

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

In the Matter of)
)
SES Americom, Inc.) File Nos. SAT-RPL-20121228-00227
) & SAT-AMD-20131113-00132
Application for Authority to Operate the) Call Sign S2892
SES-3 Replacement Satellite at 103° W.L.)

OPPOSITION OF SES AMERICOM, INC.

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Dated: December 24, 2013

SUMMARY

Section 309 of the Communications Act requires the Commission to grant an application if grant will serve the public interest, convenience, and necessity. In this case, the public interest strongly favors expeditious grant of the SES-3 Application to ensure continuity of service for the many C- and Ku-band customers currently relying on the aging AMC-1 spacecraft before that spacecraft reaches the its end of station-kept life. These customers include national television and radio broadcasters, cable networks, and other major U.S. companies that rely on AMC-1 capacity today to serve hundreds of millions of U.S. consumers.

In its Petition, DIRECTV completely ignores these customers and the consumers they serve. Instead, DIRECTV would have the Commission subordinate the public interest in service continuity in favor of DIRECTV's future plans to develop the 17/24 GHz BSS frequencies at 103° W.L. DIRECTV's 17/24 GHz BSS interests are irrelevant to the C- and Ku-band SES-3 Application that is presently before the Commission and are in any event outweighed by the public interest in favor of service continuity for the C- and Ku-band customers on AMC-1.

Contrary to DIRECTV's assertions, grant of the SES-3 Application in the C- and Ku-band frequencies has no implications for or impact on DIRECTV's ability to pursue its 17/24 GHz BSS business plans at this location. The impediments to DIRECTV's plans stem from DIRECTV's failure to comply with its obligation to coordinate its lower priority 17/24 GHz BSS filing with the higher priority filings of other administrations, not from the grant of a C-and Ku-band replacement satellite application.

Furthermore, DIRECTV has no grounds for seeking delay in action on the SES-3 Application pending completion of international coordination for the 17/24 GHz BSS frequencies. When it chose to apply for the 17/24 GHz BSS spectrum at 103° W.L., DIRECTV assumed the coordination risk. DIRECTV should not be allowed to transfer that risk to the C-

and Ku-band customers on AMC-1. Nor should the Commission endorse DIRECTV’s efforts to use those customers as bargaining chips in its 17/24 GHz BSS coordination discussions.

DIRECTV’s attempts to characterize SES’s conduct in this case as an abuse of process are both inaccurate and meritless. SES has not sought to evade FCC jurisdiction, as evidenced by the SES-3 Application that is presently before the Commission. Nor can DIRECTV legitimately criticize SES for launching a limited 17/24 GHz BSS payload on SES-3 to 103° W.L. After all, DIRECTV itself has launched a limited 17/24 GHz BSS payload on DIRECTV 12 to the same orbital location, and that payload was authorized pursuant to a Commission public interest determination.

DIRECTV’s Petition is also procedurally defective. DIRECTV’s only interest at this location is in the 17/24 GHz BSS band, and that interest is not affected in any way by the request for C- and Ku-band authority for SES-3 that is before the Commission. Thus, DIRECTV has not established – and indeed cannot establish – that it has standing as a party in interest here.

For all of these reasons, the Commission should deny DIRECTV’s Petition and immediately grant the SES-3 Application in order to permit an orderly and timely transition of services from AMC-1.

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OPPOSITION OF SES AMERICOM, INC.

SES Americom, Inc. (“SES”) hereby opposes the DIRECTV, LLC Petition to Deny or Defer¹ the above-captioned request for authority to operate the in-orbit SES-3 satellite in the conventional C- and Ku-band frequencies at 103° W.L. (the “SES-3 Application”).

**I. THE PUBLIC INTEREST OVERWHELMINGLY SUPPORTS
PROMPT GRANT OF THE SES-3 APPLICATION**

SES agrees with DIRECTV that “the U.S. public interest is the ultimate touchstone for determining the appropriate disposition of SES’s application.”² As DIRECTV observes, Section 309 obligates the Commission to assess whether grant of an application will serve the public interest, convenience, and necessity,³ and the same requirement is incorporated in the satellite service rules.⁴ The outcome of that public interest analysis is clear. Grant of the SES-3 Application will ensure continuity of service to the many SES customers that use C- and Ku-

¹ Petition to Deny or Defer of DIRECTV, LLC, IBFS File Nos. SAT-RPL-20121228-00227 & SAT-AMD-20131113-00132, filed Dec. 16, 2013 (“DIRECTV Petition”).

² *Id.* at 10.

