

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

In the Matter of)	
)	
Application of Pegasus Development DBS)	File Nos. SAT-LOA-20020322-00032
Corporation for Authority to Construct, Launch,)	SAT-LOA-20020322-00033
and Operate a System of Direct Broadcast)	SAT-LOA-20020322-00034
Satellites in the Broadcasting Satellite Service)	
)	
)	
)	

Order on Reconsideration

Adopted: June 6, 2006

Released: June 6, 2006

By the Deputy Chief, International Bureau:

I. INTRODUCTION

1. In this Order, we deny Pegasus Development DBS Corporation’s (Pegasus’s) petition for reconsideration¹ of the International Bureau’s (Bureau) December 7, 2005 dismissal of its applications for three 17 GHz satellite space stations.² The Bureau dismissed the applications, without prejudice to refiling, because Pegasus failed to amend its applications to include an orbital debris mitigation plan, as required by the Commission’s rules.³ In its Petition, Pegasus suggests that the Bureau should waive the orbital debris mitigation plan amendment requirement and requests the Bureau to reinstate the applications *nunc pro tunc*.⁴ We find that Pegasus has not justified a waiver of the Commission’s rules and we uphold our previous decision.

II. BACKGROUND

2. On March 22, 2002, Pegasus filed an application for three satellite space stations at 110° W.L., 101° W.L., and 91° W.L. in the Broadcasting Satellite Service (BSS) using the 17.3-17.8 GHz (downlink) and 24.75-25.25 GHz (uplink) bands.⁵ On June 21, 2004, the Commission released a *Second Report and Order* in its orbital debris mitigation proceeding.⁶ In the *Second Report and Order*, the

¹ Pegasus Development DBS Corporation, Petition for Reconsideration, filed January 6, 2006 (Pegasus Petition).

² Application of Pegasus Development DBS Corporation for Authority to Construct, Launch, and Operate a System of Direct Broadcast Satellites in the Broadcasting Satellite Service, File Nos. SAT-LOA-20020322-00032,33,34. See also Public Notice, DA 05-3152 (December 7, 2005) (dismissing this application) (*Dismissal Public Notice*).

³ See Mitigation of Orbital Debris, *Second Report and Order*, IB Docket No. 02-54, 19 FCC Rcd 11567 (2004) (*Second Report and Order*).

⁴ Pegasus Petition at 1.

⁵ For purposes of this Order, we refer to these bands as the “Ka-band.”

⁶ See generally *Second Report and Order*, 19 FCC Rcd 11567. Orbital debris consists of artificial objects orbiting the Earth that are not functional spacecraft. 19 FCC Rcd at 11568 (para. 2). The Commission found that mitigation

Commission, among other things, adopted a requirement that applicants disclose their orbital debris mitigation plans as part of the technical information about space station networks submitted pursuant to Section 25.114 of the Commission's rules.⁷ The Commission also stated that parties that have requests for approval of space stations pending before the Commission shall have 30 days following publication of the *Second Report and Order* in the Federal Register in which to amend their requests by filing orbital debris mitigation plans.⁸ The deadline to file amendments was subsequently changed to 30 days after the effective date of the orbital debris disclosure rules.⁹

3. Notice of the effective date of the orbital debris disclosure rules was published in the Federal Register on October 12, 2005.¹⁰ On October 13, 2005, the Commission released a public notice stating that the Commission's orbital debris disclosure rules would take effect on October 19, 2005.¹¹ That public notice further stated that applications that were pending as of October 19, 2005 were required to be amended by November 18, 2005 to include an orbital debris plan or would be dismissed as incomplete.¹²

4. Pegasus did not file the required amendment by November 18, 2005.¹³ Pegasus claims that on December 2, 2005, it verbally notified the Commission that, due to an oversight, it had failed to file the plan, it was in the process of preparing the plan, and it would request a waiver of the November deadline.¹⁴ On December 7, 2005, the Bureau released a public notice dismissing Pegasus's three Ka-band BSS applications without prejudice to refiling.¹⁵ On January 6, 2006, Pegasus filed a petition for reconsideration of the Bureau's action.¹⁶

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of orbital debris serves the public interest by preserving the United States' continued affordable access to space, the continued provision of reliable U.S. space-based services – including communications and remote sensing satellite services for U.S. commercial, government, and homeland security purposes – as well as the continued safety of persons and property in space and on the surface of the Earth. *Second Report and Order*, 19 FCC Rcd at 11568 (paras. 1-2).

