

**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
	)	
Petition for Special Temporary Authority	)	File No. SAT-STA-19990416-00042
	)	
Application for Authority to Construct, Launch, and Operate a Trans-Atlantic Satellite System Positioned at 49° W.L.	)	File No. SAT-LOA-19870331-00061
	)	

**ORDER AND  
ORDER ON RECONSIDERATION**

Adopted: May 21, 2001

Released: May 22, 2001

By the Chief, International Bureau:

**I. INTRODUCTION**

1. By this Order, we deny in part and grant in part Columbia Communications Corporation's (Columbia's)<sup>1</sup> petition for reconsideration of the *Columbia Modification Order*.<sup>2</sup> In that Order, we denied Columbia's application to add Ku-band capacity to its authorized next-

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<sup>1</sup> After Columbia filed this petition for reconsideration, it transferred its assets to GE American Communications, Inc. (GE Americom) and is now operating as a wholly-owned subsidiary of GE Americom. GE American Communications, Inc., CCC Merger Sub, Inc., and Columbia Communications Corp., Application for Consent to Transfer of Space Station Licenses of Columbia Communications Corporation, Order and Authorization, 15 FCC Rcd 11590 (Int'l. Bur., 2000).

<sup>2</sup> Columbia Communications Corporation, Memorandum Opinion and Order, 15 FCC Rcd 15566 (Int'l Bur., 2000) (*Columbia Modification Order*).

generation fixed-satellite service (FSS) C-band satellite at 47° W.L.<sup>3</sup> In doing so, we allowed Loral Space & Communications Ltd. (Loral)<sup>4</sup> to retain its license to launch and operate a Ku-band FSS satellite at 47° W.L.<sup>5</sup> We uphold these decisions here. We grant Columbia's petition, however, to the extent that we authorize it to operate the C-band transponders on the National Aeronautics and Space Administration's (NASA's) TDRS-6 satellite, which is operating at the 47° W.L. orbit location, pursuant to regular authority. Columbia is now operating these transponders under a grant of special temporary authority (STA) only. Except for this narrow STA renewal issue, reversing the *Columbia Modification Order* would lead to the unjust revocation of Loral's space station license. Finally, we deny Columbia's application for Ku-band authority at 49° W.L.

## II. BACKGROUND

2. In 1996, the International Bureau (Bureau) granted Columbia Special Temporary Authority (STA) to lease C-band capacity on the TDRS-6 satellite, subject to coordination with adjacent satellite operators.<sup>6</sup> In January 1999, the Bureau granted Columbia authorization to launch and operate a new C-band satellite at 47° W.L. to replace the TDRS-6 satellite at its end-of-fuel life.<sup>7</sup>

3. In May 1999, Columbia requested that the Bureau revoke Loral's Ku-band authorization at 47° W.L., arguing that Loral was warehousing its authority.<sup>8</sup> Columbia sought to add this Ku-band capability to its C-band authorization at 47° W.L. To accomplish this, Columbia amended an application it filed in 1987 to construct, launch, and operate a Ku-band satellite at 49° W.L., to instead place that capacity at the 47° W.L. location.<sup>9</sup> In addition, Columbia sought to replace its existing STA to offer C-band service using the TDRS-6 satellite with a grant of regular authority. We denied these requests in the *Columbia Modification Order* in January 2000.

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<sup>3</sup> The conventional Ku-band is 11.7-12.2 GHz and 14.0-14.5 GHz. The conventional C-band is 3700-4200 MHz and 5925-6425 MHz.

<sup>4</sup> This license was previously held by Orion. Loral purchased Orion's assets in 1998. 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.

<sup>5</sup> *Columbia Modification Order*, 15 FCC Rcd at 15568-69 (para. 6).

<sup>6</sup> Columbia Communications Corporation, Order, 11 FCC Rcd 8639 (Int'l Bur. 1996) (*Columbia STA Order*).

<sup>7</sup> Columbia Communications Corporation, Order and Authorization, 14 FCC Rcd 3318 (1999) (*Columbia Authorization Order*).

<sup>8</sup> See *Columbia Modification Order*, 15 FCC Rcd at 15568-69 (paras. 5-7).

<sup>9</sup> See *Columbia Modification Order*, 15 FCC Rcd at 15568 (para. 4). Columbia filed its 1987 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*). Columbia requested that we keep its application in abeyance while the Freeze remained in effect.

