

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

In the Matter of
Columbia Communications Corporation
Authorization to Launch
and Operate a Geostationary C-band
Replacement Satellite in the
Fixed-Satellite Service at 37.5° W.L.
File No. SAT-LOA-20000407-00080

MEMORANDUM OPINION AND ORDER

Adopted: November 13, 2001

Released: November 14, 2001

By the Chief, International Bureau:

I. INTRODUCTION

1. By this Order, we grant Columbia Communications Corporation (Columbia) authority to launch and operate a satellite in the Fixed-Satellite Service (FSS) in the C-band, to replace its Columbia 515 satellite located at 37.7° W.L. By this action, we enable Columbia to provide the certainty of service continuity to its C-band customers.

II. BACKGROUND

2. In 1991, the Commission authorized Columbia to offer international C-band service in the Northern Hemisphere via leased capacity on the National Aeronautics and Space Administration's (NASA's) TDRS-4 satellite located at 41° W.L., subject to coordination with INTELSAT. As part of the coordination agreement it reached with INTELSAT in December

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

2 On June 27, 2000, after Columbia filed its replacement satellite application, the International Bureau (Bureau) granted Columbia's application to merge with GE American Communications, Inc. (GE Americom). Columbia is now 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) (GE Americom/Columbia Merger Order). On October 2, 2001, the Bureau and the Wireless Telecommunications Bureau released a joint Order granting GE Americom's application to merge with SES Global S.A. Application of General Electric Capital Corporation, Transferors, and SES Global, S.A., Transferees, Order and Authorization, DA 01-2100 (Int'l Bur. and Wireless Bur., released Oct. 2, 2001).

3 Columbia Communications Corporation, Application for Authority to Use and Offer for Lease the C-band Transponders on the NASA TDRSS Satellites at 41° W.L. and 174° W.L. for the

1997, INTELSAT transferred its hybrid C-band/Ku-band INTELSAT 515 satellite to Columbia. This satellite, renamed Columbia 515, was to operate at 37.5° W.L.⁴ In September 1998, the Bureau granted Columbia's request to modify its license so that it had authority to move Columbia 515 to 37.7° W.L., and to operate it in the C-band.⁵ Also in 1998, Columbia ceased its operation of TDRS-4 at 41° W.L. and transitioned its customers to Columbia 515.⁶

3. Loral Space and Communications Ltd. (Loral) holds a license to operate a Ku-band satellite at the 37.5° W.L. orbit location.⁷ In May 1998, prior to the time Columbia filed this application for a replacement satellite, Loral filed an application for authority to launch and operate a hybrid C/Ku-band replacement satellite at 37.5° W.L. We granted Loral authority to launch a Ku-band replacement satellite, but denied its request for C-band authority because such authority would conflict with Columbia's C-band authorization at the 37.7° W.L. orbit location.⁸

Provision of International Fixed-Satellite Services, *Memorandum Opinion, Order and Authorization*, 7 FCC Rcd 122, 122 (paras. 3-5) (1991) (*Columbia Authorization Order*). Columbia requested authority to operate this as a "separate system," meaning international satellite systems separate from INTELSAT.

⁴ For more on these coordination negotiations, *see* Columbia Communications Corporation, Application for Special Temporary Authority to Remove Conditions on Its Existing Authorization to Operate C-Band Transponder Capacity on the National Aeronautics and Space Administration ("NASA") Tracking and Data Relay Satellite System ("TDRSS") Space Station at 41° West Longitude, *Order and Authorization*, 11 FCC Rcd 13710, 13712 n.8 (Int'l Bur., 1996).

⁵ Columbia Communications Corp., *Memorandum Opinion, Order, and Authorization*, 13 FCC Rcd 17772 (Int'l Bur., 1998) (*Columbia 1998 Modification Order*). The Bureau assigned Columbia 515 to 37.7° W.L. after Loral expressed concerns that a co-located satellite was at risk of colliding with Loral's Ku-band satellite operating at 37.5° W.L. and Columbia agreed to operate at 37.7° W.L.

⁶ *Columbia 1998 Modification Order*, 13 FCC Rcd at 17773 (para. 3).

⁷ This license was originally granted to 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. For more on Loral's authorization at the 37.5° W.L. orbit location, *see* Orion Satellite Corporation, Request for Final Authority to Construct, Launch, and Operate an International 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.). We granted Loral Ku-band replacement authority in June 2001. 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, *Memorandum Opinion And Order*, 16 FCC Rcd 12490 (Int'l Bur., 2001).

