Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of		
Applicability of NVNG MSS Frequency Assignments Outside the National Territory Of the United States	)	IB Docket No. 21-___
March 10, 2021, International Bureau Satellite Division Letter Declaratory Ruling	)	ORBCOMM Licensee Corp., IBFS File No. SAT-MOD-20070531-00076, FCC Call Sign S2103
	)	Swarm Technologies, Inc., IBFS File No. SAT-LOA-20181221-00094, SAT-MOD-20200501-00040, SAT-AMD-20200504-00041, FCC Call Sign S3041

OPPOSITION OF SWARM TECHNOLOGIES, INC.
TO THE APPLICATION OF REVIEW OF ORBCOMM LICENSE CORP.

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April 26, 2021

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INTRODUCTION AND SUMMARY

Swarm Technologies, Inc. opposes the Application of Review filed by ORBCOMM License Corp. ("ORBCOMM") seeking to "rescind" a March 10, 2021 Declaratory Ruling that does nothing more than "clarify ORBCOMM's permissible operations outside of the U.S. under the terms of its Commission License."[1] The Application for Review raises no issue that comes even close to justifying review by the full Commission. Even more tellingly, ORBCOMM does not even have standing to file the application, which should be dismissed or denied out of hand.

ORBCOMM operates a U.S.-licensed non-voice, non-geostationary (NVNG) system in the mobile-satellite service (MSS) in the very high frequency (VHF) bands. To facilitate entry by other operators, the Commission originally licensed ORBCOMM to operate in specific segments of the 137-138 MHz space-to-Earth and 148-150.05 MHz Earth-to-space frequency bands.[2] In 2007, ORBCOMM asked for additional segments and for temporary access to the remainder of the band.[3] The Commission agreed, *on the express condition* that ORBCOMM forego its temporary use of frequencies outside of its primary segments as soon as a second U.S.-licensed system commenced operations.[4]

Swarm became that second U.S.-licensed system, and ORBCOMM has spent the past

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1 Letter from Karl A. Kensinger, Acting Chief, Satellite Division, International Bureau, FCC, to Scott Blake Harris et al., IBFS File No. SAT-MOD-20070531-00076 (IB Mar. 10, 2021) ("Declaratory Ruling" or "Ruling"); Application for Review of ORBCOMM Licensee Corp., IB Docket No. 21-___; IBFS File Nos. SAT-MOD-20070531-00076, SAT-LOA-20181221-00094, SAT-MOD-20200501-00040 & SAT-AMD-20200504-00041 (filed Apr. 9, 2021) ("Application for Review").

2 *See* Declaratory Ruling at 1-2.

3 *See* Application of ORBCOMM License Corp., IBFS File No. SAT-MOD-20070531-00076 (filed May 31, 2007), Narrative at 24-25 (stating that frequencies outside its primary assignments would "remain available for reassignment" to other operators).

4 *Applications of ORBCOMM License Corp.*, Order and Authorization, 23 FCC Rcd. 4,804 (IB, OET 2008) ("*2008 ORBCOMM Authorization*"); Declaratory Ruling at 1-2.

several years attempting to renege on its license condition and block Swarm's emergence as a low-cost competitor. In 2019, on the flimsiest grounds imaginable, ORBCOMM opposed Swarm's application for an FCC satellite license claiming that it had no obligation to forego use of non-primary frequencies to make room for a system like Swarm's. The Commission rejected ORBCOMM's arguments.[5] It thus authorized Swarm to operate globally in band segments separate from ORBCOMM's—without having to coordinate with ORBCOMM first.[6]

Undaunted by the Commission's decision, ORBCOMM embarked on a global effort to prevent Swarm from actually using its license as the Commission intended. ORBCOMM simply refused to comply with the condition requiring it to vacate Swarm's frequencies and, without justification, began telling foreign regulators that the condition did not apply outside of the United States. ORBCOMM has used this fiction to block and delay Swarm from receiving landing rights in other countries, making a mockery of the Commission's licensing decisions. It has done so by demanding that Swarm coordinate with ORBCOMM in the very frequencies the Commission has prohibited ORBCOMM from using, only to then claim that Swarm's system design makes such coordination impossible.[7]

The International Bureau correctly put an end to this anticompetitive charade by issuing the Declaratory Ruling on March 10, 2021 to "terminat[e]" the "controversy" ORBCOMM manufactured. The Ruling "ma[d]e clear that ORBCOMM is obligated to abide by the explicit terms of its U.S. license on a global basis," and instructed ORBCOMM to "ensure that any non-

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5 *Swarm Technologies, Inc.*, Memorandum Opinion, Order and Authorization, 34 FCC Rcd. 9469 ¶12 (IB 2019) ("*2019 Swarm Grant*").

6 *See id.* ¶¶2, 10-16, 24.

7 *See* Reply of ORBCOMM License Corp. at 8-11 & Attachment 1, IBFS File Nos. SAT-MOD-20200501-00040 & SAT-AMD-20200504-00041 (filed Sept. 14, 2020) (claiming the two systems are incompatible).

