



October 14, 2020

**VIA IBFS**

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission 445  
12th Street, SW  
Washington, DC 20554

**Re: *Ex Parte* Letter  
File Nos. SAT-AMD-20200504-00041 and SAT-MOD-20200501-00040**

Dear Ms. Dortch:

On October 9<sup>th</sup>, 2020, ORBCOMM had a conference call with International Bureau Satellite Division staff to discuss ORBCOMM's pending Petition to Dismiss or Deny the above-captioned Swarm applications (the "Applications").<sup>1</sup> On the call from the FCC were Karl Kensinger, Jay Whaley, Merissa Velez, Alyssa Roberts, Sankar Persaud and Samuel Karty. ORBCOMM call participants included Walter Sonnenfeldt and John Stolte, along with Stephen Goodman, outside counsel for ORBCOMM.

The discussion focused on the core issue addressed in ORBCOMM's Petition to Dismiss or Deny and ORBCOMM's Reply (the "ORBCOMM Pleadings") - the fatal inadequacy of the Commission's required showings in the Applications that must demonstrate that the proposed modifications to the Swarm NVNG MSS satellite constellation will not cause unacceptable interference to the operations of the ORBCOMM NVNG MSS satellite system. As detailed in the ORBCOMM Pleadings, ORBCOMM explained that none of the spectrum sharing technologies or techniques that the Applications indicate Swarm *might* consider implementing at this time will be effective in precluding unacceptable interference to ORBCOMM. As also detailed in the ORBCOMM Pleadings, the call participants discussed the inherent deficiencies of the only spectrum sharing technology that Swarm appears to be definitively committed to attempting to implement (a mobile earth station-based listen-before-talk system). The mis-match between the small land area in which the listen-before-talk equipped Swarm mobile earth

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<sup>1</sup> In the *Public Notice* establishing this processing round (Report No. SPB-280, March 5, 2020), the Commission indicated:

*Ex parte status.* Myriota's petition for declaratory ruling is subject to the "permit-but-disclose" provisions of the Commission's rules governing *ex parte* communications. 47 CFR § 1.1206. To provide for uniformity of treatment, we will also treat any other applications considered in this processing round under the "permit-but-disclose" provisions of the *ex parte* rules.



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stations might be able to detect co-frequency ORBCOMM transmissions, the much larger footprint of the ORBCOMM satellite receivers, and the resulting high likelihood of unacceptable jamming of ORBCOMM uplink operations was discussed. ORBCOMM also explained why relying on post-licensing coordination is an inherently flawed approach to facilitating uplink band sharing between an existing NVNG MSS system and new entrant. This is because the only foreseeable outcome would be some form of band segmentation - a result that would not only be contrary to the first-in-time priority rights for incumbent NVNG MSS licensees under the Commission's Rules, but would also unnecessarily result in a highly inefficient use of the very limited available NVNG MSS uplink spectrum.

In addition to discussing the ORBCOMM's Pleadings, ORBCOMM indicated that after almost two years of offering to do so with no response whatsoever from Swarm, in the last few weeks the parties have finally commenced very preliminary discussions regarding possible co-frequency spectrum sharing solutions. ORBCOMM expressed cautious optimism regarding the recent commencement of direct discussions with Swarm, recognizing that ORBCOMM has previously reached mutually agreed sharing agreements with other NVNG MSS systems in the past. ORBCOMM noted, however, that unlike the currently proposed Swarm system, those other systems used either a space-based active detect and avoidance technique similar to ORBCOMM's DCAAS system, or employed CDMA technology.

Respectfully submitted,



Walter H. Sonnenfeldt, Esq.

Regulatory Counsel ORBCOMM License  
Corp. & Vice President, Regulatory  
Affairs ORBCOMM Inc.  
Direct Tel: (585) 461-3018  
E-Mail: [sonnenfeldt.walter@orbcomm.com](mailto:sonnenfeldt.walter@orbcomm.com)

cc: Karl Kensinger  
Jay Whaley  
Merissa Velez  
Alyssa Roberts  
Sankar Persaud  
Samuel Karty