

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

In the Matter of)
)
Assignment of Orbital Locations)
to Space Stations in the Ka-band)

MEMORANDUM OPINION AND ORDER

Adopted: April 16, 2001

Released: April 17, 2001

By the Chief, International Bureau:

I. INTRODUCTION

1. In December 1997, the International Bureau (“Bureau”) issued a revised assignment plan for space stations in the first Ka-band processing round (“*Reassignment Order*”).¹ The *Reassignment Order* was issued without opinion to clarify the orbit locations that were available to parties filing applications in the second Ka-band processing round. With this *Memorandum Opinion and Order*, we issue the requisite opinion, and dismiss a pending request to stay the Ka-band orbital assignment plan.²

II. MEMORANDUM OPINION

Background

2. In May 1997, the Bureau acted on the first group of applications proposing to provide fixed-satellite service (“FSS”) from geostationary-satellite orbit (“GSO”) in the Ka-band. Specifically, the Bureau issued the *Assignment Order*, assigning orbit locations pursuant to an agreement reached by all fourteen GSO system proponents participating in the first Ka-band processing round.³ The *Assignment*

¹ *Assignment of Orbital Locations to Space Stations in the Ka-Band*, Order, 12 FCC Rcd 22004 (Int’l Bur. 1997) (“*Reassignment Order*”). 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 By separate Orders, we have issued an authorization to Loral CyberStar, Inc., and modified the authorizations of Astrolink International LLC, CyberStar Licensee LLC, and PanAmSat Corporation, to reflect the *Reassignment Order*. See *Loral CyberStar, Inc.*, Order and Authorization, 15 FCC Rcd 24602, 24609 ¶ 19 (Int’l Bur. 2000) (“*Loral CyberStar License*”); *Astrolink International LLC*, Order and Authorization, 15 FCC Rcd 23738, 23742 ¶ 13 (Int’l Bur. 2000); *CyberStar Licensee LLC*, Order and Authorization, DA 01-223, at ¶ 23 (Int’l Bur., rel. January 31, 2001); *PanAmSat Corporation*, Order and Authorization, DA 01-228, at ¶ 23 (Int’l Bur., rel. January 31, 2001).

³ *Assignment of Orbital Locations to Space Stations in the Ka-Band*, Order, 13 FCC Rcd 1030 (Int’l Bur. 1997) (“*Assignment Order*”).

Order also reflected that, after the parties reached the assignment agreement, one of the first round applicants, AT&T Corp. (“AT&T”), withdrew its applications for seven orbit locations (103° W.L., 93° W.L., 55° W.L., 2° E.L., 42° E.L., 97° E.L. and 116.5° E.L.).⁴ As a result, the Bureau did not assign these locations, but stated that it would entertain requests for changes to the agreed-upon orbital assignments:

if all of the commercial GSO satellite applicants affected by the change agree. If all affected applicants do not agree, the burden is on the applicant proposing the change to demonstrate that its alternative is preferable to the adopted plan. Any alternative assignment arrangement must be presented to the Commission for approval within 30 days of the release of [the *Assignment Order*].⁵

3. The Bureau received four timely-filed requests for reassignment to orbital locations vacated by AT&T. Lockheed Martin Corporation (“Lockheed”) (now, Astrolink International LLC) requested the 2° E.L. orbit location in lieu of the 38° E.L. orbit location it received in the *Assignment Order*.⁶ Loral Space & Communications Ltd. (“Loral Ltd.”) (now, CyberStar Licensee LLC) requested the 93° W.L. orbit location in lieu of the 28° E.L. location.⁷ PanAmSat Licensee Corp. (“PanAmSat”) (now PanAmSat Corporation) requested the 103° W.L. location in lieu of the 67° W.L. location originally assigned to Hughes Communications Galaxy, Inc. (“Hughes”).⁸ Orion Network Systems, Inc. (“Orion”) (now, Loral CyberStar, Inc.) also requested the 103° W.L. location, in this case, in lieu of the 127° W.L.

⁴ *Id.* at 1030 n.3.

⁵ *Id.* at 1031 ¶ 6.

