



BY E-MAIL

The Honorable Tom Wheeler
Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

26 January 2015

**Re: Written Ex Parte Presentation on SES-3 Replacement Satellite Application
IBFS File Nos. SAT-RPL-20121228-00227 & SAT-AMD-20131113-00132,
Call Sign S2892**

Karim Michel Sabbagh
President & CEO
Chairman of the
Executive Committee

Dear Chairman Wheeler:

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Luxembourg
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I am writing to express my deep concern about the Commission's protracted delay in granting a routine application by SES Americom, Inc. for C- and Ku-band replacement authority at 103° W.L. The satellite at this orbital location, AMC-1, provides critical telecommunications services to NBCUniversal and other U.S. customers. However, the transition from the aging AMC-1 spacecraft to the new, state-of-the-art, SES-3 satellite has been unjustifiably stalled by the Commission. The SES-3 C- and Ku-band payloads comply fully with Commission requirements, but the International Bureau has withheld replacement authority pending coordination of a separate, Canadian-licensed 17/24 GHz BSS payload on board the spacecraft. I urge the Commission to terminate this inappropriate linkage of two unrelated matters and immediately grant SES C- and Ku-band authority for SES-3.

R.C.S. Luxembourg B 81 267
EU VAT identification number
LU18953352

As shown on the attached timeline, the SES-3 application was filed *more than two years ago*. The only objection to the SES-3 application came from DIRECTV, which holds a U.S. license for the 17/24 GHz BSS frequencies at 103° W.L. In April 2014, the International Bureau granted limited authority to perform TT&C and operate the Ku-band beacons, enabling some AMC-1 customers to begin preparing for the transition to SES-3, but the Bureau deferred action on the full replacement authority needed to complete traffic transfer.¹ This ongoing delay is directly contrary to well-established Commission policies and precedent:

- Public interest in service continuity: The Commission's satellite replacement expectancy policy is intended to provide "assurance that operators will be able to continue to serve their customers."² Because the International Bureau has not duly considered this core principle, service transition plans at 103° W.L. have been completely disrupted, and customers continue to bear the unnecessary risk that a problem could arise with AMC-1 while the SES-3 application remains pending.

¹ *SES Americom, Inc.*, 29 FCC Rcd 3678 (IB, rel. April 4, 2014).

² *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").

- Efficient use of satellite facilities and orbital locations: SES has been forced to maintain two operational satellites in position at 103° W.L. for more than two years. Until traffic has been transferred to SES-3, AMC-1 must remain in place and cannot be relocated to meet demand for capacity at another orbital location. This wastes valuable assets and frustrates the objectives of the Commission's satellite regulatory framework – expediting service to the public³ and providing operators the flexibility they need to tailor their systems to meet customer needs.⁴
- Adherence to Commission and ITU international coordination policies: The Canadian ITU filing for the 17/24 GHz BSS frequencies at 103° W.L. has date priority over the U.S. filing underlying the DIRECTV license. In such circumstances, Commission policy as well as DIRECTV's license makes clear that DIRECTV assumed the risk that it might not be able to operate if it failed to complete coordination.⁵ Instead, the International Bureau's decisions and related inaction on the file attempt an end-run around the ITU priority system, impermissibly shift the burden of completing coordination to SES, and use SES's C- and Ku-band U.S. customers as leverage in the coordination discussions in the 17/24 GHz BSS band.
- Fair and evenhanded treatment of applicants: The International Bureau has not duly fulfilled the Commission's obligation to treat similarly situated applicants similarly.⁶ Specifically, the Bureau granted authority for DIRECTV 12 to operate in the Ka-band and the 17/24 GHz BSS frequencies at 103° W.L., despite the fact that DIRECTV had not even initiated, much less completed, coordination of the 17/24 GHz BSS payload on the satellite with the higher priority Canadian ITU filing.⁷ Yet the Bureau has used the absence of a 17/24 GHz BSS coordination agreement at 103° W.L. as the sole justification for deferring action on replacement authority for SES-3 in the C- and Ku-bands – bands concerning which there is no outstanding coordination issue. The Bureau has not attempted to explain these conflicting decisions.

³ *Id.* at 10764, ¶ 1.

⁴ *AMSC Subsidiary Corp.*, 13 FCC Rcd 12316, 12318, ¶ 8 (IB 1998).

⁵ Space Station Reform Order, 18 FCC Rcd at 10870, ¶ 295.

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 *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.

Given these policy concerns, the Bureau's delay in acting on the SES-3 application pending completion of the 17/24 GHz BSS coordination discussions is not justified. In any event, there can be no rationale for retaining this linkage given developments in recent months. In particular, a U.S. market access request for the Canadian-licensed 17/24 GHz BSS payload on SES-3 was filed in September,⁸ providing the Commission with an alternate and more appropriate avenue to address all coordination issues relating to that band without threatening service continuity for C- and Ku-band customers. Furthermore, the time period established by the two administrations for operator-to-operator coordination negotiations expired in December, and as a result, the task of resolving the 17/24 GHz BSS coordination issues now lies with the Commission and Industry Canada. Because the coordination has moved to the administrations, it is unjustifiable to maintain linkage between that coordination and the SES-3 application.

- Accordingly, SES is seeking Commission action to immediately terminate the undue linkage between the 17/24 GHz BSS coordination and the pending request for C- and Ku-band replacement authority, and to grant the pending SES-3 application without further delay.

I would like to discuss this matter with you further and will contact your office shortly to set up this meeting.

Thank you for your attention to this important matter.

- Kind regards,



Karim Michel Sabbagh
President & CEO

cc: Commissioner Mignon Clyburn
Commissioner Ajit Pai
Diane Cornell
Louis Peraertz
Erin McGrath
Troy Tanner
Jose Albuquerque
Chip Fleming
David Horowitz
William Wiltshire, Counsel for DIRECTV
Commissioner Jessica Rosenworcel
Commissioner Michael O'Rielly
Brendan Carr
Mindel De La Torre
Robert Nelson
Karl Kensinger
Suzanne Tetreault
Steven Spaeth
Margaret Tobey, VP, NBCUniversal

⁸ DISH Operating L.L.C., File No. SES-LFS-20140924-00752, filed Sept. 24, 2014.

SES-3 Timeline

