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

In the Matter of	)	
	)	
Columbia Communications Corporation	)	
	)	
Application for Authority to Construct,	)	SAT-LOA-19870331-00061
Launch, and Operate a Trans-Atlantic	)	
Satellite System Positioned at 49° W.L.	)	

ORDER ON RECONSIDERATION

Adopted: May 6, 2003 Released: May 7, 2003

By the Chief, International Bureau:

I. INTRODUCTION

1. In this Order, we deny Columbia Communications Corporation's[1] (Columbia's) petition for reconsideration of the *Columbia 47° Reconsideration Order*.[2] In that Order, the Bureau found that it had previously and correctly denied Columbia's application for authority to construct, launch, and operate a Ku-band[3] satellite at 49° W.L. By affirming that action, we ensure that operators of licensed space stations located near 49° W.L. can continue to provide service to their customers without harmful interference.

II. BACKGROUND

2. In 1987, the Commission announced a "freeze" on applications for satellites in the 30° W.L. to 60° W.L. portion of the orbital arc.[4] Nevertheless, after the freeze was effective,

[1] On June 27, 2000, 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 International and Wireless Telecommunications Bureaus 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*, 16 FCC Rcd 17575 (Int'l Bur. and Wireless Bur., 2001).

[2] Columbia Communications Corporation, Petition to Revoke Authorization of Orion Satellite Corporation to Construct, Launch, and Operate an International Communications Satellite to be Located at 47° W.L., Application for Amendment to Pending Application to Construct, Launch, and Operate a Ku-band Satellite at 49° W.L., Application for Modification of Authorization To Launch and Operate a Fixed-Satellite Service Geostationary Satellite at 47° W.L., Application for Authority to Construct, Launch, and Operate a Trans-Atlantic Satellite System Positioned at 49° W.L., *Order and Order on Reconsideration*, 16 FCC Rcd 10867 (Int'l Bur. 2001) (*Columbia 47° Reconsideration Order*).

[3] For purposes of this Order, "Ku-band" denotes the 11.7-12.2 GHz and 14.0-14.5 MHz frequency bands.

Columbia filed an application to construct, launch, and operate a Ku-band satellite at the 49° orbit location.[5] Columbia requested the Commission to hold its application in abeyance until the Commission lifted the freeze.[6] In 1999, Columbia amended its application to, among other things, change its requested orbit location to 47° W.L. It also requested authority to consolidate this satellite with a C-band satellite we licensed to Columbia earlier in 1999 into a single hybrid satellite.[7] We denied Columbia's amended application on January 21, 2000, because we had previously granted Ku-band authority at 47° W.L. to another licensee.[8] Columbia claims that we did not explicitly address in that Order Columbia's underlying 1987 application that requested an assignment at 49° W.L.[9]

3. Columbia filed a petition for reconsideration of the *Columbia 47° Order*. The Bureau denied that petition in an Order released on May 22, 2001. In addition, the Bureau found that it in effect denied Columbia's 1987 application in the *Columbia 47° Order*. By amending its 1987 application, Columbia, in effect, replaced its original application with a new amended application.[10] The Bureau also pointed out that it could not have granted Columbia authority to operate in the Ku-band at 49° W.L. in any case, because it would cause harmful or unacceptable interference into another Ku-band satellite operated by Intelsat at 50° W.L.[11] Columbia seeks

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[4] Processing of Pending Applications for Space Stations to Provide International Communications Service, FCC 85-296 (released June 6, 1985). The freeze was intended to address congestion in the portion of the orbital arc between 30° W.L. and 60° W.L. by suspending the processing of applications involving those locations.

[5] About one year before Columbia filed its 1987 application, we denied another Columbia application to operate a Ku-band satellite at 49° W.L., in part because Columbia did not meet the Commission's financial qualification requirements and so was not qualified to operate a satellite. Columbia Communications Corporation, *Memorandum Opinion and Order*, 1986 WL 292761 (F.C.C.) (Com. Car. Bur., released Mar. 7, 1986). Thus, this is the second time Columbia has attempted to show that granting it Ku-band authority at the 49° W.L. orbit location would be in the public interest.

[6] Columbia Application at 4-5.

[7] Columbia Communications Corporation, Petition to Revoke Authorization of Orion Satellite Corporation to Construct, Launch, and Operate an International Communications Satellite to be Located at 47° W.L., Application for Amendment to Pending Application to Construct, Launch, and Operate a Ku-band Satellite at 49° W.L., Application for Modification of Authorization To Launch and Operate a Fixed-Satellite Service Geostationary Satellite at 47° W.L., *Memorandum Opinion and Order*, 15 FCC Rcd 15566, 15567-68 (paras. 2-4) (Int'l Bur. 2000) (*Columbia 47° Order*). For purposes of this Order, "C-band" denotes the 3700-4200 MHz and 5925-6425 MHz frequency bands.

