

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Loral Space & Communications Corporation)	
)	
Request for Extension of Time to Construct, Launch, and Operate a Ka-band Satellite System in the Fixed-Satellite Service)	File Nos. SAT-MOD-20000104-00042/43/44/45
)	

ORDER

Adopted: May 24, 2001

Released: May 25, 2001

By the Chief, International Bureau:

I. INTRODUCTION

1. With this *Order*, we deny Loral Space & Communications Corporation's ("Loral Corp.'s") request to extend the construction completion and launch milestones applicable to its licenses to launch and operate a satellite system in the geostationary-satellite orbit ("GSO") to provide fixed-satellite service ("FSS") in a portion of the Ka-band.¹ Loral Corp.'s request to delay construction and launch of these satellites as authorized is not due to circumstances beyond its control, nor to any other factor that would justify providing it with more time to hold these scarce orbital resources to the exclusion of others.

II. BACKGROUND

2. In May 1997, as part of the first Ka-band processing round, the International Bureau ("Bureau") issued two licenses to Loral Corp.'s predecessors in interest, Orion Network Systems, Inc. ("Orion Network") and Orion Atlantic, L.P. ("Orion Atlantic") (collectively, "Orion"), to launch and operate a GSO satellite system to provide FSS in the Ka-band.² The *Orion Network License* and the *Orion Atlantic License* (collectively, the "*Orion Licenses*") authorized Orion to operate in the Ka-band at four orbit locations.³ In March 1998, pursuant to Bureau authority, Orion transferred control of the *Orion Licenses* to another first Ka-band processing round licensee, Loral Space & Communications Ltd. ("Loral

¹ The Ka-band refers to the Earth-to-space (uplink) frequencies at 27.5-30.0 GHz and the corresponding space-to-Earth (downlink) frequencies at 17.7-20.2 GHz.

² *Orion Network Systems, Inc.*, Order and Authorization, 12 FCC Rcd 23027 (Int'l Bur. 1997) ("*Orion Network License*") and *Orion Atlantic, L.P.*, Order and Authorization, 13 FCC Rcd 1416 (Int'l Bur. 1997) ("*Orion Atlantic License*"), each modified by *Loral Space & Communications Corporation*, Order and Authorization, 16 FCC Rcd 2481 (Int'l Bur. 2001) ("*Loral Space ISL Order*").

³ These orbit locations are at 89° W.L., 81° W.L., 47° W.L., and 78° E.L.

Ltd.”).⁴ Loral Ltd.’s license (the “*CyberStar License*”), also issued in May 1997, authorized Loral Ltd. to operate in the Ka-band at three orbit locations.⁵ Through a series of subsequent *pro forma* transactions, the *Orion Licenses* are currently held by Loral Corp., and the *CyberStar License* is currently held by CyberStar Licensee LLC (“CyberStar”).⁶

3. As in all other satellite services, Ka-band licensees are required to adhere to a strict timetable for system implementation. However, some of the first Ka-band processing round applicants, such as Loral Ltd. (now CyberStar), initially proposed to operate inter-satellite links (“ISLs”) among multiple satellites in a constellation.⁷ When we granted the *CyberStar License*, there was no suitable spectrum allocated for ISL operations, and we deferred assigning the ISL frequencies.⁸ Consequently, we issued the *CyberStar License* without implementation milestones, stating that we would impose a strict milestone schedule once ISL frequencies were authorized.⁹ Since Orion (now Loral Corp.)’s initial applications did not contemplate the use of ISLs, the *Orion Licenses* included system implementation milestones as a condition of licensing, as follows: satellite construction to begin by May 1998, construction to be completed by April 2002, and the satellites to be launched by May 2002.¹⁰

4. On December 9, 1999, we contacted Loral Corp. and CyberStar with separate letter requests for information. The letter to Loral Corp. requested that it submit a copy of any executed non-contingent contracts that would verify that it had met its first implementation milestone by commencing satellite construction by May 1998, and that its satellites would be built within the time frame specified in its licenses.¹¹ On December 20, 1999, Loral Corp. submitted a copy of the requisite contract for construction and launch site delivery of four Ka-band satellites.¹² The letter to CyberStar requested that it submit detailed information on its proposed ISL operation.¹³ On January 4, 2000, CyberStar submitted its

⁴ See *Loral Space & Communications Ltd. and Orion Network Systems, Inc., et al.*, Order and Authorization, 13 FCC Rcd 4592 (Int’l Bur. 1998) (“*Loral/Orion Merger Order*”); Letter from Laurence D. Atlas, Vice President, Government Relations, Telecommunications, Loral Space & Communications Ltd. to Magalie R. Salas, Secretary, FCC (April 1, 1998) (notifying the Commission that the Loral/Orion merger consummated on March 20, 1998).