U.S.-licensed earth station operations with the ORBCOMM system are on the primary frequencies specified in ORBCOMM's U.S. license and not throughout the entire 137-138 MHz and 148-150.05 MHz bands, as Swarm, another U.S. licensed system, has begun operations."[8]

Having now lost *twice* on the same basic issue, ORBCOMM files this belated Application for Review in the hope that even a meritless legal challenge might derail Swarm's pending applications for market access in foreign jurisdictions. The Commission should see ORBCOMM's appeal for what it is—an anticompetitive delay tactic that undermines not only Swarm but the authority of the Commission.

First, ORBCOMM has not even met the threshold requirements for the Commission to consider the merits of its appeal. To start, the Application for Review is an obvious and untimely collateral attack on ORBCOMM's 2008 license modification and Swarm's 2019 FCC authorization. The Commission routinely denies such applications.

ORBCOMM also lacks standing because it is in no way "aggrieved" by the Declaratory Ruling. Its so-called "harm"—that foreign authorities will allow Swarm to operate in Swarm's assigned frequencies—is caused by Swarm's license, not the Declaratory Ruling. In any event, ORBCOMM fails to show any economic impact from such "harm." It makes no claim that its services would be affected—or that it even *uses* the spectrum it refuses to vacate.

Furthermore, ORBCOMM does not plainly state the questions presented, which is both required by rule and essential to determine whether any issue warrants Commission attention.[9] Bureaus are not only empowered but encouraged to dismiss such applications summarily.

Second, on substance, ORBCOMM has not shown any conflict with law or policy or

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[8] Declaratory Ruling at 2, 6.

[9] 47 C.F.R. § 1.115(b).

even a hint of novelty in its appeal. The Commission long ago rejected the exact same arguments about its statutory authority to specify global transmit and receive frequencies and the regulatory implications of its prior decisions to adopt non-global band plans.

Third, ORBCOMM's policy reasons for overturning such precedent are completely absurd. ORBCOMM suggests it would be somehow "efficient" for individual countries to determine piecemeal how Swarm and ORBCOMM—both U.S. licensees—share VHF. But as ORBCOMM's own conduct shows, that approach would merely empower ORBCOMM and other incumbents to delay competition and new services. It also would leave Commission decisions regarding its own licensees subject to review by every country in the world.

Finally, ORBCOMM's procedural objection fails. ORBCOMM manufactured this controversy and extensively briefed its position. It now cries prejudice because Swarm did not file a document entitled "Petition for Declaratory Ruling." But Section 1.2(a) empowers the Commission to issue Declaratory Rulings "on its own motion,"[10] and the International Bureau has the delegated authority to do the same on matters within its jurisdiction. In any event, the Bureau—and ORBCOMM—treated Swarm's request for relief effectively as a petition.

ARGUMENT

I. THE APPLICATION FOR REVIEW IS FACIALLY DEFECTIVE.

A. The Application for Review Is an Untimely Collateral Attack.

The Commission's rules provide interested parties 30 days to challenge decisions taken on delegated authority.[11] When a petitioner seeks Commission review on grounds that it raised or should have raised in a challenge to prior decision, the Commission will dismiss the

[10] 47 C.F.R. § 1.2(a).

[11] *See, e.g.*, *id.* §§ 1.115; 1.106.

application for review as an untimely collateral attack on the prior decision. Absent this policy, which the FCC has applied for at least 40 years, FCC procedures would invite endless relitigation of the same or similar issues and undermine the finality of agency decision-making.[12] The Commission's procedures also would render deadlines for review completely meaningless in the substantial number of matters that require ongoing agency supervision and implementation.

Applying these principles in the Title III context, the Commission has regularly dismissed applications for review that "launched … collateral attack[s]" on "licensing issues" previously raised in prior proceedings.[13] For example, just last year, it denied the application for review of broadcaster PMCM on grounds including collateral estoppel.[14] PMCM had sought Commission review of a Media Bureau order granting a petition to change the community of license of public broadcasting station WEDW from Bridgeport to Stamford, CT, and taking corresponding actions. Prior to adopting the Report and Order, however, the Media Bureau granted an application permitting WEDW to relocate its transmission facilities from Bridgeport to Stamford—which PMCM did not timely challenge.[15] The Commission thus determined that "PMCM's AFR constitute[d] an impermissible collateral attack on the Division's grant of the

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[12] *See, e.g.*, *Amendment of Section 73.622(i) Post-Transition Table of DTV Allotments (Bridgeport and Stamford, CT)*, Memorandum Opinion and Order, FCC 20-114, 35 FCC Rcd. 8,972 (2020) ("*PMCM Community of License AFR Denial*"); *Local Exchange Carriers' Individual Case Basis DS3 Service Offerings*, Memorandum Opinion and Order, 6 FCC Rcd. 4,776 ¶6 (1991) ("*SWB Tariff Suspension Order AFR Denial*"); *Regents of the Univ. of California*, Memorandum Opinion and Order, 22 FCC Rcd. 7,152 ¶8 (2007) ("*Regents*"); *In Re Daniels*, Memorandum Opinion and Order, 62 FCC 2d. 218 ¶5 (1976) ("*Daniels*").