[8] *Columbia 47° Order*, 15 FCC Rcd at 15571 (para. 10).

[9] Columbia Petition at 3. Although the file number of the 1987 application was not listed in the caption or the ordering clauses of the *Columbia 47° Order*, the Bureau's denial of Columbia's amendment subsumed its 1987 application. We explain this further below.

[10] *Columbia 47° Reconsideration Order*, 16 FCC Rcd 10877 (para. 31).

[11] *Columbia 47° Reconsideration Order*, 16 FCC Rcd 10877 (para. 32), *citing* Applications of INTELSAT LLC for Authority to Operate, and to Further Construct, Launch, and Operate C-Band and Ku-band Satellites That Form a Global Communications System in Geostationary Orbit, *Memorandum Opinion, Order and Authorization*, 15 FCC Rcd 15460 (2000) (*INTELSAT Licensing Order*); 47 C.F.R. § 25.273(a)(3) (prohibiting transmissions that cause unacceptable interference to the authorized transmissions of another licensee). *See also* Columbia Amendment Application, File No. SAT-AMD-19990511-00052,

reconsideration of the conclusion in the *Columbia 47° Reconsideration Order* that its application for Ku-band authority at 49° W.L. was denied as of January 2000, and asserts that the application should be reinstated.[12]

III. DISCUSSION

A. Effect of Denial of Amendment Application on Underlying License Application

4. As an initial matter, the Bureau affirms its conclusion that by amending an application, the applicant in effect replaces its original application with a new amended application. Accordingly, the Bureau in effect denied Columbia's 1987 application when it denied Columbia's amendment request.[13] Columbia does not raise any persuasive arguments to reconsider this decision.

5. Section 25.116 governs amendments to satellite applications, and includes requests to change an orbit location in the definition of a "major amendment."[14] Section 25.116 also states that an application will be treated like a newly filed application if it is amended by a major amendment, except under certain circumstances related to processing rounds not relevant here.[15] Columbia did not request a waiver of this rule in its amendment application, nor did it suggest that it wanted the Commission to consider its request for authority at 47° W.L. as an alternative to its original 49° W.L. request.[16] Thus, Columbia has no basis now to claim that it was inappropriate to treat its application as newly filed when it submitted its major amendment.

6. Columbia cites two Orders in which it claims the Commission acted on license applications and satellite licenses separately.[17] In each of those Orders, there were factors that made those applications and amendments distinguishable from Columbia's amended application. In the *National Exchange Order*, the Commission denied an amended application because the applicant failed to meet its financial qualification milestones, and concluded that it did not need to

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at 13 (Columbia states that, "In its 1987 application, Columbia requested assignment of the 49° W.L. orbital location for its Ku-band operations. However, since that initial application was filed, INTELSAT has located a satellite just one degree away at 50° W.L., which would preclude Columbia from successfully coordinating a viable operation at that location.")

[12] Columbia Petition at 4-8.

[13] *Columbia 47° Reconsideration Order*, 16 FCC Rcd 10877 (para. 31).

[14] 47 C.F.R. § 25.116(b)(1).

[15] 47 C.F.R. § 25.116(c).

[16] In another proceeding, Columbia asked for a waiver of the major amendment rule with respect to its merger with GE Americom. *See GE Americom/Columbia Merger Order*, 15 FCC Rcd at 115__ (para. 12). Columbia specifically asked for a waiver of the "cut-off" rule, and its waiver request was dismissed as moot because it did not have any applications in pending processing rounds. Columbia did not ask for a waiver of the rule requiring that we treat applications with major amendments as newly filed in this proceeding, however.

[17] Columbia Petition at 6, *citing* National Exchange, Inc., *Order*, 103 FCC 2d 836 (1985) (*National Exchange Order*); STARSYS Global Positioning, Inc., *Order and Authorization*, 11 FCC Rcd 1237, 1239-40 (paras. 16-21) (Int'l Bur., 1995) (*Starsys Order*).

reach arguments in comments filed in response to the amendment.[18] In the *Starsys Order*, the Bureau granted an application in a processing round, decided to treat a major amendment as a modification, and deferred consideration of the modification to the second processing round in that proceeding. In neither of these Orders did the Commission or the Bureau do what Columbia claims we did in the *Columbia 47° Order*, that is, deny an amendment request while deferring action on the original license application.[19]

