

September 3, 2020

BY ELECTRONIC FILING

Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

Re: *Space Exploration Holdings, LLC, IBFS File No. SAT-MOD-20200417-00037*

Dear Ms. Dortch:

Space Exploration Holdings, LLC (“SpaceX”) files this letter in response to a recent ex parte meeting in which representatives of Kuiper Systems LLC (“Amazon”) spoke with Commission staff. Amazon predictably attempts to solicit the Commission’s aid in stifling a competitor.¹ But rather than arguing its case on the merits, Amazon has now unfortunately resorted to misrepresenting facts in the record and ignoring Commission policy. The Commission should reject this continued effort to create double standards designed to undermine competition.

SpaceX proposes to improve the safety profile of its authorized non-geostationary orbit (“NGSO”) satellite system by operating it at lower altitudes. Despite the obvious public interest benefits of this modification for consumers and space safety, Amazon has sought to impose obligations on its competitors that it cannot itself meet:

- Amazon criticizes SpaceX’s collision risk analysis, but Amazon has yet to provide complete orbital debris information, including collision risk analysis, for its own system.²
- Amazon tries to force first-round licensees like SpaceX to protect its second-round system from interference, even though the Commission required Amazon—not SpaceX—to submit an interference analysis to show how it will protect first-round licensees.³

¹ See Letter from Mariah Dodson Shuman to Marlene H. Dortch, IBFS File No. SAT-MOD-20200417-00037 (Aug. 18, 2020) (“Amazon Aug. 18 Ex Parte”); Letter from Mariah Dodson Shuman to Marlene H. Dortch, IBFS File No. SAT-MOD-20200417-00037, et al. (Sep. 2, 2020) (“Amazon Sep. 2 Ex Parte”).

² See, e.g., *Kuiper Systems LLC*, FCC 20-102, ¶ 32 (rel. July 30, 2020) (“*Amazon Authorization*”) (“Because the design of Kuiper’s satellites is not completed, and because Kuiper consequently did not present specific information concerning some required elements of a debris mitigation plan, we condition our grant of the Kuiper application on Kuiper presenting, and the Commission granting, a modification of this authorization to provide for review of the final orbital debris mitigation plan.”).

³ *Amazon Authorization* ¶ 59(a) (prior to initiating service, “Kuiper must certify that it has completed a coordination agreement with or make a showing that it will not cause harmful interference to any operational system licensed or granted U.S. market access” in a prior processing round).

- Even though Amazon tried to have its untimely application considered in an earlier processing round, it now argues that SpaceX's modification should be bumped with prejudice to the second processing round only because that round happened to be open for applications at the time SpaceX filed its application.⁴

While SpaceX's modification would bring clear improvements in space safety, Amazon nonetheless seeks to block the application so that Amazon can claim exclusive use of orbital real estate it has claimed for itself. But the Commission has already rejected these sorts of claims to exclusive orbits, as they would unnecessarily limit competition. The Commission has specifically found that its rules "do not prohibit SpaceX's selection of an orbital regime that is also used by other satellite operators."⁵

Lacking legal support for its claim, Amazon turns instead to misrepresenting facts in the record. Specifically, Amazon continues to proffer an analysis of "1,240 SpaceX satellites that would overlap with 784 satellites in the Kuiper System."⁶ The only way to arrive at these figures is to assume that every satellite SpaceX proposes to operate at a nominal altitude of 570 km will consistently operate very near the top of its ± 30 km orbital tolerance (20-22 km above the nominal altitude) even though SpaceX has already explained that "most SpaceX satellites will operate within much less than 30 kilometers of their nominal altitude most of the time."⁷ Yet Amazon persists in presenting this flawed and misleading analysis and ignoring the plain facts to the contrary. Moreover, although Amazon asserts that SpaceX has failed to analyze the potential collision risk with Amazon,⁸ this assertion runs counter to the Commission's general practice of considering a collision risk of zero for satellites with maneuvering capability (like SpaceX's) and its specific prior finding that SpaceX had addressed collision risk by "stat[ing] that its satellites have propulsion and SpaceX will maintain the ability to maneuver the satellites to avoid collisions."⁹

But Amazon goes further, trying to turn the conditions that the Commission placed on its own license on their head. The Commission explicitly stated that *Amazon* "must coordinate to prevent harmful interference to operational systems licensed or granted U.S. market access in the previous NGSO FSS processing rounds."¹⁰ Yet, in a naked effort to undo the Commission's decision, Amazon argues the reverse, seeking to require SpaceX to protect Amazon's operations against interference. But the Commission has been clear—*Amazon* is the one that must protect first round licensees like SpaceX. Amazon cannot simply wish away the conditions it does not like.

⁴ See Amazon Aug. 18 Ex Parte at 2.

⁵ *Space Exploration Holdings, LLC*, 34 FCC Rcd. 2526, ¶ 22 (IB 2019) ("*SpaceX Modification*").

⁶ Amazon Aug. 18 Ex Parte at 1. See also Amazon Sep. 2 Ex Parte at 2 (asserting that modification "would put SpaceX satellites in the midst of the Kuiper System orbits").

⁷ Consolidated Opposition to Petitions and Response to Comments of Space Exploration Holdings, LLC, IBFS File No. SAT-MOD-20200417-00037, at 10 (July 27, 2020).

⁸ See Amazon Aug. 18 Ex Parte at 2.

⁹ *SpaceX Modification* ¶ 22.

¹⁰ *Amazon Authorization* ¶ 34.

Finally, Amazon makes the novel argument that SpaceX's modification should be relegated to the second processing round just because that round happened to be open for applications at the time SpaceX filed.¹¹ Amazon points to no precedent or rule for this argument – because there is none. This novel argument runs counter to the public interest. Such a rule would effectively prevent operators from seeking to modify their systems while a new processing round is open. Amazon cannot seriously believe that such an anti-innovation regime would serve the public interest.

As was the case for its own application, Amazon persists in asking for one set of rules for itself and another set for its competitors. The Commission should reject these anti-competitive claims and grant SpaceX's application for modification.

Sincerely,

/s/ David Goldman

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Director of Satellite Policy

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¹¹ See Amazon Aug. 18 Ex Parte at 2.