

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

In the Matter of )  
 )  
Applications of Loral Space & )  
Communications Ltd. (DIP) )  
for the Transfer of Control of Licenses ) IB Docket No. 05-233  
and Authorizations Held by )  
Loral Orion, Inc. (DIP), )  
Loral SpaceCom Corporation (DIP) )  
and Loral Skynet Network )  
Services, Inc. (DIP) to Loral Space )  
& Communications Inc. )

To: International Bureau

OPPOSITION TO PETITION FOR RECONSIDERATION  
AND REQUEST FOR INVESTIGATION

LORAL SPACE & COMMUNICATIONS INC.

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December 8, 2005

## SUMMARY

Loral Space & Communications Inc. ("Loral") submits this Opposition to the Petition for Reconsideration and Request for Investigation ("Petition") filed by Mr. Philip Ivaldy and certain "other shareholders" of Loral Space & Communications Ltd. ("Old Loral"). The Petition seeks reconsideration of the decision of the International Bureau granting Old Loral authority to transfer control of certain of its subsidiaries, and the space station and earth station licenses held by such entities, from Old Loral to Loral in connection with the emergence of Old Loral and its debtor subsidiaries from bankruptcy.

Mr. Ivaldy's procedurally defective Petition provides no legitimate basis for reconsideration of the Bureau's decision. Under the guise of challenging Loral's qualifications to hold FCC licenses, Mr. Ivaldy rehashes baseless allegations regarding Old Loral that have been fully considered and appropriately rejected by the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court") over the course of Old Loral's bankruptcy proceedings. There is no basis upon which the Bureau should re-examine the legal, financial, or other basic qualifications of Loral. Mr. Ivaldy seeks to re-litigate the propriety of the Bankruptcy Court's decision in a different forum. The Commission should not countenance such action.

The legal issues raised in Mr. Ivaldy's Petition have been thoroughly considered by the Bankruptcy Court. It is unnecessary and contrary to Commission precedent to reexamine the Bankruptcy Court's determination with respect to the allegations made in the Petition. Mr. Ivaldy's Petition should be denied.

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To: International Bureau

OPPOSITION TO PETITION FOR RECONSIDERATION  
AND REQUEST FOR INVESTIGATION

Loral Space & Communications Inc. ("Loral"), by its attorneys, submits this Opposition to the Petition for Reconsideration and Request for Investigation, dated October 31, 2005 (the "Petition"), filed by Mr. Phillip Ivaldy and certain "other shareholders" ("Mr. Ivaldy") of Loral Space & Communications Ltd. ("Old Loral").

The Petition seeks reconsideration of the decision of the International Bureau in the above-captioned proceeding granting Old Loral authority to transfer control of certain of its subsidiaries (the "FCC Licensees"), and the space and earth station licenses held by such entities, from Old Loral to Loral in connection with the emergence of Old Loral and its debtor subsidiaries from bankruptcy.<sup>1</sup> Reconsideration "is

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<sup>1</sup> Applications of Loral Space & Communications Ltd. (DIP) for the Transfer of Control of Licenses and Authorizations Held by Loral Orion, Inc. (DIP), Loral SpaceCom Corporation (DIP) and Loral Skynet Network Services, Inc. (DIP) to Loral Space & Communications Inc., Public Notice, DA 05-2639 (rel. Sept. 30, 2005) ("Transfer Order").

appropriate only where the petitioner either shows a material error in the original order or raises additional facts not known or not existing until after the petitioner's last opportunity to present such matters."<sup>2</sup> Mr. Ivaldy's Petition meets none of these criteria.

The Petition consists of baseless and unsupportable allegations that have already been wholly rejected by the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court") and that have no relevance whatsoever to the Bureau's determination of whether Loral meets the basic qualifications to be a Commission licensee. The Petition is entirely without merit and should be denied.

#### I. BACKGROUND

Loral, through its various subsidiaries and affiliates, holds numerous FCC licenses, including space station and earth station authorizations. It currently operates a fleet of international satellites that provide satellite capacity and platforms for use by television and cable networks to deliver video programming, and by communications service providers, resellers, corporate and government customers for international broadband data transmission, internet services and other value-added communications services. In addition, Loral, through its wholly owned subsidiary Space Systems/Loral, Inc., engages in the design and manufacture of satellites and satellite systems for commercial and government applications including satellite services, television broadcasting, direct-to-home television, broadband communications, military communications, wireless telephony, digital satellite radio, weather monitoring, and air traffic management.