³ *Id.*, citing 47 U.S.C. § 309(a).

⁴ *Id.*, citing 47 C.F.R. § 25.156(a).

band capacity at 103° W.L. to serve hundreds of millions of consumers and is fully consistent with established Commission rules and policy.

A. Expedited Grant of the SES-3 Application Will Ensure Service Continuity and an Orderly Transition for AMC-1 Customers

AMC-1 serves as a key network element for leading media and information industry customers that serve many U.S. consumers nationwide. In the Ku-band, these customers include: a national broadcaster and premier media and entertainment provider serving U.S. homes throughout the country; a distributor of radio broadcasts and Emergency Alert System notifications to 250 million U.S. listeners; a leading provider of transportation and logistics support to corporate fleets; a pioneer in digital cinema and signage seen by 100 million viewers daily; and a Fortune 100 global delivery firm. In the C-band, customers include a home shopping network that reaches more than 95 million U.S. households; the number one Nielsen-rated network with programming for U.S. Hispanic communities; and some of the nation's most-watched regional sports networks. The AMC-1 C-band payload is also used to distribute video on demand to approximately 60 million U.S. households and serves as backbone infrastructure for the U.S. cable industry as part of the SES North American cable neighborhood.

The strong public interest in continuity of service is the foundation for the Commission's satellite replacement expectancy policy, which is intended to provide "assurance that operators will be able to continue to serve their customers."⁵ Consistent with that objective, the Commission routinely grants replacement applications for operations in the same frequency bands and same orbital location, provided that the replacement satellite conforms to U.S.

⁵ *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, 10854-55 (2003) ("Space Station Reform Order").

international coordination obligations under the ITU rules.⁶ The Commission has applied these policies dozens of times, finding that authorizing replacement satellite capacity at the same orbital location serves the public interest because it “ensures continuity of service to customers and eliminates any need for them to repoint their antennas.”⁷

SES’s request for C- and Ku-band authority for the SES-3 replacement satellite fits squarely within this precedent. SES-3 is ready and able to provide state-of-the-art follow-on capacity for customers now using AMC-1 at the same orbital location. The C- and Ku-band rights at this orbital location are coordinated internationally, and operation of SES-3 is consistent with the Commission’s licensing framework.

Moreover, the facts here warrant expedited action to authorize the SES-3 replacement. The transition from AMC-1 to SES-3 will be unusually complicated and time-consuming for Ku-band customers due to the difference in polarization orientation between the AMC-1 and SES-3 Ku-band payloads. AMC-1 has a 26-degree polarization cant on its Ku-band payload that is not on the SES-3 Ku-band payload. As a result, SES’s customers will need to make adjustments to their large networks of geographically-dispersed antennas to reflect the polarization difference. These adjustments will require significant allocation of personnel and equipment, and the changeover must be scheduled around significant broadcast events to minimize the risk of disruption. Thus, prompt grant of the SES-3 Application by the

⁶ See *id.* at 10857.

⁷ *GE American Communications, Inc.*, Order and Authorization, 11 FCC Rcd 11497, 11498 (Sat. Div. 1996) (authorizing GE-4 replacement satellite). See also *DIRECTV Enterprises, Inc.*, 14 FCC Rcd 13159, 13159 (Sat. Div. 1999) (grant of authority for DBS-1R “will enable DIRECTV to ensure continuity of service for its customers”); *PanAmSat Licensee Corp.*, 17 FCC Rcd 8367, 8367 (Sat. Div. 2002) (grant of replacement authority will “enable PanAmSat to ensure continuation of service to the public and increased service reliability”); *Columbia Communications Corp.*, 16 FCC Rcd 4725, 4725 (Sat. Div. 2001) (grant of replacement authority will permit Columbia to “provide continuity of service for existing customers”).

Commission is required to ensure long-term continuity of service and a smooth transition for AMC-1 customers. This is precisely what the Commission’s replacement expectancy is intended to facilitate.

DIRECTV completely ignores the public interest in ensuring service continuity for existing AMC-1 customers. Instead, DIRECTV is asking the Commission to subordinate this public interest in favor of DIRECTV’s future plans to develop the 17/24 GHz BSS frequencies at 103° W.L. The Commission cannot take such a narrow view of the public interest. To SES’s knowledge, DIRECTV has no customers on its RB-2A 17/24 GHz BSS payload today. In contrast, there are hundreds of millions of U.S. consumers today that directly or indirectly receive services carried by the C- and Ku-band capacity at 103° W.L. Thus, the public interest calculus requires grant of the SES-3 Application.

