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March 7, 2014

**FILED ELECTRONICALLY**

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

**Re: Notice of *Ex Parte* Presentation, IBFS File Nos. SAT-RPL-20121228-00227  
& SAT-AMD-20131113-00132, Call Sign S2892**

Dear Ms. Dortch:

On March 6, 2014, SES representatives, together with Margaret Tobey of NBCUniversal, met with David Horowitz and Steven Spaeth of the Office of General Counsel to discuss the above-referenced application for the SES-3 C- and Ku-band replacement satellite. The SES-3 application has been designated as permit-but-disclose for purposes of the *ex parte* rules effective October 31, 2013.<sup>1</sup>

The purpose of the meeting was to seek expedited grant of the SES-3 application and to argue that there is no legal justification for linking the C- and Ku-band replacement rights requested in the SES-3 application with issues relating to international coordination of the Canadian-licensed 17/24 GHz BSS payload aboard the spacecraft. The discussion covered the following points.

- Timing is critical with respect to the SES-3 application. The date specified by NBCUniversal, the biggest Ku-band customer at this orbital location, to begin the process of individually adjusting antennas in preparation for the transition from AMC-1 to SES-3 has already passed. NBCUniversal explained the importance of completing this transition before the NFL season begins because any disruption of service during the NFL season would have serious detrimental effects on the NBC Network and its broadcast affiliates.
- There is no controversy about the request for C- and Ku-band replacement rights at 103° W.L. SES-3 complies fully with Commission rules and policies, and grant of authority is consistent with the strong public interest in service continuity embodied in the Commission's satellite replacement policy.<sup>2</sup>

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<sup>1</sup> See Policy Branch Information, Actions Taken, Report No. SAT-00979, DA No. 13-2141, rel. Nov. 8, 2013 at 2.

<sup>2</sup> See, e.g., *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,

- Instead, the application is being held up by extraneous issues relating to the Canadian-licensed Ciel-6i 17/24 GHz BSS payload on the satellite. No request relating to Ciel-6i is before the Commission, and grant of C- and Ku-band operating authority for SES-3 would have no effect on 17/24 GHz BSS rights. Nevertheless, DIRECTV, which holds an FCC license in the 17/24 GHz BSS band under a U.S. filing with inferior international coordination priority, is asking the Commission to hold the SES C- and Ku-band customers at this location hostage in order to increase DIRECTV's leverage in coordination discussions.
- The International Bureau has previously held that it “does not serve the public interest for parties to invoke the Commission’s processes . . . simply to retain or to gain an alleged advantage in commercial negotiations.”<sup>3</sup> Yet this is precisely what DIRECTV is doing by using the SES-3 application as a vehicle to enhance its bargaining position in coordination discussions.
- DIRECTV's demands directly conflict with Commission precedent. Commission rules<sup>4</sup> and decisions<sup>5</sup> make clear that DIRECTV, like all other U.S. licensees, took its

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¶ 250 (2003) (“Space Station Reform Order”) (explaining that the satellite replacement expectancy policy is intended to provide “assurance that operators will be able to continue to serve their customers”).

<sup>3</sup> See *Loral Orion Services, Inc.*, Order, DA 99-2221 (IB, rel. Oct. 18, 1999) at ¶ 16 (rejecting EUTELSAT’s argument that grant of launch authority to Loral would upset the negotiating relationship between the parties in ongoing coordination discussions).

<sup>4</sup> Section 25.111(b) of the Commission’s rules provides that:

No protection from interference caused by radio stations authorized by other Administrations is guaranteed unless ITU procedures are timely completed or, with respect to individual Administrations, coordination agreements are successfully completed. A license for which such procedures have not been completed may be subject to additional terms and conditions required for coordination of the frequency assignments with other Administrations.

<sup>5</sup> As the Commission observed in the Space Station Reform Order, 18 FCC Rcd at 10870, ¶ 295 (footnote omitted, emphasis added):

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 coordination.*

See also *id.* at 10800, ¶ 96 (emphasis added):

*This may mean that the U.S.-licensee may not be able to operate its system if the coordination cannot be appropriately completed.* Indeed, with the first-come, first-served approach, we assign applicants to the orbit location that is requested. Consequently, the applicant *assumed the coordination risk* when choosing the particular orbit location at the time it submitted its application.

17/24 GHz BSS license subject to the outcome of coordination and accepted the risk that it would not be able to operate if coordination was unsuccessful.