[13] *Regents*, 22 FCC Rcd. at 7,152 ¶8 (denying an application for review that "launched a collateral attack on licensing issues that go back to 1991"). *See also Daniels*, 62 FCC 2d. at 218 ¶5 (denying an application for review that was "an obvious collateral attack on the refusal to renew" the petitioner's broadcast licenses); *PMCM Community of License AFR Denial*, 35 FCC Rcd. at 8,972 ¶14.

[14] *PMCM Community of License AFR Denial*, 35 FCC Rcd. 8,972 ¶14.

[15] *Id.* ¶¶2, 14.

Stamford Modification Application[.]”[16] The Commission likewise has dismissed petitions challenging the qualifications of spectrum acquirers based on allegations that were or should have been raised in prior actions regarding the acquiring entity.[17]

On the same basis, the Commission also has rejected belated complaints about its jurisdiction. For example, when Southwestern Bell (“SWB”)’s sought review of a tariff suspension order on grounds that the Commission lacked the statutory authority to regulate dark fiber, the Commission determined that the “jurisdictional argument [was] essentially a collateral attack upon” a prior order “requiring SWB to file generally available dark fiber rates.”[18] Because the prior order was premised on the very authority SWB came to dispute, the Commission denied its application for review.[19]

ORBCOMM’s Application for Review collaterally attacks its own 2008 license modification and the 2019 grant of Swarm’s FCC satellite license[20] and must be rejected for the same reasons. ORBCOMM claims that its uplink frequency assignments do not apply outside of the United States because the Commission lacks jurisdiction to regulate satellite uplinks overseas.[21] ORBCOMM also claims that allowing it to operate only in its primary band

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[16] *Id.* ¶14.

[17] *Applications of T-Mobile License LLC, AT&T Mobility Spectrum LLC, New Cingular Wireless PCS LLC*, Memorandum Opinion and Order, 29 FCC Rcd. 6,350 ¶11 (2014) (rejecting arguments about AT&T’s qualifications as an impermissible “collateral attack” on a prior order and consent decree); *Applications of Cellco P'ship d/b/a Verizon Wireless and Spectrumco LLC, et al.*, Memorandum Opinion and Order and Declaratory Ruling, 27 FCC Rcd. 10,698 ¶39 (2012) (dismissing petition challenging Verizon’s qualifications where Verizon “has previously and repeatedly been found qualified to hold Commission licenses”).

[18] *SWB Tariff Suspension Order AFR Denial*, 6 FCC Rcd. at 4,776 ¶6.

[19] *Id.*

[20] *2008 ORBCOMM Authorization*, 23 FCC Rcd. 4804; *2019 Swarm Grant*, 34 FCC Rcd. 9469.

[21] Application for Review at 6-10.

segments would somehow be "inefficient."[22]

But the *2008 ORBCOMM Authorization* was premised on the very authority ORBCOMM now disputes. ORBCOMM literally specified "'Global Coverage' as its requested service area" when applying for authority,[23] and the resulting authorization specified ORBCOMM's downlink *and* uplink frequencies without geographic qualification.[24] At ORBCOMM's explicit request, the Commission even adopted licensing provisions governing "bi-directional" (*i.e.*, both downlink and uplink) operations with earth stations located in Russia and Germany.[25] The *2008 ORBCOMM Authorization* also carried forward the Commission's approach of VHF band segmentation by limiting ORBCOMM to its primary band segments upon the launch of a second U.S.-licensed system.[26] If ORBCOMM wished to limit the global reach of its license or do away with band segmentation, it should have challenged its 2008 authorization within the 30 days permitted. It did not do so.

ORBCOMM also attempts to relitigate matters decided in the *2019 Swarm Grant*.[27] In the proceeding leading to Swarm's authorization, ORBCOMM vigorously disputed its obligation to vacate Swarm's frequencies to make way for Swarm's global operations.[28] The Commission rejected ORBCOMM's arguments,[29] assigned Swarm's uplink and downlink frequencies on a

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22 *Id.* at 10-13.

23 Declaratory Ruling at 6 nn. 23-24.

24 *2008 ORBCOMM Authorization*, 23 FCC Rcd. at 4,804 ¶¶22(a), 23(a).

25 *Id.* ¶¶6, 22(c), 24. *See also id.* ¶¶16-20.

26 *Id.* ¶¶11, 22(a), 23(a).

27 *See 2019 Swarm Grant*, 34 FCC Rcd. at 9,469 ¶¶2, 18(a).

28 *See, e.g.*, Petition to Dismiss, Deny, or Hold in Abeyance of ORBCOMM License Corp., IBFS File No. SAT-LOA-20181221-00094 (filed Apr. 1, 2019); Letter from Walter H. Sonnenfeldt, Regulatory Counsel, ORBCOMM License Corp., to Marlene H. Dortch, Secretary, FCC, IBFS File No. SAT-LOA-20181221-00094 (filed July 1, 2019).

29 *See 2019 Swarm Grant*, 34 FCC Rcd. at 9,469 ¶24; *see id.* ¶¶9-13.

global basis,[30] and concluded that Swarm did not need to coordinate with ORBCOMM at all—*not in any direction or in any part of the world*—because ORBCOMM would need to vacate the frequency segments assigned to Swarm upon Swarm's launch.[31] If ORBCOMM believed these decisions should have been limited to Swarm's and ORBCOMM's U.S. operations, or if it disagreed with the continuation of VHF band segmentation, it should have sought review on those grounds. It did not, and its effort to chip away at Swarm's license almost 18 months later must be rejected.