⁵ These orbit locations are at 115° W.L., 93° W.L., and 105.5° E.L. See *Loral Space & Communications Ltd.*, Order and Authorization, 13 FCC Rcd 1379 (Int’l Bur. 1997) (“*CyberStar License*”), modified, *CyberStar Licensee LLC*, Order and Authorization, 16 FCC Rcd 2442 (Int’l Bur. 2001) (“*CyberStar Milestone Order*”).

⁶ See *Loral Space ISL Order*, 16 FCC Rcd at 2482 ¶ 2 & nn.7-8.

⁷ ISLs are communication links between in-orbit satellites. ISLs operate in spectrum allocated to the inter-satellite service. International Telecommunication Union (“ITU”) Radio Regulation S1.22.

⁸ *CyberStar License*, 13 FCC Rcd at 1386-87 ¶¶ 24-26.

⁹ *Id.*, 13 FCC Rcd at 1387-88 ¶ 27.

¹⁰ *Orion Network License*, 12 FCC Rcd at 23037 ¶ 31; *Orion Atlantic License*, 13 FCC Rcd at 1426 ¶ 32.

¹¹ See Letter from Thomas S. Tycz, Chief, Satellite and Radiocommunication Division, FCC to Philip L. Verveer, Counsel for Loral Orion Network Systems, Inc. and Orion Atlantic, L.P. (December 9, 1999).

¹² See Letter from John P. Stern, Associate General Counsel, Loral Space & Communications Ltd. to Magalie R. Salas, Secretary, FCC (December 20, 1999) (confidential treatment of attachment requested).

¹³ See Letter from Thomas S. Tycz, Chief, Satellite and Radiocommunication Division, FCC to Philip L. Verveer, Counsel for CyberStar Licensee LLC (December 9, 1999).

detailed ISL proposal.¹⁴ That same day, January 4, 2000, Loral Corp. filed applications to modify the *Orion Licenses* to permit the use of ISLs, attaching CyberStar's detailed ISL proposal as its own.¹⁵ According to Loral Corp., employing ISLs would permit the four satellites authorized by the *Orion Licenses* to communicate directly with each other, and with CyberStar's three Ka-band satellites.¹⁶

5. In conjunction with the newly-filed request for ISLs, Loral Corp. also requested that the Commission extend the construction and launch milestones associated with the *Orion Licenses* to conform them to CyberStar's milestones, once imposed.¹⁷ On January 31, 2001, we assigned CyberStar its requested ISL spectrum and imposed system implementation milestones as a condition of licensing, as follows: satellite construction to begin by January 2002, and the satellites to be launched and operational by June and July 2005.¹⁸ On January 31, 2001, we also assigned Loral Corp. its requested ISL spectrum, but deferred consideration of Loral Corp.'s request to synchronize its remaining milestones with CyberStar's milestones.¹⁹ This *Order* disposes of Loral Corp.'s milestone extension request.

III. DISCUSSION

6. Loral Corp. states that by employing ISLs, it can operationally integrate its system with the CyberStar system, thereby enhancing the performance of the Loral-affiliated Ka-band satellite constellation.²⁰ Loral Corp. contends that the addition of the ISLs for this purpose warrants that the remaining milestones associated with the *Orion Licenses* (*i.e.*, April and May 2002) be extended an additional three years to comport with those imposed on CyberStar (*i.e.*, June and July 2005).²¹ We deny Loral Corp.'s request. The milestone schedule, included as a condition of space station authorizations, is designed to ensure that licensees are proceeding with construction and will launch their satellites in a timely manner.²² Requiring licensees to adhere strictly to a milestone schedule prevents increasingly scarce orbital resources from being warehoused by licensees.²³ 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

¹⁴ See Letter from Jennifer D. McCarthy, Counsel for CyberStar Licensee LLC to Magalie Roman Salas, Secretary, Federal Communications Commission (January 4, 2000) ("CyberStar ISL Letter").

¹⁵ See Loral CyberStar, Inc. Applications for Modification at 3-4, File Nos. SAT-MOD-20000104-00042/43/44/45 (January 4, 2000) ("ISL Modification Applications"). See also Public Notice, Report No. SAT-00036 (rel. February 8, 2000).

¹⁶ ISL Modification Applications at 1, 3-4 & Exhibit 1 (attaching CyberStar ISL Letter at 1).

¹⁷ *Id.* at 2, 5-6.

¹⁸ *CyberStar Milestone Order*, 16 FCC Rcd at 2451 ¶ 24, 2452 ¶ 29.

¹⁹ *Loral Space ISL Order*, 16 FCC Rcd at 2483 n.16, 2485-86 ¶ 10, 2488 ¶ 16.

²⁰ ISL Modification Applications at 3-4.