⁷ *Second Report and Order*, 19 FCC Rcd at 11576 (para.16). The Commission found that disclosure of debris mitigation plans allows the Commission and potentially affected third parties to evaluate debris mitigation plans prior to issuance of Commission approval for communications activities in space, and may also aid in the wider dissemination of debris mitigation techniques. Without such disclosure, the Commission is denied the opportunity to ascertain whether operators are in fact considering and adopting reasonable debris mitigation practices. *Second Report and Order*, 19 FCC Rcd at 11576 (para. 16). The required contents of an orbital debris mitigation plan for filings subject to Part 25 of the Commission's rules are codified in Section 25.114(d)(14). See 47 C.F.R. § 25.114(d)(14).

⁸ *Second Report and Order*, 19 FCC Rcd at 11577 (para. 20).

⁹ Mitigation of Orbital Debris, Erratum, 19 FCC Rcd 16333 (Aug. 24, 2004).

¹⁰ *Mitigation of Orbital Debris*, 70 Fed. Reg. 59276.

¹¹ Disclosure Of Orbital Debris Mitigation Plans, Including Amendment of Pending Applications, *Public Notice*, DA 05-2698, Report No. SPB-112 (October 13, 2005) (*Orbital Debris Mitigation Public Notice*).

¹² *Orbital Debris Mitigation Public Notice*.

¹³ See *Dismissal Public Notice*.

¹⁴ Pegasus Petition at 2.

¹⁵ See *Dismissal Public Notice*.

¹⁶ On April 12, 2006, Pegasus refiled these three applications that included an orbital debris mitigation plan. See IBFS File Nos. SAT-LOA-20060412-00042, 43, and 44. This Order does not prejudice our review of these applications.

III. DISCUSSION

A. Waiver Standard

5. The Commission may waive a rule or deadline if there is good cause to do so, if special circumstances warrant such a waiver, and a deviation from the rules would better serve the public interest than would strict adherence to the general rule.¹⁷ Further, the Commission may grant a waiver only if the relief requested does not undermine the policy objective of the rule in question and would otherwise serve the public interest.¹⁸ We find that granting Pegasus a waiver would undermine the purpose of the rule at issue here and that the circumstances that Pegasus outlines do not warrant a deviation from the rule.

B. Purpose of the Rule

6. Pegasus asserts that the purpose of the *Orbital Debris Mitigation Public Notice* is to establish a date certain for amendments to applications to enable the Bureau to act on such applications expeditiously in accord with the Commission's first-come, first-serve, licensing process applicable to most applications. Pegasus further claims that because rules have not yet been established for the service that Pegasus planned to offer, the Bureau is not in a position to act on its application, even had it filed an orbital debris showing.¹⁹ Pegasus therefore maintains that a waiver of the orbital debris filing requirement would not frustrate Commission policy.²⁰ We disagree.

7. In its request, Pegasus is not simply asking for a waiver of the filing deadline in the *Orbital Debris Mitigation Public Notice*, but in effect is also asking for a waiver of the Commission's requirement that all applications be substantially complete when filed. In the *First Space Station Reform Order*, the Commission adopted a first-come, first-served processing procedure for most applications proposing satellites that will operate in the geostationary satellite orbit, such as Pegasus's proposed satellites. It also adopted a requirement that all applications must be substantially complete at the time of filing.²¹ This requirement is needed to discourage speculative satellite applications and to ensure that applicants do not submit incomplete applications with the aim of obtaining "first-in-line" status.²² Since the *First Space Station Reform Order* was adopted, the Bureau has strictly enforced this requirement,²³

¹⁷ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (*Northeast Cellular*)

¹⁸ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972); *Northeast Cellular*, 897 F.2d at 1166.

¹⁹ Pegasus Petition at 4.

²⁰ Pegasus Petition at 1.

²¹ Space Station Licensing Rules and Policies, *First Report and Order and Further Notice of Proposed Rulemaking*, IB Docket No. 02-34, 18 FCC Rcd 10760, 10852 (para. 244) (2003) (*First Space Station Reform Order*). 47 C.F.R. § 25.114(b) ("The technical information for a proposed satellite system should be complete in all pertinent details.").