B. ORBCOMM Lacks Standing.

In order to file an application for review, a party must be "aggrieved" by the challenged action.[32] "To make such a showing, a party seeking review must demonstrate a direct causal link between the challenged action and its alleged injury, and show that the injury would be prevented or redressed by the relief requested."[33]

ORBCOMM cannot make either demonstration. In its accompanying Stay Request, ORBCOMM asserts that it will be harmed if the European Conference of Postal and Telecommunications Administrations ("CEPT"), "CEPT member countries, ANATEL Brazil, and other foreign regulatory authorities" read the Declaratory Ruling and conclude that ORBCOMM's U.S. license does not permit it to operate outside the frequencies where it is primary.[34] But this alleged "harm" would not be caused by the Declaratory Ruling, and review

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[30] *Id.* ¶¶2, 18.

[31] *Id.* ¶12.

[32] 47 C.F.R. § 1.115(a); 47 U.S.C. § 155(c)(4).

[33] *Bernard Dallas, LLC*, Memorandum Opinion and Order, 31 FCC Rcd. 11,107 ¶3 (2016).

[34] Request for Stay of ORBCOMM License Corp. at 5, IBFS File No. SAT-MOD-20070531-00076; Swarm Technologies, Inc., IBFS File Nos. SAT-LOA-20181221-00094, SAT-MOD-20200501-00040, SAT-AMD-20200504-00041 (filed Apr. 9, 2021) ("ORBCOMM Stay Request").

of the Declaratory Ruling would not prevent or redress it. The instrument that allows Swarm to seek landing rights in these frequencies is its 2019 Commission authorization.[35] As a result, the foreign regulators at issue here can authorize Swarm operations even in the absence of the Declaratory Ruling. In any event, the Declaratory Ruling merely confirms that ORBCOMM's license does not permit it to use non-primary frequencies, some of which have now been assigned to Swarm. It therefore does not change the rights of the parties, but merely "remov[es] uncertainty" that ORBCOMM created by its misrepresentations "regarding the terms of its U.S. license."[36] ORBCOMM is not aggrieved by the Commission simply reiterating what its prior licensing decisions had already made plain, but ORBCOMM chose to ignore.

More fundamentally, ORBCOMM fails to establish any "direct economic" injury that might result from the alleged harm.[37] ORBCOMM never even claims to *use* the non-primary frequencies at issue, beyond positing in its Stay Request that it might one day be required to "cease transmit operations in certain uplink frequency bands[.]"[38] Even assuming ORBCOMM *does* operate in Swarm's uplink frequencies, ORBCOMM does not claim it would suffer any losses by vacating them—because it won't. Less than two months ago, ORBCOMM told investors that its "satellite network capacity remains multiple times more capable than current demand," and that its second-generation satellites "are meeting our capacity needs with just two downlink channels per satellite."[39] Late last year, it confirmed to Swarm that it had ceased

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[35] *2019 Swarm Grant*, 34 FCC Rcd. at 9,469 ¶2.

[36] Declaratory Ruling at 1.

[37] *See K Licensee, Inc.*, Memorandum Opinion and Order, 31 FCC Rcd. 841 ¶3 n.8 (2016) (internal quotation marks omitted).

[38] ORBCOMM Stay Request at 5.

[39] *See* Annual Report of ORBCOMM Inc., Form 10K (rel. Feb. 25, 2021) ("ORBCOMM 2020 Annual Report"), https://investors.orbcomm.com/financials/sec-filings/sec-filings-

operations in non-primary frequencies in the United States.[40] There is no reason why ORBCOMM cannot do the same abroad, assuming it has even been using this spectrum in the first place.

C. The Application for Review Lacks Statements Required Under 1.115(b).

Section 1.115(b) of the Commission's rules requires every application for review to include a concise and plain statement of the questions presented.[41] The questions presented are critical to bring focus to the matters raised on appeal and to allow Commissioners to quickly determine whether an application warrants their scarce attention. ORBCOMM's application, however, does not contain *any* statement of the questions presented. It entirely omits this basic requirement of an administrative appeal.

As the Commission recently confirmed in its *Order Updating Delegations of Authority*, the Bureau is therefore empowered—and encouraged—to dismiss ORBCOMM's "procedurally defective" application.[42] The International Bureau has long possessed the authority "to dismiss Applications for Review that do not comply with the procedural requirements of Sections 1.115(a), (b), (d) or (f) of [FCC] rules,"[43] while other Commission bureaus have lacked it. The Commission thus adopted a "uniformly applicable standard" for all bureaus, which made the International Bureau's already clear authority in this area even more explicit.[44] Under the new

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details/default.aspx?FilingId=14747186. The frequencies at issue here are uplink frequencies, but satellites are largely mirrors in space. And what goes up must come down.