- Notwithstanding its obligation to coordinate, DIRECTV allowed more than three years to elapse during which it made no attempt to initiate discussions with Ciel. Now DIRECTV wants the Commission to put at risk SES's ability to ensure service continuity to its C- and Ku-band customers at 103° W.L. in order to alleviate the coordination risk DIRECTV freely undertook when it accepted its 17/24 GHz BSS license. But, as the Commission has explained, when licensees "take their licenses subject to the outcome of the international coordination process," the Commission "does not guarantee the success" of the required coordination.<sup>6</sup>
- Furthermore, acceding to DIRECTV's demands would have serious adverse implications internationally. DIRECTV is suggesting that the Commission act in a way that would announce to the world the Commission's lack of respect for ITU rules and priority and its willingness to strong-arm parties in order to stack the deck in international coordination to favor inferior U.S. filings. This could have negative impact on U.S. satellite operators seeking to access foreign markets, impair U.S. credibility and undermine U.S. policy.<sup>7</sup>
- Finally, acceding to DIRECTV's request to defer SES-3 authority until coordination is completed on the 17/24 GHz BSS frequencies would remove any incentive DIRECTV has to compromise and therefore make it more difficult to reach an agreement regarding 17/24 GHz BSS operations. DIRECTV has no 17/24 GHz BSS customers and therefore no immediate need to reach coordination, whereas SES urgently needs replacement authority for the C- and Ku-band capacity used to carry programming to every U.S. household and to provide other critical services.<sup>8</sup>

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In the proceeding to develop rules for 17/24 GHz BSS, the Commission rejected a request that U.S. 17/24 GHz BSS licenses include a condition requiring the U.S. licensee to coordinate with non-U.S.-licensed operators that have ITU date priority, because the Commission concluded that such a condition was redundant and unnecessary in light of Section 25.111(b) and the language of Commission decisions on coordination obligations. *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, ¶¶ 10-11 (2010).

<sup>6</sup> *Id.* at ¶ 10, quoting Space Station Reform Order, 18 FCC Rcd at 10799-10800.

<sup>7</sup> For example, the U.S. has not supported proposals by developing countries in favor of allowing ITU "queue jumping" to allow them enhanced access to orbital locations. But Commission action to take advantage of the SES-3 C- and Ku-band application to enhance the negotiating position of a U.S. licensee that lacks priority in a different frequency band could be viewed as a form of self-help "queue jumping" to favor U.S. filings.

<sup>8</sup> DIRECTV recently filed an *ex parte* letter suggesting that there is no urgency because SES could unilaterally configure SES-3 beacons to facilitate early U.S. customer transition activity. See Letter from William Wiltshire, Counsel for DIRECTV, to Marlene Dortch, filed in File Nos.

- In light of these factors, the Commission should immediately authorize SES-3 in the C- and Ku-bands and reject any linkage to 17/24 GHz BSS matters, which can and should be addressed separately.

The attached document was also distributed at the meeting. Please contact the undersigned if you have any questions.

Respectfully submitted,

*/s/ Karis A. Hastings*

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Attachment

cc: Diane Cornell  
Brendan Carr  
Louis Peraertz  
Steven Spaeth  
Jose Albuquerque  
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Margaret Tobey, VP, NBCUniversal

David Goldman  
Erin McGrath  
David Horowitz  
Roderick Porter  
Karl Kensinger  
William Wiltshire, Counsel for DIRECTV

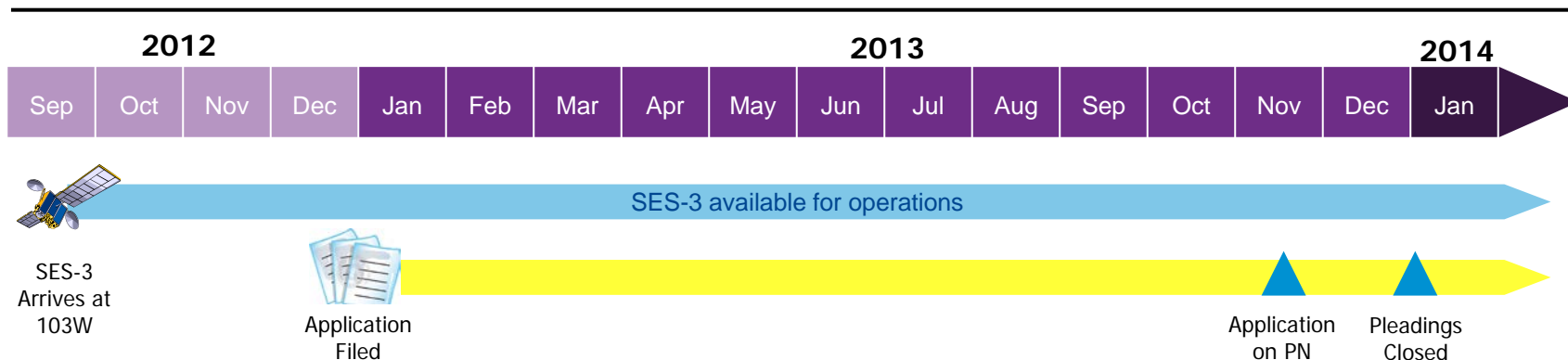
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SAT-RPL-20121228-00227 and SAT-AMD-20131113-00132 (Feb. 19, 2014). This overlooks the fact that some Commission action is required before U.S. earth stations are allowed to receive the beacons from SES-3 to enable such transition activities. See 47 C.F.R. § 25.131(j).