4. Columbia requests that we to reconsider these decisions. Columbia maintains that the Bureau did not adequately consider evidence that casts doubt on whether Loral has met its construction commencement milestone, or whether Loral is likely to meet its construction completion or launch milestones. Loral opposes Columbia's petition, arguing that Columbia provides no reason for the Bureau to revisit its conclusions.<sup>10</sup>

### III. DISCUSSION

#### A. The Loral License

##### 1. Loral's Compliance with its Implementation Milestones

5. The Commission awarded Loral its license to construct, launch, and operate a Ku-band satellite at 47° W.L. in 1991. This license authorized Loral to provide international satellite services between the United States and other countries pursuant to the "separate system" framework then in effect. This framework recognized, among other things, that U.S. international satellite systems "separate" from INTELSAT would operate in those portions of the orbital arc best suited for international service. These orbit locations were to the east and west of the arc from which satellites could best provide domestic U.S. satellite service (domsats).<sup>11</sup> Because the "international" arc was significantly less congested than the "domestic" arc, the Commission did not impose satellite implementation milestones on separate system licensees, as it did on domsat licensees. Thus, Loral's 1991 license did not require it to meet specified deadlines for beginning construction, completing construction, and launching its satellite. It contained no other conditions allowing us to revoke the license on the basis of construction status.

6. The Commission eliminated the "separate system" framework in 1996, consolidating it into one uniform policy that would cover all U.S.-licensed FSS satellites. In doing so, it did not impose construction deadlines on previously licensed separate system satellites, such as the Loral satellite at 47° W.L. Nevertheless, when the Bureau granted Loral's application to add Ka-band capacity<sup>12</sup> to its planned satellite at the 47° W.L. in 1997, it included a milestone schedule as a condition of the new license.<sup>13</sup> This milestone schedule required Loral to commence construction of its hybrid Ku/Ka-band satellite by May 1998, to complete construction of the satellite by April 2002, and to launch the satellite by May 2002.<sup>14</sup> The license further provided that failure to meet any of these dates would render the license null and void. In response to a

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<sup>10</sup> The pleadings are listed in Appendix A. On July 14, 2000, Columbia filed a motion for leave to supplement its petition for reconsideration. Loral filed an opposition, and Columbia filed a reply. We grant Columbia's motion. We will treat Columbia's supplemental pleadings as *ex parte* statements and consider them in this Order.

<sup>11</sup> The Commission has licensed domestic satellites at locations as far east as 67° W.L. and as far west as 143° W.L.

<sup>12</sup> The Ka-band refers to frequencies in the 17.7-20.2 and 27.5-30 GHz bands.

<sup>13</sup> *Columbia Modification Order*, 15 FCC Rcd at 15568-69 (para. 5), *citing* 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, 1426 (para. 32) (Int'l Bur. 1997) (*Loral Modification Order*).

<sup>14</sup> *Loral Modification Order*, 13 FCC Rcd at 1426 (para. 32).

letter the Bureau sent to all Ka-band licensees,<sup>15</sup> Loral submitted a construction contract documenting that it had begun construction of its satellite as required. The Bureau found that the record in that proceeding supported a conclusion that Loral had met its construction commencement deadline.<sup>16</sup> Loral's next construction milestone is one year away -- in April 2002.

7. In its May 1999 application, Columbia noted that the Commission awarded Loral its Ku-band license in 1991. Columbia argued that Loral was warehousing the spectrum/orbit resource because Loral had not yet launched a Ku-band satellite.<sup>17</sup> While we do not sanction Loral's failure to build and launch a satellite that was authorized ten years ago, Loral has not violated any of the terms of its licenses, because there were no milestone requirements applied to Loral's 1991 license. Further, at the time Columbia asked us to revoke Loral's license, Loral had met its first required milestone by entering into contract with a satellite manufacturer to build its satellite. Thus, in the *Columbia Modification Order*, we determined that there was no basis on which to revoke Loral's Ku-band authority at 47° W.L. and to award that authority to Columbia.<sup>18</sup>

8. Columbia asks us to reconsider this decision. It raises several new arguments in support of its request to revoke Loral's Ku-band license and to award it the authority to operate in the Ku-band spectrum at 47° W.L. None of Columbia's arguments persuade us that there is a sufficient basis on which to overturn our previous decision and revoke Loral's satellite license.