B. The SES-3 Application Is Fully Consistent with Commission Rules, Policies, and Precedent

In addition to effectuating the Commission’s commitment to ensuring service continuity, grant of the SES-3 Application is completely consistent with the Commission’s satellite regulatory framework. The spacecraft’s C- and Ku-band payloads conform in all respects to the Commission’s technical rules.⁸ The payloads reflect current technology, fully comply with Commission requirements, and are intended to provide robust follow-on capacity to customers. They are therefore entitled to licensing under the Commission’s rules. DIRECTV’s Petition does not raise any technical issues or otherwise contradict this in any way.

Even if aspects of the SES-3 Application are unusual, they are well within established Commission precedent. For example, the FCC has in many cases granted U.S. licenses to in-orbit satellites or payloads that were not originally launched and operated pursuant to U.S.

⁸ SES-3 Application, Narrative at 11.

authority.⁹ Similarly, the Commission has on numerous occasions approved of dual-licensing situations, where a U.S.-authorized payload shares the spacecraft bus with a foreign-licensed payload.¹⁰ Thus, the SES-3 Application raises no novel issues.

Similarly, SES's decision to launch and initially operate SES-3 under Luxembourg authority presents no concerns under applicable law. That choice was driven by the simple fact that the spacecraft had a Luxembourg mission to perform in its first year of operation.¹¹ Accordingly, SES sought and obtained the necessary authority from Luxembourg for the launch and initial operations of the satellite, before filing the present application for U.S. operating authority once the satellite was ready to commence its AMC-1 replacement mission. There is no Commission rule, policy or precedent that would have required SES to seek U.S. authority for the satellite's missions authorized by Luxembourg and other administrations.

Furthermore, SES is not asking the Commission to ratify or otherwise approve of the past operations of SES-3, as those were fully sanctioned by Luxembourg and other administrations. Instead, SES seeks simply a prospective determination that authorizing operations of the SES-3 C- and Ku-band payloads is in the public interest. The Commission has previously found it in the public interest to issue a prospective license for a satellite notwithstanding unusual features in the spacecraft's past life.¹²

⁹ See *id.* at 7-9 and cases cited in nn.12-25.

¹⁰ See *id.* at 10-11 and cases cited in nn.26-30.

¹¹ The initial missions of SES-3 are fully described in the SES-3 Application, *id.* at 3-5.

¹² For example, the Commission granted Intelsat's application to license Protostar 1, which it had purchased in a bankruptcy proceeding, and whose prior licensing status Intelsat had characterized as "uncertain." *Intelsat North America LLC*, File No. SAT-A/O-20091223-00151, Call Sign S2804, Narrative at 2 n.5, grant-stamped Apr. 2, 2010 ("ProtoStar 1 Grant"). The Commission also authorized operation of the PAS-22 spacecraft (previously known as HGS-1), which was originally intended to be AsiaSat 3. *PanAmSat Corp.*, Order and Authorization,

DIRECTV also expresses concern that grant of the SES-3 Application would encourage other operators to pursue a similar licensing path, implying that U.S. interests would somehow be adversely affected.¹³ But in fact, SES's licensing path is legitimate. The Commission itself has permitted satellites originally launched for U.S. missions to relocate to foreign orbital slots to serve a different mission,¹⁴ and has granted U.S. licenses to satellites launched originally under foreign authority.¹⁵ The Commission has also licensed U.S. satellites for short-term missions at a number of slots before they commence operation at their long-term location.¹⁶ Thus, there is no indication that the SES-3 licensing path raises concerns for the Commission.

Because the C- and Ku-band payloads of SES-3 conform to the Commission's regulatory framework completely, the FCC should immediately grant operational authority to permit the payloads to provide follow-on capacity at 103° W.L.

DA 99-2220 (IB rel. Oct. 26, 1999) ("PAS-22 Order"). PanAmSat acquired the satellite after it was salvaged following a launch malfunction. *See id.*

¹³ DIRECTV Petition at 11.

¹⁴ *See, e.g., EchoStar Satellite Operating Corp.*, File No. SAT-MOD-20130503-00066, Call Sign S2811, grant-stamped June 20, 2013 ("EchoStar 15 Grant") (authorizing EchoStar 15 to operate at 45.1° W.L. pursuant to Brazilian ITU filings); *SES Americom, Inc. and EchoStar Satellite L.L.C.*, Order and Authorization, 21 FCC Rcd 3430 (IB 2006) ("AMC-16 Relocation Order") at ¶ 1 (permitting AMC-16 to temporarily relocate to 118.75° W.L. to operate pursuant to Canadian authority prior to returning to service as a U.S.-licensed spacecraft at 85° W.L.).