²² See *First Space Station Reform Order*, 18 FCC Rcd at 10805-06 (para. 112). We emphasize that we do not find that the Pegasus application is speculative. Rather, we conclude that granting a waiver of our requirement that applications be substantially complete would undermine the purpose of this requirement and open the door to future speculators.

²³ 47 C.F.R. § 25.112(a)(1). See e.g., Echostar Satellite LLC (F/K/A Echostar Satellite Corporation), Application for Authority to Construct, Launch and Operate a Geostationary Satellite in the Fixed Satellite Service Using the Extended Ku-Band Frequencies at the 101° W.L. Orbital Location, *Order on Reconsideration*, 19 FCC Rcd 24953, 24958-59 (para. 14) (Int'l Bur. 2004) (*EchoStar Dismissal Reconsideration Order*). See also, e.g. Letter to James V. Heck, World Radio Network, Inc., from Scott A. Kotler, Chief, Systems Analysis Branch, Satellite Division, 20 FCC Rcd 1919 (Int'l Bur., Sat. Div., 2005) (James V. Heck Letter); Letter to Robert Lewis, SkyTerra

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stating that finding defective applications acceptable for filing is not consistent with the *First Space Station Reform Order* and creates uncertainty and inefficiencies in the licensing process.²⁴ Allowing applicants, like Pegasus, to cure applications after they are filed could adversely impact other applicants, including 17 GHz applicants, filing complete applications that are “second-in-line” to the first application.²⁵

8. Pegasus argues, however, that because the Commission has not yet established service, technical, or licensing rules for systems such as Pegasus’s, and thus is not in a position to act on Pegasus’s applications, a waiver is warranted.²⁶ As indicated above, the purpose of the substantially complete requirement is to discourage defective applications, and to ensure that parties filing defective applications do not adversely affect parties filing substantially complete applications. Contrary to Pegasus’s assertion, the purpose of the rule is not to expedite Commission review of applications.²⁷ Thus, regardless of whether the Commission can immediately act on Pegasus’s applications, granting the Pegasus waiver request would undermine the purpose of the requirement that applications be substantially complete when filed.

C. Particular Circumstances

9. Pegasus also asserts that it had not been sufficiently notified of the requirement to amend its application to provide an orbital debris mitigation disclosure, and that dismissal of its application would be unduly harsh since its application has been pending for more than three and a half years.²⁸ We disagree with both assertions, and find that dismissal is an appropriate action.

10. First, we find that the Commission provided ample notice of the requirement to amend pending applications to include orbital debris mitigation disclosures. Contrary to Pegasus’s assertions that it was notified only by the *Orbital Debris Mitigation Public Notice*, the Commission provided public notice of the requirement to amend pending applications on two other occasions:

- (1) The *Second Report and Order*, released on June 24, 2004;²⁹
- (2) Federal Register Notice, dated October 12, 2005;³⁰

Any of these notification methods, by itself, provide Pegasus adequate notice.³¹ Nonetheless, the Bureau took the further extraordinary step of providing actual notice by e-mail to the contact of record of parties

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Communications, Inc., from Fern J. Jarmulnek, Deputy Chief, Satellite Division, 20 FCC Rcd 2112 (Int’l Bur., Sat. Div., 2005) (Robert Lewis Letter).

²⁴ *EchoStar Dismissal Reconsideration Order*, 19 FCC Rcd at 24957 (para. 9).

²⁵ *EchoStar Dismissal Reconsideration Order*, 19 FCC Rcd at 24958 (para. 13).

²⁶ Pegasus Petition at 4.

²⁷ *First Space Station Reform Order*, 18 FCC Rcd at 10852 (para. 244). *EchoStar Dismissal Reconsideration Order*, 19 FCC Rcd at 24958-59 (para. 14).

²⁸ Pegasus Petition at 1.

²⁹ *Second Report and Order*, 19 FCC Rcd at 11577 (para. 20).

³⁰ *Mitigation of Orbital Debris*, 70 Fed. Reg. 59276.

