

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

FILED/ACCEPTED
AUG 26 2008
Federal Communications Commission
Office of the Secretary

In the Matter of)	
)	
DIRECTV Enterprises, LLC	)	Call Signs S2242 (File Nos. SAT-LOA-19970605-
	)	00049 <i>et al.</i>), S2243 (File Nos. SAT-LOA-19970605-
	)	00050 <i>et al.</i>), S2244 (File Nos. SAT-LOA-19970605-
	)	00051 <i>et al.</i>), S2711 (File Nos. SAT-LOA-20060908-
	)	00099 <i>et al.</i>) & S2712 (File Nos. SAT-LOA-
	)	20060908-00100 <i>et al.</i>)
)	
EchoStar Satellite Operating L.L.C.	)	Call Signs S2440 (File Nos. SAT-LOA-20020328-
	)	00050 <i>et al.</i>), S2441 (File Nos. SAT-LOA-20020328-
	)	00051 <i>et al.</i>), S2442 (File Nos. SAT-LOA-20020328-
	)	00052 <i>et al.</i>), S2723 (File Nos. SAT-LOA-20070105-
	)	00001 <i>et al.</i>) & S2725 (File Nos. SAT-LOA-20070105-
	)	00003 <i>et al.</i>)
)	
Intelsat North America LLC	)	Call Signs S2659 (File Nos. SAT-LOA-20050210-
	)	00028 <i>et al.</i>), S2660 (File Nos. SAT-LOA-20050210-
	)	00029 <i>et al.</i>), S2661 (File Nos. SAT-LOA-20050210-
	)	00030 <i>et al.</i>) & S2662 (File Nos. SAT-LOA-20050210-
and	)	00031 <i>et al.</i>)
)	
Pegasus Development DBS Corporation	)	Call Signs S2698 (File Nos. SAT-LOA-20060412-
	)	00042 <i>et al.</i>), S2699 (File Nos. SAT-LOA-20060412-
Applications for Authority to Launch	)	00043 <i>et al.</i>) & S2700 (File Nos. SAT-LOA-20060412-
and Operate 17/24 GHz Broadcasting-	)	00044 <i>et al.</i>)
Satellite Service Space Stations)	

REPLY OF SES AMERICOM, INC.

SES Americom, Inc. (“SES Americom”), by its attorneys and pursuant to Section 25.154 of the Commission’s Rules, 47 C.F.R. § 25.154, hereby submits its reply to the response of DIRECTV Enterprises, LLC (“DIRECTV”)¹ to SES Americom’s comments on the above-captioned applications of DIRECTV, EchoStar Satellite Operating L.L.C. (“EchoStar”),

¹ Response of DIRECTV Enterprises, LLC, File Nos. SAT-LOA-19970605-00049 *et al.* (Aug. 14, 2008) (“DIRECTV Response”).

Intelsat North America LLC (“Intelsat”), and Pegasus Development DBS Corporation (“Pegasus”) for Commission licenses to launch and operate new space stations in the 17/24 GHz Broadcasting-Satellite Service (“BSS”) (collectively, the “BSS Applications”).² In our comments, SES Americom made a straightforward request. We asked the Commission to state in any authorizations granted pursuant to the BSS Applications that the licenses are subject to international coordination requirements and that licensed operations will not be protected absent successful coordination with networks with date priority under the International Telecommunication Union (“ITU”) rules.

Given the overwhelming legal precedent supporting this request, we would have thought it would be uncontroversial. As we explained in our filing, as a member of the ITU, the U.S. is under a treaty requirement to coordinate all U.S.-licensed satellites internationally. SES Americom Comments at 3. The Commission has codified this obligation in Section 25.111(b) of its rules, and includes a restatement of that provision as part of the routine conditions when it awards satellite licenses. *Id.* When it adopted the first-come, first served licensing framework that applies to 17/24 GHz applications, the Commission once again emphasized that licenses are granted subject to the outcome of international coordination. The Commission made clear that an applicant assumes the risk that coordination at its chosen orbital location may not be successful and operation pursuant to the license may not be possible as a result.³ The Commission has applied the same policy in the context of BSS service, advising the licensee of the need to comply with

² Comments of SES Americom, Inc., File Nos. SAT-LOA-19970605-00049 *et al.* (Aug. 1, 2008) (“SES Americom Comments”). Appendix 1 of the SES Americom Comments contains a complete listing of the call signs and file numbers of the BSS Applications.