## 2. The Construction Contract

9. To meet a construction commencement milestone, the licensee must enter into a binding, non-contingent contract.<sup>19</sup> Loral originally submitted a copy of its construction contract under a request for exemption from public disclosure under the Freedom of Information Act (FOIA).<sup>20</sup> In the *Columbia Modification Order*, the Bureau found that the contract demonstrated that Loral had begun construction as required.<sup>21</sup>

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<sup>15</sup> Letter from Thomas Tycz, Chief, Satellite and Radiocommunication Division, to Phillip L. Vermeer, Esq., Counsel for Loral (dated Dec. 9, 1999).

<sup>16</sup> *Columbia Modification Order*, 15 FCC Rcd at 15569 (para. 6).

<sup>17</sup> *Columbia Modification Order*, 15 FCC Rcd at 15568-69 (para. 5).

<sup>18</sup> *Columbia Modification Order*, 15 FCC Rcd at 15569 (para. 6).

<sup>19</sup> PanAmSat Licensee Corp., Memorandum Opinion and Order, 15 FCC Rcd 18720, 18722 (para. 8) (Int'l Bur. 2000) (*PanAmSat License Revocation Order*); Norris Satellite Communications, Inc., Memorandum Opinion and Order, 12 FCC Rcd 22299, 22303 (para. 8) (1997) (*Norris Review Order*).

<sup>20</sup> See FOIA Exemption 4, 47 U.S.C. § 552(b)(4), and Sections 0.457 and 0.459 of the Commission's rules, 47 C.F.R. §§ 0.457, 0.459.

<sup>21</sup> *Columbia Modification Order*, 15 FCC Rcd at 15569 (para. 6). In that Order, the Bureau also concluded that Columbia conceded that Loral's contract demonstrated construction commencement. *Columbia Modification Order*, 15 FCC Rcd at 15569 (para. 6). Columbia now explains that it conceded only that Loral had entered into a contract, not that the contract satisfies Loral's construction commencement milestone. Columbia Petition at 5-6. We now interpret Columbia's pleadings as not making any concession that Loral has met its construction commencement milestone. Nevertheless, we find that the record in the *Columbia Modification Order* and in this reconsideration proceeding cannot support a decision to revoke Loral's Ku-band authorization at 47° W.L.

10. Columbia now claims that Loral's contract does not support a conclusion that Loral met its construction commencement milestone. After the Bureau issued the *Columbia Modification Order*, Columbia filed a request to inspect Loral's construction contract.<sup>22</sup> In response, the Bureau provided Columbia with a redacted version of Loral's contract.<sup>23</sup> Columbia argued that the redacted version of the contract did not provide specifically for a Ku/Ka-band hybrid satellite, nor did it identify any of the orbital locations in which any of the four satellites to be built pursuant to the contract will be deployed.<sup>24</sup> Subsequently, Loral provided the Commission and Columbia with three pages from Exhibit B of its construction contract, disclosing some of the technical details for its planned satellite.<sup>25</sup>

11. Loral's construction contract provides for a specific payment schedule,<sup>26</sup> and specific penalties that would be incurred if Loral tried to cancel construction.<sup>27</sup> Furthermore, the additional information submitted by Loral specifies that one of the satellites included in the contract is a hybrid Ku/Ka-band satellite to be located at 47° W.L. Thus, Columbia has given us no reason to reverse our previous finding on the basis of the contract's language.<sup>28</sup>

12. Columbia notes, however, that Loral's spacecraft manufacturer is a corporate affiliate.<sup>29</sup> According to Columbia, the "close relationship" between the satellite operator and the manufacturer casts doubt on whether Loral has in fact entered a "binding" contract.<sup>30</sup> We will not, however, hold satellite operators that choose to contract with corporate affiliates to a different standard than that which we use to determine whether other manufacturing contracts are

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<sup>22</sup> Letter from John P. Stern, Counsel for Loral, to Magalie R. Salas, Secretary, FCC (Dec. 20, 1999).

<sup>23</sup> We determined that the redacted contract was responsive to Columbia's FOIA request, and therefore did not determine whether the remaining portions of Loral's contract warranted confidential treatment. Letter from Donald Abelson, Chief, International Bureau, FCC, to David S. Keir, Esq., Counsel for Columbia (May 12, 2000).