⁸ 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, *Memorandum Opinion And Order*, 16 FCC Rcd 12490, 12493 (para. 5) (Int'l. Bur., 2001) (*Loral Replacement Order*).

4. On April 7, 2000, Columbia filed an application for authority to launch and operate a replacement satellite in the C-band at the 37.5° W.L. orbit location.⁹ Columbia plans to provide voice, video, and data services from the satellite.¹⁰ Its proposed spacecraft would have 72 conventional C-band transponders with 36 MHz of useable bandwidth each, and will cover North America, South America, Europe, and Africa.¹¹

5. We placed Columbia's application on public notice on April 27, 2000. Loral filed a petition to deny the application, Columbia filed an opposition, and Loral filed a reply. Columbia filed subsequent *ex parte* statements to update its application to reflect its merger with GE Americom.¹² For the reasons discussed below, we grant Columbia's application.

III. DISCUSSION

A. Procedural Issues

6. Loral asserts that we cannot consider Columbia's replacement application before we act on Loral's application for replacement authority at 37.5° W.L.¹³ We have since considered Loral's application, and denied its request for C-band authority at that location.¹⁴ Therefore, this issue is now moot. We consider Columbia's application on its merits below.

B. Replacement Expectation

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.¹⁵ 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.¹⁶ It

⁹ Columbia Application at 5.

¹⁰ Columbia Application at 5. Columbia originally planned to operate in portions of the extended C-band outside of North America. Columbia Application, App. 1 at 33. Columbia later withdrew its request for extended C-band authority. Letter from Karis A. Hastings, Counsel for GE Americom, to Magalie Roman Salas, Secretary, FCC (dated Nov. 27, 2000) (*November 27 Letter*) at 3.

¹¹ Columbia Application at 5. The conventional C-band is comprised of the 3700-4200 and 5925-6425 MHz frequency bands.

¹² Letter from Karis A. Hastings, Counsel for GE Americom, to Magalie Roman Salas, Secretary, FCC (dated Sept. 25, 2000) (*September 25 Letter*); *November 27 Letter*; *GE Americom/Columbia Merger Order*, 15 FCC Rcd 11590.

¹³ Loral Petition at 5.

¹⁴ *Loral Replacement Order* at para. 5.

¹⁵ 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*).

¹⁶ *1988 Orbit Assignment Order*, 3 FCC Rcd at 6976 n.31; *GE Americom Replacement Order*, 10 FCC Rcd at 13775-76 (para. 6).

has also acted on applications for replacement satellites as they are filed, without consolidating them into a processing group.¹⁷

8. Loral claims, however, that, because Columbia was originally authorized to lease C-band capacity on a NASA satellite on a temporary basis, Columbia cannot have a reasonable expectation of replacement.¹⁸ Columbia responds that neither the conditions included in the original 1991 license nor the conditions in the subsequent modifications of its license provide any basis for concluding that Columbia does not have a reasonable expectation of replacement.¹⁹

9. We conclude that Columbia's expectation of replacement is reasonable. The Commission adopted its replacement satellite policy in part to help ensure that satellite service customers can rely on continuity of a service provider.²⁰ Columbia has been providing C-band service to its customers since we authorized it to do so in 1991. We conclude that Loral's argument does not provide sufficient justification for obliging Columbia's customers to find another satellite service provider or risk a disruption of service.

10. Columbia requested authority to operate its satellite at 37.5° W.L., rather than the 37.7° W.L. orbit location where it is currently authorized to operate.²¹ We conclude that we should authorize Columbia to operate its replacement satellite at 37.5° W.L. for several reasons. First, the 37.5° W.L. orbit location is consistent with orbit spacings for other frequency bands. The Commission regularly assigns satellites operating in different frequency bands to the same orbit location.²² Second, Columbia will be able to continue to serve its customers from 37.5° W.L. Last, the Bureau assigned Columbia 515 to 37.7° W.L. in 1998 only because Loral expressed concerns that a co-located satellite was at risk of colliding with Loral's Ku-band satellite operating at 37.5° W.L., and because Columbia agreed to operate at 37.7° W.L.²³ In its petition to deny Columbia's application, Loral did not comment on Columbia's request to operate at 37.5° W.L. Given the large number of co-located in-orbit satellites operating without incident over the last decade, we see no reason to deny Columbia's request to operate its replacement satellite at 37.5° W.L.