[40] *See* Email from Walter Sonnenfeldt, Vice President, Regulatory Affairs, ORBCOMM Inc., to Scott Blake Harris and Shiva Goel, Counsel to Swarm (Oct. 19, 2020), attached as Exhibit A.

[41] 47 C.F.R. § 1.115(b).

[42] *Amendment of Parts 0 and 1 of the Commission's Rules*, Order, FCC 21-17, 36 FCC Rcd. 731 ¶2 (2021) ("*Order Updating Delegations of Authority*").

[43] *Id.* ¶1 & n.2.

[44] *Id.* ¶1.

rules, which took effect prior to ORBCOMM's filing,[45] "the Chief of the International Bureau may dismiss any such application that does not contain any statement required under § 1.115(a) or (b)."[46] ORBCOMM's Application for Review is thus not only deficient, but subject to immediate dismissal without review by the full Commission.

Importantly, in addition to *clarifying* their power to dismiss defective applications for review, the Commission encouraged its bureaus to actually *exercise* that authority. Recognizing the importance of Section 1.115's required statements, the Commission observed that its new rules would "aid in the expeditious dismissal of procedurally defective Applications for Review."[47] Thus, instead of forcing Commissioners to dig through a morass of lengthy and often unclear arguments, the International Bureau should faithfully implement the *Order Updating Delegations of Authority* and dismiss ORBCOMM's application out of hand.

II. THE COMMISSION HAS ALREADY REJECTED ORBCOMM'S SUBSTANTIVE ARGUMENTS.

A. ORBCOMM's Jurisdictional Challenge Has Been Rejected Repeatedly.

ORBCOMM claims that the "Commission lacks statutory authority to regulate . . . uplink frequencies at this time," especially with respect to signals received from stations located outside the United States.[48] But as explained in the Declaratory Ruling, the full Commission has repeatedly rejected this exact same argument.[49] In the *Globalstar Order*, the Commission confirmed that it was "general Commission policy" to "require[] U.S. space station licensees to

[45] *Id.* ¶2 ("These amendments to the rules will apply to all Applications for Review filed on or after the effective date of the amendments set forth below"); *id.* ¶8 (rules effective as of April 5, 2021, which was "30 days after publication in the Federal Register").

[46] *See* 47 C.F.R. § 0.261(b)(3).

[47] *Order Updating Delegations of Authority*, FCC 21-17, 36 FCC Rcd. 731 ¶2.

[48] Application for Review at 6.

[49] Declaratory Ruling at 2-3 nn. 12-13.

operate their space stations in a manner consistent with their U.S. licenses, regardless of whether the end user of the communication service is using an earth station subject to the territorial jurisdiction of another country."[50] It made explicitly clear that the global reach of an FCC space station license applied to both downlink and uplink operations, explaining that a "U.S. space station may … transmit to and receive signals from the non-U.S. earth station only within the operating parameters set out in its U.S. space station license."[51]

On the issue of its statutory authority, the Commission relied on its "mandate under Sections 151, 152, 301, and 303(r) of the Communications Act,"[52] citing multiple Bureau decisions on the same subject. In those decisions, the International Bureau rejected Globalstar's argument that the Commission lacked authority to regulate the operations of Iridium, a U.S.-licensed satellite operator, "in non-U.S. territories,"[53] concluding that the "Commission has jurisdiction with respect to those satellites pursuant to, inter alia, 47 U.S.C. §§ 151, 152, 301, 303(r)."[54] When Globalstar again "assert[ed] that the Communications Act does not authorize the Commission to mandate what frequencies Iridium uses for service to the Middle East,"[55] the Bureau again rejected the argument, relying in part on Section 151.[56] Nothing in these decisions were limited to downlinks; indeed, they granted Iridium additional spectrum globally for "both

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[50] *Globalstar Licensee LLC and Iridium Constellation LLC*, Order of Modifications, 23 FCC Rcd. 15,207 ¶32 (2008) ("*Globalstar Order*").

[51] *Id.* ¶37 (noting that such a requirement is a "proper exercise of U.S. jurisdiction over its licensed communications facilities"). *See also id.* ¶23 n.60.

[52] *Id.* ¶32 n.81.

[53] *Modification of Licenses held by Iridium Constellation, LLC and Iridium, US LP*, Order, 18 FCC Rcd. 11,480 ¶5 (IB 2003) ("*2003 Iridium Order*").

[54] *Id.* ¶8 n.18.

[55] *Request for Special Temporary Authority Iridium Constellation, LLC*, Order, 18 FCC Rcd. 25,814 ¶13 (2003) (citing 47 U.S.C. § 151).

[56] *Id.*

uplink and downlink" operations.[57]

The FCC has confirmed its authority to regulate the global transmit and receive operations of U.S. space station licensees on many other occasions. For example, in 2017, the Commission imposed a default sharing rule for NGSO FSS systems—in both uplink and downlink bands—that "govern . . . operations both within and outside the United States."[58] And as the Declaratory Ruling noted, the International Bureau has explicitly authorized Earth-to-space operations between U.S. space stations and terminals located outside of the United States in several licensing decisions[59]—including ORBCOMM's own.[60] Indeed, global regulation of U.S. NVNG licensees is nothing new. In 1997, the Commission adopted a global band-sharing plan for NVNG licensees governing both uplink and downlink frequencies.[61] It also expressly prohibited NVNG licensees from pursuing exclusive agreements for market access in foreign jurisdictions, thereby regulating their conduct overseas.[62]

The plain text of Sections 151, 152, 153, 301, and 303 of the Act show why arguments

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[57] *2003 Iridium Order*, 18 FCC Rcd. 11,480 ¶2.

