

~~CONFIDENTIAL~~

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

In the Matter of )  
)  
Northrop Grumman Space Technology and )  
Mission Systems Corporation ) IB Docket No. 02-19  
)  
Petition for Partial Reconsideration )  
of The Establishment of Policies and Service )  
Rules for the Non-Geostationary Satellite Orbit, )  
Fixed Satellite Service in the Ka-band )

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MEMORANDUM OPINION AND ORDER

Adopted: May 9, 2007

Released: May 11, 2007

By the Commission:

I. INTRODUCTION

1. In this Order, we deny a Petition for Partial Reconsideration filed by Northrop Grumman Space and Mission Systems Corporation (Northrop Grumman) through its Northrop Grumman Space Technology sector (NGST). NGST requests reconsideration of the *Ka-Band NGSO FSS Report and Order* establishing service rules for Non-Geostationary Satellite Orbit (NGSO) Fixed-satellite service (FSS) systems in the Ka-band.<sup>1</sup> Specifically, NGST seeks reconsideration of that portion of the Order imposing a payment bond requirement on pending Ka-band NGSO FSS applications. The arguments made by NGST in this proceeding are the same arguments that were made, and rejected, in the Commission's reconsideration of the *Space Station Licensing Reform Order*.<sup>2</sup> Thus, we find that Northrop Grumman has failed to justify a reconsideration of the *Ka-band NGSO Report and Order*.

II. BACKGROUND

2. In 1997, NGST, formerly TRW, Inc., filed an application to launch and operate a satellite system composed of NGSO and geostationary satellite orbit (GSO) satellites using the V-band. Shortly

<sup>1</sup> Establishment of Policies and Service Rules for Non-Geostationary Satellite Orbit, Fixed-Satellite Service in the Ka-band, *Report and Order*, 18 FCC Rcd 14708 (2003) (*Ka-band NGSO Report and Order*). The term "Ka-band" generally refers to the space-to-Earth (downlink) communications in the 17.2-20.2 GHz band and the corresponding Earth-to-space (uplink) communications in the 27.5-30.0 GHz band.

<sup>2</sup> Amendment of the Commission's Space Station Licensing Rules and Policies, *First Order on Reconsideration and Fifth Report and Order*, 19 FCC Rcd 12637 (2004) (*First Order on Reconsideration*).

thereafter, NGST filed an amendment to add Ka-band frequencies. The applications were further amended in March 2004.<sup>3</sup>

3. In May 2003, the Commission released the *Space Station Licensing Reform Order*, which changed the space station licensing process.<sup>4</sup> Among other things, the *Space Station Licensing Reform Order* replaced the Commission's existing financial qualification requirement with a bond requirement. Pursuant to this requirement, satellite licensees must post a bond of \$3 million for GSO satellites, and \$5 million for NGSO satellites, within 30 days of receiving a Commission license.<sup>5</sup> The policy consideration behind this change was to require licensees to make a financial commitment to launch and operate their satellites upon grant, and to discourage speculative satellite applications. The *Space Station Licensing Reform Order* expressly applied the new bond requirement to pending Ka-band NGSO applications, as part of the Commission's effort to safeguard against speculation and warehousing.<sup>6</sup>

4. Shortly after the *Space Station Licensing Reform Order* was adopted, the Commission released the *Ka-Band NGSO FSS Report and Order*.<sup>7</sup> This Order established various policies and service rules for NGSO FSS systems in the Ka-band. Consistent with the *Space Station Licensing Reform Order*, the *Ka-band NGSO Report and Order* states that all "applicants for NGSO FSS Ka-band licenses will be required to execute a "bond ... within 30 days of the grant of their license."<sup>8</sup>

5. In September 2003, Northrop Grumman filed a petition for partial reconsideration of the *Space Station Licensing Reform Order*.<sup>9</sup> Northrop Grumman urged the Commission not to impose the

