

Before the
Federal Communications Commission
Washington, D.C.

In the matter of the Application of
TRW Inc.,
Transferor
And
Northrop Grumman Corporation,
Transferee
For Consent to Transfer of Control of
Authorization to Construct, Launch and
Operate a Ka-Band Satellite System in
the Fixed-Satellite Service
SAT-T/C-20021001-00181
File Nos. SAT-LOA-19970904-00081 -
00084;
and No. SAT-AMD-19971222-00229

Order and Authorization

Adopted: December 5, 2002

Released: December 6, 2002

By the Chief, Satellite Division:

I. Introduction

1. In this Order, we grant the application filed by TRW Inc. ("TRW") and Northrop Grumman Corporation ("Northrop Grumman") seeking authority to transfer control of TRW's geostationary satellite orbit ("GSO"), fixed satellite service ("FSS") Ka-band space station authorizations to Northrop Grumman. We find that the proposed transfer of control is in the public interest pursuant to our review under Section 310 of the Communications Act of 1934, as amended ("Act"). Our approval should provide the merged entity with the potential to develop new and innovative advanced broadband satellite services and expedite the delivery of these services on a global basis.

II. Background

A. The Applicants

2. TRW, a publicly traded company incorporated and headquartered in Ohio, is a global technology company that provides products and services to the automotive, space, defense and

1 See TRW Inc. and Northrop Grumman Corporation Application for Transfer of Control of the Ka-band Satellite Authorizations held by TRW Inc. to Northrop Grumman Corporation ("Application"), Public Notice Report No. SAT-00126, SAT-T/C-20021001-00181, October 18, 2002. Together, TRW and Northrop Grumman are referred to herein as the "Applicants." No comments or oppositions were filed in this proceeding.

2 47 U.S.C. § 310.

information systems markets.³ TRW holds authority to launch and operate a GSO FSS system in the Ka-band⁴ at the 119° W.L, 79° W.L., 15° E.L., and 116.5° E.L. orbital locations.⁵ Once operational, the TRW Ka-band network will be capable of providing advanced broadband communication services to businesses and consumers around the globe.⁶

3. Northrop Grumman, a publicly-traded company with headquarters in Los Angeles, California, provides products and services in defense and commercial electronics, systems integration, information technology and nuclear and non-nuclear shipbuilding and systems to U.S. and international military, government and commercial customers.⁷ Northrop Grumman and its wholly owned subsidiaries are current FCC licensees, holding more than 290 authorizations for satellite earth stations, experimental radio stations, aeronautical fixed stations, aviation radio stations, ship radio stations, marine coast, private land mobile radio stations, and private fixed microwave radio stations.⁸

B. The Proposed Transaction

4. The Applicants seek Commission approval to transfer control of the Ka-band authorizations held by TRW to Northrop Grumman. The proposed transaction is part of a larger acquisition of TRW by Northrop Grumman as contemplated in the Agreement and Plan of Merger, dated June 30, 2002, by and among TRW, Northrop Grumman, and Richmond Acquisition Corp., a wholly owned subsidiary of Northrop Grumman ("Merger Agreement").⁹ According to the Applicants, Northrop Grumman will acquire TRW for \$60 per share in common stock in a transaction valued at approximately \$7.8 billion, and will assume TRW's net debt at the time of closing. Following the consummation of the proposed transaction, TRW's satellite and defense systems businesses will be operated as a separate Northrop Grumman sector.¹⁰

5. The Applicants state that the proposed transaction will bring about numerous efficiencies in non-FCC-regulated businesses from the combination of operational, manufacturing, marketing, and administrative resources and functions.¹¹ The Applicants contend that the proposed transfer is pro-competitive because it will permit the alliance of two advanced-technology companies, thereby enhancing Northrop Grumman's ability to develop satellite networks and offer new and innovative services to customers.¹² Applicants also contend that the proposed transaction does not violate the Commission's anti-trafficking rules because it is incidental to the larger acquisition of TRW by Northrop Grumman, a

³ *Application*, Exhibit F at 1.

