

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

In the Matter of
Application of
Loral Space & Communication Ltd.,
f/k/a Orion Atlantic, L.P.,
for Authority to Launch and Operate
a Hybrid Ku-band/C-band Satellite
System at the 37.5° W.L. Orbit Location
File No. SAT-LOA-19980508-00043

MEMORANDUM OPINION AND ORDER

Adopted: June 18, 2001

Released: June 19, 2001

By the Chief, International Bureau:

I. INTRODUCTION

1. By this Order, we grant Loral Space & Communication Ltd. (Loral) authority to launch and operate a Ku-band satellite at the 37.5° W.L. orbit location to replace the satellite now operating at that location, which is nearing its end-of-life. We deny Loral's application, however, to the extent that it seeks to operate the satellite in the C-band as well. By this action, we enable Loral to provide the certainty of service continuity to its Ku-band customers, without impacting service being provided from the 37.7° W.L. orbit location by another U.S.-licensed space station.

II. BACKGROUND

2. Loral has been operating a Ku-band satellite at the 37.5° W.L. orbit location since 1994. In May 1998, Loral filed an application for authority to launch and operate a replacement

1 The license application we address in this Order was filed by Loral's predecessor in interest, Orion Atlantic L.P. (Orion). Orion and Loral merged 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 consistency, we refer to this company as "Loral" throughout this Order.

2 For purposes of this Order, "Ku-band" denotes the 11.7-11.95 GHz (Region 2), 12.5-12.75 GHz (Region 1), and 14.0-14.5 GHz frequency bands.

3 For purposes of this Order, "C-band" denotes the 3700-4200 MHz and 5925-6425 MHz frequency bands.

4 See Columbia Communications Corporation, Memorandum Opinion and Order, DA 01-1426 (Int'l Bur., released June 19, 2001) (Columbia Southern Hemisphere Order). See also Orion Satellite Corporation, Request for Final Authority to Construct, Launch, and Operate an International

satellite to provide follow-on Ku-band service at 37.5° W.L. It also sought authority to add C-band capacity to that satellite.<sup>5</sup>

3. Shortly before Loral filed its application for a hybrid C/Ku-band satellite, Columbia Communications Corporation (Columbia)<sup>6</sup> and INTELSAT resolved a long-standing coordination dispute regarding C-band operations at 41° W.L. Under the coordination agreement, INTELSAT was to operate at 41° W.L. and Columbia was to terminate its existing C-band operations at that location. In return, INTELSAT would transfer its INTELSAT 515 satellite to Columbia, which would then operate as Columbia 515 at 37.7° W.L.<sup>7</sup> Columbia subsequently filed a modification application to implement the agreement. Loral opposed Columbia's modification application, claiming, among other things, that Columbia's proposed operations at 37.7° W.L. would conflict with Loral's planned C-band operations at 37.5° W.L. The Bureau found that there was no basis for concluding that C-band authority at this location was reserved to Loral, and granted Columbia's application to operate the Columbia 515 C-band satellite at 37.7° W.L.<sup>8</sup>

4. In light of this decision, we invited comment on only the Ku-band portion of Loral's hybrid C/Ku-band space station application. Columbia and Orbital Resources, LLC (Orbital) filed petitions to deny Loral's application,<sup>9</sup> arguing in part that Loral filed its application to preclude our consideration of Columbia's Ku-band application to serve South America from 37.7° W.L.<sup>10</sup>

### III. DISCUSSION

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Communications Satellite System, *Memorandum Opinion, Order, and Authorization*, 5 FCC Rcd 4937 (1990) (*Loral Technical Requirements Order*) (concluding that Loral had satisfied the Commission's technical requirements for satellite licensees, and directing Loral to demonstrate its financial qualifications); Orion Satellite Corporation, Request for Final Authority to Construct, Launch, and Operate an International Communications Satellite System, *Order*, 6 FCC Rcd 4201 (1991) (*Loral Authorization Order*) (concluding that Loral had adequately demonstrated its financial qualifications and authorizing it to operate a Ku-band satellite at 37.5° W.L.).

<sup>5</sup> Currently, Loral is providing Ku-band service only to the Northern Hemisphere. Loral plans to provide service to the Northern and Southern Hemispheres with its replacement satellite. Loral Application at 3-4.

<sup>6</sup> On June 27, 2000, the International Bureau (Bureau) granted Columbia's application to merge with GE American Communications, Inc. (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). For consistency, we refer to this company as "Columbia" throughout this Order.

<sup>7</sup> Columbia Communications Corporation, *Memorandum Opinion, Order, and Authorization*, 13 FCC Rcd 17772 (Int'l Bur. 1998) (*Columbia 1998 Modification Order*).

<sup>8</sup> *Columbia 1998 Modification Order*, 13 FCC Rcd at 17777 (para. 13).

<sup>9</sup> Loral filed an opposition to these petitions on April 26, 2001. Columbia and Orbital filed replies to Loral's opposition on May 4, 2001.