³¹ See *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314, 70 S.Ct. 652, 657, 94 L.Ed. 865 (1950) (“... [a] fundamental requirement of due process [is] ... notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.”).

with pending applications that were subject to the orbital debris mitigation amendment requirement. Such actual notice was provided to Pegasus ten days before the amendment was due.³² As a result, Pegasus had actual prior notice of the need to amend its pending applications by November 18, 2005, or face dismissal. Thus, Pegasus's assertion that it missed the filing deadline because it did not have sufficient notice of the orbital debris mitigation amendment requirements is contradicted by the record. Furthermore, we do not find that dismissal of Pegasus's applications is unduly harsh. The Commission stated in the *Orbital Debris Mitigation Public Notice* that it would dismiss applications in cases where the applicant did not submit an amendment to provide an orbital debris mitigation plan.³³ As noted above, the Commission has consistently dismissed applications that it has found to be incomplete,³⁴ and Pegasus is free to resubmit its application without paying another filing fee.³⁵

11. Pegasus also asserts that its original application was submitted, in part, to assist in preserving U.S. international coordination priority for certain orbital locations relative to other nations under the procedures of the International Telecommunication Union (ITU).³⁶ In the ITU international coordination process, member nations submit filings on behalf of their applicants. When a member nation submits the required filings with the ITU, it obtains "priority" over member nations filing subsequently. This priority gives the member nation superior status in coordinating their satellite systems with the systems of later-filed nations. Retaining ITU date-priority for Pegasus, however, does not justify reinstatement. Beginning in 1998, when the United States agreed to open its satellite market to satellites licensed by other countries,³⁷ the Commission has authorized foreign-licensed satellites to serve U.S. customers.³⁸ Accordingly, even if the United States loses date priority at Pegasus's orbital locations, it does not follow that the U.S. public will necessarily lose service from these orbital locations.³⁹ Thus, the Commission's overriding goal – delivery of service to the public – could be met even if Pegasus' application is dismissed.

12. Finally, Pegasus argues that the Bureau improperly acted before it could submit its waiver request and amendment.⁴⁰ As noted, the Commission provided ample notice for parties to submit the

³² See e-mail from Curtrisha Banks, Policy Branch, Satellite Division, International Bureau, to Scott Blank, Senior Vice President, Legal and Corporate Affairs, and General Counsel, dated November 8, 2005. See also Letter from Bruce Jacobs, Counsel for Pegasus Development Corporation, to Marlene Dortch, Secretary, FCC, dated April 1, 2005, informing the Commission that the contact person for Pegasus's satellite-related licenses and pending applications is Scott Blank.

³³ See *Orbital Debris Mitigation Public Notice*.

³⁴ *EchoStar Dismissal Reconsideration Order*, 19 FCC Rcd at 24958-59 (para. 14). See also, e.g. James V. Heck Letter, 20 FCC Rcd 1919; Robert Lewis Letter, 20 FCC Rcd 2112.

³⁵ As indicated above, Pegasus refiled these applications on April 12, 2006.

³⁶ Pegasus Petition at 2.

³⁷ The results of the World Trade Organization (WTO) basic telecommunications services negotiations are incorporated into the General Agreement on Trade in Services (GATS) by the Fourth Protocol to the GATS (April 30, 1996), 36 I.L.M. 336 (1997). These results, as well as the basic obligations contained in the GATS, are referred to as the "WTO Basic Telecom Agreement." This agreement, which took effect on January 1, 1998, opened global markets, including that of the United States, for telecommunications services, including satellite services.

³⁸ 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*, IB Docket No. 96-111, 12 FCC Rcd 24094 (1997) (*DISCO II*).

³⁹ See *VisionStar Incorporated, Application for Modification of Authority to Construct, Launch and Operate a Ka-Band Satellite System in the Fixed Satellite Service*, 19 FCC Rcd 14820, 14824 (para. 11) (Int'l Bur. 2004) (*VisionStar Order*).

⁴⁰ Pegasus Petition at 4-5.

required amendment or request a waiver of the requirement. Pegasus did neither. Pegasus's petition does not cite any provision of the Commission's rules or administrative law that requires the Bureau to grant, or even consider, a waiver request filed after a filing deadline has expired or to withhold action on a defective application for a certain time period.⁴¹ As a result, we can find no basis for Pegasus's waiver request and dismiss it.

IV. ORDERING CLAUSES

13. Accordingly, IT IS ORDERED that the petition for reconsideration filed by Pegasus Development DBS Corporation is DENIED.

14. 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.

FEDERAL COMMUNICATIONS COMMISSION

John V. Giusti
Deputy Bureau Chief
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⁴¹ In fact, Courts have upheld a number of prior cases in which requests for waiver of filing deadlines have been denied. See *In re Burlington Cablevision, Inc.*, 13 FCC Rcd 772 (Mass Media Bur., 1998), and cases cited therein.