⁶ See Letter from Raymond G. Bender, Jr., Counsel for Lockheed Martin Corporation to Peter F. Cowhey, Chief, International Bureau, FCC (May 29, 1997). See also Letter from Raymond G. Bender, Jr., Counsel for Lockheed Martin Corporation to Peter F. Cowhey, Chief, International Bureau, FCC (June 20, 1997) (noting that Lockheed’s request to utilize the 2° E.L. orbit location does not “affect” any other Ka-band licensee).

⁷ See Letter from Andrew R. D’Uva, Counsel for Loral Space & Communications Ltd. to Peter F. Cowhey, Chief, International Bureau, FCC (June 5, 1997).

⁸ Consolidated Comments and Petition to Deny of PanAmSat Licensee Corp. at 6-8 (September 25, 1997) (“PanAmSat Comments”). PanAmSat had initially requested to exchange its assigned location at 125° W.L. for the 103° W.L. orbit location. See Letter from Daniel S. Goldberg, Counsel for PanAmSat Licensee Corp. to Peter F. Cowhey, Chief, International Bureau, FCC (June 3, 1997). PanAmSat subsequently received the 67° W.L. orbit location as part of a consolidation of PanAmSat’s operations under Hughes Communications Inc.’s control. See *Hughes Communications, Inc. and Affiliated Companies and Anselmo Group Voting Trust/PanAmSat Licensee Corp. and Affiliated Companies*, Order and Authorization, 12 FCC Rcd 7534 (1997) (Commission approval of the transaction); Letter from John P. Janka, Counsel for Hughes Communications Galaxy, Inc. to William F. Caton, Acting Secretary, FCC (June 9, 1997) (requesting that the Commission update its records to reflect consummation of the transaction).

location.⁹ Orion and PanAmSat agreed to continue negotiating a resolution to their conflicting requests for the 103° W.L. orbit location, and notified the Commission accordingly.¹⁰

4. The Bureau placed the four reassignment requests on Public Notice.¹¹ PanAmSat and Orion filed comments, each arguing that it should receive the 103° W.L. orbit location, or alternatively, Loral Ltd.'s requested orbit location, 93° W.L., and for that reason, we should deny Loral Ltd.'s request to use 93° W.L.¹² CAI Data Systems, Inc. ("CAI"), an applicant in the second Ka-band processing round, filed a petition to deny the proposed reassignments.¹³ Lockheed, Loral Ltd., and PanAmSat filed oppositions or reply comments.¹⁴ CAI, Lockheed, and PanAmSat filed responses or further comments.¹⁵

5. Loral Ltd., PanAmSat, and Orion subsequently reached an agreement with respect to their conflicting orbital reassignments ("Reassignment Agreement"), with Loral Ltd. requesting the 93° W.L. orbit location, PanAmSat requesting the 103° W.L. orbit location, and Orion requesting the Hughes/PanAmSat orbit location at 67° W.L.¹⁶ The companies indicated that, upon the Commission's acceptance of their proposed reassignments, they would withdraw any objections made with respect to each others' orbital reassignment requests, leaving only their arguments with respect to CAI's Petition to Deny.¹⁷

⁹ See Letter from Julian L. Shepard, Counsel for Orion Network Systems, Inc. to Peter F. Cowhey, Chief, International Bureau, FCC (June 5, 1997). The *Assignment Order* reserved assignment of the 127° W.L. orbit for Orion because the Bureau required Orion to clarify its plans with respect to this orbit location. See *Loral CyberStar License*, 15 FCC Rcd at 24603-04 ¶¶ 3-4.

¹⁰ See Letter from Julian L. Shepard, Counsel for Orion Network Systems, Inc. to Peter F. Cowhey, Chief, International Bureau, FCC (June 9, 1997). Cf. Letter from Daniel S. Goldberg, Counsel for PanAmSat Licensee Corp. to Peter F. Cowhey, Chief, International Bureau, FCC (June 9, 1997).

¹¹ Public Notice, Report No. SPB-102 (rel. September 10, 1997), *corrected*, Public Notice, Report No. SPB-103 (rel. September 16, 1997) ("*Reassignment Public Notice*").