⁴ The term "Ka-band" generally refers to the space-to-Earth (downlink) frequencies at 17.7-20.2 GHz and the corresponding Earth-to-space (uplink) frequencies at 27.5-30.0 GHz, or the "28 GHz band."

⁵ See *In the Matter of TRW Inc. Application for Authority to Construct, Launch, and Operate a Ka-Band Satellite System in the Fixed Satellite Service*, Order and Authorization, DA 01-1694, 16 FCC Rcd 14407 (Int'l Bur. 2001) ("*TRW Authorization Order*").

⁶ *Id.*

⁷ *Application*, Exhibit F at 1.

⁸ *Id.* at 1-2.

⁹ *Id.* at 2. The Merger Agreement is included in the *Application* as Attachment 1 to Exhibit F.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.* at 3.

concurrent transaction of much greater economic importance, in which the consideration paid under the Merger Agreement represents fair market value of TRW as a whole.¹³

III. Discussion

A. Framework for Analysis

6. Section 310(d) of the Act requires that the Commission authorize the assignment or transfer of control of Commission licenses only upon finding that the public interest, convenience, and necessity will be served.¹⁴ The legal standards that govern our public interest analysis under Section 310(d) require that we weigh the potential public interest harms against the potential public interest benefits to ensure that, on balance, the proposed transaction will serve the public interest, convenience, and necessity.¹⁵ Our analysis considers the likely competitive effects of the proposed transfer and whether such transfer raises significant anti-competitive issues.¹⁶ We also consider the efficiencies and other public interest benefits that are likely to result from the proposed transfer.¹⁷ Further, we consider whether the transaction raises issues of national security, law enforcement, foreign policy and trade policy, including such concerns that may be raised by the Executive Branch.¹⁸

B. Qualifications of the Applicants

1. Transferor

7. As a threshold matter, we must determine whether the Applicants meet the requisite qualifications to hold and transfer licenses under Section 310(d) of the Act and our rules. In general, when evaluating transfers of control under Section 310(d), we do not re-evaluate the qualifications of the transferor.¹⁹ The exception to this rule occurs where issues related to basic qualifications have been designated for hearing by the Commission or have been sufficiently raised in petitions to warrant the

¹³ *Id.* at 3-4.

¹⁴ 47 U.S.C. § 310(d).

¹⁵ See e.g., *Application of VoiceStream Wireless Corporation, Powertel, Inc., Transferors, and Deutsche Telekom AG, Transferee, for Consent to Transfer Control of Licenses and Authorizations Pursuant to Sections 214 and 310(d) of the Communications Act and for Declaratory Ruling Pursuant to Section 310 of the Communications Act*, Memorandum Opinion and Order, 16 FCC Rcd 9779, 9789 (2001) (“*VoiceStream/Deutsche Telekom Order*”). See also *AT&T Corp., British Telecommunications, plc, VLT Co. L.L.C., Violet License Co. LLC, and TNV [Bahamas] Limited Applications For Grant of Section 214 Authority, Modification of Authorizations and Assignment of Licenses in Connection with the Proposed Joint Venture Between AT&T Corp. and British Telecommunications, plc*, Memorandum Opinion and Order, 14 FCC Rcd 19140, 19147 (1999) (“*AT&T/BT Order*”); and *Applications of NYNEX Corporation, Transferor and Bell Atlantic Corporation, Transferee, For Consent to Transfer Control of NYNEX Corporation and Its Subsidiaries*, Memorandum Opinion and Order, 12 FCC Rcd 19985, 20003-04 (1997) (“*Bell Atlantic/NYNEX Order*”).

¹⁶ See e.g., *AT&T/BT Order*, 14 FCC Rcd at 19148.

¹⁷ See e.g., *VoiceStream/Deutsche Telekom Order*, 16 FCC Rcd at 9789.