¹⁵ *See, e.g., Intelsat License LLC*, Call Sign S2854, File No. SAT-RPL-20120216-00018, grant-stamped May 25, 2012 ("NSS-7 Grant") (granting a U.S. license for Ku-band frequencies on NSS-7, which was launched and had previously operated under Netherlands authority); *Intelsat License LLC*, Call Sign S2801, File No. SAT-A/O-20091208-00141, grant-stamped June 4, 2010 ("NSS-5 Grant") (licensing Ku-band frequencies on NSS-5, which was launched and initially operated as part of the INTELSAT intergovernmental system then later spun off to New Skies and operated pursuant to Netherlands authority). *See also* Protostar 1 Grant; PAS-22 Order.

¹⁶ For example, before DIRECTV 8 was put into position at the nominal 101° W.L. orbital position, DIRECTV sought and received Commission authority to operate it for brief periods at two other locations. *See, e.g., DIRECTV Enterprises, LLC*, File No. SAT-STA-20050506-00096, Call Sign S2132, grant-stamped May 26, 2005 (authorizing operations for up to four days at 102.8° W.L. and for up to eighteen days at 99.2° W.L.).

**C. Grant of the SES-3 Application Does Not Impact
DIRECTV’s Ability to Pursue its 17/24 GHz BSS Plans at 103° W.L.**

The focus of the DIRECTV Petition, of course, is not on the straightforward C- and Ku-band replacement capacity request that is actually before the Commission, but on the Canadian-licensed 17/24 GHz BSS payload (known as “Ciel-6i”) that is hosted aboard the satellite. That payload is licensed to Ciel Satellite Limited Partnership (“Ciel”), a Canadian limited partnership that is 70% owned by SES’s parent company.

DIRECTV cannot, however, demonstrate that award of the operating license requested by SES – which would confer only C- and Ku-band rights – would harm DIRECTV, whose sole interests at this orbital location lie in the 17/24 GHz BSS band. The only concrete “harm” claimed by DIRECTV is the suggestion that DIRECTV’s 17/24 GHz BSS plans could be thwarted because the higher priority rights of the Canadian-licensed Ciel-6i payload with which DIRECTV must coordinate have been perfected. But such a result has nothing to do with whether the SES-3 Application is granted. Instead, it is a straightforward consequence of the ITU rules establishing date priority and the Commission’s announced policy that all U.S. satellite licensees “assume[] the coordination risk when choosing [a] particular orbit location.”¹⁷

Nor can DIRECTV show that denial of the SES-3 Application for C- and Ku-band rights could cure any “harm” to DIRECTV with respect to its attempt to pursue its 17/24 GHz BSS business objectives. The Ciel-6i payload is duly licensed by Canada and has operated at 103° W.L. for over a year, since September 2012. As DIRECTV recognizes, the documentation

¹⁷ *The 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*, Second Order on Reconsideration, 25 FCC Rcd 15718, 15724, ¶ 10 (2010) (“17/24 GHz Reconsideration Order”), quoting Space Station Reform Order, 18 FCC Rcd at 10799-10800, ¶ 96.

to bring into use the Canadian 17/24 GHz BSS network at that location is on file with the ITU.¹⁸ Denial of the SES-3 Application – which relates only to the C- and Ku-band frequencies – would not have any effect on the relative priority of Canada and the U.S. in the 17/24 GHz BSS spectrum.

Thus, DIRECTV’s interests are wholly unaffected by grant of the SES-3 Application. The uncertainty facing DIRECTV relating to its ability to pursue its goals for the 17/24 GHz BSS band is a result of the workings of the ITU rules and DIRECTV’s assumption of the coordination risk. Neither grant nor denial of the SES-3 Application will change DIRECTV’s situation.

D. DIRECTV Provides No Basis for Deferring Action on the SES-3 Application

DIRECTV’s request that the Commission defer any action on SES-3 pending completion of the 17/24 GHz BSS coordination discussions between Ciel and DIRECTV¹⁹ must also be rejected. There is no justification for placing the SES-3 C/Ku-band replacement proceeding in limbo awaiting the outcome of unrelated coordination discussions. Instead, given the strong public interest in service continuity and the need to begin the transition to SES-3 in the near term to minimize the impact on customers, the Commission should immediately grant the SES-3 Application.