<sup>10</sup> We address Columbia's application in a separate Order adopted concurrently with this Order. *Columbia Southern Hemisphere Order*.

5. We grant Loral's application to the extent that it seeks authority to operate in the Ku-band at the 37.5° W.L. orbit location. We deny Loral's application to the extent that it seeks to operate in the C-band at that location, because such authority would conflict with Columbia's C-band authorization at the 37.7° W.L. orbit location. We explain these decisions below.

**A. Orbital's Standing**

6. Orbital is a company formed by the former shareholders of Columbia, who sold their interests in Columbia to GE Americom.<sup>11</sup> Orbital states that it has an interest in this proceeding because its shareholders retained a financial interest in the pending Columbia application.<sup>12</sup> Loral asserts that Orbital has not explained its financial interest sufficiently to show that it has standing to participate in this proceeding.<sup>13</sup> We do not need to resolve this issue here. Instead, we assume for the sake of argument that Orbital has standing, and dismiss its petition on substantive grounds as discussed below.

**B. Ku-band Authority**

7. The Commission has stated that, given the huge costs of building and operating satellite space stations, there should be some assurance that operators will be able to continue to serve their customers.<sup>14</sup> The Commission has therefore stated that, when the orbit location remains available for a U.S. satellite with the technical characteristics of the proposed replacement satellite, it will generally authorize the replacement satellite at the same location.<sup>15</sup> It has also acted on applications for replacement satellites as they are filed, without consolidating them into a processing group.<sup>16</sup> Loral's application demonstrates that it is legally<sup>17</sup> and financially<sup>18</sup> qualified to construct, launch, and operate a satellite for a year. Consequently, we find that granting authority to Loral to operate a replacement satellite in the Ku-band from the 37.5° W.L. orbit location furthers the public interest, convenience, and necessity.

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<sup>11</sup> Orbital Petition at 1-2.

<sup>12</sup> Orbital Petition at 1-2; Orbital Reply at 2-3.

<sup>13</sup> Loral Opposition at 8-9. Columbia takes no position on the standing issue, but disputes Orbital's assertion that it retains a financial interest in the applicant in this proceeding. Columbia Reply at 1 n.1.

<sup>14</sup> See Assignment of Orbital Locations to Space Stations in the Domestic Fixed-Satellite Service, *Memorandum Opinion and Order*, 3 FCC Rcd 6972, 6976 n.31 (1988) (*1988 Orbit Assignment Order*); GE American Communications, Inc., *Order and Authorization*, 10 FCC Rcd 13775, 13775-76 (para. 6) (Int'l Bur. 1995) (*GE Americom Replacement Order*).

<sup>15</sup> *1988 Orbit Assignment Order*, 3 FCC Rcd at 6976 n.31; *GE Americom Replacement Order*, 10 FCC Rcd at 13775-76 (para. 6).

<sup>16</sup> *GE Americom Replacement Order*, 10 FCC Rcd at 13775-76 (para. 6); Loral Spacecom Corp., *Order and Authorization*, 13 FCC Rcd 16348, 16440 (para. 5) (Int'l Bur., Sat. and Rad. Div., 1995).

<sup>17</sup> Loral Application, Exh. 6.

<sup>18</sup> Loral Application, Exh. 2, 3, 4.

8. Columbia and Orbital, however, argue that Loral's request for replacement Ku-band authority is premature because Loral's current Ku-band satellite is not near the end of its useful life.<sup>19</sup> For this reason, Orbital accuses Loral of filing a "strike" application intended solely to exclude Columbia from providing Ku-band service to the Southern Hemisphere from the 37.7° W.L. orbital location.<sup>20</sup> Orbital also argues that Loral's replacement authority at 37.5° W.L. should be limited to the authority in its original license, to provide Ku-band band service to the Northern Hemisphere.<sup>21</sup>

9. The Commission usually does not consider replacement satellite applications filed more than five years in advance of the replacement satellite's proposed launch date.<sup>22</sup> Thus, under this policy, Loral's application was not premature when it was filed in May 1998, as Columbia and Orbital claim. Loral proposes to place its replacement satellite into service in February 2003, less than five years after it filed its application.<sup>23</sup> Thus, granting Loral Ku-band replacement authority now is consistent with the Commission's five-year replacement satellite policy. Furthermore, given the huge costs of building and operating space stations and the corresponding replacement expectancy, we would reassign the 37.5° W.L. orbit location to another satellite operator only if the satellite operating at that location was ready to be retired and the licensee had not filed an application for a replacement satellite. This has not occurred.