B. Merits of License Application

7. In any case, even if were to reinstate the 1987 application, we find that the Bureau provided more than adequate independent justification in the *Columbia 47° Reconsideration Order* for denying Columbia's initial assignment request for 49° W.L. In that Order, the Bureau explained that it could not have granted Columbia authority to operate in the Ku-band at 49° W.L. in any case, because it would cause interference into another lawfully operating Ku-band satellite at 50° W.L.[20] Moreover, the Bureau's conclusion is consistent with Columbia's statement in its 1999 amendment that, "In its 1987 application, Columbia requested assignment of the 49° W.L. orbital location for its Ku-band operations. However, since that initial application was filed, INTELSAT has located a satellite just one degree away at 50° W.L., which would preclude Columbia from successfully coordinating a viable operation at that location."[21] None of Columbia's arguments in the petition for reconsideration before us now persuade us to revisit this conclusion.

8. Columbia asserts that, if the 49° W.L. orbital location was not available, the Bureau should have granted it authority to operate a Ku-band satellite someplace else in the Atlantic Ocean Region. According to Columbia, the Commission's policy of treating orbital locations as fungible requires us to determine whether Columbia could have operated its proposed satellite system at any other location.[22] Columbia asserts further that granting its application would

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[18] *National Exchange Order*, 103 FCC 2d at 837 n.1.

[19] Columbia Petition at 4-5. According to Columbia, the Bureau also stated in a later Order that Columbia's 1987 application was still pending. Columbia Petition at 6, *citing GE Americom/Columbia Merger Order*, 15 FCC Rcd at 11591 n.12. Columbia maintains further that the International Bureau Filing System (IBFS) listed its application as pending about a month after the *Columbia 47° Order* was released. Columbia Petition, Att. I (IBFS printout dated Feb. 17, 2000, listing Columbia's application as pending). In both cases, these were administrative errors and not of decisional significance.

[20] *Columbia 47° Reconsideration Order*, 16 FCC Rcd 10877 (para. 32), *citing INTELSAT Licensing Order*, 15 FCC Rcd at 15495 n.243. The Commission instituted its 2° orbital spacing policy in 1983, to maximize the number of satellites in-orbit. Under the 2° spacing framework, the Commission assigns adjacent in-orbit satellites to orbit locations 2° apart in longitude. Licensing of Space Stations in the Domestic Fixed-Satellite Service and Related Revisions of Part 25 of the Rules and Regulations, Report and Order, CC Docket No. 81-704, FCC 83-184, 54 Rad. Reg. 2d 577 (released Aug. 16, 1983); Licensing Space Stations in the Domestic Fixed-Satellite Service, 48 F.R. 40233 (Sept. 6, 1983) (*Two Degree Spacing Order*).

[21] Columbia Amendment Application, File No. SAT-AMD-19990511-00052, at 13.

[22] Columbia Petition at 7-8. Historically, the Commission has treated orbital locations as fungible in the context of processing rounds, and has held that applications seeking assignment to the same orbit location do not give rise to comparative hearing rights. *See* Assignment of Orbital Locations to Space Stations in the Domestic Fixed Satellite Service, *Memorandum Opinion and Order*, 84 FCC 2d 584, 601 (para. 45) (1981) (*1980 Assignment Order*); Establishment of Satellite Systems Providing International

increase competition, and Section 309(a) of the Communications Act of 1934 requires us to consider "the public's need for new service and all potential options for delivery of such service" before denying a license application.[23] Finally, Columbia asserts that, once we have held an application in abeyance for a long period of time, we should continue to hold it in abeyance so that it could be considered in the event that either the 47° W.L. or 49° W.L. orbital location becomes available for reassignment to another Ku-band licensee.[24]

9. We disagree with Columbia's interpretation of the Commission's fungibility policy for two reasons. First, the Commission has not applied its fungibility policy to license applications like Columbia's. Second, extending the fungibility policy to Columbia's application would lead to unreasonable results. We explain both these considerations further below.

10. First, Columbia mistakenly assumes that the Commission's fungibility policy should apply to its application. The Commission has historically maintained a policy of treating orbital locations as fungible only in the context of processing rounds, as one means of resolving mutually exclusive situations in those processing rounds.[25] This policy enabled the Commission to resolve mutually exclusive situations without resorting to lengthy comparative hearings among satellite applicants with equal status. As a result, the Commission was able to complete processing rounds and issue satellite licenses more quickly than would have been possible otherwise. Columbia sought authority for an international satellite[26] under the "separate system" framework in effect prior to the *DISCO I Order*.[27] Prior to *DISCO I*, we considered only domestic satellite license applications in processing rounds, while separate system applications were considered on a case-by-case basis.[28] Therefore, we were correct to act on Columbia's application without instituting a

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Communications, *Report and Order*, CC Docket No. 84-1299, 101 FCC 2d 1046, 1176 n.168 (1985) (*Separate Systems Order*).

