6, a NASA satellite. Nevertheless, we will not permit Columbia to use its leased capacity on TDRS-6 -- a satellite that does not meet technical requirements in place since 1983[38] -- to justify delaying implementation of a state-of-the-art satellite it had represented it would begin to construct in April 2000. As early as 1985, the Commission explained that TDRS system satellites do not satisfy the Commission's full frequency reuse requirements, and therefore those satellites are inefficient compared to a "reasonable state-of-the-art space station."[39] The Commission found that it was in the public interest to waive its full frequency reuse requirements to allow TDRS satellites that were in orbit at that time to provide commercial service, but only as long as the TDRS satellite did not preclude the use of a satellite that meets the Commission's technical requirements.[40]

14. In 1996, when granting Columbia's STA to provide service using TDRS-6, the Bureau noted that "availability of this capacity presents Columbia with an opportunity to provide immediate *interim* service at the proposed location of its follow-on satellite."[41] The clear expectation was that indeed Columbia would construct and launch a new satellite and comply with the Commission's technical requirements within the milestone requirements of its authorization. In light of the Commission's conclusions regarding TDRS, Columbia cannot now

---

Aerospace Satellite Services Corporation, Memorandum Opinion and Order, 2 FCC Rcd 4431, 4433-34 (paras. 21-23) (1987) (neither negotiation of construction contract nor existence of in-orbit satellite at orbit location in question justify extension of milestones).

[36] *Advanced Order*, 10 FCC Rcd at 13341 (para. 14) (Int'l Bur., 1995), *quoting* Tempo Enterprises, Inc., Memorandum Opinion and Order, 1 FCC Rcd 20 (1986).

[37] *November 12 Letter* at 2.

[38] Licensing of Space Stations in the Domestic Fixed-Satellite Service and Related Revisions of Part 25 of the Rules and Regulations, Report and Order, CC Docket No. 81-704, 54 RR 2d 577 (1983) (*Reduced Orbital Spacing*).

[39] Systematics General Corporation, Memorandum Opinion and Order, 103 FCC 2d 879, 881-82 (paras. 6-9) (1985). *See also* Columbia Communications Corporation, Memorandum Opinion, Order, and Authorization, 7 FCC Rcd 122, 123 (para. 15) (1991) (*TDRS Order*). The Commission adopted full frequency reuse requirements in 1983. Specifically, a 4/6 GHz space station is required to have a capacity equivalent to that provided by a space station having transponders that use 864 MHz of a 1000 MHz (with two-times frequency reuse) assignment and provide a total power of 192 watts. *Reduced Orbital Spacing*, 54 RR 2d at 598 n. 67. *See also Separate Systems Order*, 101 FCC 2d at 1168-69 (para. 248); *TDRS Order*, 7 FCC Rcd at 126 n.14. Essentially, full frequency reuse doubles the capacity of a space station.

[40] *TDRS Order*, 7 FCC Rcd at 123 (para. 16).

[41] *Columbia STA Order*, 11 FCC Rcd at 8640 (para. 6) (emphasis added).

justify delaying the construction and launch of a modern, efficient satellite system that complies with the Commission's rules by attempting to rely on the TDRS-6 satellite.

D. Permanent Authority to Provide C-Band Service

15. Columbia is providing C-band service via leased capacity on TDRS-6 pursuant to a series of STA grants beginning in July 1996.[42] Columbia requests that we now grant it "permanent authority to operate the C-band transponders on the TDRS-6 satellite for the remainder of that spacecraft's useful life, until replaced by the Columbia-ATL-47W satellite."[43] It argues that such grant would be in the public interest because it would facilitate continued service to its TDRS-6 customers. Columbia also maintains that such authority would eliminate the need to file STA renewal requests every six months, and, thus, would allow efficient use of Commission resources by avoiding future STAs.[44] PanAmSat argues that it is common for satellite operators to provide service pursuant to STA near the end of the useful life of a satellite, that such an approach in this case is consistent with Commission precedent, and that the Commission should not "transform [Columbia's] TDRS-6 STA into a license."[45]

16. We are not persuaded by Columbia's assertions. As explained above, the Commission granted Columbia a waiver of the Commission's full frequency reuse requirements, to use TDRS-6 only on an interim basis. Though we acknowledge Columbia's resource efficiency claim, we find that it is better to review Columbia's STA periodically, to ensure that use of TDRS-6 remains in the public interest. In addition, continuing with an STA approach, rather than full authorization, will allow provision of service to customers from the 47° W.L. orbital location.

IV. ORDERING CLAUSES

17. Accordingly, IT IS ORDERED that the Petition to Revoke Authorization filed by Columbia Communications Corporation on March 19, 1999, File No. CSS-83-002-P-(M), IS DENIED.

---

42 *Columbia STA Order*, 11 FCC Rcd 8639.

43 Columbia Application at 12.

44 Columbia Application at 12.

45 PanAmSat Petition at 5-6.

18. IT IS FURTHER ORDERED that the Application for Modification of Authorization and for Amendment of Application to Construct, Launch, and Operate a Ku-band Satellite, file by Columbia Communications Corporation on May 10, 1999, File Nos. SAT-MOD-19990511-0051, SAT-AMD-19990511-00052, IS DENIED.

19. IT IS FURTHER ORDERED that the request to extend milestones, filed by Columbia Communications Corporation on November 12, 1999, IS DENIED.

20. IT IS FURTHER ORDERED that the request for permanent authority to operate the C-band transponders on the National Aeronautics and Space Administration's TDRS-6 satellite located at 47° W.L., made by Columbia Communications Corporation on May 11, 1999, IS DENIED.

21. This Order is issued pursuant to Section 0.261 of the Commission's rules on delegated authority, 47 C.F.R. § 0.261, and is effective upon release. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's rules, 47 C.F.R. §§ 1.106, 1.115, may be filed within 30 days of the date of the release of this Order. (*See* 47 C.F.R. § 1.4(b)(2).)

FEDERAL COMMUNICATIONS COMMISSION

Donald Abelson
Chief, International Bureau