³ *Id.* at 4, citing *Amendment of the Commission’s Space Station Licensing Rules and Policies*, First Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 10760 (2003) (“*Space Station Reform Order*”) at ¶ 96.

international coordination requirements and mandating that the operator advise its customers of the risk that services might need to be modified or terminated to conform to coordination agreements.⁴

Thus, pursuant to international law and the policies and rules of the Commission, the obligation to coordinate applies to all 17/24 GHz licensees. In that context, SES Americom requested that any licenses granted here include a coordination condition, not because such a condition is necessary to impose the obligation, but simply to ensure that there is no confusion on the part of new licensees. Indeed, given the treaty-based nature of the requirement, the Commission could not grant a licensee exemption from international coordination in any case. Expressly stating the terms of the coordination mandate as part of the license, however, guarantees that the licensee is on notice that the ability to operate pursuant to the license and the interference protection accorded to those operations depend on the outcome of the coordination process.

Based on its response, DIRECTV, at least, needs this reminder. DIRECTV is the only 17/24 GHz license applicant to object to SES Americom's request. Intelsat has previously expressly acknowledged that the requirement to coordinate pursuant to Section 25.211(b) applies to 17/24 GHz operations,⁵ and neither Pegasus nor EchoStar opposed imposition of a coordination condition here.

Remarkably, DIRECTV asks the Commission to reject SES Americom's proposed coordination condition without even acknowledging – much less disputing – the legal underpinnings of international coordination requirements. DIRECTV chooses to ignore completely the fact that as a signatory to the ITU treaty, the U.S. is obligated to conform to ITU rules relating

⁴ SES Americom Comments at 4, citing *EchoStar Satellite L.L.C., Application to Construct, Launch and Operate a Direct Broadcast Satellite at the 86.5° W.L. Orbital Location*, Order and Authorization, DA 06-2440, 21 FCC Rcd 14045 (IB 2006).

⁵ See *Opposition of Intelsat to Telesat Canada Petition for Reconsideration*, IB Dkt No. 06-123, filed Feb. 11, 2008, at 3.

to international coordination. Likewise, there is no mention in DIRECTV's Response of the Commission's express reaffirmation, in adopting the first-come, first-served licensing framework that applies to the BSS Applications, that it grants licenses subject to the outcome of international coordination. The existence of Section 25.111(b), which codifies the Commission's international coordination policy, warrants mention only in a footnote of the DIRECTV filing. DIRECTV Response at 4 n.9. DIRECTV suggests that the rule, which among other things permits licenses to be modified as needed to conform to international coordination agreements, makes imposition of a coordination condition unnecessary. *Id.* DIRECTV does not address the remainder of the rule, which makes clear that a licensee's right to interference protection from other networks depends on successful international coordination.

To the limited extent that DIRECTV refers to Commission precedent in its filing, the company misinterprets the significance or relevance of the applicable case law. For example, DIRECTV recognizes that the Commission has imposed a coordination condition when granting market access to a foreign applicant that lacks ITU priority, citing a decision involving Loral.⁶ But DIRECTV uses that decision to suggest that this Commission practice is restricted to situations involving two non-U.S. licensees. The Commission, however, has emphasized that its policy when the U.S. lacks ITU priority is to grant any operational authority on a temporary basis and subject to the outcome of coordination:

ITU date priority does not preclude us from licensing the operator of a U.S.-licensed GSO satellite on a temporary basis pending launch and operation of a satellite with higher priority in cases where the non-U.S.-licensed satellite has not been launched yet. When we have authorized a U.S. licensee to operate at an orbit location at which another Administration has ITU priority, we have issued the license subject to the outcome of the international coordination process, and

⁶ DIRECTV Response at 3 n.9., *citing Loral SpaceCom Corp.*, 18 FCC Rcd 16734 (IB 2003).

emphasized that the Commission is not responsible for the success or failure of the required international coordination.⁷

SES Americom has asked only that the Commission follow this precedent in acting on the BSS Applications. DIRECTV fails to acknowledge that its opposition to “conditioning U.S. licenses on coordination with non-U.S. networks” (DIRECTV Response at 3) directly conflicts with this clear statement of Commission policy.