When DIRECTV accepted its 17/24 GHz BSS licenses at 103° W.L., it assumed the associated coordination risk. The Commission has made clear that 17/24 GHz BSS licensees “take their licenses subject to the outcome of the international coordination process,” and that the

¹⁸ DIRECTV Petition at 9.

¹⁹ *Id.* at 13-14.

Commission “does not guarantee the success of the required coordination.”²⁰ The Commission must not allow DIRECTV to now transfer that risk to the C- and Ku-band customers on AMC-1 that are awaiting licensing of the SES-3 replacement satellite. Nor should DIRECTV be allowed to use the C- and Ku-band customers on AMC-1 as bargaining chips in its attempt to coordinate its lower priority 17/24 GHz BSS filing with Ciel’s higher priority operations.

Acceding to DIRECTV’s demands would only sanction abuse of the Commission’s processes by giving DIRECTV an unwarranted veto power over further processing of the SES-3 Application.²¹ While Ciel is committed to coordinating in good faith, the co-frequency, co-coverage nature of the Canadian and U.S. ITU filings make coordination difficult.²² Moreover, DIRECTV has a clear interest in stalling action on the SES-3 Application for as long as possible in order to attempt to extract concessions from SES and Ciel. Were the Commission to suspend further processing of the SES-3 Application while coordination discussions remain ongoing, it would remove any possible incentive for DIRECTV to deal in good faith. Given the strong service continuity interests of existing C- and Ku-band customers, the Commission cannot confer on DIRECTV the ability to block action on the SES-3 Application.

Commission precedent supports proceeding with the C/Ku-band authority requested here notwithstanding the 17/24 GHz BSS matters raised by DIRECTV. For example, when DIRECTV requested authority to add the RB-2A 17/24 GHz BSS payload to DIRECTV 12, Ciel

²⁰ 17/24 GHz Reconsideration Order, 25 FCC Rcd at 15724, ¶ 10, quoting Space Station Reform Order, 18 FCC Rcd at 10799-10800, ¶ 96.

²¹ It would also reward DIRECTV for its own foot-dragging, since DIRECTV has been aware of its obligation to coordinate and could have initiated discussions with Ciel years ago. *Cf.* Reply of DIRECTV Enterprises, LLC, File Nos. SAT-LOI-20050312-00062 and -00063, filed June 8, 2005, at 8 (criticizing Spectrum Five because it had failed to initiate coordination discussions with DIRECTV during the more than seven months since the ITU filing underlying the Spectrum Five network had been filed).

²² See DIRECTV Petition at 13-14.

submitted comments relating to the international coordination issues surrounding RB-2A.²³ The Commission acted expeditiously on the DIRECTV 12 application, and did not hold up processing while it considered the arguments specific to RB-2A.²⁴ The same approach is warranted here.

E. DIRECTV, Not SES, Is Attempting to Abuse the Commission’s Process

SES has been open and transparent about the SES-3 spacecraft. The satellite’s history is laid out in detail in the SES-3 Application. Moreover, this history is well known by the Commission, as SES has briefed the Commission staff on numerous occasions regarding its plans for SES-3 both before and after the satellite’s launch.²⁵

SES’s decision to launch and initially operate SES-3 under Luxembourg authority is perfectly legitimate, as the satellite’s initial mission was a Luxembourg mission.²⁶ When it became time for SES-3 to embark on its mission as a replacement for AMC-1, SES requested C- and Ku-band authority from the Commission well in advance of the date the authority was needed. As noted above, the Commission itself has licensed the launch of U.S. satellites to one orbital location, only to authorize the relocation of such satellites to a foreign slot for another mission. Such changes of mission have been authorized by the Commission both early and late

²³ See, e.g., Comments of Ciel Satellite Limited Partnership, File No. SAT-LOA-20090807-00085, Call Sign S2796, filed Nov. 2, 2009.

²⁴ The Commission granted authority for launch and operation of DIRECTV 12 and for launch of the RB-2A payload on December 15, 2009, just over four months after the application was filed. *DIRECTV Enterprises LLC*, File No. SAT-LOA-20090807-00086, Call Sign S2797, grant-stamped Dec. 15, 2009, and File No. SAT-LOA-20090807-00085, Call Sign S2796, granted in part and deferred in part Dec. 15, 2009. A few weeks later, the Commission granted operational authority for the RB-2A payload. *DIRECTV Enterprises LLC*, File No. SAT-LOA-20090807-00085, Call Sign S2796, granted Jan. 8, 2010 (“RB-2A Grant”).