<sup>3</sup> File Nos. SAT-LOA-19970904-00080 thru 00084 and SAT-AMD-19971222-00219. On May 18, 2004, the International Bureau's Satellite Division dismissed these applications for failure to comply with Commission rules on casualty risk assessments and two-degree orbital spacing. The applications were later reinstated by the Satellite Division on its own motion, because the Division determined that the rules were subject to reasonable but conflicting interpretations. Letter to Peter Hadinger, Northrop Grumman Space & Missile Systems Corporation from Thomas S. Tycz, Chief, Satellite Division, International Bureau, dated June 16, 2004, 19 FCC Rcd 10716 (Sat. Div., Int'l Bur. 2004). NGST subsequently submitted a revised casualty risk assessment and two-degree interference analysis. See File No. SAT-AMD-20040719-00136. The amended applications were placed on public notice. Policy Branch Information: Satellite Space Applications Accepted for Filing, Report No. SAT-00234 (August 13, 2004). For several filings, SAT-LOA-19970904-00080/81/83, NGST has requested a "contingent partial waiver of the performance bond requirement to permit the posting of a single NGST bond to cover the hybrid Ka-band/V-band NGSO system." This issue will be addressed in the context of NGST's applications.

<sup>4</sup> Amendment of the Commission's Space Station Licensing Rules and Policies, *First Report and Order and Further Notice of Proposed Rulemaking* in IB Docket No. 02-34 and *First Report and Order* in IB Docket No. 02-54, 18 FCC Rcd 10760 (2003) (*Space Station Licensing Reform Order*).

<sup>5</sup> 47 C.F.R. § 25.165.

<sup>6</sup> *Space Station Licensing Reform Order*, 18 FCC Rcd at 10866.

<sup>7</sup> Establishment of Policies and Service Rules for the Non-Geostationary Satellite Orbit, Fixed Satellite Service in the Ka-Band, *Report and Order*, IB Docket No. 02-19, 18 FCC Rcd 14708 (2003) (*Ka-band NGSO Report and Order*).

<sup>8</sup> *Ka-band NGSO Report and Order*, 18 FCC Rcd at 14723. The bond amount for NGSO-like systems was originally \$7.5 million. The Commission subsequently reduced the bond amount to \$5 million. *First Order on Reconsideration*, 19 FCC Rcd at 12654.

<sup>9</sup> Northrop Grumman Space Technology and Mission Systems Corporation, Petition for Partial Reconsideration of IB Docket 02-34, filed Sept. 26, 2004 (*Northrop Grumman Petition of Space Station Licensing Reform Order*).

new bond requirement on any licenses granted for applications filed before the new rules became effective. In this regard, Northrop Grumman noted that many applications now subject to the bond were filed years ago, and only because of the delay in processing are they now subject to additional costs.<sup>10</sup> Northrop Grumman also stated that imposing a bond requirement would not discourage speculative filers in cases where the applications had already been filed.<sup>11</sup> It pointed to a weak economy as further support that the bond requirement should not be imposed on pending applications. Northrop Grumman further claimed that there was a disparity in treatment between V-band, Ka-band applications, and Ku-band applications with regard to the bond requirement.<sup>12</sup> In support, Northrop Grumman referred to a July 8, 2003 document provided in a public forum in which the Bureau stated that the Space Station Reform Procedures "will be applied to V-band applications, but not to Ku-band NGSO applications."<sup>13</sup>

6. In December 2003, NGST, a subsidiary of Northrop Grumman, filed a petition for partial reconsideration of the *Ka-Band NGSO Report and Order*.<sup>14</sup> In its Petition, NGST asserted that the Commission should not apply the new bond requirement to pending applications in the second round of processing for Ka-band NGSO systems in the fixed-satellite service. NGST reiterated arguments made by Northrop Grumman in its Petition for Partial Reconsideration of the *Space Station Licensing Reform Order*.

7. In July 2004, the Commission, in its *First Order on Reconsideration of the Space Station Licensing Reform Order* denied Northrop Grumman's petition, stating that the "bond requirement applies to all licenses granted after the requirement took effect, regardless of when the application for each of those licenses was filed."<sup>15</sup> The Commission stated that Northrop Grumman failed to persuade it to eliminate the bond requirement for licensees whose applications were pending when the *Space Station Licensing Reform Order* was adopted. The Commission disagreed with Northrop Grumman that pending applications were less likely to be speculative than newly filed applications. The Commission concluded that regardless of when an application was filed, the bond requirement provides assurance that a licensee remains committed to implementing its system.<sup>16</sup>

### III. DISCUSSION

8. The issues raised by NGST in its petition for partial reconsideration of the *Ka-Band NGSO Report and Order* are the same arguments previously raised and fully addressed by the Commission in its *First Order on Reconsideration*. The Commission does not grant reconsideration for

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<sup>10</sup> *Northrop Grumman Petition of Space Station Licensing Reform Order*, at 6.