¹² PanAmSat Comments at 2-6; Comments of Orion Network Systems, Inc. (September 25, 1997). *But see* Letter from Andrew R. D'Uva, Counsel for Loral Space & Communications Ltd. to Peter F. Cowhey, Chief, International Bureau, FCC (June 10, 1997) (objecting to any other licensee's potential expression of interest for reassignment to 93° W.L.).

¹³ Consolidated Petition to Deny of CAI Data Systems, Inc. (September 25, 1997) ("CAI Petition to Deny"). CAI's application, filed one month after Lockheed, Loral Ltd., PanAmSat and Orion filed their reassignment requests, seeks authority to construct, launch and operate a single Ka-band satellite at either the 93° W.L. or the 103° W.L. orbit location. CAI's application was accepted for filing in March 1999, as were all other second Ka-band processing round applications. See Public Notice, Report No. SAT-00012 (rel. March 16, 1999).

¹⁴ Consolidated Reply Comments and Opposition to Petition to Deny of Lockheed Martin Corporation (October 6, 1997) ("Lockheed Opposition"); Consolidated Opposition to Petitions to Deny and Reply Comments of Loral Space & Communications Ltd. (October 6, 1997) ("Loral Ltd. Opposition"); Consolidated Opposition and Reply Comments of PanAmSat Licensee Corp. (October 6, 1997) ("PanAmSat Opposition").

¹⁵ Consolidated Reply to Oppositions of CAI Data Systems, Inc. (October 14, 1997) ("CAI Reply"); Further Comments of Lockheed Martin Corporation (October 14, 1997); Response of PanAmSat Licensee Corp. (October 14, 1997).

¹⁶ See Joint Letter from Andrew R. D'Uva, Counsel for Loral Space & Communications Ltd., Julian L. Shepard, Counsel for Orion Network Systems, Inc., John P. Janka, Counsel for Hughes Communications Galaxy, Inc., and Joseph A. Godles, Counsel for PanAmSat Licensee Corp. to Thomas S. Tycz, Chief, Satellite and Radiocommunication Division, FCC (October 23, 1997).

¹⁷ *Id.* at 1 & n.1.

CAI filed letters opposing the Reassignment Agreement, to which the parties to the Reassignment Agreement replied.¹⁸

6. The Bureau accepted the Reassignment Agreement, and issued the *Reassignment Order*, which revised the assignment plan to reflect the Reassignment Agreement.¹⁹ This *Memorandum Opinion* details the Bureau's rationale for that decision, and addresses CAI's Petition to Deny and related filings.

Discussion

7. The Commission encourages and prefers that satellite operators resolve coordination difficulties, because they can best weigh the technical and economic tradeoffs involved in changes in orbit locations and operating parameters.²⁰ Consistent with this policy, the Bureau revised the first Ka-band processing round assignment plan to reflect the affected satellite operators' agreement. CAI asserts that we should not reassign AT&T's vacated orbit locations to licensees within the first Ka-band processing round; rather, according to CAI, we should consider these locations for assignment in the second Ka-band processing round.²¹ CAI raises several arguments in support of this assertion.

8. CAI first claims that by filing orbit location reassignment requests, Lockheed, Loral Ltd., PanAmSat, and Orion declined their Ka-band authorizations and submitted "major amendments" to their underlying satellite applications.²² Section 25.116(c) of the Commission's rules provides generally that if a major amendment to an application being considered in a processing round is submitted after a cut-off date, the application is considered to be newly filed, and loses its status in the processing group.²³ Section 25.116(b)(1) provides that amendments to change requested orbit locations are considered major amendments.²⁴ CAI argues that the amended Lockheed, Loral Ltd., PanAmSat and Orion applications should therefore be considered in the second Ka-band processing round.²⁵ Lockheed, Loral Ltd., and PanAmSat deny that they have declined their authorizations; instead, they argue that their requests to

¹⁸ See Letter from James U. Troup, Counsel for CAI Data Systems, Inc. to Thomas Tycz, Chief, Satellite and Radiocommunication Division, FCC (November 4, 1997) ("CAI's First Opposition Letter") and Letter from James U. Troup, Counsel for CAI Data Systems, Inc. to Thomas S. Tycz, Chief, Satellite and Radiocommunication Division, FCC (December 8, 1997) ("CAI's Second Opposition Letter"); see also Joint Letter from Andrew R. D'Uva, Counsel for Loral Space & Communications Ltd., Julian L. Shepard, Counsel for Orion Network Systems, Inc., John P. Janka, Counsel for Hughes Communications Galaxy, Inc., and Daniel S. Goldberg, Counsel for PanAmSat Licensee Corp. to Thomas S. Tycz, Chief, Satellite and Radiocommunication Division, FCC (November 6, 1997) ("Reassignment Parties' Reply Letter").