¹⁸ See *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, Report and Order and Order on Reconsideration, 12 FCC Rcd 23891, 23919-21 (1997); *Order on Reconsideration*, 15 FCC Rcd 18158 (2000). See also *Amendment of the Commission's Regulatory Policies to Allow Non-U.S. Licensed Satellites Providing Domestic and International Service in the United States*, Report and Order, 12 FCC Rcd 24094, 24170 (1997).

¹⁹ See e.g., *VoiceStream/Deutsche Telekom Order*, 16 FCC Rcd at 9790.

designation of a hearing.²⁰ No such issues have been raised that would require us to re-evaluate the basic qualifications of the transferor, TRW, and thus we find TRW is qualified as the transferor.

2. Transferee

8. As to the qualifications of the transferee, Section 310(d) requires that the Commission consider the qualifications of the proposed transferee as if the transferee were applying for the license directly under Section 308 of the Act.²¹ The basic qualification requirements for FSS space station licenses are contained in Section 25.140 of our rules.²² These rules describe the legal, technical, and financial criteria we use to evaluate an applicant's qualifications to hold FSS space station licenses. In addition, under the Commission's Title III public interest review, the Commission considers the character qualifications of an applicant or licensee.²³ To this end, the Commission has determined that, in deciding character issues, it will consider certain forms of adjudicated, non-FCC related misconduct that includes: (1) felony convictions; (2) fraudulent misrepresentations to governmental units; and (3) violations of antitrust or other laws protecting competition.²⁴ The Commission has also stated that it will consider non-FCC related misconduct of the licensee's or applicant's parent or related subsidiary where there is a sufficient nexus between the licensee or applicant and the parent corporation or a related subsidiary.²⁵ Further, the Commission has used its character policy in the broadcast area as guidance in resolving similar questions in transfer of common carrier authorizations and other license transfer proceedings.²⁶

9. As disclosed in the *Application*, in 1990 Northrop Corporation, the predecessor to Northrop Grumman, pled guilty to 34 counts of violations of 18 U.S.C. § 1102. The guilty plea involved false certificates of conformance where Flight Data Transmitters had either failed Performance Verification Testing ("PRVT") or had been subject to incomplete PRVT.²⁷ The *Application* also discloses

²⁰ *Id.*

²¹ 47 U.S.C. § 310(d). Section 308 requires that applicants for Commission licenses set forth such facts as the Commission may require as to citizenship, character, and financial, technical, and other qualifications. *See* 47 U.S.C. § 308.

²² 47 C.F.R. § 25.140. The Commission established qualification requirements and service rules for GSO FSS systems in the Ka-band in conjunction with the first Ka-band processing round. *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*, Third Report and Order, 12 FCC Rcd 22310 (1997) ("Ka-Band FSS Rules Order").

²³ The Commission has long held that character qualifications are relevant to a public interest analysis as an applicant's or licensee's willingness to violate other laws, and in particular to commit felonies, also bears on our confidence that an applicant or licensee will conform to FCC rules and policies. *Policy Regarding Character Qualifications in Broadcast Licensing*, 102 FCC 2d 1179, 1209-10 (1986) ("Character Qualifications Policy Statement 1986"), modified, 5 FCC Rcd 3252 (1990), recon. granted in part, 6 FCC Rcd 3448 (1991), modified in part, 7 FCC Rcd 6564 (1992) (collectively "Broadcast Licensing Character Qualifications").

²⁴ *Id.*

²⁵ *See e.g., Broadcast Licensing Character Qualifications*, 7 FCC Rcd at 6567. As a general matter, non-FCC misconduct by parent or related subsidiary is reportable if (a) there is a close ongoing relationship between the parent (or related subsidiary) and the licensee; (b) the two have common principals; and (c) the common principals are actively involved in the operations of the licensee. *Id.* Misconduct directly involving common principals is reportable where the common principal of the licensee or applicant was in control of the other entity or was adjudicated to be directly involved in the other entity's misconduct. *Id.* at n. 51.

