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Karl Kensinger,  
Acting Chief Satellite Division, International Bureau  
Federal Communications Commission  
45 L Street, NE  
Washington, DC 20554

**Re: ORBCOMM License Corp., Call Sign: S2103, File Nos. SAT-MOD-20070302-00041, SAT-MOD-20070531-00076 and SAT-AMD-20071116-00161; Swarm Technologies, Inc., Call Sign S3041, File Nos. SAT-LOA-20181221- 00094, SAT-MOD-20200501-00040, and SAT-AMD-20200504-00041.**

Dear Mr. Kensinger:

Myriota Pty. Ltd. (“Myriota”), through its representatives, hereby submits this letter concerning the recent *ex parte* exchange between Swarm Technologies, Inc. (“Swarm”) and ORBCOMM License Corp. (“ORBCOMM”) in the above-captioned application proceedings. This correspondence arose following Swarm’s letter to the Federal Communications Commission (“Commission”) asking it to “instruct ORBCOMM that the terms of its FCC satellite license apply globally, and thus that its obligation to vacate Swarm’s frequencies applies overseas.”<sup>1</sup> In this connection, Swarm and ORBCOMM raise several issues including the global limitations imposed on a U.S. space station licensee, and the need for a global band-sharing plan. As an applicant for U.S. market access in the relevant VHF bands and planned operator in such spectrum globally, Myriota has a clear interest in the Commission’s resolution of these issues.

While Myriota currently takes no position on the merits of Swarm’s request, it is clear from comments by both parties that the ultimate resolution of these issues must come in the form of a global band-sharing plan. Such a plan between Swarm, ORBCOMM, and Myriota would give the operators needed certainty and discourage procedural delay tactics, the combination of which would expedite service deployment to the United States and the world.<sup>2</sup>

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<sup>1</sup> See Letter from Scott Blake Harris and Shiva Goel, Counsel, Swarm, to Karl Kensinger, Acting Chief, Satellite Division, International Bureau, FCC, at 1, File Nos. SAT-LOA-20181221-00094, SAT-MOD-20200501- 00040, and SAT-AMD-20200504-00041; SAT-MOD-20070302-00041, SAT-MOD-20070531-00076, and SATAMD-20071116-00161 (filed Oct. 16, 2020) (“*Swarm October 16 Letter*”).

<sup>2</sup> Myriota has previously stated the need for such a global band sharing plan to promote “fair and equitable access to the NVNG VHF spectrum.” See Reply to Opposition, File Nos. SAT-MOD-20200501-00040, SAT-AMD-20200504-00041 (filed Sept. 14, 2020).

## I. Introduction

Both Swarm and ORBCOMM dispute how the general Commission policy applies to the current situation and whether it creates an implied term of ORBCOMM's license restricting its spectrum rights to those determined by the Commission. While that policy can be clarified, the most relevant issue is whether ORBCOMM must accommodate new entrants into the VHF bands on a global basis.

Irrespective of the implied term, ORBCOMM's space segment license was issued by the United States and is subject to its authority. The ITU and international community recognizes that a "[n]ational government, through the act of licensing a satellite, undertakes responsibility with respect to other countries for its operation. The satellite assumes a national identity: the licensing government holds the satellite owner responsible for operating the satellite within the terms of the license."<sup>3</sup> Those "terms of license" include the frequency assignments.<sup>4</sup>

Moreover, it seems that the Commission's responsibility to assert control over ORBCOMM's operations is due. It is clear from the positions of both Swarm and ORBCOMM in these *ex parte* letters that there is uncertainty and vigorous disagreement regarding how the parties should operate on a global basis. Therefore, the Commission should use its authority over Swarm and ORBCOMM to resolve this conflict impacting global operations, which has been caused by the lack of clarity of ORBCOMM's license terms. The two U.S.-authorized systems are subject to the FCC's effective and direct regulatory oversight which is acknowledged by both parties as they seek the FCC's adjudication on their global spectrum rights.

To clarify spectrum rights on a worldwide basis, Myriota asks that the Commission seek to create a global band-sharing plan between the VHF NVNG parties, including Myriota,<sup>5</sup> to provide certainty, prevent procedural delay tactics, and expedite global operations.

## II. Discussion

Operators seek regulatory certainty and to secure their right to use specific frequencies. Accordingly, Myriota proposes that a global band-sharing plan should be adopted between Swarm, ORBCOMM, and Myriota to achieve this goal in the VHF NVNG MSS band. Since Swarm and ORBCOMM's space segment license was issued by the U.S. and the Commission has responsibility for its operation, Myriota's consent to an agreed global band-sharing plan would enable a certain, consistent, and secure coordination agreement between the three operators.

The Commission has the authority to impose a global band-sharing plan for these frequencies. ORBCOMM argues that the Commission explicitly declined to impose a global band-sharing

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<sup>3</sup> See <https://www.itu.int/newsarchive/wtpf96/exsum3.html>.

<sup>4</sup> Myriota agrees with Swarm that the Commission has the authority to regulate U.S. licensees whether in the U.S. or abroad. See, e.g., Applications of ORBCOMM License Corp., Order and Authorization, 23 FCC Rcd. 4804 (Int'l Bur., Office of Eng'g and Tech. 2008).