C. Qualifications

11. All applicants must demonstrate technical, legal, and financial qualifications to hold a satellite license.²⁴ The Commission's financial qualification rules require applicants to

¹⁷ *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).

¹⁸ Loral Petition at 3-4.

¹⁹ Columbia Opposition at 2-8.

²⁰ *1988 Orbit Assignment Order*, 3 FCC Rcd at 6976 n.31; *GE Americom Replacement Order*, 10 FCC Rcd at 13775-76 (para. 6).

²¹ Columbia Application at 5.

²² *See, e.g., 1988 Orbit Assignment Order*, 3 FCC Rcd at 6975 (Table of Orbital Assignments in Appendix to the Order).

²³ *Columbia 1998 Modification Order*, 13 FCC Rcd at 17776 (para. 11).

²⁴ 47 C.F.R. §§ 25.114, 25.140.

demonstrate that they have sufficient funds to cover construction, launch, and first-year operating costs of the proposed satellite.²⁵

12. Columbia initially requested a waiver of the financial qualification rules based in part on its then-pending merger with GE Americom.²⁶ This request has become moot, however. Columbia's merger with GE Americom has been completed, and Columbia has provided a copy of GE Americom's parent company's balance sheet, showing total assets of \$405 billion and net earnings of \$10.7 billion in 1999.²⁷ Columbia estimates that the costs of constructing, launching, and operating its replacement satellite for one year to be \$280 million.²⁸ We find that the information Columbia provides in its *September 25 Letter* is sufficient to show that it is financially qualified to construct and launch a satellite, and to operate it for one year.

D. Milestone Schedule

13. Columbia proposed beginning construction of its satellite one year after authorization, completing construction four years after authorization, and launching four months after completion of construction.²⁹ Loral claims that the Columbia 515 satellite is expected to reach the end of its useful life in the 2001-2002 timeframe, and that Columbia's proposed deployment schedule would result in at least a three-year interruption of service.³⁰ Loral argues that Columbia's proposed satellite cannot be considered a replacement satellite for Columbia 515 because it will not provide continuity of service.³¹ Columbia explains that its proposed milestone schedule was intended to reflect the typical milestone schedule adopted by the Commission for other licensees, and does not preclude a shorter construction period.³² Columbia also states that it has started constructing its replacement satellite.³³

14. We agree with Loral that Columbia should be required to bring its replacement satellite into service before its current satellite reaches the end of its useful life, to ensure continuity of service to Columbia's customers. We disagree, however, that Columbia's proposed four-year milestone schedule warrants denial of Columbia's application. Rather, we will adopt the milestone schedule Columbia proposes in its application,³⁴ but also condition Columbia's license on bringing its replacement satellite into service before the end of the useful life of the

²⁵ 47 C.F.R. § 25.140(c).

²⁶ Columbia Application at 8-10. *See also* Columbia Opposition at 14-17.

²⁷ GE Annual Report, 1999, at 55, *attached to September 25 Letter*.

²⁸ Columbia Application at 8.

²⁹ Columbia Application at 11.

³⁰ Loral Petition at 2, *citing Columbia 1998 Modification Order*, 13 FCC Rcd at 17777-78 (paras. 15, 17).

³¹ Loral Petition at 2-3; Loral Reply at 1-4.

³² Columbia Opposition at 8-9.

³³ *November 27 Letter* at 3-4.

³⁴ Columbia Application at 11.

Columbia 515 satellite, in the event that the end of the useful life of the Columbia 515 satellite occurs before the launch milestone deadline we adopt here.

IV. ORDERING CLAUSES

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

16. 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 Columbia Communications Corporation for authority to launch and operate a satellite in the C-band at the 37.5° W.L. orbit location IS GRANTED, and Columbia Communications Corporation 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.

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

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 2002 | November 2005 | February 2006 |

19. IT IS FURTHER ORDERED that, notwithstanding the milestone schedule set forth above, this authorization is conditioned on Columbia Communications Corporation bringing a space station into service at the 37.5° W.L. orbit location before the Columbia 515 satellite reaches the end of its useful life, in the event that this end-of-useful life date occurs before the launch deadline set forth above.

20. 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.

21. 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 right to the use of the orbit or spectrum.

22. IT IS FURTHER ORDERED that Columbia Communications Corporation is afforded 30 days from the date of release of this Order to decline any authorization granted in this Order as conditioned. Failure to respond within this period will constitute formal acceptance of the authorization as conditioned.

23. 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
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