**SES-3 C/Ku Band  
Replacement Satellite  
at 103° W.L.**



# SES-3 Chronology



- ▲ The SES-3 Application was filed in December 2012.
- ▲ The Application was identified by SES as a priority item at an April 10, 2013 meeting with staff and during numerous subsequent meetings and telephone calls.
- ▲ Staff requested additional information concerning expected EOL and TT&C at a meeting June 21, 2013; all requested information has been provided to staff.
- ▲ On August 27, 2013, staff asked SES to request its partially-owned Canadian affiliate to undertake coordination with a lower-priority filing in the 17/24 GHz BSS band licensed to DirecTV; SES understands that such coordination efforts are on-going.
- ▲ In a September 26, 2013 meeting with staff, SES emphasized that immediate Commission processing is needed to ensure an orderly service transition.
- ▲ The SES-3 Application was placed on public notice on November 15, 2013; the pleading cycle closed on January 3, 2014.

# Immediate Grant of the SES-3 Application Is Justified

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- ▲ Licensing SES-3 will promote the long-standing Commission policy in favor of ensuring service continuity for customers.
- ▲ Given the especially complex transition that is required, the C- and Ku-band payloads on SES-3 must be authorized in the near term to minimize customer impact.
- ▲ The record is now complete and contains no basis for delaying action:
  - DIRECTV's ability to pursue its planned 17/24 GHz BSS service at 103° W.L. will not be affected by grant of C/Ku authority for SES-3.
  - In any event, DIRECTV's interests as a prospective 17/24 GHz BSS provider cannot possibly outweigh the interests of C- and Ku-band customers who rely on SES capacity at 103° W.L. today.

# AMC-1 Hosts Leading Media and Information Industry Customers

Ku-Band	C-Band
Premier media & entertainment provider serving all U.S. homes	Shopping networks that reach >95 million U.S. households
Distributor of radio broadcasts and EAS alerts to 250 million listeners	#1 Nielsen-rated network with programming for U.S. Hispanics
Leading transportation and logistics provider to corporate fleets	The nation's most watched regional sports networks
Pioneer in digital cinema/signage seen by 100 million people daily	Distributor of video on demand to >60 million VOD-enabled households
Fortune 100 global delivery firm	Backbone infrastructure for the U.S. cable industry via SES North American Cable Neighborhood



# Expedited Grant Will Ensure a Timely and Orderly Service Transition

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- ▲ The transfer of Ku-band traffic to SES-3 will be unusually complicated and prolonged because SES-3 has a standard polarization orientation and AMC-1 does not.
- ▲ AMC-1 customers must adjust their Ku-band antennas to reflect this change, requiring site visits to thousands of sites dispersed across the country.
- ▲ Customers must schedule the switchover to avoid significant events and need lead time to plan the deployment of personnel, equipment, and other resources.
- ▲ Because receipt of the SES-3 Ku-band beacon is needed to properly adjust the antennas, customers cannot begin the transition process until the Commission grants SES-3 operating authority.

# The Public Interest Calculus Overwhelmingly Supports Grant

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- ▲ SES has conclusively demonstrated that grant of the SES-3 Application is necessary to ensure service continuity for C- and Ku-band customers.
- ▲ There is no evidence of any countervailing harms to the public interest:
  - DIRECTV has zero customers and is providing no service in the 17/24 GHz BSS band at 103° W.L.
  - DIRECTV effectively concedes in its reply that an SES-3 C/Ku-band grant will not impact DIRECTV's position in the 17/24 GHz BSS band.
  - In any event, the Commission must distinguish between the public interest and DIRECTV's interest: U.S. consumers will benefit from 17/24 GHz BSS service provided by an operator with better international protection from interference.

## 17/24 GHz BSS Issues Do Not Justify Delay

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- ▲ The Commission will have an opportunity to fully consider matters relating to the 17/24 GHz BSS band when a request for access to the U.S. market using Canadian-licensed capacity is filed.
- ▲ The Commission must reject DIRECTV's self-serving attempt to link action on C- and Ku-band authority to 17/24 GHz BSS coordination:
  - When DIRECTV accepted its 17/24 GHz BSS license at 103° W.L. in 2009, it was aware of the superior Canadian ITU priority and knowingly assumed the coordination risk.
  - Nevertheless, DIRECTV made no attempt to initiate coordination in the years since its license was granted.
  - DIRECTV's bid to delay action on SES-3 is a transparent effort to hold the C- and Ku-band customers at 103° W.L. hostage in order to increase DIRECTV's leverage in unrelated coordination discussions.