

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

Applications of)	
)	
)	
The Boeing Company	)	File Nos. SAT-AMD-20171206-00167
	)	SAT-AMD-20171206-00168
For Amendment to Convey NGSO	)	SAT-LOA-20161115-00109
Applications to SOM1101, LLC;	)	SAT-LOA-20160622-00058
	)	SAT-AMD-20170301-00030
For Authority to Launch and Operate an NGSO)	
Low Earth Orbit Satellite System in the Fixed)	
Satellite Service)	
)	
For Authority to Launch and Operate a Ka-band)	
NGSO System in the Fixed Satellite Service and)	
in the Mobile Satellite Service)	
)	

PETITION TO DENY OF IRIDIUM SATELLTE LLC

Introduction

The Boeing Company (“Boeing”) has pending applications to launch and operate two non-geostationary satellite orbit (“NGSO”) constellations that have been accepted for filing as part of the Commission’s Ka- and V-band processing rounds.¹ Last December, Boeing and SOM1101, LLC (“Wyler LLC”) applied to amend the Boeing applications to substitute Wyler LLC as the applicant in place of Boeing.² Wyler LLC, however, is indirectly wholly-owned by Greg Wyler, the founder, Executive Chairman, and a substantial owner of *another* participant in both processing rounds, WorldVu Satellites Limited d/b/a OneWeb (“OneWeb”).³ The Boeing-Wyler Amendments, if granted, would give Mr. Wyler an

¹ See IBFS File Nos. SAT-LOA-20161115-00109, SAT-LOA-20160622-00058, SAT-AMD-20170301-00030.

² See IBFS File Nos. SAT-AMD-20171206-00167, SAT-AMD-20171206-00168 (the “Boeing-Wyler Amendments”). See also Waiver of Section 25.159(b), IBFS File Nos. SAT-LOA-20160622-00058, SAT-LOA-20161115-00109, and SAT-AMD-20170301-00030 (filed Dec. 29, 2017) (“Boeing-Wyler Waiver Applications”).

³ See IBFS File Nos. SAT-LOI-20160428-00041, SAT-LOI-20170301-00031.

attributable interest in more than one entity with a pending application or a licensed-but-unbuilt system in both Ka- and V-band frequencies. As a result, they would produce two straightforward violations of the Commission’s rules against multiple ownership of proposed NGSO constellations.

Iridium Satellite LLC (“Iridium”) urges the Commission to enforce its rules and deny the Boeing-Wyler Amendments. Boeing and Wyler LLC have failed to make the showing required for the Commission to waive its multiple ownership rule, which serves the important purpose of deterring the speculative maneuvering that Boeing and Wyler have engaged in here. If the Commission grants the waiver, it should remove Boeing’s applications from the current NGSO processing rounds. The Commission’s rule concerning major amendments filed after the applicable cut-off date requires no less.

I. The Boeing-Wyler Amendments Violate the Multiple Ownership Rule.

Under section 25.159 of the Commission’s rules, “[a]pplicants with an application for one NGSO-like satellite system license on file with the Commission in a particular frequency band, or one licensed-but-unbuilt NGSO-like satellite system in a particular frequency band, will not be permitted to apply for another NGSO-like satellite system license in that frequency band.”⁴ To enforce this limit, “pending applications and licensed-but-unbuilt satellite systems” filed by any entity in which the applicant holds an “attributable interest” “will be counted as filed by the applicant.”⁵ An applicant holds an “attributable interest” in an entity if it holds a “controlling interest” in that entity.⁶ Under the controlling interest standard in Part 1 of the

⁴ 47 C.F.R. § 25.159(b).

⁵ *Id.* § 25.159(c).

⁶ *Id.* § 25.159(c)(2).

Commission’s rules, individuals or entities that hold more than “50 percent of the voting stock” have a controlling interest in an entity,⁷ as do the entity’s “[o]fficers and directors.”⁸

Mr. Wyler plainly holds an attributable interest in both Wyler LLC and in OneWeb. According to the Boeing-Wyler Waiver Applications, Mr. Wyler indirectly wholly owns Wyler LLC, and thus owns more than 50 percent of its voting stock.⁹ Obviously, Mr. Wyler has a controlling interest in Wyler LLC. Moreover, as the Executive Chairman of OneWeb, Mr. Wyler is both an officer and director of OneWeb.¹⁰ He thus also holds a controlling interest in OneWeb.

Because Mr. Wyler holds an attributable interest in Wyler LLC and in OneWeb, the Boeing-Wyler Amendments, if granted, would violate the prohibition against multiple ownership. In the Ka-band, post-amendment, Boeing’s pending NGSO system application and OneWeb’s licensed-but-unbuilt NGSO constellation¹¹ would both be attributable to the same applicant—Wyler. The same result would follow in the V-band, where Boeing and OneWeb both have pending NGSO applications.

Boeing and Wyler LLC make a half-hearted attempt to skirt the multiple ownership rule. They argue that the “controlling interest” standard from Part 1 does not apply here, claiming that the Commission only adopted the Part 1 standard for “affiliates” for the purpose of determining attributable interests in pending applications and licensed-but-unbuilt NGSO systems.