¹⁹ *Reassignment Order*, 12 FCC Rcd 22004.

²⁰ See, e.g., *GE American Communications, Inc.*, Memorandum Opinion and Order, 3 FCC Rcd 6871, 6871 ¶ 2 (1988).

²¹ CAI Petition to Deny at iii.

²² *Id.* at 4.

²³ 47 C.F.R. § 25.116(c).

²⁴ *Id.* § 25.116(b)(1).

²⁵ CAI Petition to Deny at 4-5.

modify the orbital assignment plan were made at the Bureau's invitation and consistent with Commission precedent regarding orbital reassignments.²⁶

9. Historically, the Commission has given satellite licensees a limited opportunity to suggest alternatives to an adopted orbit assignment plan, provided that the changes are consistent with the basic structure of the assignment plan and are agreed to by all, or at least most, of the satellite operators affected by the change.²⁷ Contrary to CAI's assertion, the Commission has never deemed such a reassignment request as a licensee declining its authorization, nor has Commission considered a reassignment request as a major amendment to the underlying application. Rather, the Commission clearly has stated that "[o]perators may propose exchanges or small adjustments of their orbital assignments without necessarily becoming part of the next processing group."²⁸ Consistent with this precedent, the Bureau invited the first round Ka-band licensees to request reassignments, and viewed the timely-filed requests as extensions of the first Ka-band processing round.

10. Building on its argument that the reassignment requests should be considered in the second Ka-band processing round, CAI contends that Orion's and PanAmSat's reassignment requests are mutually exclusive with CAI's second round Ka-band application seeking to operate at the same orbit locations.²⁹ Our rejection of CAI's contention that the reassignment requests should be considered in the second Ka-band processing round moots this argument.

11. CAI next argues that, even if the reassignment requests are considered an extension of the first Ka-band processing round, the fact that both PanAmSat and Orion requested the same orbital location (103° W.L.) creates mutual exclusivity requiring denial of their requests.³⁰ Specifically, CAI asserts that any reassignments made as a result of the Reassignment Agreement violates the terms of the *Assignment Order*, because all of the satellite applicants affected by the change did not "agree" concerning the orbital reassignments within thirty days after the release of the *Assignment Order*.³¹ In that regard, CAI asserts that the plain language of the *Assignment Order* indicates that any agreed-upon alternative assignment

²⁶ Lockheed Opposition at 8; Loral Ltd. Opposition at 6; PanAmSat Opposition at 4. Lockheed and Loral Ltd. also assert that CAI lacks standing to oppose the reassignments. See Lockheed Opposition at 6-7; Loral Ltd. Opposition at 5-6. We need not reach the question of whether CAI has standing in this case, because we address CAI's substantive arguments below. See, e.g., *Voicestream Wireless Corporation or Omnipoint Corporation, et al.*, Memorandum Opinion and Order, 15 FCC Rcd 3341, 3358 n.109 (2000).

²⁷ See, e.g., *Assignment of Orbital Locations to Space Stations in the Domestic Fixed-Satellite Service*, Memorandum Opinion and Order, 13 FCC Rcd 13863, 13865 ¶ 3 (Int'l Bur. 1998) (adjusting the orbit assignment plan in *Assignment of Orbital Locations to Space Stations in the Domestic Fixed-Satellite Service*, Order and Authorizations, 11 FCC Rcd 13788 (Int'l Bur. 1996) ("1996 Domsat Assignment Order")); *Assignment of Orbital Locations to Space Stations in the Domestic Fixed-Satellite Service*, Memorandum Opinion and Order, 5 FCC Rcd 179, 179 ¶ 2 (1990) (adjusting the orbit assignment plan in *Assignment of Orbital Locations to Space Stations in the Domestic Fixed-Satellite Service*, Memorandum Opinion and Order, 3 FCC Rcd 6972 (1988)).