²⁵ See, e.g., Notice of *Ex Parte* Presentation, IBFS File No. SAT-RPL-20121228-00227, Call Sign S2892, filed Nov. 13, 2013, attachment at 3 (listing the numerous SES contacts with FCC staff regarding the SES-3 Application after it was filed in December 2012).

²⁶ See generally SES-3 Application at 3-5.

in the life of a U.S.-licensed satellite.²⁷ The Commission has also granted U.S. licenses for satellites that were originally launched under foreign authority, reflecting a change in the mission of such satellites.²⁸ Thus, there was no requirement on SES to seek Commission authority until SES-3 had completed its initial missions and was ready to shift to its replacement mission.

DIRECTV's criticism of Ciel's use of an interim payload to initiate operations in the 17/24 GHz BSS band is also disingenuous at best. DIRECTV itself chose initially to deploy the limited-capacity RB-2A 17/24 GHz BSS payload at this orbital location, citing uncertainty regarding the outcome of international coordination.²⁹ The RB-2A 17/24 GHz payload consists of four downlink beams over four cities in the western United States and a single uplink beam,³⁰ and thus falls short of the Commission's geographic service requirements for the 17/24 GHz BSS.³¹ Nevertheless, the Commission found that grant of authority for the interim RB-2A payload was in the public interest, and waived DIRECTV's non-compliance with the rules.³² Ciel's decision to deploy a limited 17/24 GHz BSS payload to 103° W.L. on SES-3 is no

²⁷ For example, AMC-16 and EchoStar 15 each was relocated early in the spacecraft's life to another location to perform a foreign mission. *See* AMC-16 Relocation Order; EchoStar 15 Grant. Other satellites were repurposed to a foreign location later in the spacecraft life cycle. *See, e.g.*, DIRECTV Enterprises, LLC, File Nos. SAT-A/O-20120817-00137, SAT-AMD-20120824-00142, & SAT-AMD-20120913-00148, Call Sign S2369, grant-stamped Dec. 21, 2012 (modifying the license of the DIRECTV 1R satellite to authorize operation pursuant to Russian ITU filings at 55.8° E.L.); Intelsat North America LLC, File No. SAT-T/C-20100112-00009, Call Sign S2159, granted July 30, 2010 (authorizing transfer of Galaxy 27 for operation at 45.10° E.L. pursuant to German licensing authority).

²⁸ *See, e.g.*, NSS-7 Grant; NSS-5 Grant; Protostar 1 Grant; PAS-22 Order.

²⁹ DIRECTV Enterprises LLC, File No. SAT-LOA-20090807-00085, Call Sign S2796, Exhibit C at 3.

³⁰ *See id.* at 6.

³¹ *See id.*, Exhibit B at 1-2, seeking waiver of the geographic service requirements in 47 C.F.R. § 25.225.

³² RB-2A Grant, Attachment to Grant at 2.

different than DIRECTV’s own behavior in this regard and was motivated by similar concerns about access to the spectrum at 103° W.L.

In other words, the Ciel-6i 17/24 GHz BSS payload on SES-3 is no more or less a “token”³³ payload than is DIRECTV’s RB-2A. In this context, DIRECTV’s claims of warehousing³⁴ are clearly revealed as frivolous. Unless DIRECTV is conceding that it violated the Commission’s warehousing policy by deploying RB-2A, it has no grounds to attack the Ciel-6i payload on SES-3. Similarly, DIRECTV’s claim that Ciel-6i would not qualify for regular Commission authority given its limited capabilities³⁵ is inconsistent with the fact that the Commission granted a license to RB-2A. It is also moot because the Commission is not being asked to license or otherwise authorize the Ciel-6i payload. Instead, Ciel-6i is subject to Canadian authority, and Canada has already made its licensing determination.

At some future date, Ciel or Ciel’s customer may apply for U.S. market access in the 17/24 GHz BSS band. At that time, DIRECTV will have an opportunity to raise any objections. Grant of the SES-3 Application will not constrain the Commission’s flexibility in deciding such a future request. SES notes, however, that the mere existence of DIRECTV’s U.S. licenses for 17/24 GHz BSS operations at 103° W.L. is not a decisive fact. To the contrary, the Commission has granted U.S. market access to a Canadian licensee with ITU priority notwithstanding the fact that the Canadian operations precluded use of a previously granted FCC license for the same frequencies.³⁶

³³ DIRECTV repeatedly uses this moniker for Ciel-6i. *See* DIRECTV Petition at i, ii, 1, 4, 5, 7, 8, 11, 12, 13, & 14.

³⁴ *See id.* at 11-12.