⁷ *Id.* § 1.2110(c)(2)(i).

⁸ *Id.* § 1.2110(c)(2)(ii)(F).

⁹ *See* Boeing-Wyler Waiver Applications at 1 (“Gregory T. Wyler . . . indirectly holds 100 percent of the membership interests in SOM1101”).

¹⁰ *See id.* at 1-2.

¹¹ The Commission granted OneWeb’s request for market access for its Ka-band constellation last June. *See WorldVu Satellites Limited*, Order and Declaratory Ruling, 32 FCC Rcd. 5366 (2017). The constellation, though licensed, has not been built.

This argument is both incorrect and irrelevant. It is incorrect because when the Commission adopted the multiple ownership rule, *it also expressly “adopt[ed] . . . the ‘controlling interest’ standard” from Part 1 for this specific purpose.*¹² And it is irrelevant because Wyler plainly qualifies as a OneWeb “affiliate” under the Part 1 standard that Boeing and the Wyler LLC concede must apply. Under Part 1, “affiliates” typically include officers and directors¹³ and other individuals or entities that directly or indirectly “control or have the power to control the applicant.”¹⁴ And Mr. Wyler, in his role as Executive Chairman, is both the chief executive officer of OneWeb *and* the chairman of its board of directors. Critically, the Part 1 “affiliate” standard also provides that “every business concern is considered to have one or more parties who directly or indirectly control or have the power to control it.”¹⁵ If the founder, chief executive, board chairman, *and* a substantial equity holder does not qualify as a party with control over OneWeb, it is hard to imagine who else might.

II. The Commission Should Enforce Its Multiple Ownership Rule.

Boeing and the Wyler LLC do seek a waiver of the multiple ownership rule, but their effort falls far short of the standard required for a waiver. Under the Commission’s rules, a waiver may be granted only for good cause shown. “Good cause exists where special circumstances warrant a deviation from the general rule, such deviation will serve the public interest, and a waiver would be consistent with the purposes underlying the rule.”¹⁶

Far from being consistent with the purposes underlying the multiple ownership rule, a waiver would simply reward the very type of behavior the rule was designed to prevent. In

¹² *Amendment of the Commission's Space Station Licensing Rules & Policies*, First Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd. 10760, 10850 ¶ 237 n.564 (2003) (emphasis added).

¹³ 47 C.F.R. § 1.2110(c)(5)(ii)(B).

¹⁴ *Id.* § 1.2110(c)(5)(i).

¹⁵ *Id.* § 1.2110(c)(5)(ii)(A).

¹⁶ *See Echostar Satellite Corp.*, Memorandum Opinion and Order, 16 FCC Rcd. 14300, 14304 ¶ 8 (2001).

November 2016, Boeing portrayed itself as a provider of “technical expertise” and “manufacturing” that was eager to “expand its contribution to the U.S. technological leadership and economic growth by introducing new satellite-delivered broadband services.”¹⁷ Based on its claimed commitment to becoming a satellite operator, Boeing filed multiple applications for authority to launch and operate space stations through March 2017.¹⁸ Less than a year later, however, Boeing now describes itself as nothing more than a provider of “manufacturing and advisory service[s]” that must adhere to its historic role.¹⁹ This timing certainly suggests that Boeing never intended to operate the constellations in the first place.

The best Boeing can muster in support of its “clear intent” to become a satellite operator is that it prosecuted its applications and pushed for regulatory accommodations to increase their value to the likes of Mr. Wyler.²⁰ But this evidence merely shows that Boeing has done precisely what the rules were designed to prevent. Indeed, not only are Boeing’s efforts precisely the steps *any* speculative applicant would take to maximize the value of its investment, they are also steps for which the Wyler LLC plans to reimburse Boeing.²¹

Boeing’s approach raises serious competitive and fairness concerns for other participants in the NGSO processing rounds. For Iridium, an existing NGSO operator that operates in spectrum Boeing applied to use, the concern is that this type of gamesmanship, if sanctioned by the Commission, will become commonplace. As any responsible satellite operator must, Iridium spends significant resources to monitor industry developments, and closely evaluates proposals

¹⁷ See Narrative at 1-2, IBFS File No. SAT-LOA-20161115-00109.

¹⁸ See IBFS File No. SAT-LOA-20170301-00030 (V-band application filed in March 2017). See also SAT-LOA-20170301-00028 (March 2017 V-band application that has not been accepted for filing).

¹⁹ Public Interest Statement at 1-2, IBFS File Nos. SAT-LOA-20161115-00109, SAT-LOA-20160622-00058, SAT-AMD-20170301-00030 (“Public Interest Statement”).

²⁰ *Id.* at 2-3 & n.2.

²¹ *Id.* at 3 (noting that “Boeing will be reimbursed for a portion of its expenses in maintaining its NGSO FSS Application”).

to launch satellites near its constellation's orbit and to operate in spectrum upon which its constellation relies.²² This burden is entirely appropriate for genuine applications filed with the Commission. But it is an unwarranted distraction for speculative ones, regardless of whether the speculator ultimately succeeds in finding a buyer.²³

III. If the Commission Waives the Multiple Ownership Rule, It Should Remove the Applications from the Current Processing Rounds.