<sup>24</sup> Columbia Supplemental Petition at 3-4, 6-7, citing *Tempo Enterprises, Inc.*, Memorandum Opinion and Order, 1 FCC Rcd at 20, 21 (para. 7) (1986) (*Tempo Order*).

<sup>25</sup> Letter from John P. Stern, Counsel for Loral, to Andrew S. Fishel, Managing Director, FCC (Nov. 9, 2000) (*November 9 Letter*).

<sup>26</sup> See Loral Redacted Contract at 64.

<sup>27</sup> See Loral Redacted Contract at 16.

<sup>28</sup> See Letter from Donald Abelson, Chief, International Bureau, FCC, to David S. Keir, Counsel for Columbia (dated May 7, 2001). In that letter, we concluded that the information in the publicly disclosed portions of Loral's construction contract is sufficient to support our conclusion that Loral met its construction commencement milestone. We also found that the redacted portions of Loral's construction contract contain confidential information, and therefore should not be publicly disclosed under Exemption 4 of the Freedom of Information Act, 5 U.S.C. § 552(b)(4)).

<sup>29</sup> The satellite purchaser is Orion Network Services, Inc., and the manufacturer is Space Systems/Loral, Inc. See Loral Redacted Contract at 8.

<sup>30</sup> Columbia Supplemental Petition at 5.

"non-contingent." In fact, several other U.S. satellite licensees are affiliated with their manufacturers.<sup>31</sup> These licensees have built and launched over 20 satellites pursuant to their construction contracts. Nothing in Loral's manufacturing contract suggests the contract is not binding, nor has Columbia provided any evidence to support its assertion otherwise. Consequently, we will not revoke Loral's authorization on this basis.

### 3. Loral's Plans to Add Inter-Satellite Links

13. On January 4, 2000, Loral filed an application to incorporate inter-satellite links (ISLs) into its hybrid Ku/Ka-band satellite at 47° W.L., to enable that satellite to communicate directly with its other Ka-band satellites. The Bureau has granted this modification request.<sup>32</sup> In its modification application, Loral also requested an extension of the construction completion and launch milestones for its 47° W.L. satellite. That request is still pending.<sup>33</sup>

14. According to Columbia, Loral has shown, by requesting extensions of its construction *completion* and launch deadlines, that it did not meet its May 1998 construction *commencement* deadline. Alternatively, Columbia maintains that requesting a modification to add ISL frequencies to its contract implies that Loral is no longer making progress towards completing construction, and that any such lack of progress would justify revoking Loral's license now. Neither of Columbia's arguments justifies revocation of Loral's license.

#### a. Construction Commencement Milestone

15. Columbia has presented no evidence that Loral did not have a binding contract with its satellite manufacturer *before* it requested ISL frequencies. Indeed, given the three-year period generally required for satellite construction and the constantly evolving technology, licensees often request modifications to their satellites as they are being built. As noted, Loral's contract contained a specific payment schedule with specific penalties for cancellation. While portions of the contract may need to be amended in light of Loral's plans to incorporate ISLs, this does not affect the validity of the underlying contract.<sup>34</sup>

16. Nevertheless, Columbia contends that the *PanAmSat License Revocation Order* requires us to revoke Loral's license.<sup>35</sup> We disagree. In fact, in revoking PanAmSat's license for

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<sup>31</sup> Many Fixed-Satellite Service and Direct Broadcast Satellite Service satellites licensed to Hughes Communications Galaxy, Inc. and DIRECTV, Inc. have been built by their former affiliate, Hughes Space and Communications, now Boeing; Fixed-Satellites licensed to GE American Communications, Inc. are built by its corporate affiliate GE AstroSpace.

<sup>32</sup> Loral Space & Communications Corporation, Order and Authorization, DA 01-227 (released Jan. 31, 2001) (*Loral Corp. ISL Order*).

<sup>33</sup> *Loral Corp. ISL Order* at para. 5 n.16.

<sup>34</sup> We note that Columbia is currently authorized to launch and operate a satellite in the C-band at 47° W.L., and that Columbia requested authority to modify that license to add Ku-band capability to this satellite. Under Columbia's reasoning, the fact that it filed a modification application could justify revoking its C-band license.