<sup>11</sup> *Northrop Grumman Petition of Space Station Licensing Reform Order*, at 8.

<sup>12</sup> *Northrop Grumman Petition of Space Station Licensing Reform Order*, at 3.

<sup>13</sup> *Northrop Grumman Petition of Space Station Licensing Reform Order* at 3, citing *Public Notice*, International Bureau schedules Public Forum to Answer Questions Related to First Space Station Reform Order, DA 03-2063 (June 23, 2003), Attachment: Frequently Asked Questions, Question 30.

<sup>14</sup> NGST, Petition for Partial Reconsideration in the Matter of the Establishment of Policies and Service Rules for the Non-Geostationary Satellite Orbit, Fixed Satellite Service in the Ka-Band, IB Docket No. 02-19, filed Dec. 3, 2003) (*NGST Petition for Partial Reconsideration*).

<sup>15</sup> *First Order on Reconsideration*, 19 FCC Rcd at 12663.

<sup>16</sup> *First Order on Reconsideration*, 19 FCC Rcd at 12663.

the purpose of allowing a petitioner to reiterate arguments already presented particularly where the arguments have been considered and rejected in a prior order on reconsideration.<sup>17</sup> We see no reason to revisit the arguments addressed in the *First Order on Reconsideration of the Space Station Licensing Reform Order*.

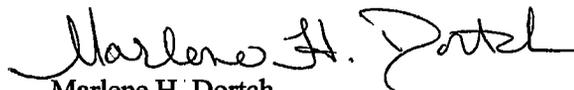
9. Further, while the Commission did not explicitly respond to NGST's argument concerning statements made in the public forum, we do so here. NGST mischaracterizes the Bureau's statements regarding the applicability of the *Space Station Licensing Reform Order* to pending applications, inappropriately comparing statements regarding the bond-posting requirement and the processing framework in general. While Bureau indicated that the new processing *procedure*, that is, initiating a modified processing round for competing applications, would not apply to Ku-band NGSO applications, it did not state that these applications were exempt from the bond requirement.<sup>18</sup> Thus, there is no disparity in treatment of the bond requirement to pending applications. Rather, the *Space Station Licensing Reform Order*, and the *First Order on Reconsideration*, explicitly state that the bond-posting requirement applies to all satellite licenses issued after the *Space Station Licensing Reform Order's* effective date. Moreover, in the *First Order on Reconsideration*, the Commission specifically considered and rejected Northrop Grumman's arguments that it should treat applications filed before it adopted the *Space Station Reform Order* differently than applications filed after it adopted the Reform Order for purposes of posting a bond.<sup>19</sup> NGST provides no basis to revisit the issue here.

#### IV. ORDERING CLAUSES

10. Based on the foregoing, we find that Northrop Grumman Space Technology has failed to persuade us to reconsider that portion of the *NGSO Ka-band Report and Order* requiring all Ka-band NGSO licensees to comply with the bond requirement.

11. Accordingly, IT IS ORDERED, that Northrop Grumman Space and Mission Systems Corporation's Petition for Partial Reconsideration of the Establishment of Policies and Service Rules for the Non-Geostationary Satellite Orbit, Fixed Satellite Service in the Ka-band, *Report and Order*, filed in IB Docket 02-19 on November 13, 2003, is DENIED.

FEDERAL COMMUNICATIONS COMMISSION



Marlene H. Dortch  
Secretary

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<sup>17</sup> Amendment of Part 95 of the Commission's Rules to Provide Regulatory Flexibility in the 218-219 MHz Service, *Second Order on Reconsideration*, 15 FCC Rcd 25020, 25035 (2000).

<sup>18</sup> The handout relied on by NGST was divided into five categories of information: I. Mechanics of the Queue; II. Available Orbit Locations; III. Bond Issues; IV. Fee Issues; V. Miscellaneous. The question and answer NGST refers to is under section V. Miscellaneous. In response to the question "What about pending applications?" the Bureau states that the new procedures will be applied to pending applications "to the extent that it furthers the goal of the proceeding to issue licenses faster." Nothing in the section on bonds, or in this response, indicates that certain applicants will be exempt from the bond requirement.

<sup>19</sup> *First Order on Reconsideration*, 19 FCC Rcd at 12663.