³⁵ *See id.* at 12-13.

³⁶ *See* 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

If there is any regulatory gamesmanship here, it is on the part of DIRECTV. DIRECTV has known for years that the United States does not have international priority for the 17/24 GHz BSS spectrum at 103° W.L.; this is clear in the ITU databases and has been expressly raised by Ciel in DIRECTV’s licensing proceedings. But rather than recognize that, DIRECTV has taken the position that its first-in-time application to the FCC precludes any other foreign-licensed satellite from providing 17/24 GHz BSS service in the United States from the same slot, regardless of ITU priority.³⁷ DIRECTV is attempting to use the Commission’s first-come, first-served process to subvert the ITU system of date priorities under which all countries operate. However, this is not how the Commission’s first-come, first-served process works.³⁸ In any event, the Commission need not reach a decision on this issue, as the only matter before it is whether it is in the public interest to grant the C- and Ku-band SES-3 Application.

Ka-band Capacity on Anik F2, 17 FCC Rcd 25287, 25295-96 at ¶ 25-26 (IB 2002) (“Anik F2 Order”) (granting U.S. market access for Anik F2 Ka-band payload at 111.1° W.L. based on Canadian ITU priority at that location, despite Commission’s prior grant of a Ka-band license to KaStarCom at 111.0° W.L.). *See also KaStarCom World Satellite, LLC*, Order and Authorization, 16 FCC Rcd 14322, 14330 at ¶ 25 (IB 2001) (“KaStarCom Order”) (“The orbit location assigned today may be co-located or within two degrees of a non-U.S. licensed satellite filing having date priority in its ITU filings. Under these circumstances, U.S. licensees assigned to these locations are reminded that they take these licenses 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.”).

³⁷ *See* Reply Comments of DIRECTV Enterprises, LLC, File No. SAT-LOA-20090807-00085, Call Sign S2796, filed Nov. 12, 2009, at 4 (claiming that Ciel cannot be authorized to serve the U.S., despite the Canadian ITU priority, as long as DIRECTV holds its previously granted 17/24 GHz BSS license at 103° W.L.).

³⁸ The Anik F2 Order held that the prior grant of a Commission license did not foreclose an award of market access. Although the case was decided prior to adoption of the first-come, first-served processing approach, the Commission made clear in the Space Station Reform Order that it was continuing the policies on which the Anik F2 Order relied:

As is the case now in processing rounds, U.S. licensees assigned to a particular orbit location in a first-come, first-served approach take their licenses subject to the outcome of the international coordination process. . . . This may

In an ironic twist, DIRECTV cites to Commission precedent in the broadcast license renewal context to bolster its abuse of process claims.³⁹ But it is DIRECTV’s conduct here that most resembles the behavior condemned by the Commission in that decision. Specifically, the Commission took steps to prevent the practice in broadcast license renewal proceedings of parties filing competing applications or petitions to deny, and then seeking a payment from the incumbent in exchange for agreeing to withdraw the filing.⁴⁰ Here, DIRECTV is attempting to block a replacement application that would provide service continuity to hundreds of millions of U.S. customers with no apparent objective other than obtaining a coordination advantage for its lower-priority 17/24 GHz BSS filing vis-à-vis Canada’s higher ITU priority filing. In short, if there is any abuse of process in this proceeding, it is in DIRECTV’s suggestion that the Commission should sanction a sort of regulatory blackmail – whereby the public interest is allowed to be held hostage until a completely unrelated matter can be resolved to DIRECTV’s satisfaction.

mean that the U.S. licensee may not be able to operate its system if the coordination cannot be appropriately completed.

Space Station Reform Order, 18 FCC Rcd at 10799-10800, ¶ 96. *See also id* at 10870, ¶ 295 & n.704 (“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 emphasized that the Commission is not responsible for the success or failure of the required international coordination”), *citing* KaStarCom Order.

³⁹ *See* DIRECTV Petition at 11 & n.32, *citing Formulation of Policies and Rules Relating to Broadcast Renewal Applicants, Competing Applicants, and Other Participants to the Comparative Renewal Process and to the Prevention of Abuses of the Renewal Process*, 5 FCC Rcd 3902, 3902-03, ¶ 9 (1990) (“Broadcast Renewal Policies”).

⁴⁰ *See* Broadcast Renewal Policies at 3902-03, ¶¶ 6-7.

Again, the Commission should not allow DIRECTV’s meritless abuse of process claims⁴¹ to distract it from a clear-eyed review of the public interest merits of authorizing SES-3 to replace AMC-1. In this case, the public interest is overwhelmingly in favor of replacement, and the Commission should grant the SES-3 Application accordingly.