[58] *Update to Parts 2 and 25 Concerning Non-Geostationary, Fixed-Satellite Service Systems and Related Matters*, Report and Order and FNPRM, 32 FCC Rcd. 7809 ¶53 (2017).

[59] *See* Declaratory Ruling at nn. 13, 23, & 26.

[60] *See id.* at 6, nn. 23-24. When seeking authority for its second-generation constellation, ORBCOMM sought and received a waiver permitting "bi-directional" TT&C operations with two gateways located in Russia and Germany. *2008 ORBCOMM Authorization*, 23 FCC Rcd. 4804 ¶24; *see id.* ¶¶16-17. *See also Application of ORBCOMM License Corp.*, IBFS File No. SAT-AMD-20071116-00161 (filed Nov. 16, 2007), at Exhibit 1, p.1. If ORBCOMM did not need Commission authority to receive signals from overseas earth stations, a "bi-directional" waiver would have been completely unnecessary.

[61] *See* Declaratory Ruling at 5 & n.19; *id.* at 4 n.15. *Amendment of Part 25 of the Commission's Rules to Establish Rules and Policies Pertaining to the Second Processing Round of the Non-Voice, Non-Geostationary Mobile Satellite Service*, Report and Order, 13 FCC Rcd. 9,111 ¶¶127-28 (1997) ("*Second Processing Round Order*").

[62] *Second Processing Round Order*, 13 FCC Rcd. 9,111 ¶¶127-28.

like ORBCOMM's fail.[63] The Commission's grants of general jurisdiction demonstrate that its authority over U.S. licensees does not stop at U.S. borders—and extends expressly to the precise type of activity ORBCOMM claims is beyond the agency's reach. Section 151 shows that Congress empowered the FCC to regulate interstate and foreign communications and to bring wireless services with "world-wide" reach to U.S. consumers.[64] Section 152(a), in turn, specifically allows the Commission to regulate "interstate *and foreign* communication by wire or radio and all interstate and *foreign* transmission of energy by radio" that "originates and/*or is received* within the United States."[65] A communication received aboard a U.S. satellite is received within the United States, which retains jurisdiction over objects launched into outer space under its authority.[66] Section 153 underscores that foreign communications subject to Commission regulation include transmissions from foreign countries to U.S. satellites.[67] It also makes clear that the Commission may regulate facilities "incidental to transmission," including, "among other things," the "receipt, forwarding, and delivery of communications."[68]

Furthermore, as the Declaratory Ruling cogently explained, the Commission's responsibilities as a licensing and notifying administration under international treaty require it to specify the "permissible range of frequencies on which" space stations "may operate," for both

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[63] Declaratory Ruling at nn. 12, 26.

[64] 47 U.S.C. § 151.

[65] *Id.* § 152(a) (emphasis added).

[66] United Nations Outer Space Treaty art. 8, Oct. 10, 1967, 610 U.N.T.S. 205.

[67] 47 U.S.C. § 153(21) (defining "foreign communication" to include such transmissions); *id.* § 152(a) (empowering the FCC to regulate "foreign communication").

[68] 47 U.S.C. § 153(40) (defining "radio communication" to mean "the transmission by radio of writing, signs, signals, pictures, and sounds of all kinds, including all instrumentalities, facilities, apparatus, and services (among other things, the receipt, forwarding, and delivery of communications) incidental to such transmission"). *See also id.* § 153(57).

"transmit and receive" operations, and for both domestic and global service.[69] And under Section 303(r), the Commission may prescribe "such restrictions and conditions" necessary to "carry out the provisions of . . . any international radio or wire communications treaty or convention."[70] The Commission may impose such conditions on any station license, an instrument that Section 301 requires operators like ORBCOMM to obtain before launching and operating a U.S. communications satellite.[71] Other provisions of Title III empower the Commission to "assign frequencies for each individual station" and "[p]rescribe the nature of the service to be rendered by . . . each station," without regard to the direction of communication.[72] They also authorize the Commission to "prevent interference between stations," without regard to the location of the source of interference.[73]

ORBCOMM attempts to cast this case as different or somehow unique. But it is not.

First, ORBCOMM claims that Section 301 does not require a license simply to receive, and that ITU regulations require the FCC to regulate "transmit stations" licensed and notified by the United States.[74] So what? ORBCOMM's satellites do not simply receive; they *are* "transmit stations" that require a license and Commission oversight. And as explained, that oversight clearly extends to the assignment of transmit and receive frequencies on a global basis. Just because a license is not required to engage in a particular activity does not mean that the FCC cannot regulate that activity in a license condition, so long as it does so to advance its statutory

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[69] Declaratory Ruling at 6.

[70] *Id.* at n.12; *see* 47 U.S.C. § 303(r).

[71] Declaratory Ruling at n.12.

