

ORIGINAL

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

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OCT 31 2003

Federal Communications Commission
Office of Secretary

In the Matter of)
)
Application of)
)
PANAMSAT LICENSEE CORP.)
)
For Authority to Construct, Launch,)
And Operate a Hybrid Satellite in its)
Separate International Communications)
Satellite System)

File Nos. SAT-LOA-19951012-00165
SAT-AMD-19960202-00016
SAT-AMD-20030827-00284

Int'l Bureau

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SUPPLEMENT TO PETITION FOR RECONSIDERATION

PanAmSat Licensee Corp. ("PanAmSat"), by its attorneys, hereby supplements its Petition for Reconsideration, filed October 24, 2003, of the International Bureau's ("Bureau") letter dated October 22, 2003, dismissing the above-captioned application and related amendments.¹ PanAmSat demonstrates below that this dismissal was inconsistent with the Commission's precedents under the "substantially complete" standard.

The Commission requires space station applications to be "substantially complete" when filed.² This substantially complete standard has applied to space

¹ See Letter from Thomas S. Tycz, Chief, Satellite Division, International Bureau, FCC, to Kalpak Gude, Vice President and Associate General Counsel of PanAmSat (Oct. 22, 2003) ("Dismissal Letter").

² See *Amendment of the Commission's Space Station Licensing Rules and Policies*, First Report and Order and Further Notice of Proposed Rulemaking, IB Docket No. 02-34, 18 FCC Rcd 10760, ¶ 244 (2003) ("*Space Station Licensing Reform R&O*") ("In the Notice, the Commission emphasized that it requires satellite applications be substantially complete when they are filed. . . . Here, we find that continuing to require substantially complete satellite applications

station applications since well before the Commission's adoption of the *Space Station Licensing Reform R&O* in 2003.³ Under the standard, space station applications found, upon initial review, not to be substantially complete will be deemed unacceptable for filing and will be returned to the applicant rather than placed on public notice.⁴

In its Dismissal Letter, the Bureau found that PanAmSat's August 23, 2003 amendment to the above-referenced space station application was "incomplete" because PanAmSat had not submitted new antenna gain contours for the proposed operations of SBS-4 at 125° W.L.⁵ Consequently, the Bureau found the amendment "unacceptable for filing" under the substantially complete standard and dismissed both the amendment and the underlying application.⁶

Yet under the very same substantially complete standard, the Bureau previously has granted space station applications requesting authority to relocate from one orbital location to another, even though the applications did not include antenna gain contours for the new location. In particular, the Bureau did not require

will also continue to provide some additional protection against speculative satellite applications.").

³ See *id.*; see also *Amendment of the Commission's Space Station Licensing Rules and Policies*, Notice of Proposed Rulemaking, IB Docket No. 02-34, 17 FCC Rcd 3847, ¶ 84 (2002) ("*Space Station Licensing Reform NPRM*") ("Furthermore, as the International Bureau (Bureau) emphasized in its 1998 *Streamlining Public Notice*, we continue to expect satellite applications to be substantially complete when they are filed."). To be perfectly clear, the Commission stated that: "We emphasize that we are not proposing any changes to the 'substantially complete' standard we currently use for satellite license review." See *id.* at n. 104. Notably, the *NPRM* cites *Salzar v. FCC*, 778 F.2d 869 (D.C. Cir. 1985), in which the court overturned the Commission for not being sufficiently clear in its attempt to adopt a standard of review for completeness ("complete and sufficient") that was more stringent than the substantially complete standard. See *id.*

⁴ See *Space Station Licensing Reform NPRM* at 84; see also *International Bureau to Streamline Satellite and Earth Station Processing*, Public Notice, Report No. SPB-140 (rel. Oct. 28, 1998) ("If an application fails to include any of the required information, the Bureau will return the application without prejudice as being unacceptable for filing.").

⁵ Dismissal Letter at 2.

⁶ *Id.*

the space station applicants to submit new gain contours when changing orbital location in the following cases:

- GE Americom request for relocation of GE-3 satellite from 81° W.L. to 72° W.L., granted October 2, 1998 (File No. SAT-MOD-19970130-00012).⁷
- GE Americom request for relocation of GE-4 satellite from 72° W.L. to 101° W.L., granted November 12, 1999 (File No. SAT-MOD-19981023-00076).⁸
- GE Americom request for relocation of Satcom SN-4 satellite from 101° W.L. to 72° W.L., granted November 12, 1999 (File No. SAT-MOD-19981023-00075).⁹
- GE Americom request for relocation of Satcom C-1 satellite from 137° W.L. to 79° W.L., granted September 13, 2000 (File No. SAT-MOD-19981023-00073).¹⁰

Likewise, the Bureau previously has placed space station relocation requests on public notice as accepted for filing, even though the applications lacked new antenna gain contours.¹¹

Thus, the Bureau's recent decision to dismiss PanAmSat's request to relocate SBS-4 to 125° W.L. is contrary to these precedents and established Bureau practice. For this reason, and for the reasons set forth in PanAmSat's Petition for

⁷ See *In re Application of GE American Communications, Inc., Request for Reassignment*, Memorandum Opinion and Order, 13 FCC Rcd 23684 (IB 1998).

⁸ See *In re Application of GE American Communications, Inc. for Modification of Authorizations to Construct, Launch, and Operate Space Stations in the Fixed Satellite Service*, Order and Authorization, 15 FCC Rcd 3385 (IB 1999).

⁹ See *id.*

¹⁰ See *In re Application of GE American Communications, Inc. for Modification of Authorizations to Construct, Launch, and Operate Space Stations in the Fixed Satellite Service*, Memorandum Opinion, Order and Authorization, 15 FCC Rcd 23583, ¶ 11 (IB 2000).

¹¹ See, e.g., Request of GE American Communications, Inc. for Modification of License to Permit the Relocation of Satcom SN-3 from 87° W.L. to 83° W.L., File No. 107-SAT-ML-97 (filed Aug. 20, 1997). This relocation application was accepted for filing despite the absence of antenna gain contours. See Satellite Policy Branch Information: Applications Accepted for Filing, Public Notice, Rep. No. SPB-97 (rel. Aug. 25, 1997). (This application subsequently was dismissed as moot for reasons unrelated to its completeness.)

Reconsideration, PanAmSat respectfully requests reconsideration of the Bureau's dismissal and reinstatement *nunc pro tunc* of its application as amended.

Respectfully submitted,

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