Similarly, DIRECTV invokes the Ka-band licensing framework in support of its arguments (*id.* at 4-5), but fails to acknowledge that in the Ka-band proceeding, the Commission did exactly what SES Americom has requested here, granting licenses subject to the outcome of international coordination. In fact, in the very case cited by DIRECTV, the International Bureau awarded market access to Telesat Canada, a foreign licensee who had ITU priority, even though the Commission had previously issued a U.S. license to KaStarCom for Ka-band operations a fraction of a degree away. The Bureau explained that:

Under the ITU’s international Radio Regulations, any U.S. Ka-band satellite at 111.0° W.L. must be coordinated with Telesat’s planned satellite at 111.1° W.L. Consequently, we conditioned KaStarCom’s license on coordination with any non-U.S. satellite within two degrees of the KaStarCom satellite having filing date priority at the ITU. We also reminded KaStarCom that it takes its license subject to the outcome of the international coordination process, and that the Commission is not responsible for the success or failure of the required international coordination.

In light of the fact that Canada has ITU priority at this location, we find that granting Telesat access to the U.S. market in the Ka-band from the 111.1° W.L. location is consistent with the Commission’s spectrum management policies.⁸

⁷ *Space Station Reform Order*, 18 FCC Rcd 10760 (2003) at ¶ 295 (footnotes omitted).

⁸ *Telesat Canada Petition for Declaratory Ruling For Inclusion of Anik F2 on the Permitted Space Station List and Petition for Declaratory Ruling to Serve the U.S. Market Using Ka-band Capacity on Anik F2*, 17 FCC Rcd 25287 (IB 2002) at ¶¶ 25-26.

It is DIRECTV, not SES Americom, that is suggesting that the Commission should depart from the precedent established in the Ka-band context.

Thus, SES Americom's request that the Commission impose a coordination condition in connection with any action on the 17/24 GHz Applications is fully consistent with U.S. obligations under international law and with long-standing Commission rules and policies. DIRECTV's pleading does not present any rebuttal to this fundamental fact.

DIRECTV's remaining arguments are simply attempts to distract the Commission from this fatal defect in the Response and are easily dispensed with. First, DIRECTV claims that in its *Reconsideration Order* in the 17/24 GHz rulemaking, the Commission "considered and rejected" imposition of a coordination requirement.⁹ In fact, however, apart from a mention of Telesat Canada's request for a standard coordination requirement in the decision's recitation of the underlying pleadings, the *Reconsideration Order* contains no discussion of international coordination matters. DIRECTV attempts to read much into this silence, claiming that it constitutes an affirmative determination by the Commission that subjecting U.S. licenses to the outcome of coordination would be "contrary to the public interest." DIRECTV Response at 1. Yet as highlighted above, the obligation to comply with international coordination requirements is a principle of international law, is codified in the Commission's rules, and has been repeatedly emphasized in Commission decisions. The suggestion that with no analysis or discussion the *Reconsideration Order* effectively abdicated compliance with an international treaty and overruled years of Commission precedent is preposterous on its face.

⁹ DIRECTV Response at 1-2, citing *Establishment of Policies and Service Rules for the Broadcasting-Satellite Service at the 17.3-17.7 GHz Frequency Band and at the 17.7-17.8 GHz Frequency Band Internationally, and at the 24.75-25.25 GHz Frequency Band for Fixed Satellite Services Providing Feeder Links to the Broadcasting-Satellite Service and for the Satellite Services Operating Bi-directionally in the 17.3-17.8 GHz Frequency Band*, Order on Reconsideration, 22 FCC Rcd 17951 (2007) ("*Reconsideration Order*").

Second, DIRECTV implies that making clear to U.S. licensees that their operations are subject to the outcome of international coordination would somehow undermine the Commission's orbital spacing and technical policies. DIRECTV Response at 3-4. But one has nothing to do with the other. SES Americom's request that the Commission follow its practice of including standard coordination language in any licenses granted in response to the BSS Applications clearly does not implicate the spacing grid or technical requirements for the U.S. 17/24 GHz service.