If the Commission for any reason permits the proposed substitution sought by Boeing and Wyler LLC, it should at the very least remove the applications from the current Ka- and V-band processing rounds. Under section 25.116(c) of the Commission's rules, an application will be treated as newly filed when amended by a major amendment after the cut-off date applicable to the application.²⁴ That rule also provides that amendments “determined by the Commission . . . to be substantial pursuant to section 309 of the Communications Act” will be treated as major.²⁵ Under section 309, insubstantial amendments are ones that do not require the Commission to issue a public notice prior to grant. They include amendments seeking routine and modest relief, such as an extension of time or “a minor change in the facilities of an authorized station.”²⁶

The Commission already has determined that the Boeing-Wyler Amendments warrant public notice under section 309 and they are, therefore, substantial.²⁷ Moreover, Boeing and

²² Notably, Iridium filed comments and reply comments in response to Boeing's Ka-band application. *See* Comments of Iridium, IBFS File No. SAT-LOA-20161115-00109 (filed June 26, 2017); Reply Comments of Iridium, IBFS File No. SAT-LOA-20161115-00109 (filed July 14, 2017).

²³ Boeing's claim that it will not profit from the proposed substitution should be rejected out of hand. Boeing clearly has “bet on the come”—in fact, Boeing admits that it has “an arrangement” with the Wyler LLC pursuant to which Boeing will “provide manufacturing and advisory service” for the would-be constellations. Public Interest Statement at 3.

²⁴ *See* 47 C.F.R. § 25.116(c).

²⁵ *Id.* § 25.116(b).

²⁶ *See* 47 U.S.C. § 309(c)(2).

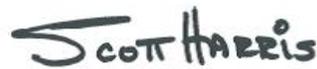
²⁷ *See* Public Notice, *Space Station Applications Accepted for Filing*, Rep. No. SAT-01294 (rel. Jan. 12, 2018).

Wyler LLC seek far more than the limited tweaks that would be considered “minor” under the statute. Indeed, the applicant, and its qualifications, competitive standing, potential plans for the constellations, and related business before the Commission, all would change radically if the Boeing-Wyler Amendments are granted. That is to say nothing of the serious public interest concerns raised by Wyler’s effort to contravene the multiple ownership rule, which on their own warrant treating the amendments as major. Accordingly, if the Commission allows the Amendments, it must remove these post-cut-off applications from the current processing rounds.

Conclusion

The Commission should maintain the integrity of its processing-round rules for NGSO systems and deny the Boeing-Wyler Amendments. But if the Amendments are granted, the Commission must remove the applications from the current Ka- and V-band processing rounds.

Respectfully submitted,



Maureen C. McLaughlin
Vice President, Public Policy
IRIDIUM CONSTELLATION LLC
1750 Tysons Boulevard, Suite 1400
McLean, VA 22102
(703) 287-7518

Scott Blake Harris
V. Shiva Goel
HARRIS, WILTSHIRE & GRANNIS LLP
1919 M Street, NW, 8th Floor
Washington, DC 20036
(202) 730-1313

February 12, 2018

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

_____)	
Applications of)	
)	
The Boeing Company	)	File Nos. SAT-AMD-20171206-00167
	)	SAT-AMD-20171206-00168
For Amendment to Convey NGSO	)	SAT-LOA-20161115-00109
Applications to SOM1101, LLC;	)	SAT-LOA-20160622-00058
	)	SAT-AMD-20170301-00030
For Authority to Launch and Operate an NGSO)	
Low Earth Orbit Satellite System in the Fixed)	
Satellite Service)	
)	
For Authority to Launch and Operate a Ka-band)	
NGSO System in the Fixed Satellite Service and)	
in the Mobile Satellite Service)	
_____)	

**DECLARATION OF SCOTT BLAKE HARRIS IN SUPPORT OF
PETITION TO DENY OF IRIDIUM SATELLITE LLC**

I, Scott Blake Harris, declare under penalty of perjury that the following is true and correct:

1. I am outside counsel to Iridium Satellite LLC.

2. I have read the foregoing "Petition to Deny of Iridium Satellite LLC." I have personal knowledge of any facts alleged therein of which the Federal Communications Commission may not take official notice, and those facts are true and correct to the best of my knowledge, information, and belief.

Executed on February 12, 2018.



Scott Blake Harris
HARRIS, WILTSHIRE & GRANNIS LLP
1919 M Street, NW, 8th Floor
Washington, DC 20036
(202) 730-1313

CERTIFICATE OF SERVICE

I hereby certify that on February 12, 2018, a copy of the foregoing Petition to Deny of Iridium Satellite LLC was sent by first-class, United States mail to the following:

Bruce A. Olcott
JONES DAY
51 Louisiana Ave., NW
Washington, DC 20001
Counsel for The Boeing Company

/s/ Elizabeth Marley _____
Elizabeth Marley