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<sup>2</sup> See In re Regionet Wireless Licensee, LLC, Order on Further Reconsideration, 16 FCC Rcd. 22097 at ¶ 8 (2001) (citing WWIZ, Inc., 37 FCC 685, 686 (1964), *aff'd sub nom. Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert. denied*, 383 U.S. 967 (1966)).

On July 15, 2003, Old Loral and certain of its subsidiaries and affiliates (collectively, the “Debtors”) commenced voluntary cases under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) in the Bankruptcy Court.<sup>3</sup> The Debtors were authorized to continue to operate their businesses and manage their properties as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

On July 24, 2003, the United States Trustee for the Southern District of New York (the “U.S. Trustee”) appointed the statutory committee of unsecured creditors (the “Creditors’ Committee”) pursuant to section 1102(a)(1) of the Bankruptcy Code.

On March 24, 2005, in accordance with its authority under section 1102(a)(2) of the Bankruptcy Code, the U.S. Trustee appointed an official committee of equity security holders in the Debtors’ chapter 11 cases pursuant to section 1102 of the Bankruptcy Code (the “Equity Committee”). On March 29, 2005, the U.S. Trustee appointed seven members to the Equity Committee. The Equity Committee retained and was represented by capable and sophisticated attorneys and financial advisors. Mr. Tony Christ, the spokesperson for the self-styled Loral Stockholders Protective Committee (the “LSPC”), of which Mr. Ivaldy is a member, was among those appointed to the Equity Committee. After a mere two weeks, however, Mr. Christ voluntarily resigned from the Equity Committee.

By Order dated June 3, 2005, after notice and a hearing, the Bankruptcy Court approved the Disclosure Statement (the “Disclosure Statement”) for Debtors’ Fourth

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<sup>3</sup> Loral’s chapter 11 cases were consolidated for procedural purposes only and are being jointly administered pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure under the caption of *In re Loral Space & Communications Ltd., et al.* (Chapter 11 Case No. 03-41710 (RDD)).

Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code, dated June 3, 2005 (as modified, the “Plan of Reorganization”) pursuant to section 1125 of the Bankruptcy Code as containing “adequate information” of a kind and in sufficient detail to enable hypothetical, reasonable investors typical of the Debtors’ creditors to make an informed judgment as to whether to accept or reject the Debtors’ Plan of Reorganization.

During the period June 9, 2005 through July 8, 2005, the Debtors solicited votes to accept or reject the Plan of Reorganization. The Plan of Reorganization explicitly was supported by the Creditors’ Committee. In total, approximately 96% in number and approximately 98% in dollar amount of all Allowed Claims (as such term is defined in the Plan of Reorganization) that voted on the Plan of Reorganization voted to accept the Plan of Reorganization.

On June 28, 2005, Old Loral filed with the Commission various applications (the “Transfer Applications”) seeking authorization to transfer control of the FCC Licensees to Loral as part of the Debtors’ plan to emerge from bankruptcy. The applications were placed on public notice on July 18, 2005.<sup>4</sup> Neither Mr. Ivaldy nor any other person filed an opposition or comment in this proceeding.

On July 25, 2005, after a comprehensive evidentiary hearing that lasted seven days (the “Confirmation Hearing”) and in which the Debtors, the Creditors’ Committee, the Equity Committee and various members of the LSPC were present and participated, the Bankruptcy Court issued on the record its decision confirming the Debtors’ Plan of Reorganization. In addition, the Bankruptcy Court denied the Equity Committee’s

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<sup>4</sup> Public Notice, 20 FCC Rcd. 12370 (2005).

motion for leave to prosecute an allegedly fraudulent conveyance (the "Motion to Prosecute"). On August 1, 2005, the Bankruptcy Court entered an order confirming the Plan of Reorganization (the "Confirmation Order") and a separate order denying the Motion to Prosecute (together with the Confirmation Order, the "Orders").