²⁶ *See e.g., Broadcast Licensing Character Qualifications*, *supra* note 23; *MCI Telecommunications Corp.*, 3 FCC Rcd 509, 515 at n.14 (1988).

²⁷ *Application*, Exhibit B at 1.

that in 1999, Litton Applied Technology Division pled guilty to making false statements and mail fraud in a federal case related to sales commissions paid to a Taiwanese consultant, and Litton Systems Canada, Ltd. pled guilty to providing false and misleading information to the U.S. Government with respect to commissions paid to Greek and Taiwanese consultants.²⁸ Northrop Grumman acquired Litton Applied Technology Division and Litton Systems Canada, Ltd. in 2001.²⁹

10. The central focus of our review of an applicant's character qualifications is "misconduct which demonstrates the proclivity of an applicant or licensee to deal truthfully with the Commission and to comply with our rules and policies."³⁰ In the *Character Policy Statement 1986*, the Commission stated that a ten-year limitation should apply to considering past conduct that may indicate a "flagrant disregard of the Commission's regulations and policies."³¹ The Commission imposed this limitation because of the "inherent inequity and practical difficulty involved in requiring applicants to respond to allegations of greater age"³² and thus, designed a limitation to prevent the agency from forcing licensees to defend themselves from stale charges. Although we do not consider ten-year old misconduct *per se* indicative of an applicant's or licensee's character qualifications, we do consider as relevant "the passage of time since the misconduct, the frequency of misconduct, the involvement of management and the efforts to remedy the situation, [as] good evidence as to whether rehabilitation has occurred."³³

11. Our review as it relates to the implications of Northrop Grumman's 1990 guilty plea in this case, is whether there is evidence since the 1990 guilty plea of other misconduct that would show a pattern of dishonesty that would seriously erode our ability to trust Northrop Grumman as a Commission licensee.³⁴ We find no evidence that Northrop Grumman, which currently holds many Commission licenses, has engaged in the type of behavior that would lead us to seriously question its character qualifications to be a Commission licensee. We also find that neither of the Litton subsidiaries had a close relationship to Northrop Grumman at the time these companies pled guilty to federal felonies. Therefore, we conclude that the misconduct of the Litton subsidiaries are not relevant to Northrop Grumman's character qualifications for purposes of this review.

12. Thus, we do not find the non-FCC misconduct disclosed in the *Application* sufficient grounds for disqualification of Northrop Grumman on the basis of character. Further, we find no evidence that Northrop Grumman lacks the legal, technical, and financial qualifications required under our rules to hold FSS space station licenses. Therefore, we find that Northrop Grumman is a qualified transferee in this case.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Character Qualifications Policy Statement 1986*, 102 FCC 2d at 1190-91.

³¹ *Id.* at 1229. The Commission has also applied this limitation in review of non-FCC misconduct. *See e.g.*, *Stockholders of RCA Corp. (Transferors) and General Electric Co. (Transferee), for Transfer of Control of RCA Corporation and its Wholly-Owned Subsidiary, National Broadcasting Company, Inc.*, Memorandum Opinion and Order, FCC 86-285, 60 RR 2d 563 (1986) at ¶ 18.

³² *Character Qualifications Policy Statement 1986*, 102 FCC 2d at 1229.

³³ *Id.* at 1228-1229.

³⁴ *Compare, e.g.*, *Applications of Leslie D. Brewer*, 17 FCC Rcd 2804, 2804 (2002) (licensee lacked character qualifications because he "had been broadcasting without a license . . . and was marketing and selling unauthorized FM broadcast transmitting equipment"); *Kevin David Mitnick*, 16 FCC Rcd 22740, 22740 (2002) (license applicant was "a convicted felon whose illegal activities have included the interception of electronic communications, computer fraud, wire fraud, and causing damage to computers"); *Mario Loreda*, 11 FCC Rcd 18010, 18010 (1996) (permit applicant misrepresented nationality).