²⁸ *Assignment of Orbital Locations to Space Stations in the Domestic Fixed-Satellite Service*, Memorandum Opinion and Order, 94 FCC 2d 129, 141 ¶ 33 (1983). *Accord GTE Spacenet Corporation et al.*, Order and Authorization, 9 FCC Rcd 1271, 1273 ¶ 14 (Com. Car. Bur. 1994) ("[N]o new processing group is necessary because the request involves a previously authorized satellite and does not require the assignment of an additional orbital location.").

²⁹ CAI Petition to Deny at 6-7.

³⁰ *Id.* at 7-8.

³¹ *Id.* at 11-15; CAI's First Opposition Letter at 2; CAI's Second Opposition Letter at 1-3.

arrangement should have been filed by June 9, 1997. CAI contends that, by filing the Reassignment Agreement in October 1997, the licensees did not comply with the terms of the *Assignment Order*, and therefore, the disputed orbital positions are properly considered only in the second Ka-band processing round.³²

12. As an initial matter, we have consistently found that requests for the same orbit location do not necessarily give rise to mutual exclusivity.³³ Rather, as noted, we attempt to accommodate orbit locations agreements reached by the applicants, when possible, because applicants are in the best position to develop a compromise solution that best meets their business plans.³⁴ In this case, the first round Ka-band applicants spent the better part of a year negotiating the orbital plan reflected in the *Assignment Order*. These successful negotiations included AT&T's applications for seven orbit locations. Shortly after the applicants submitted their agreed-upon orbit plan, but before the Bureau issued the *Assignment Order*, AT&T withdrew its applications. Accordingly, in the *Assignment Order*, AT&T's orbit locations remained unassigned, and we provided the licensees with thirty days in which to request changes to the *Assignment Order*.³⁵

13. Four licensees requested reassignment to three of AT&T's locations within this thirty-day period. Among other requests, Loral Ltd. requested reassignment to the 93° W.L. orbit location and both PanAmSat and Orion requested reassignment to the 103° W.L. orbit location. At this time, CAI had not yet filed its application, in which it sought assignment to either 93° W.L. or 103° W.L.³⁶ In the *Reassignment Public Notice* seeking comment on the first-round reassignment requests, we acknowledged Loral Ltd.'s request for 93° W.L. and the two requests for 103° W.L.³⁷ While the first-round licensees did not resolve their conflicting interest in 103° W.L. during the initial thirty day period following release of the *Assignment Order*, they kept us apprised of their ongoing negotiations, and resolved their disputes within a reasonable amount of time. Significantly, the first-round licensees reached the agreement on October 23, 1997, two months *before* the cut-off date established for filing applications to be considered in the second Ka-band processing round.³⁸ Consequently, we viewed the Reassignment Agreement regarding AT&T's vacated locations as the logical conclusion of the initial negotiations among the first round Ka-band applicants. The *Reassignment Order* accommodated the Reassignment Agreement and allowed us to complete action on the first-round GSO assignments before the cut-off date established for filing second-round applications.

³² CAI's First Opposition Letter at 2-3.

³³ *See 1996 Domsat Assignment Order*, 11 FCC Rcd at 13789-90 ¶ 4.

³⁴ *See supra* footnote 20 and accompanying text.

³⁵ The practice of giving licensees thirty days to submit orbital reassignment requests arose in the context of our need to evaluate the requests in the early stages of international frequency coordination, which is not relevant to the instant proceeding. *See, e.g., Assignment of Orbital Locations to Space Stations in the Domestic Fixed-Satellite Service*, Memorandum Opinion and Order, 94 F.C.C.2d 129, 141 ¶ 30 (1983), *recon.*, FCC 84-32 (rel. February 2, 1984), *further recon.*, FCC 84-181 (rel. May 15, 1984).

³⁶ *See supra* footnote 13.

³⁷ *Reassignment Public Notice*, *supra* footnote 11.