[23] Columbia Petition at 8-9, *citing* 47 U.S.C. § 309(a). Columbia also refers to *dicta* in a 1986 Order addressing a PanAmSat modification request, but this reference does not persuade us to grant its application. Columbia Petition at 7 n.8, *citing* Pan American Satellite Corporation, *Memorandum Opinion, Order and Authorization*, FCC 86-257, 60 Rad. Reg. 2d 398, 409 (para. 33) (released May 21, 1986). In that Order, the Commission stated that, after it has granted a satellite license, assignments of orbital locations are subject to change by summary order on 30 days' notice. It does not discuss whether or under what circumstances an applicant can or should be granted authority to operate at an orbital location other than the one specified in its application.

[24] Columbia Petition at 8-10.

[25] *See* Assignment of Orbital Locations to Space Stations in the Domestic Fixed Satellite Service, *Memorandum Opinion and Order*, 84 FCC 2d 584, 601 (para. 45) (1981); Establishment of Satellite Systems Providing International Communications, *Report and Order*, CC Docket No. 84-1299, 101 FCC 2d 1046, 1175 (para. 263) (1985), *cited in* Columbia Petition at 7 n.8; Assignment of Orbital Locations to Space Stations in the Domestic Fixed-Satellite Service, *Memorandum Opinion and Order*, 3 FCC Rcd 6972, 6972 (para.3) (1988), *cited in* Columbia Petition at 7 n.8.

[26] *See* Columbia License Application, File No. SAT-LOA-19870331-00061, at 10-13.

[27] Amendment to the Commission's Regulatory Policies Governing Domestic Fixed Satellites and Separate International Satellite Systems, *Report and Order*, CC Docket No. 95-41, 11 FCC Rcd 2429 (1996). The term "separate system" referred to international satellite systems separate from INTELSAT.

[28] *See* PanAmSat Licensee Corp., *Order and Authorization*, 14 FCC Rcd 2719, 2724 (para. 13) (Int'l Bur. 1998).

processing round, and as a result, the Commission's fungibility policy is not applicable to Columbia's application.

11. Furthermore, we reject Columbia's argument that Section 309(a) compels us to apply the fungibility policy to international separate system applications outside of processing rounds. As noted above, Columbia maintains that we must grant it authority to operate at some orbital location as long as a location is available, and additional competition for Ku-band service in the Atlantic Ocean Region is in the public interest.[29] The Commission and the Courts have rejected arguments that Section 309(a) "mandates" us to grant any particular license application.[30] They have also rejected arguments that license applicants have an "automatic" right to operating authority.[31] Finding that we must determine that there is no unoccupied orbital location anywhere in the Atlantic Ocean Region at which Columbia could operate its proposed satellite would be tantamount to concluding that it has an automatic right to operating authority.

12. Similarly, we disagree with Columbia that holding an application in abeyance for more than a certain amount of time obligates the Bureau to continue to hold that application in abeyance until such time that it can be granted.[32] This also would be tantamount to concluding that applicants can have automatic rights to operating authority under certain circumstances. Furthermore, given that there is no basis for determining when or if we would ever be able to grant Columbia's application if the Bureau continued to hold it in abeyance, it was reasonable to deny that application.

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[29] Columbia Petition at 7-8.

[30] *See* TelQuest Ventures, L.L.C., *Memorandum Opinion and Order*, 16 FCC Rcd 15026, 15036-37 (para. 29) (2001) (*TelQuest Order*) (petition for review pending) (interpreting Section 309(a) in a manner that would require us to grant every application filed would substantially negate the remainder of Title III of the Communications Act). Courts do not interpret clauses of statutes in a way that would make other clauses of the statute meaningless. *See TelQuest Order*, 16 FCC Rcd at 15037 n.75, *citing* Toro Corp. v. White Consolidated Industries, Inc., 199 F.3d 1295, 1300 (Fed. Cir. 1999); Boise Cascade Corp. v. EPA, 942 F.2d 1427, 1432 (9th Cir. 1991); Hughes Air Corp. v. Public Utility Commission of Calif., 644 F.2d 1334, 1338 (9th Cir. 1981).

[31] *TelQuest Order*, 16 FCC Rcd at 15038-39, *citing* National Broadcasting Co., Inc. v. United States, 319 U.S. 190, 226-27 (1943) (*NBC v. United States*) (applicants do not have automatic right to operating authority).

[32] Columbia Application at 8-10.

IV. ORDERING CLAUSE

13. Accordingly, IT IS ORDERED that the petition for reconsideration filed by the Columbia Communications Corporation IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Donald Abelson
Chief, International Bureau