On or about August 10, 2005, Mr. Ivaldy, Mr. Tony Christ and Mr. John Plum, on behalf of the LSPC, submitted certain documents to the Honorable Robert P. Patterson of the United States District Court for the Southern District of New York ("U.S. District Court") purportedly seeking to appeal the Orders. Judge Patterson denied the application for lack of plenary jurisdiction over the Debtors' chapter 11 cases. On or about August 10, 2005, Mr. Christ, on behalf of the LSPC, submitted to the Clerk of the Bankruptcy Court his designation of items to be included in the record on appeal (the "LSPC Designation") and a notice of appeal captioned "Appeal of Drain's Orders Approving 4th Amended Plan, Disclosures and Denying Leave to Sue Request on Fraudulent Conveyance Charge In re: Loral Space & Communications Ltd., et al. Brought by the Loral Stockholders Protective Committee."

On September 16, 2005, in accordance with Rule 8006 of the Federal Rules of Bankruptcy Procedure, the Debtors filed a motion to strike (the "Motion to Strike") certain items from the LSPC Designation, as such items: (a) were not considered by the Bankruptcy Court in deciding whether to confirm the Plan of Reorganization or grant the Motion to Prosecute; (b) were completely irrelevant to the issues on appeal; (c); were specifically excluded from the record by order of the Bankruptcy Court; and (d) were unidentifiable based on the incomplete description contained in the LSPC Designation. The Creditors' Committee joined in the Motion to Strike. On September 23, 2005, Mr.

Ivaldy served the Debtors with his objection to the Motion to Strike, to which the Debtors filed with the Bankruptcy Court a response on September 28, 2005.

On September 30, 2005, the International Bureau granted Loral's Transfer Applications.

Following a hearing on the Motion to Strike in which Mr. Ivaldy participated, on October 4, 2005, the Bankruptcy Court entered an order granting the Motion to Strike and authorized the Debtors to file a joint designation of items to be included in the record on appeal of the Orders. Mr. Ivaldy and the LSPC have attempted to appeal that order as well. On October 10, 2005, the Debtors filed a joint designation of the record on appeal of the Orders, which designation is composed of various items designated by the Debtors, the Creditors' Committee, and the LSPC as agreed and approved by the Bankruptcy Court at the hearing on the Motion to Strike. Despite the Debtors' efforts to coordinate with Mr. Ivaldy, ultimately Mr. Ivaldy refused to consent to the substance or filing of the joint designation.

On November 21, 2005, Old Loral officially concluded its reorganization and emerged from bankruptcy and is now conducting business as Loral. The transfers of the FCC Licensees from Old Loral to Loral that were approved in the Transfer Order were also consummated on that date.

## II. DISCUSSION

Based upon Old Loral's full and detailed explanation of the transactions as set forth in the Transfer Applications and numerous documents reviewed by Commission staff in connection therewith, including the Plan of Reorganization and subsequently filed (and publicly available) letters responding to further inquiries of the Bureau with

respect to, among other things, the ownership of Loral,<sup>5</sup> the Bureau determined that permitting the transfers of control of the FCC Licensees to Loral is in the public interest and that Loral is qualified to hold the FCC licenses at issue.<sup>6</sup> Mr. Ivaldy does not challenge this determination in any material way and there is no basis on which the Bureau should re-examine the legal, financial, or other basic qualifications of Loral to hold FCC licenses.

Mr. Ivaldy's Petition focuses solely on baseless allegations regarding Old Loral that have been considered and appropriately rejected by the Bankruptcy Court over the course of the Debtors' chapter 11 cases. Under the guise of challenging Loral's qualifications to hold FCC licenses, Mr. Ivaldy is rehashing assertions he made in the bankruptcy proceedings as part of a last-ditch effort to re-litigate the propriety of the Bankruptcy Court's decision confirming the Debtors' Plan of Reorganization in a different forum. Such collateral attack of Bankruptcy Court orders should be denied.