³⁸ *See* Public Notice, Report No. SPB-106, 13 FCC Rcd 8020 (Sat. Policy Branch 1999) (setting December 12, 1997 as the cut-off date for GSO system proponents to file applications to be considered in the second Ka-band processing round).

14. CAI further contends that the Commission's domestic fixed-satellite service policy limiting providers to only two orbit locations capable of 50 state coverage requires us to deny PanAmSat's and Orion's reassignment requests.³⁹ Specifically, CAI asserts that approval of the Reassignment Agreement would impair competition due to what it claims to be a significant consolidation of Ka-band orbital resources in the control of Hughes/PanAmSat and Loral/Orion, particularly with regard to the orbital slots capable of serving the continental United States ("full-CONUS").⁴⁰ Thus, CAI argues that it is particularly important for the Commission to continue its policy of limiting the number of orbit locations in resolving their reassignment requests.⁴¹

15. Historically, the orbital assignment limitation pertained to the provision of domestic FSS in the United States, the objectives being to avoid prematurely assigning an excessive number of orbital locations to an existing licensee for expansion of its domestic system and to promote entry opportunity in the bands.⁴² As the Commission noted in adopting service rules for the Ka-band licensees, many of the systems being considered in the first Ka-band processing round proposed to provide global service. The Commission found it was in the public interest to allow the first round Ka-band applicants, especially those proposing to serve different geographic areas, to proceed as proposed. Therefore, the Commission waived any rules and policies limiting the number of orbit locations that may be assigned to any applicant.⁴³ Consequently, CAI's argument that we violated the two orbit location policy by reassigning PanAmSat and Loral to full-CONUS locations is misplaced.

16. Finally, CAI asserts that grant of the reassignment requests would create barriers to entry for small businesses, contravening Section 257 of the Communications Act.⁴⁴ Specifically, CAI requests us to assign the full-CONUS orbital slots withdrawn by AT&T (93° W.L. and 103° W.L.) to small businesses, which would reduce those operators' cost of providing nationwide service and thus, maximize their opportunity to participate in the Ka-band satellite market.⁴⁵ We first note that the Commission waived financial qualification requirements for applicants in the first Ka-band processing round because it could accommodate all proposed systems, thereby eliminating the financial barrier to Ka-band entry for small businesses.⁴⁶ In fact, small businesses were among those awarded licenses to provide satellite services from

³⁹ CAI Reply at 3 (citing *Satellite Transponder Leasing Corporation*, Memorandum Opinion and Order, 3 FCC Rcd 6737 (Com. Car. Bur. 1988) (Common Carrier Bureau declined request for reassignment because it would have resulted in the assignment of three orbital locations with 50-state coverage to the licensee and its affiliates)).

⁴⁰ CAI's Second Opposition Letter at 3-4.

⁴¹ CAI Reply at 4.

⁴² See *Rulemaking to Amend Parts 1, 2, 21, and 25 of the Commission's Rules to Redesignate the 27.5-29.5 GHz Frequency Band, to Reallocate the 29.5-30.0 GHz Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services*, CC Docket No. 92-297, Third Report and Order, 12 FCC Rcd 22310, 22320 ¶ 24 (1997) ("*Third Report and Order*") (citing *Licensing Space Stations in the Domestic Fixed-Satellite Service*, 50 Fed. Reg. 36071 (September 5, 1985)).

⁴³ *Id.*

⁴⁴ 47 U.S.C. § 257.

⁴⁵ CAI Petition to Deny at 15-16; CAI's Second Opposition Letter at 4.

⁴⁶ *Third Report and Order*, 12 FCC Rcd at 22316-18 ¶¶ 14-18.

full-CONUS orbit locations in the first Ka-band processing round.⁴⁷ We therefore find that our actions have been consistent with the goals underlying Section 257. That notwithstanding, we also note that CAI's request to set aside orbit locations for small businesses is no longer relevant to its pursuit of a full-CONUS Ka-band orbital, as its parent company, CAI Wireless Systems, Inc., has become a wholly-owned subsidiary of WorldCom, Inc.⁴⁸

