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FILED ELECTRONICALLY

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

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

Dear Ms. Dortch:

On December 11, 2014, SES met to discuss the above-referenced application for the SES-3 C- and Ku-band replacement satellite with Suzanne Tetreault, David Horowitz, and Steven Spaeth of the Office of General Counsel. The SES representatives present at the meeting were Gerald E. Oberst, Senior Vice President, Global Regulatory & Governmental Strategy; Daniel C.H. Mah, Regulatory Counsel; and the undersigned outside counsel to the company. The purpose of the meeting was to seek grant without further delay of full C- and Ku-band replacement authority for SES-3 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.

SES noted that despite the fact that its replacement expectancy in the C- and Ku-band frequencies is undisputed, the International Bureau has withheld replacement authority at the behest of DIRECTV pending resolution of coordination issues involving a different frequency band.¹ As a result of the Bureau's action, SES has been required to maintain both SES-3 and AMC-1 at the 103° W.L. location, preventing the company from relocating AMC-1 to introduce additional services. Existing customers at this orbital location have also been harmed because their plans for transitioning to the new satellite have been disrupted, and they continue to bear the risk that a problem could arise with AMC-1 while the SES-3 application remains pending.

SES contended that the Commission must de-link the SES-3 C- and Ku-band application from the ongoing 17/24 GHz BSS coordination dispute. SES emphasized that any additional delay in granting C- and Ku-band replacement authority is legally indefensible.

First, the SES-3 Deferral Order ignores the public interest:

- SES showed that grant of the SES-3 application is fully consistent with the Commission's satellite replacement expectancy policy, which is intended to provide

¹ *SES Americom, Inc.*, 29 FCC Rcd 3678 (IB 2014) ("SES-3 Deferral Order").

assurance of service continuity to customers.² The Order, however, does not even mention this core consideration.

- Furthermore, the International Bureau has 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.”³ This, however, is precisely what DIRECTV has done by using the SES-3 C- and Ku-band application as a vehicle to enhance its bargaining position in 17/24 GHz BSS coordination discussions.

Second, the linkage created by the SES-3 Deferral Order is contrary to Commission policy and precedent:

- DIRECTV, like all other U.S. licensees, took its 17/24 GHz license subject to the outcome of coordination and accepted the risk that it would not be able to operate if coordination was unsuccessful.⁴
- The International Bureau has repeatedly refused to defer grant of authority in a frequency band pending completion of coordination of that band. For example, the Bureau granted DIRECTV licenses in the Ka-band and the 17/24 GHz BSS band at this location even though DIRECTV had not even commenced, much less completed,

² 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, ¶ 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”).

³ 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).

⁴ 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.

coordination with Ciel in one of those bands.⁵ Yet here the Bureau has deferred SES-3 replacement authority in the C- and Ku-bands pending coordination in an unrelated frequency band, violating its obligation to treat similarly-situated applicants consistently.⁶

- The Bureau has made no attempt to reconcile its present action with the DIRECTV grants, the Loral Orion case, or any of its other precedents refusing to hold up grant of authority for coordination purposes. The Bureau cannot depart from those earlier precedents without providing “a reasoned analysis indicating that prior policies and standards are being deliberately changed, not casually ignored.”⁷ The Bureau here has crossed “the line from the tolerably terse to the intolerably mute.”⁸
- In any event, there can be no possible rationale for retaining this linkage now that a U.S. market access request for the Canadian-licensed 17/24 GHz payload on SES-3 is pending,⁹ providing the Commission with an appropriate avenue to address coordination issues relating to that band without threatening service continuity for C/Ku-band customers.

Third, the linkage created by the SES-3 Deferral Order is counter-productive:

- The Bureau’s decision made it less likely that the parties could resolve their coordination dispute because it removed any incentive on the part of DIRECTV to compromise. DIRECTV has no 17/24 GHz BSS customers and therefore no immediate need to reach coordination, whereas SES is in need of replacement authority for the C- and Ku-band capacity used to carry programming to every U.S. household and other critical services.

Accordingly, SES urged the Commission to de-link the SES-3 C/Ku-band application from the outstanding 17/24 GHz coordination and promptly grant the long-pending SES-3 application.

⁵ *DIRECTV Enterprises LLC*, File No. SAT-LOA-20090807-00086, Call Sign S2797, grant-stamped Dec. 15, 2009; File No. SAT-LOA-20090807-00085, Call Sign S2796, granted in part and deferred in part Dec. 15, 2009; operational authority granted Jan. 8, 2010.

⁶ See, e.g., *Freeman Engineering Assoc., Inc. v. Federal Communications Commission*, 103 F.3d 169 (D.C. Cir. 1997); *Melody Music, Inc. v. Federal Communications Commission*, 345 F.2d 730 (D.C. Cir. 1965).

⁷ *Greater Boston Television Corp. v. FCC*, 444 F.2d 841, 852 (D.C. Cir. 1970) (footnote omitted).

⁸ *Id.* (footnote omitted).

⁹ DISH Operating L.L.C., File No. SES-LFS-20140924-00752.

Please contact the undersigned if you have any questions.

Respectfully submitted,

/s/ Karis A. Hastings

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Attachment

cc: Suzanne Tetreault
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Margaret Tobey, VP, NBCUniversal

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