C. Competitive Effects

13. Our analysis of the proposed transfer under Section 310(d) of the Act considers the effects on competition in relevant markets and potential efficiencies and public interest benefits that may likely result from the proposed transfer.³⁵ In assessing the competitive effects of the proposed transfer, we examined the ownership interests held by Northrop Grumman and TRW in the relevant U.S. markets and considered the effect of the proposed transfer on market concentration in these markets.

14. Our analysis considers the relevant markets in which GSO FSS systems using frequencies in the Ka-band participate.³⁶ These satellite systems have the potential to provide a wide variety of broadband interactive, direct-to-home, and digital services to all areas of the United States, including under-served and rural areas, and around the world. We find that the proposed transferee, Northrop Grumman, has no commercial communications services by satellite and does not operate FCC-licensed satellite space segment facilities as any part of its current business.³⁷ Thus, we find that the proposed transfer of control will not increase concentration or lessen competition in any relevant market.

D. Public Interest Benefits

15. We find that granting the proposed transfer meets our public interest test. Northrop Grumman has committed substantial resources and capital investment in acquiring TRW and has made ongoing commitments that require the continuation and incorporation of TRW's operation into Northrop Grumman's long range plans.³⁸ In the *Bell Atlantic/NYNEX Order*, the Commission stated "[a]s the harms to the public interest become greater and more certain, the degree and certainty of the public interest benefits must also increase commensurately in order for us to find that the transaction on balance serves the public interest, convenience, and necessity."³⁹ As noted above, we find no potential harms, and thus, the Applicants' demonstration of potential benefits need not be as great. In this case, because we find no potential harms, we find the Applicants' showing of public benefits sufficient to meet the public interest test. In addition, we note that no concerns were raised in this proceeding as to issues of national security, law enforcement, foreign policy and trade policy. Thus, based on the record before us, we find that the proposed transfer poses no national security, law enforcement, foreign policy or trade concerns.

E. Trafficking

16. Section 25.145(d) of the Commission's rules⁴⁰ prohibits Ka-band satellite licensees from selling "a bare license for profit."⁴¹ In adopting this rule, the Commission explained that it is intended to

³⁵ See *supra* para. 6.

³⁶ In this respect, we have granted authorizations to a number of applicants to launch and operate Ka-band GSO FSS systems. See *Assignment of Orbital Locations to Space Stations in the Ka-Band*, Order, 13 FCC Rcd 1030 (Int'l Bur., May 1997), revised in *Assignment of Orbital Locations to Space Stations in the Ka-Band*, Order, 12 FCC Rcd 22004 (Int'l Bur., Dec. 1997); *Second Round Assignment of Geostationary Satellite Orbit Locations to Fixed-Satellite Service Space Stations in the Ka-Band*, Order, DA 01-1693, 16 FCC Rcd 14389 (Int'l Bur. August 2001); and *Second Round Assignment of Geostationary Satellite Orbit Locations to Fixed-Satellite Service Space Stations in the Ka-Band*, Order, DA 02-1796, (Int'l Bur. July 2002).

³⁷ See e.g., *Application*, Exhibit F at 3.

³⁸ *Id.* at 2, 4. See also http://www.northgrum.com/41603_BannerlessSlides.pdf, visited December 5, 2002.

³⁹ *Bell Atlantic/NYNEX Order*, 12 FCC Rcd at 20063.

⁴⁰ 47 C.F.R. § 25.145(d).