II. DIRECTV LACKS STANDING TO SEEK DENIAL OF THE SES-3 APPLICATION

As explained above, DIRECTV’s substantive arguments regarding the SES-3 Application are baseless, and the Commission therefore has ample grounds to dismiss the DIRECTV Petition on the merits. The petition, however, is also procedurally defective because it fails to establish DIRECTV’s standing as a party in interest. Accordingly, DIRECTV’s pleading is defective on its face.

Section 25.154 specifies that a petition to deny must contain specific factual allegations sufficient to demonstrate that the petitioner is a party in interest.⁴² All of the following elements must be shown to establish party-in-interest standing:

a petitioner must allege facts sufficient to demonstrate that grant of the subject application would cause it to suffer a direct injury. In addition, petitioners must demonstrate a causal link between the claimed injury and the challenged action. To demonstrate a causal link, petitioners must

⁴¹ In the course of raising these frivolous claims, DIRECTV makes a number of inaccurate statements regarding tangential matters. SES hereby corrects the record. First, DIRECTV suggests that the temporary operation of SES-3 at 99° W.L. prior to its relocation to 103° W.L. resulted in a bringing into use of the Luxembourg filing there, thus compromising U.S. rights at that location. In fact, the Luxembourg filing at that location was not brought into use and has expired. Second, DIRECTV makes a point of claiming that the SES-2 17/24 GHz BSS payload was operated without Commission approval to bring into use a Canadian ITU filing at 86.5° W.L. That is not the case. Instead, the ITU notification at that location was made with the full knowledge of the Commission following discussions with Industry Canada.

⁴² 47 C.F.R. § 25.154(a)(4). This rule reflects the mandate of Section 309(d)(1) of the Communications Act, which permits only a “party in interest” to file a petition to deny an application. 47 U.S.C. § 309(d)(1).

establish that the injury can be traced to the challenged action and that the injury would be prevented or redressed by the relief requested.⁴³

DIRECTV’s pleading satisfies none of these requirements. DIRECTV does not demonstrate that award of the C- and Ku-band operating license requested by SES would harm DIRECTV. The only concrete “harm” claimed by DIRECTV is the suggestion that DIRECTV’s 17/24 GHz BSS plans could be thwarted because of the superior rights of the Canadian-licensed Ciel-6i payload.⁴⁴ But as SES has shown, that alleged “harm” is a straightforward consequence of the ITU rules establishing date priority and has nothing to do with whether the SES-3 Application is granted. Furthermore, the relevant events perfecting the Canadian ITU priority have already occurred, so DIRECTV’s situation would not change if the Commission were to ignore the clear public interest benefits and deny the SES-3 Application.

Thus, DIRECTV’s interests are wholly unaffected by the Commission’s disposition of the SES-3 Application. Because DIRECTV has failed to show that it is a party in interest here, the portion of the DIRECTV petition that seeks denial of the SES-3 Application must be dismissed.

⁴³ *Applications of T-Mobile License LLC, AT&T Mobility Spectrum LLC and New Cingular Wireless PCS, LLC*, Order, 27 FCC Rcd 4124, 4126 (WTB 2012) (“T-Mobile Order”) (footnotes omitted), citing *Wireless Co., L.P.*, Order, 10 FCC Rcd 13233, 13235 ¶ 7 (WTB 1995) and *Sierra Club v. Morton*, 405 U.S. 727, 733 (1972).

⁴⁴ DIRECTV raises the specter of other alleged adverse consequences from grant of the SES-3 Application, including the suggestion that it would confer Commission endorsement of SES’s actions and thereby “invite future regulatory gamesmanship.” DIRECTV Petition at i. SES strongly disagrees that any such ill effects would result from a grant here. But leaving that aside, DIRECTV’s arguments clearly cannot serve as the basis for party-in-interest standing. These claimed injuries are speculative, not concrete, and DIRECTV does not demonstrate how its own interests would be harmed. Thus, the required demonstration of “direct injury” has not been made. T-Mobile Order, 27 FCC Rcd at 4126.

III. CONCLUSION

For the foregoing reasons and those set forth in the SES-3 Application, the Commission should immediately deny the DIRECTV Petition and immediately grant the SES-3 Application to provide service continuity in the C- and Ku-band spectrum at 103° W.L.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of December, 2013, I caused to be served a true copy of the foregoing “Opposition of SES Americom, Inc.” by electronic mail upon the following:

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