<sup>35</sup> Columbia Supplemental Petition at 7-8, *citing* PanAmSat Licensee Corp., Memorandum Opinion and Order, 15 FCC Rcd 18720 (Int'l Bur. 2000) (*PanAmSat License Revocation Order*).

failure to begin required construction, we *rejected* PanAmSat's contention that it could not enter into a binding, non-contingent construction contract before we assigned it ISL frequencies.<sup>36</sup> We recognize that we did not include implementation milestone requirements in the licenses of those Ka-band licensees who requested ISL links before they were available for assignment. Rather, we deferred imposing milestones on these licensees until we awarded them ISL frequencies. This does not, however, suggest that it would not have been possible for these licensees to enter into a binding contract without ISL frequencies. GE Americom, for example, entered into a contract that did not include ISLs initially, but that provided that ISLs could be added later. Columbia has not presented any evidence that Loral's construction contract was not binding because Loral did not contemplate using ISLs at the time the contract was executed.

#### b. Construction Progress

17. Columbia recognizes that under Commission precedent, a binding contract with a definitive payment schedule is sufficient to constitute commencement of construction.<sup>37</sup> Columbia also argues that this is a lax standard, and that the Commission should ensure that licensees are making progress towards construction completion.<sup>38</sup> Columbia claims that, because Loral has requested ISL frequency assignments, it is probably no longer making progress towards completion of construction, and therefore we should revoke its license.<sup>39</sup> Columbia criticizes Loral for "provid[ing] no affirmative showing at all concerning progress toward construction of a satellite for 47° W.L."<sup>40</sup> Columbia requests that we require Loral to certify that it has actually begun construction, and to disclose the location of the facility where construction is taking place so that the Commission can conduct an on-site inspection.<sup>41</sup>

18. Columbia is, in effect, requesting us to insert a new condition into Loral's license. Columbia, however, fails to provide any basis for retroactively adding such a condition to Loral's license. In this regard, Columbia does not provide us with any evidence that Loral is *not* proceeding with construction. Loral's next milestone is in April 2002, when it is required to have completed construction of the satellite. At that time, we will evaluate Loral's compliance with this license condition. At this time, we will not retroactively modify Loral's license to require it to make any additional certifications regarding its progress, nor will we require Loral to permit us to make any on-site inspections of its construction facilities to determine construction progress on this satellite.

#### 4. Loral Press Release

19. In its Reconsideration Petition, Columbia submits a press release issued by Loral in which Loral discusses its plans for its Ka-band licenses, but does not mention specifically its

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<sup>36</sup> *PanAmSat License Revocation Order*, 15 FCC Rcd at 18722 (para. 7), 18723 (para. 10).

<sup>37</sup> Columbia Supplemental Reply at 5, *citing* GE American Communications, Memorandum Opinion and Order, 7 FCC Rcd 5169, 5169 n.7 (Com. Car. Bur., 1992); *Tempo Order*, 1 FCC Rcd at 21 (para. 7).

<sup>38</sup> Columbia Supplemental Reply at 5-6.

<sup>39</sup> Columbia Supplemental Reply at 6-7.

<sup>40</sup> Columbia Reply at 2-3.

<sup>41</sup> Columbia Supplemental Reply at 8-9.

plans for its Ku/Ka-band license at 47° W.L. According to Columbia, because the 47° W.L. location was not discussed, "the Loral press release leaves no doubt that the company does not intend to launch a Ku/Ka-band satellite at 47° W.L. within any timeframe resembling the milestone schedule contained in its authorization."<sup>42</sup> Loral states that the press release was not intended as an exhaustive list of the orbital locations Loral is currently developing.<sup>43</sup>

20. The Commission does not require Loral to issue press releases, and does not require Loral to highlight its plans for any particular orbit location when it chooses to issue press releases. We cannot revoke a license because Loral did *not* state something in a press release or on the speculation that it may not meet a future launch milestone, in a case where it has met all of its milestones to date.