Mr. Ivaldy did not oppose or comment on Loral's Transfer Applications within the comment period set forth in the Public Notice and therefore is not a party to this proceeding.<sup>7</sup> Any claim that it was not possible for him to participate at the appropriate time is belied by the facts. Mr. Ivaldy participated in the Debtor's bankruptcy

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<sup>5</sup> See Letters from Laurence D. Atlas, Vice President, Loral Space & Communications, Ltd. (DIP), to Ms. Marlene H. Dortch, Secretary, Federal Communications Commission (9/6/05; 9/28/05).

<sup>6</sup> Transfer Order at 3.

<sup>7</sup> Section 1.106(b)(1) of the Commission's rules require that petitions filed by a person who is not a party must show "good reason why it was not possible for him to participate in the earlier stages of the proceeding." 47 C.F.R. § 1.106(b)(1). Mr. Ivaldy's actions throughout the Debtor's chapter 11 cases demonstrate that the exact opposite is true. This fundamental procedural flaw requires that the Petition be dismissed. See In re AT&T Corp. v. BusinessTelecom, Inc., and Sprint Communications Company, L.P. v. BusinessTelecom, Inc., Order on Reconsideration, 16 FCC Rcd. 21750 at ¶ 10 (2001).

proceedings at every stage, including during the Bureau's comment period.<sup>8</sup> The asset valuation, insolvency and general bankruptcy law issues alleged in the Petition<sup>9</sup> were raised by Mr. Ivaldy and the LSPC numerous times in scores of motions and applications by the LSPC over the course of two years and were thoroughly considered and appropriately rejected in their entirety by the Bankruptcy Court.

Mr. Ivaldy argues that the Commission should reconsider its decision on the ground that the Bankruptcy Court improperly valued the Debtors' assets.<sup>10</sup> This same issue was a primary focus of the objections interposed by the LSPC and Mr. Ivaldy to confirmation of the Debtors' Plan of Reorganization. During the weeks leading up to the Confirmation Hearing, the Debtors, the Creditors' Committee, the Equity Committee and the LSPC engaged in extensive discovery related to these valuation issues, including the deposition of numerous fact and expert witnesses, the production and review of in excess of one hundred fifty thousand pages of documents, requests for admission and interrogatories served by the LSPC and responded to by the Debtors, and the preparation of expert reports. At the Confirmation Hearing, each of the above parties drew testimony from various expert witnesses in an effort to demonstrate the value of the Debtors' estates. After carefully considering all of the sworn testimony and exhibits submitted, the Bankruptcy Court established an appropriate value of these estates. Based on the Bankruptcy Court's findings and the application of the Bankruptcy Code,

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<sup>8</sup> In fact, the appeal by the LSPC and Mr. Ivaldy on or about August 10, 2005, with respect to the Orders, which date also was within the relevant comment period, demonstrates that Mr. Ivaldy was deeply involved in the Debtor's bankruptcy cases at the time when challenges to Loral's Transfer Applications were permitted.

<sup>9</sup> See Petition at p. 2, 3-7, 9.

<sup>10</sup> See Petition at p. 6-7.

Mr. Ivaldy and all other equity security holders are not entitled to any distribution under the Plan of Reorganization.

In response to an allegation by the Equity Committee and the LSPC that Old Loral's guaranty of certain debt obligations of its Orion subsidiary in 2001 was a fraudulent transfer, various witnesses testified at the Confirmation Hearing as to the Debtors' solvency at that time. Based on the record of the Confirmation Hearing, the Bankruptcy Court correctly found that the Debtors were solvent at the time of the guaranty and, therefore, under all applicable law, the transfer could not have been fraudulent. Mr. Ivaldy was dissatisfied with the decision of the Bankruptcy Court and is attempting to re-litigate this issue at the Commission.<sup>11</sup>

Further, throughout the Bankruptcy Court proceedings, Mr. Ivaldy and the members of the LSPC have on numerous occasions made allegations of misconduct and breach of fiduciary duty by the Debtors that the Bankruptcy Court found to be baseless. Despite his efforts to convince the Commission otherwise by rehashing the very allegations wholly rejected by the Bankruptcy Court on countless other occasions, Mr. Ivaldy has not presented a shred of evidence in support of his allegations.<sup>12</sup>

Accordingly, there exists no legitimate basis whatsoever to support re-litigating *any* of the foregoing issues, let alone before the Commission.