²¹ *Id.* at 5-6.

²² See, e.g., *Columbia Communications Corporation*, Memorandum Opinion and Order, 15 FCC Rcd 15566, 15571 ¶ 11 (Int'l Bur. 2000) ("*Columbia MO&O*").

²³ *Id.*

proceed immediately with the construction and launch of their satellite systems.²⁴ Accordingly, extensions of the milestone schedule are granted only when delay in implementation is due to circumstances beyond the licensee's control.²⁵

7. The Commission has repeatedly determined that requesting a license modification is a business decision wholly within the discretion and control of the licensee, and so, is not a circumstance beyond the licensee's control.²⁶ Further, extending milestones on this basis would allow licensees to "extend indefinitely their nonperformance by repeated modifications of their proposals."²⁷ This in turn could facilitate warehousing of scarce orbital resources or, at a minimum, delay service to the public. Loral Corp. made a business decision to merge with Orion in 1998, aware that the *Orion Licenses'* milestones began to run in May 1997.²⁸ Yet, Loral Corp. waited until January 2000 – nearly two years after consummating the merger with Orion – to request ISLs and milestone extensions for the Orion satellites. Moreover, Loral Corp. requested the ISLs, and the associated milestone extensions, only after the Bureau sought to verify the status of the Orion satellites' construction. There is nothing in the record to explain why it took two years and a milestone compliance letter from the Bureau for Loral Corp. to apply for ISLs to integrate the Orion satellites with its affiliated CyberStar system. This business decision may enhance the interoperability of its satellite assets, as Loral Corp. suggests, but does not constitute a circumstance beyond Loral Corp.'s control. Therefore, we find no good cause for deferring Loral Corp.'s milestone schedules set forth in the *Orion Licenses*.²⁹

²⁴ *Id.*

²⁵ *Id.*; see also *National Exchange Satellite, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 1990, 1991 ¶ 8 (Com. Car. Bur. 1992); *Hughes Communications Galaxy, Inc.*, Order and Authorization, 5 FCC Rcd 3423, 3424 ¶ 10 (Com. Car. Bur. 1990); *MCI Communications Corporation*, Memorandum Opinion and Order, 2 FCC Rcd 233, 233 ¶ 5 (Com. Car. Bur. 1987) ("*MCI Order*").

²⁶ See, e.g., *Columbia MO&O*, 15 FCC Rcd at 15571 ¶ 12; *Columbia Communications Corporation*, Memorandum Opinion and Order, 15 FCC Rcd 16496, 16497-98 ¶ 5 (Int'l Bur. 2000); *Advanced Communications Corporation*, Memorandum Opinion and Order, 10 FCC Rcd 13337, 13341 ¶ 14 (Int'l Bur. 1995) ("*Advanced Order*"). Cf. *Advanced Communications Corporation*, Memorandum Opinion and Order, 11 FCC Rcd 3399, 3417 ¶ 45 (1995) (delay related to negotiations with potential investors does not constitute circumstances beyond the licensee's control); *American Telephone and Telegraph Company and Ford Aerospace Satellite Services Corporation*, Memorandum Opinion and Order, 2 FCC Rcd 4431, 4433-34 ¶ 21 (1987) (delay due to construction contract negotiation does not constitute circumstances beyond the licensee's control).

²⁷ *Advanced Order*, 10 FCC Rcd at 13341 ¶ 14 (quoting *Tempo Enterprises, Inc.*, Memorandum Opinion and Order, 1 FCC Rcd 20 (1986)).

²⁸ *Accord MCI Order*, 2 FCC Rcd at 234 ¶ 7 (mergers do not justify extension of milestones).

²⁹ *But see GE American Communications, Inc.*, Order, DA 01-1286 (Int'l Bur. rel. May 25, 2001) (granting GE Americom a waiver of its remaining construction and launch milestones because, *inter alia*, GE Americom requested its ISLs and associated milestone extension a few days after actions taken at the World Radiocommunication Conference in November 1997 (WRC-97) made ISL frequencies available internationally, and a review of its construction contract shows that ISLs were contemplated in the early stages of system design).

IV. CONCLUSION AND ORDERING CLAUSE

8. Based on the foregoing, we deny Loral Corp.'s request to extend the construction completion and launch milestones applicable to the satellites authorized by the *Orion Licenses*. Failure to meet the remaining milestones as set forth in the *Orion Licenses* will automatically render the authorizations for these satellites null and void without further Commission action.

9. Accordingly, IT IS ORDERED that, pursuant to Section 0.261 of the Commission's rules, 47 C.F.R. § 0.261, the request to defer milestones filed by Loral Space & Communications Corporation on January 4, 2000, File Nos. SAT-MOD-20000104-00042/43/44/45, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Donald Abelson
Chief, International Bureau