III. ORDER

17. In 1996, the Bureau declared Norris Satellite Communications, Inc.'s ("Norris") license to operate a GSO FSS Ka-band satellite at the 90° W.L. orbit location null and void for failure to begin satellite construction by the required date.⁴⁹ While Norris's Application for Review of this decision was pending, Norris filed a Request for Stay of the *Assignment Order* ("Norris Stay Request").⁵⁰ Specifically, Norris argued that it would suffer irreparable harm in its attempt to reinstate its revoked license because the *Assignment Order* authorized satellites at two orbit locations (89° W.L. and 91° W.L.) that were mutually exclusive with Norris's voided authorization at 90° W.L. The Commission subsequently upheld the Bureau's decision regarding nullification of Norris's license.⁵¹ Accordingly, we dismiss the Norris Stay Request as moot.⁵²

⁴⁷ See, e.g., *KaStar Satellite Communications Corp.*, 13 FCC Rcd 1366 (Int'l Bur. 1997) (assigned to the 109.2° W.L. and 73° W.L. orbit locations). *Accord* PanAmSat Opposition at 5 (asserting that there is no need to take special measure to safeguard the participation of small businesses because several small businesses were licensed in the first Ka-band processing round).

⁴⁸ See Application Amendment of CAI Data Systems, Inc., File No. SAT-AMD-19990930-00093 (September 30, 1999); Public Notice, Report No. SAT-00028 (rel. October 18, 1999).

⁴⁹ *Norris Satellite Communications, Inc.*, Order, 11 FCC Rcd 5402 (Int'l Bur. 1996).

⁵⁰ See Request for Stay of Norris Satellite Communications, Inc. (May 23, 1997). See also Opposition of GE American Communications, Inc. (May 30, 1997); Opposition of Hughes Communications Galaxy, Inc. (May 30, 1997); Opposition of Lockheed Martin Corporation (May 30, 1997); Opposition of Orion Network Systems, Inc. (May 30, 1997); Opposition of NetSat 28 Company, L.L.C. (May 30, 1997); Motion to Accept Late-Filed Opposition/Opposition of Loral Space & Communications Ltd. (June 2, 1997); Motion for Leave to File Opposition Out of Time/Opposition of Comm, Inc.-Motorola (June 4, 1997); Letter from Christopher D. Imlay, Counsel for Norris Satellite Communications, Inc. to Peter F. Cowhey, Chief, International Bureau, FCC (June 11, 1997).

⁵¹ *Norris Satellite Communications, Inc.*, Memorandum Opinion and Order, 12 FCC Rcd 22299 (1997).

⁵² The Norris Stay Request also attempted to resurrect a pioneer's preference request Norris proffered in its Petition for Rulemaking (filed in 1990) to reallocate the Ka-band frequencies to a General Satellite Service. See Norris Stay Request at 4-5 (claiming its pioneer's preference request was never adjudicated); *id.* at 10-11 & n.39 (arguing that the fact that it received its Ka-band license did not moot the pioneer's preference request). Assuming *arguendo* that Norris's pioneer's preference request was pending at the Commission in May 1997 (the filing date of the Norris Stay Request), Congress terminated the Commission's authority to award pioneer's preferences in August 1997, rendering moot all pending pioneer's preference requests. See Balanced Budget Act of 1997, Pub. L. No. 105-33, Title III, § 3002(a)(1)(F), 111 Stat. 251, 259; see also *Dismissal of All Pending Pioneer's Preference Requests*, ET Docket No. 93-266, Order, 12 FCC Rcd 14006 (1997).

IV. CONCLUSION AND ORDERING CLAUSES

18. For the reasons discussed above, we find the public interest, convenience and necessity was served when the Bureau adopted the Ka-band *Reassignment Order*.

19. Accordingly, IT IS ORDERED that the Petition to Deny filed September 25, 1997 by CAI Data Systems, Inc. IS DENIED.

20. IT IS FURTHER ORDERED that the Request for Stay filed May 23, 1997 by Norris Satellite Communications, Inc. IS DISMISSED as moot.

21. This *Memorandum Opinion and Order* is issued pursuant to Section 0.261 of the Commission's rules on delegations of authority, 47 C.F.R. § 0.261, and is effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

Donald Abelson
Chief, International Bureau