<sup>5</sup> In order to facilitate a global harmonization of the NVNG spectrum, Myriota submits that it would consent to an agreed global band sharing plan to enable a certain, consistent, and secure coordination agreement between the three operators.

plan on U.S. licensees in the VHF bands,<sup>6</sup> and that the Commission would have to undertake a rule change to do so now.<sup>7</sup> This position lacks merit. The Commission did not decide against imposing “a global band-sharing plan on all U.S. NVNG MSS licensees as a matter of rule[.]”<sup>8</sup> Instead the Commission only deferred addressing international sharing and coordination at that time, stating that “[w]e believe it to be premature to attempt to resolve international sharing difficulties ... before they actually arise”<sup>9</sup> Thus, while the Commission has declined to create a band-sharing plan to date, it can and should do so now to resolve the issues that have arisen with multiple operators intending to provide service in the NVNG VHF bands.<sup>10</sup>

Furthermore, both Swarm and ORBCOMM acknowledge that there should be a band-sharing plan in the NVNG VHF bands. Swarm notes that “ORBCOMM-Swarm sharing can be addressed separately as part the pending VHF processing round, where Swarm and Myriota have applied for frequencies that *actually overlap* with ORBCOMM’s authorization.”<sup>11</sup> Likewise, ORBCOMM states that it “continues to believe that it is all parties’ interest to try to reach a sharing agreement (which the parties can clearly agree to globally). ... [and] such a solution is consistent with the Commission’s and CEPT’s preferences.”<sup>12</sup> Myriota agrees that global spectrum sharing among the NVNG VHF operators should be addressed in the VHF processing round.<sup>13</sup>

A global band-sharing plan will also prevent further “forum shopping” by operators seeking a favorable determination of their spectrum rights (with respect to other operators) in other parts of the world. The VHF spectrum sharing issue has already impacted CEPT negotiations and will continue to be disputed until the Commission addresses the international issues surrounding its licensees. A band-sharing plan will prevent further procedural delay tactics now and during successive rounds of global coordination.

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<sup>6</sup> Letter from Walter H. Sonnenfeldt, Regulatory Counsel, ORBCOMM, File No. SAT-LOA-20181221-00094 (filed Nov. 5, 2020) n.4 (“*ORBCOMM Further Response*”).

<sup>7</sup> *Id.* at 3.

<sup>8</sup> Letter from Scott Blake Harris, File No. SAT-LOA-20181221-00094 (filed Nov. 6, 2020) at 1 (“*Swarm Further Reply*”) (internal quotes omitted) (*citing* Application of Orbital Communications Corporation, Order and Authorization, 9 FCC Rcd. 6476, ¶15 (1994) (“*Orbcomm 1994 Licensing Decision*”). Indeed, as Swarm points out, the Commission has jurisdiction over U.S. licensees operating abroad. *See Swarm October 16 Letter* at n.6 (*citing* Globalstar Licensee LLC and Iridium Constellation LLC, Order of Modifications, 23 FCC Rcd. 15207, ¶17- 20, 32 & n.81 (2008) (“We note, however, that Globalstar has, on several previous occasions, argued that the Commission does not have jurisdiction to regulate a U.S. licensee’s international operations. On each of these occasions, the Commission stated that it disagreed”). *See also* 47 U.S.C. §§ 151, 152(a), 301, 303(r)).

<sup>9</sup> *Orbcomm 1994 Licensing Decision*, ¶15.

<sup>10</sup> *See, e.g.*, Letter from Scott Blake Harris, File No. SAT-LOA-20181221-00094 (filed Nov. 2, 2020) at 5 (“*Swarm Reply*”) (noting claims by ORBCOMM that “cannot effectively share with the Swarm system as authorized”).

<sup>11</sup> *Id.*

<sup>12</sup> *ORBCOMM Further Response* at 6.

<sup>13</sup> *Swarm Reply* at 5.

Accordingly, a global band-sharing plan is both appropriate and necessary to adequately resolve the spectrum sharing issues revealed in the recent *ex parte* exchange and to ensure that these valuable services can be provided to consumers all over the world.

### III. Permit-But-Disclose

Pursuant to 47 C.F.R. § 1.1206, Myriota also requests the Commission designate the above-captioned proceedings as permit-but-disclose to the extent it has not already done so.<sup>14</sup> Interested parties continue to make filings outside of the formal pleading cycle, and making the designation will serve the public interest by facilitating resolution of the broad policy issues raised.<sup>15</sup>

### IV. Conclusion

Although Swarm and ORBCOMM insist that the FCC's rules and policies are clear as to whether U.S. licenses and frequency assignments determine overseas authority, this dispute shows that they are not. Without accepting either Swarm or ORBCOMM as correct, Myriota believes the Commission should establish a global band-sharing plan for the VHF NVNG MSS band. Such a plan would provide needed certainty to Swarm, ORBCOMM, and Myriota, prevent further procedural delay tactics, and expedite service the United States and the world.

Please do not hesitate to contact me with any questions regarding this matter.

Respectfully submitted,



Eric B. Graham

*for Myriota Pty. Ltd.*

cc: Scott Blake Harris (via E-Mail)  
V. Shiva Goel (via E-Mail)  
*Counsel to Swarm Technologies, Inc.*

Walter H. Sonnenfeldt, Esq. (via E-Mail)  
*Regulatory Counsel, ORBCOMM License Corp.*

Stephen L. Goodman (via E-Mail)  
*Counsel for ORBCOMM License Corp.*

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<sup>14</sup> While Myriota notes that Swarm's applications were designated as permit-but-disclose, it appears that ORBCOMM's applications were not. *See* Report No. SAT-0136, DA No. 19-164 (issued Mar. 8, 2019) (Swarm public notice); *but see, e.g.*, Report No. SAT-00829, DA No. 11-2029 (Dec. 16, 2011) (ORBCOMM public notice).

<sup>15</sup> *See* 47 C.F.R. § 1.1200(a) ("Where the public interest so requires in a particular proceeding, the Commission and its staff retain the discretion to modify the applicable *ex parte* rules by order, letter, or public notice"); *see also* 47 C.F.R. § 1.1206.