## 5. Loral Prospectus

21. Columbia also asserts that in the *Columbia Modification Order*, the Bureau did not adequately consider a 1997 prospectus Loral filed with the Securities and Exchange Commission. Columbia had submitted the Loral prospectus in conjunction with its revocation petition. Columbia maintains that the prospectus "contained significant evidence that [Loral] had effectively abandoned plans to develop the 47° W.L. orbital location during *any reasonable timeframe*."<sup>44</sup>

22. We agree with Columbia that a considerable amount of time had passed between Loral's 1991 authorization and its 1997 prospectus. As we noted in the *Columbia Modification Order*, however, the passage of time by itself does not warrant revoking Loral's authorization.<sup>45</sup> Loral had not then missed a required construction milestone and, since that time, has met the construction commencement milestone contained in its modified 1997 license.<sup>46</sup> Columbia provides no reason for the Bureau to revisit this conclusion.

## 6. Other Issues

23. In its May 1999 application, Columbia asserted that Loral's Ku-band authorization at 47° W.L. violated the Commission's policy limiting satellite operators to two satellites per region, and sought revocation of Loral's authorization on this basis.<sup>47</sup> We rejected Columbia's argument on both procedural and substantive grounds. On procedural grounds, we noted that the Commission had granted Loral its third license for a satellite in the Atlantic Ocean Region

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<sup>42</sup> Columbia Petition at 8-10.

<sup>43</sup> Loral Opposition at 4.

<sup>44</sup> Columbia Petition at 3-4 (emphasis added).

<sup>45</sup> *Columbia Modification Order*, 15 FCC Rcd at 15569 (para. 6).

<sup>46</sup> *Columbia Modification Order*, 15 FCC Rcd at 15569 (para. 6).

<sup>47</sup> See *Columbia Modification Order*, 15 FCC Rcd at 15570 (para. 8). For more on the Commission's orbital assignment policy, see 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).

(AOR), at 12° W.L. in 1995.<sup>48</sup> We concluded that Columbia should have raised any argument about excessive orbit locations in the context of the *1995 Loral Order* and that raising it now constituted a late-filed petition for reconsideration of the *1995 Loral Order*. This cannot justify revoking Loral's 1991 license for a satellite at 47° W.L.<sup>49</sup> On substantive grounds, we found that Loral's third license in the Atlantic Ocean Region comported with the Commission's orbital assignment policy, which allows us to authorize additional satellites to an operator whose licensed satellites are essentially filled.<sup>50</sup> The policy also allows us to authorize satellites at more than two locations in cases where the applicant proposes to provide service to more than one region of the world.<sup>51</sup>

24. In its petition for reconsideration, Columbia does not question the Bureau's procedural grounds for rejecting its argument regarding the number of orbit locations assigned to Loral. Thus, we have no grounds for revisiting our conclusion that Columbia's argument is, in effect, a late-filed petition for reconsideration of the *1995 Loral Order* authorizing Loral to build its third satellite at 12° W.L.

25. Even if we were to consider further Columbia's arguments regarding the Commission's orbit assignment policies, we still would have no basis for reversing the decision in the *Columbia Modification Order*. Columbia's argument that we incorrectly awarded Loral a third orbit location at 12° W.L. in 1995 has nothing to do with the satellite license at issue in this proceeding -- Loral's 1991 license to construct and launch a satellite into 47° W.L. Columbia does not refute that the Commission's rules permit us to assign up to two initial orbit locations in each frequency band to each applicant.<sup>52</sup> The Bureau granted Loral a license for its first two satellites in the Atlantic Ocean Region, at 37.5° W.L. and 47° W.L., in 1991.<sup>53</sup> We granted Loral a license for its third AOR satellite, at 12° W.L., in 1995. Consequently, any challenge Columbia makes to the number of orbit assignments we awarded to Loral is relevant only to Loral's *third* satellite and would not support a finding that we should revoke any one of Loral's *initial* two satellite licenses.

## B. Columbia's Application for Ku-band Authority

26. Because we found no basis on which to revoke Loral's Ku-band authority at 47° W.L. in the *Columbia Modification Order*, we denied Columbia's application to add Ku-band capability to its authorized C-band satellite at 47° W.L. We did so without reaching any of

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<sup>48</sup> *Columbia Modification Order*, 15 FCC Rcd at 15570 (para. 8), citing 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) (*1995 Loral Order*).

<sup>49</sup> *Columbia Modification Order*, 15 FCC Rcd at 15570 (para. 8).

<sup>50</sup> *Columbia Modification Order*, 15 FCC Rcd at 15570 (para. 9), citing 47 C.F.R. § 25.140(f); *Separate Systems Order*, 101 FCC 2d at 1174-75 (para. 261).