10. Further, we disagree with Orbital that Loral's Ku-band request is a "strike" application, and that Loral's replacement authority should be limited to Ku-band service in the Northern Hemisphere. As we explain in the *Columbia Southern Hemisphere Order* adopted concurrently with this Order, Loral has authority to provide Ku-band service to both the Northern and Southern Hemispheres from the 37.5° W.L. orbit location.<sup>24</sup> Loral represents that it will do so with its replacement satellite. Columbia has presented no evidence demonstrating that this is not the case, or that Loral's application is in any way solely a "strike" application.

**C. C-band Authority**

11. In 1998, we authorized Columbia to operate in the C-band at the 37.7° W.L. orbit location.<sup>25</sup> Recognizing this, we did not solicit comment on that portion of Loral's application requesting authority to provide C-band service from 37.5° W.L. Loral did not request reconsideration of Columbia's C-band license at 37.7° W.L., nor has it provided us with any other reason to revisit this decision.

12. Accordingly, we deny Loral's application to include C-band authority in its replacement satellite license. To do otherwise would cause harmful interference to Columbia's

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<sup>19</sup> Columbia Petition at 4-6; Orbital Petition at 2-4.

<sup>20</sup> Orbital Petition at 4-6; Orbital Reply at 5-6.

<sup>21</sup> Orbital Reply at 4-5.

<sup>22</sup> Licensing Space Stations in the Domestic Fixed-Satellite Service, *Report and Order*, CC Docket No. 85-135, FCC 85-395, 58 Rad. Reg. 2d 1267, 1278 (para. 78) (released Aug. 29, 1985).

<sup>23</sup> Loral Application, Exh. 5.

<sup>24</sup> *Columbia Southern Hemisphere Order* at paras. 6-7.

<sup>25</sup> *Columbia 1998 Modification Order*, 13 FCC Rcd 17772.

authorized system, in contravention of the Commission's two-degree spacing policy.<sup>26</sup> Because we deny Loral's request to operate in the C-band at the 37.5° W.L. orbit location, we do not need to address Orbital's contention that Loral should be required to demonstrate its financial qualifications to launch and operate its proposed satellite.<sup>27</sup>

**IV. CONCLUSION AND ORDERING CLAUSES**

13. We conclude that Loral is legally, technically, financially, and otherwise qualified to construct, launch, and operate a replacement Ku-band satellite at 37.5° W.L., and that authorizing Loral to construct, launch, and operate this replacement Ku-band satellite at 37.5° W.L. will serve the public interest, convenience, and necessity.

14. Accordingly, IT IS ORDERED that, pursuant to Section 309(a) of the Communications Act, as amended, 47 U.S.C. § 309(a), the application filed by Loral Space & Communication Ltd. for authority to launch and operate a satellite in the Ku-band at the 37.5° W.L. orbit location IS GRANTED, and Loral Space & Communication Ltd. IS AUTHORIZED to launch and operate a replacement satellite in the Ku-band at the 37.5° W.L. orbit location in accordance with the terms, conditions, and technical specifications set forth in its application and this Order.

15. IT IS FURTHER ORDERED that, pursuant to Section 309(a) of the Communications Act, as amended, 47 U.S.C. § 309(a), the application filed by Loral Space & Communication Ltd. for authority to launch and operate a satellite in the C-band at the 37.5° W.L. orbit location IS DENIED.

16. IT IS FURTHER ORDERED that the operation of the Loral Space & Communications Ltd. satellite network in the 11.45-11.7 GHz band is limited in the United States to international operations in accordance with NG104.

17. IT IS FURTHER ORDERED that Loral Space & Communications Ltd. is obliged to comply with the applicable laws, regulations, rules, and licensing procedures in those countries it proposes to serve.

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<sup>26</sup> See 47 C.F.R. § 25.140(a)(2). See also Columbia Communications Corporation, *Memorandum Opinion and Order*, 15 FCC Rcd 15566, 15569 (para. 6) (Int'l Bur., 2000) (*Columbia 2000 Modification Order*) (denying Columbia's application to add Ku-band authority to its C-band license at the 47° W.L. orbit location because it would be inconsistent with Loral's authority at that location); 47 C.F.R. § 25.273(a)(3) (prohibiting transmissions that cause unacceptable interference to the authorized transmissions of another licensee).

<sup>27</sup> Orbital Petition at 6-7.

18. IT IS FURTHER ORDERED that, unless extended by the Commission for good cause shown, this authorization shall become NULL AND VOID in the event the space station is not constructed and launched by the following dates:

<u>Commence Construction</u>	<u>Complete Construction</u>	<u>Launch</u>
November 2001	January 2003	February 2003

19. IT IS FURTHER ORDERED that the license term for the satellite is ten years and will begin to run on the date the licensee certifies to the Commission that the space station has been successfully placed in orbit and operations fully conform to the terms and conditions of our authorization.

20. IT IS FURTHER ORDERED that assignment of any orbital location is subject to change by summary Order of the Commission on 30 days notice and does not confer any permanent location to the use of the orbit or spectrum.

FEDERAL COMMUNICATIONS COMMISSION

Donald Abelson  
Chief, International Bureau