[72] 47 U.S.C. §§ 303(b), (c).

[73] *Id.* § 303(f).

[74] Application for Review at 7-8.

aims.[75] For the same reason, ORBCOMM's reliance on *American Library Association v. FCC* is misplaced.[76] The court had no occasion to explore the Commission's authority under Title III to specify receive frequencies of a transmitting station, and in any event recognized that the Commission may regulate receivers "engaged in the process of receiving" a transmission under Title I.[77]

Second, ORBCOMM suggests that the Commission's authority differs in cases where it has not formally concluded that "co-frequency co-sharing . . . is not feasible."[78] But ORBCOMM fails to provide *any* statutory basis for why a such finding would be necessary to assign and regulate space station receive frequencies. That is not surprising, because there is no logic to the argument that if two operators might eventually share, then the Commission lacks authority to regulate them. The Commission regularly exercises oversight over operators to encourage coordination, create sharing regimes, and enforce sharing requirements in the face of operator disagreements, all of which presume sharing is technically feasible, and all of which would be statutorily impermissible under ORBCOMM's view of the world.

Even if the feasibility of sharing were statutorily relevant, the ability of two systems to share spectrum effectively *down the line* says nothing about the Commission's authority to regulate their operations *now*. Whether the cause of a present inability to share is permanent technical infeasibility, or the intransigence of an incumbent operator, makes no difference from the perspective of the Commission's statutory objectives. In both cases, the Commission must attempt to resolve mutual exclusivity and allow entry to promote competition and the availability

[75] *See*, *e.g.*, 47 U.S.C. § 303(r) (providing expansive authority to condition licenses).

[76] 406 F.3d 689, 703-04, 708 (D.C. Cir. 2005) (examining the Commission's authority to regulate non-transmitting consumer broadcast receivers); Application for Review at 7 n.15.

[77] *Am. Library Ass'n*, 406 F.3d at 692.

[78] Application for Review at 8-10.

of new services. With Swarm and ORBCOMM, it has done exactly that by assigning non-overlapping frequencies at this time.

B. ORBCOMM's Argument About the 1994 Band Plan Was Also Previously Rejected by the Commission.

ORBCOMM also claims that it may operate outside the United States in whatever frequencies it wishes because the Commission declined to adopt a global bandsharing plan for NVNG licensees in 1994.[79] But as the Declaratory Ruling observed, this non-sequitur, too, has been rejected by the full Commission.

ORBCOMM relies on the *Orbital 1994 Order*, where the Commission stated that it "will not impose a global bandsharing plan on U.S. licensees at this time."[80] The Declaratory Ruling concluded that by adopting a U.S.-only band plan, the Commission "did not provide authority for Little LEO licensees to operate throughout the Little LEO spectrum outside of the U.S. without further Commission approval," but rather "simply recognized the autonomy of other countries to decide whether to allow service within their borders from U.S. systems on frequency bands the Commission had specifically authorized in the license."[81]

That conclusion was compelled by the Commission's standing interpretation of the exact same language in a prior satellite licensing matter.[82] In a separate 1994 decision governing Big LEO NGSO MSS systems, the Commission "used the same language stating that it 'will not impose a global band sharing plan at this time.'"[83] Globalstar, a Big LEO operator, argued that

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[79] *Id.* at 10-13.

[80] *Application of Orbital Communication Corporation*, Order and Authorization, 9 FCC Rcd. 6,476 ¶15 (1994) ("*Orbital 1994 Order*").

[81] Declaratory Ruling at 4-5.

[82] *Id.* at 5 n.17.

[83] *Id.* (quoting *Amendment of the Commission's rules to Establish Rules and Policies Pertaining to a Mobile Satellite Service in the 1610-1626.5/2483.5-2500 MHz Frequency Bands*, Report and Order, 9 FCC Rcd. 5,936 ¶213 (1994)).

this language freed Big LEO licensees to operate in frequencies not specified in their U.S. licenses in other parts of the world. The full Commission rejected this argument, explaining that its decision not to impose a global bandsharing plan "does not provide authority for Big LEO licensees to operate anywhere in the L-band spectrum without further Commission approval" and "should be viewed as simply declining to adopt the specific proposal before it, given the circumstances then obtaining, rather than as a broader statement about the scope of FCC space station licensing authority."[84] In short, because ORBCOMM has not received FCC authority to operate in non-primary frequencies after the launch of a second U.S.-licensed system, it may not do so anywhere in the world—regardless what the *Orbital 1994 Order* said.

ORBCOMM's reliance on the *Orbital 1994 Order* is ultimately irrelevant because the Commission replaced the U.S.-only bandsharing plan with a global bandsharing plan just a few years later in the *Second Processing Round Order*.[85] ORBCOMM suggests that paragraph 128 of the *Second Processing Round Order* limited the decision to U.S. operations, but this is untrue.[86] Paragraph 128 merely explained that U.S. licensees may not enter into agreements with foreign jurisdictions to be the exclusive NVNG MSS provider within their borders.[87] It also explained that a U.S. licensee would not violate the prohibition against exclusive arrangements if it were the "sole service provider in a particular market" for reasons beyond its control, such as a country's independent decisions making entry by more than one operator impossible.[88] Nothing

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[84] *Globalstar Order*, 23 FCC Rcd. 15,207 ¶14 & n.43.