<sup>51</sup> *Columbia Modification Order*, 15 FCC Rcd at 15570 (para. 9), citing *Separate Systems Order*, 101 FCC 2d at 1174 (para. 260).

<sup>52</sup> 47 C.F.R. § 25.140(e).

<sup>53</sup> Orion Satellite Corporation, *Order*, 6 FCC Rcd 4201 (1991).

Columbia's arguments in support of its application.<sup>54</sup> Because we affirm our decision regarding Loral's license here, we also affirm our decision to deny Columbia's modification application. Regardless of the merits of Columbia's application, the Ku-band capacity at the 47° W.L. is not available for assignment to Columbia or any other applicant at this time.

### C. Columbia's Authority to Provide C-Band Service

27. Since July 1996, Columbia has been providing C-band service via leased capacity on TDRS-6 pursuant to a series of STA grants. These grants included a waiver of the Commission's full frequency re-use requirements.<sup>55</sup> In its modification application, Columbia requested us to grant it regular authority to operate the C-band transponders on the TDRS-6 satellite until replaced by the authorized replacement satellite for that location.<sup>56</sup> It argued that such grant would be in the public interest because it would facilitate continued service to its TDRS-6 customers. Columbia also maintained that such authority would eliminate the need to file STA renewal requests every six months.<sup>57</sup> We denied Columbia's request. We found that because the TDRS-6 satellite does not comply fully with the Commission's technical requirements, we wanted to retain the opportunity to review periodically whether an additional STA grant would continue to serve the public interest.<sup>58</sup>

28. Columbia seeks reconsideration of this decision. Columbia denies that there is any need to review interim use of TDRS-6, because the STA will not expire until the satellite regularly assigned to 47° W.L. is launched into that location. In addition, Columbia notes that we granted PanAmSat similar authority in October 1999.<sup>59</sup> Columbia suggests that we condition its authority on it meeting the construction milestones contained in its license to launch its next-generation Ku-band satellite into 47° W.L.<sup>60</sup>

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<sup>54</sup> *Columbia Modification Order*, 15 FCC Rcd at 15571 (para. 10).

<sup>55</sup> *Columbia STA Order*, 11 FCC Rcd 8639; *Columbia Modification Order*, 15 FCC Rcd at 15572 (para. 13). 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. 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, 598 n.67 (1983) (*Reduced Orbital Spacing*). See also Establishment of Satellite Systems Providing International Communications, Report and Order, CC Docket No. 84-1299, 101 FCC 2d 1046, 1168-69 (para. 248) (1985) (*Separate Systems Order*); Columbia Communications Corporation, Memorandum Opinion, Order, and Authorization, 7 FCC Rcd 122, 126 n.14 (1991) (*TDRS Order*). Essentially, full frequency reuse doubles the capacity of a space station.

<sup>56</sup> *Columbia Modification Order*, 15 FCC Rcd at 15573 (para. 15).

<sup>57</sup> *Columbia Modification Order*, 15 FCC Rcd at 15573 (para. 15).

<sup>58</sup> *Columbia Modification Order*, 15 FCC Rcd at 15573 (para. 16).

<sup>59</sup> Columbia Petition at 15, citing PanAmSat Corporation, Request for Special Temporary Authority to Operate a Space Station at 60° W.L., Order and Authorization, DA 99-2220 (released Oct. 26, 1999) (*PanAmSat Order*) at para. 11.

<sup>60</sup> Columbia Petition at 15.

29. We agree that if we condition any grant of authority on Columbia implementing its replacement satellite in accordance with the milestone requirements for that satellite, we do not need to revisit Columbia's current operating authority for the TDRSS-6 satellite every six months. Accordingly, we reverse our previous decision and grant Columbia interim authority to continue to operate the C-band transponders on TDRS-6 at 47° W.L. until the Columbia satellite regularly licensed to that location is launched. In granting Columbia this conditional authorization, we emphasize that this authority will terminate if Columbia does not implement its follow-on satellite in accordance with its required implementation milestones.

#### **D. Columbia's Application for Authority to Operate at 49° W.L.**

30. The procedural vehicle Columbia used to request Ku-band authority at 47° W.L. was an amendment to an application it filed in 1987 to construct, launch, and operate a Ku-band satellite at 49° W.L., to instead place that capacity at the 47° W.L. location.<sup>61</sup> Columbia filed its 1987 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. Columbia requested that we keep its application in abeyance while the freeze remained in effect.