DIRECTV also argues that the "international coordination process runs parallel to the U.S. licensing process, and there is no reason to conflate the two." *Id.* at 3 (footnote omitted). SES Americom agrees that licensing and coordination are independent matters. We ask only that the Commission make this fact clear to its 17/24 GHz licensees so that if they accept their licenses, they do so with the understanding that the rights conferred by the license are constrained as a matter of law by the need to comply with ITU coordination requirements.

Finally, there is no basis for DIRECTV's suggestion that imposing a coordination condition on U.S. licensees would allow foreign licensees to subvert the Commission's market access policies or otherwise contravene the public interest. The Commission has determined that U.S. customers benefit from the additional competition resulting from market entry by foreign licensees who satisfy the Commission's requirements. DIRECTV itself, of course, has taken advantage of these policies, seeking and obtaining authority to serve the U.S. using spacecraft operated pursuant to Canadian licenses.¹⁰

¹⁰ See, e.g., *DIRECTV Enterprises, LLC*, 19 FCC Rcd 15529 (Sat. Div. 2004) at ¶ 8 (finding that granting request to serve the U.S. using DIRECTV 5 pursuant to a Canadian license would improve the quality of service to U.S. DBS consumers).

For its part, SES Americom has a history of more than thirty years of providing high quality, state-of-the-art communications services to customers across the U.S. Our fleet currently consists of seventeen satellites, the overwhelming majority of which are U.S.-licensed. However, SES Americom, through a wholly-owned subsidiary, has also received authority to use foreign-licensed satellites to serve the U.S. in some instances. Whether or not the U.S. is the licensing administration, SES Americom customers receive the same high levels of performance and reliability, and the flexibility to use non-U.S.-licensed assets has allowed SES Americom to be more responsive to customer requirements.

For example, in early 2007 we introduced new U.S. C-band service from the nominal 105° W.L. orbital location using the Gibraltar-licensed AMC-18 spacecraft. Under the terms of the 1988 Trilateral Agreement among the U.S., Canada and Mexico, the C-band frequencies at that orbital location were not available for U.S. licensing,¹¹ but neither Canada nor Mexico had deployed a C-band satellite to that position. By obtaining a Gibraltar license and seeking U.S. market access, SES Americom was able to provide new service to U.S. customers using spectrum at an orbital location that had lain fallow for nearly twenty years.

SES Americom is ready, willing, and able to build on this legacy of quality service by bringing its technical expertise and financial assets to bear in developing and deploying 17/24 GHz BSS spacecraft. U.S. customers will be the beneficiaries of facilities that will provide additional services and serve as the framework for new competition to existing DBS operations. DIRECTV, on the other hand, has a clear incentive to attempt to preserve the benefits that flow

¹¹ See *Trilateral Arrangement Regarding Use of the Geostationary Orbit Reached by Canada, Mexico, and the United States*, Public Notice, Sept. 2, 1988 at 1 (noting that “the U.S. has agreed to implement 12/14 GHz band satellites only at 105° W.L.”).

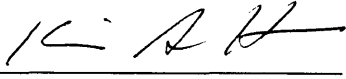
from its position as an incumbent DBS provider by blocking new entry. The Commission must reject any attempt to thwart its pro-competitive objectives in this manner.

For the foregoing reasons, the Commission should include in any grants of the above-captioned BSS Applications a provision notifying the licensees of the international coordination obligations that apply as a matter of international treaty and Commission policy. The licensees should be advised that unless coordination is completed, they are not entitled to interference protection from networks operating pursuant to ITU filings with date priority. The licensees should also be notified that absent successful international coordination, their operations may have to be modified or terminated to accommodate a network with priority, and they should be required to make a disclosure to that effect to their customers.

Respectfully submitted,

SES AMERICOM, INC.

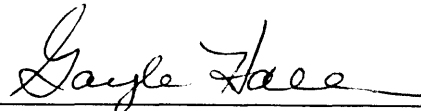
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CERTIFICATE OF SERVICE

I, Gayle Hall, hereby certify that on this 26th day of August, 2008, I caused to be served copies of the foregoing "Reply of SES Americom, Inc." on the following parties by first-class U.S. mail, postage prepaid:



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