⁴¹ See *Ka-Band FSS Rules Order*, 12 FCC Rcd at 22339-40.

discourage speculators and to prevent unjust enrichment of those who do not implement their proposed systems. This provision was not intended to prevent the infusion of capital by either debt or equity financing. Nevertheless, we stated that any such transaction would be monitored to ensure that it does not constitute an evasion of the anti-trafficking provision.⁴²

17. The Applicants state that the acquisition of TRW's Ka-band authorizations by Northrop Grumman is "incidental to a merger of interests driven by the desire for operational efficiencies in various lines of business unrelated to FCC-regulated industries" and represents a miniscule portion of a very large, multi-billion, merger transaction.⁴³ In this context, the Applicants state the request to transfer control of the Ka-band satellite authorizations cannot be viewed as an attempt to profit from the resale of unbuilt licenses.⁴⁴ The Applicant's also state that because of their relatively small current economic value in relation to the size of the overall transaction, there is no specific amount of consideration assignable to the FCC facilities and licenses to be transferred as part of the merger. The Applicant's contend that the consideration paid under the Merger Agreement represents the fair market value of TRW as a whole as is corroborated by the fact that the two companies are public, financially sound, and able to conduct business dealings at arms length.

18. We find that the proposed transfer does not violate our anti-trafficking requirements. In this case, because the scope of the merger transaction as a whole encompasses such a substantial acquisition of non-FCC related business assets, the four Ka-band authorizations appear to be a relatively minor asset in the overall acquisition price. Under these circumstances, we find that the transaction is consistent with our anti-trafficking rules.

F. Milestones

19. TRW's authorization to construct, launch and operate a Ka-band satellite system is subject to certain milestone requirements.⁴⁵ In granting TRW its Ka-band authorizations, the Commission ordered, *inter alia*, that:

TRW Communications, Inc.'s authorization shall become NULL and VOID with no further action on the Commission's part in the event the space station is not constructed, launched, and placed into operation in accordance with the technical parameters and terms and conditions of this authorization by the following dates:

<u>Construction Commenced</u>		<u>Launch and Operate</u>
First satellite	August 2002	119° W.L. Orbit Location, June 25, 2005
Remaining satellites	August 2003	79° W.L. Orbit Location, June 25, 2005
		15° E.L. Orbit Location, March 9, 2003
		116.5° E.L. Orbit Location, July 16, 2005 ⁴⁶

⁴² *Id* at 22339.

⁴³ *Application*, Exhibit F at 3-4.

⁴⁴ *Id.* at 4.

⁴⁵ On August 3, 2001, as part of the second Ka-band processing round, the International Bureau authorized TRW to launch and operate a GSO satellite to provide fixed satellite service in the Ka-band. *See TRW Authorization Order*, 16 FCC Rcd at 14416.

⁴⁶ *See TRW Authorization Order*, 16 FCC Rcd at 14416. We noted that if the International Telecommunication Union grants a two-year extension of the March 9, 2003 date, this milestone would automatically change to March 9, 2005 without further Commission action.

20. Our approval of the proposed transfer of TRW's Ka-band authorizations to Northrop Grumman is conditioned upon the same milestone requirements that were imposed on TRW at the time we granted TRW its Ka-band authorizations. We note that at this time, we are conducting a review of whether TRW and other Ka-band licensees have complied with Ka-band milestone requirements. Our determinations in this Order and Authorization should not be construed as providing any indication as to the findings of that review, and are without prejudice to any action that may be appropriate in connection with that review.

IV. Conclusion and Ordering Clauses

21. For the reasons stated above, we find the proposed transfer of control of the Ka-band authorizations from TRW to Northrop Grumman serves the public interest, convenience and necessity.

22. Accordingly, IT IS ORDERED that, pursuant to Section 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. § 310(d), the application for transfer of control of Ka-band authorizations held by TRW to Northrop Grumman IS GRANTED to the extent specified in this Order and Authorization.

23. IT IS FURTHER ORDERED that this grant IS CONDITIONED on our requirement pursuant to Section 25.119(f) of the Commissions Rules, 47 C.F.R. § 119(f), that Northrop Grumman shall consummate this transaction within 60 days from the date of this authorization, and within 30 days of consummation, notify the Commission by letter of the date of consummation.

24. This action is taken under delegated authority pursuant to Sections 0.51, 0.261, 0.131, 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.51, 0.261, 0.131, 0.331, and SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Thomas S. Tycz
Chief, Satellite Division