31. By filing an amendment to an application, the applicant in effect replaces its original application with a new amended application. The Commission is then examining the entire application as amended. Thus, the Bureau's denial of Columbia's amendment application subsumed Columbia's original 1987 license application. Accordingly, when we denied Columbia's amended application, we in effect also denied its request for Ku-band authority at 49° W.L.

32. Furthermore, we could not have granted Columbia Ku-band authority to operate in the Ku-band at 49° W.L. even if Columbia had not amended its application. INTELSAT operates a Ku-band satellite at 50° W.L.<sup>62</sup> Thus, granting Columbia's application would cause harmful interference to INTELSAT's authorized satellite system in contravention of the Commission's two-degree spacing policy.<sup>63</sup> Furthermore, we could not require INTELSAT to accommodate Columbia by relocating its satellite from 50° W.L. to 51° W.L. without creating coordination issues involving foreign administrations.<sup>64</sup>

#### **IV. ORDERING CLAUSES**

33. Accordingly, IT IS ORDERED, pursuant to Sections 4(i), 301, 302, 303(e), 303(f), 303(r), 304, and 307 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 301, 302, 303(e), 303(f), 303(r), 304, 307, and Section 1.106 of the Commission's rules, 47 C.F.R. §

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<sup>61</sup> See *Columbia Modification Order*, 15 FCC Rcd at 15568 (para. 4).

<sup>62</sup> See Applications of INTELSAT LLC for Authority to Operate, and to Further Construct, Launch, and Operate C-Band and Ku-band Satellites That Form a Global Communications System in Geostationary Orbit, Memorandum Opinion, Order and Authorization, 15 FCC Rcd 15460 (2000) (*INTELSAT Licensing Order*).

<sup>63</sup> See 47 C.F.R. § 25.140(a)(2). See also 47 C.F.R. § 25.273(a)(3) (prohibiting transmissions that cause unacceptable interference to the authorized transmissions of another licensee).

<sup>64</sup> *INTELSAT Licensing Order*, 15 FCC Rcd at 15495 n.243.

1.106, that the petition for reconsideration filed by Columbia Communications Corporation on February 22, 2000, IS GRANTED IN PART, to the extent indicated above, and otherwise IS DENIED.

34. IT IS FURTHER ORDERED that the Motion for Leave to Supplement Petition for Partial Reconsideration, filed by Columbia Communications Corporation on July 14, 2000, IS GRANTED.

35. IT IS FURTHER ORDERED, pursuant to Section 309 of the Communications Act of 1934, as amended, 47 U.S.C. § 309, and Section 0.261 of the Commission's rules, 47 C.F.R. § 0.261, that Columbia Communications Corporation IS GRANTED authority to lease capacity on the TDRS-6 satellite at 47° W.L. to provide fixed-satellite service in the C-band. This authority will terminate on the earlier of: (a) the date on which the regularly authorized C-band satellite is launched to the 47° W.L. orbit location, or (b) the date on which Columbia fails to comply with any of its implementation milestones for its authorized follow-on C-band at 47° W.L. as contained in the *Columbia Authorization Order*, 14 FCC Rcd 3318 (1999), and as modified in the Letter from Thomas S. Tycz, Chief, Satellite and Radiocommunication Division, International Bureau, to Raul R. Rodriguez, Counsel for Columbia (dated April 5, 1999).

36. IT IS FURTHER ORDERED that Application No. SAT-LOA-19870331-00061, filed by the Columbia Communications Corporation, IS DENIED.

37. This Order is effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

Donald Abelson  
Chief, International Bureau

**APPENDIX A**

- Columbia Petition for Partial Reconsideration, filed Feb. 22, 2000 (Columbia Petition)
- Opposition of Loral Space & Communications Ltd., filed Mar. 8, 2000 (Loral Opposition)
- Columbia Reply to Opposition, filed Mar. 20, 2000 (Columbia Reply)
- Columbia Supplement to Petition for Partial Reconsideration, filed July 14, 2000 (Columbia Supplemental Petition)
- Opposition of Loral Space and Communications Ltd., filed July 27, 2000 (Loral Supplemental Opposition)
- Columbia Reply to Opposition, filed Aug. 8, 2000 (Columbia Supplemental Reply)