It is unnecessary and contrary to precedent for the Commission to reexamine the Bankruptcy Court's determination with respect to the allegations made by Mr. Ivaldy in the Petition. Such determinations are squarely within the province and expertise of the

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<sup>11</sup> See Petition at p. 3-5, 7.

<sup>12</sup> See Petition at 6-7.

Bankruptcy Court and the U.S. District Court. Commission precedent instructs that only in extraordinary circumstances – which do not exist here – will the Commission disrupt the decision of a court of competent jurisdiction that has, or is, actively engaged in the process of making factual determinations of the sort that are at issue in Mr. Ivaldy's Petition.<sup>13</sup> As the Commission has stated on numerous occasions, "the Commission will not undertake an independent investigation of allegations that there were mistakes, illegalities, and irregularities in a bankruptcy court's decision, but rather will leave such disputes for resolution by tribunals specifically charged with reviewing such matters on appeal."<sup>14</sup>

The substantive bankruptcy law issues raised in Mr. Ivaldy's Petition have been fully addressed during the over two years of the Debtors' bankruptcy proceedings. It is not the province of the Commission to review the propriety of the Bankruptcy Court's decision regarding these issues. To the extent a remedy exists for Mr. Ivaldy in connection with the Bankruptcy Court's Orders, he "must seek [that] remedy through the judicial process rather than at the Commission."<sup>15</sup>

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13 See Final Analysis Communication Svcs., Inc.; For Authority to Transfer Control of NVNG MSS License to New York Satellite Industries, LLC, Order and Authorization, 17 FCC Rcd. 16062 at ¶12 (2002); Applications of TV Active, LLC et al. for Consent to the Assignment of Licenses, Order on Reconsideration, 16 FCC Rcd. 18938 at ¶¶ 15-16 (2001) ("TV Active"); see also In re Applications of Arecibo Radio Corporation, Memorandum Opinion and Order, 101 FCC 2d 545 at ¶ 8 (1985).

14 Interactive Control Two, Inc. et al. for Consent to the Assignment of Licensees for Stations KIVD0063 and KIVD0247 in the 218-219 MHz Service, Order on Reconsideration, 16 FCC Rcd 18948 at fn. 96 (2001) (quotations omitted) (citing Station KDEW(AM), Memorandum Opinion and Order, 11 FCC Rcd. 13683, 13687 (1996), and cases cited therein).

15 TV Active at ¶ 16.

It is clear from Mr. Ivaldy's Petition that he is mistaken in his assessment of the relationship between the Bankruptcy Court and the Commission. Mr. Ivaldy would have the Commission "apply its great powers to assure conformance to Chapter 11 bankruptcy statutes."<sup>16</sup> This is not a role that the Commission has ever assumed; but has appropriately left to the purview of the Bankruptcy Court and, if necessary, the U.S. District Courts. To do otherwise would be to invite individuals to litigate highly technical financial issues before the Commission and to turn the Commission into a court of last resort for bankruptcy law cases. Consistent with precedent, the Commission should not now involve itself in the issues raised in the Petition.

### III. CONCLUSION

The Petition provides no legitimate reason as to why the Bureau should reconsider its decision to approve the Transfer Applications. Mr. Ivaldy had ample opportunity to actively litigate his grievances in the Bankruptcy Court, of which he took full advantage. The Bankruptcy Court confirmed the Debtors' Plan of Reorganization, which was supported by 96% of the creditors who voted. Mr. Ivaldy did not like the result and is attempting to re-litigate the Bankruptcy Court's decision in a different and inappropriate forum. The Commission should not countenance this.

In reviewing and analyzing Loral's Transfer Applications, the Bureau thoroughly considered the record before it and appropriately approved Loral's request as in the

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16 Petition at 10.

public interest. For all of the foregoing reasons, Mr. Ivaldy's Petition should be denied in its entirety.

Respectfully submitted,

LORAL SPACE & COMMUNICATIONS INC.

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December 8, 2005

CERTIFICATE OF SERVICE

I, Dennette Manson, do hereby certify that on this 8<sup>th</sup> day of December, copies of the foregoing Opposition to Petition for Reconsideration and Request for Investigation of Loral Space & Communications Inc. were delivered electronically unless otherwise indicated, to the following parties:

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