[85] Declaratory Ruling at 5 (explaining that the *Second Processing Round Order* "both by its terms and through the omission of any limitation of its scope, was intended to apply to the full range of operations of U.S. licensed systems, including those with earth stations outside the United States").

[86] Application for Review at 11.

[87] *Second Processing Round Order*, 13 FCC Rcd. 9,111 ¶128.

[88] *Id.*

in the paragraph disclaimed the FCC's authority to specify the outer limits of the frequencies a U.S. space station may use on a global basis. And nothing in it permitted a U.S. operator to use frequencies in another country that were disallowed by its FCC license.

III. ORBCOMM PROVIDES NO REASON TO OVERTURN SETTLED LAW.

ORBCOMM resorts to suggesting that Commission precedent should be overturned. But its policy proposals are absurd. ORBCOMM claims that instead of applying the terms of its license globally, the Commission should allow individual countries to regulate sharing between ORBCOMM and Swarm on a piecemeal basis, unless Swarm and ORBCOMM reach a global agreement over use of the entire band within the next six months.[89] In other words, it asks the Commission to disregard its treaty responsibilities so that ORBCOMM can act as a gatekeeper over frequencies that it does not need, may not even be using, and ultimately has no right to use.[90] Needless to say, these arguments should be rejected.

First, the FCC, and not foreign regulators, is responsible for ensuring compatibility between U.S.-licensed satellites systems.[91] As the licensing administration for Swarm and ORBCOMM, the United States "has a unique and fundamental responsibility for the detection and elimination of harmful interference caused by either of these space station constellations" under the International Telecommunication Union's Radio Regulations, which are given the status of treaty under U.S. law.[92] It would be inefficient, and highly unfair, for the Commission to foist that responsibility on foreign sovereigns. Doing so also would create the risk of

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[89] Application for Review at 13-14, 15-16.

[90] *Id.* at 13-14.

[91] Declaratory Ruling at 3 n.12. *See also Globalstar Order*, 23 FCC Rcd. 15,207 ¶¶36-37 (citing U.S. treaty obligations to resolve band sharing conflicts between U.S. licensees).

[92] *Globalstar Order*, 23 FCC Rcd. 15,207 ¶34 (internal quotation marks omitted). *See also* Declaratory Ruling at 3 & n.12.

operational conflicts and cross-border interference issues,[93] and would undermine the Commission's ability to resolve interference promptly if and when it occurs.[94]

Contrary to ORBCOMM's suggestions, foreign countries remain fully able to control the deployment of satellite services within their borders under the status quo. They can require U.S. systems to obtain landing rights prior to providing overseas services, and they may impose additional technical requirements and limitations to protect national terrestrial networks and other activity occurring in their countries. But in complying with local requirements, a U.S. licensee must "transmit to and receive signals from the non-U.S. earth station only within the operating parameters set out in its U.S. space station license," which means that foreign countries cannot give a U.S. operator more than its U.S. license allows.[95] This qualification, however, is "a function of the ITU international coordination process and the proper exercise of U.S. jurisdiction over its licensed communications facilities. It is not a function of the United States imposing an 'extraterritorial fiat' on other countries"[96]—indeed, the qualification is reciprocal.[97]

Second, ORBCOMM's professed opposition to global band segmentation is an anticompetitive ruse. ORBCOMM makes no claim that it actually uses frequencies beyond its primary segments, and its statements to investors belie any need to access the entire band.[98] ORBCOMM simply knows that if it can require Swarm to relitigate sharing on a jurisdiction-by-

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93 *Globalstar Order*, 23 FCC Rcd. 15,207 ¶34.

94 *Id.* ¶36 (noting that "all countries experiencing interference" between U.S.-licensed operations "would look to the United States to resolve their respective interference issues").

95 *Id.* *See also id.* ¶23 n. 60 ("In other words, the U.S.-licensed space station may operate with [foreign] earth stations only on those frequency bands authorized for operation in its U.S. license, or on a subset of those frequency bands.").

96 *Id.*

97 *Id.* ¶39 (noting that the Commission will not permit U.S. earth stations to communicate with a foreign-licensed satellite on bands not authorized by the licensing jurisdiction).

98 *See supra* nn. 39-40 & accompanying text.

jurisdiction basis, then it may succeed in delaying delay Swarm's competitive entry into international markets. But blocking innovative startups from using frequencies that they are already licensed to use goes against public interest. That is especially the case where the frequencies would otherwise lie fallow, because the incumbent has shown no apparent use for them after many years of operation.

Finally, the status quo in no way prejudices future agreements over coordinated use of the band. In fact, by continuing to apply band segmentation globally, the Commission would only make it *easier* for the parties to reach such an agreement down the line. For so long as ORBCOMM can block Swarm based on misrepresentations of its U.S. license rights, ORBCOMM has no incentive to agree to share with Swarm on any reasonable terms and in any reasonable timeframe. The Declaratory Ruling's confirmation that ORBCOMM's license means what it says, by contrast, situates the parties to negotiate based on their actual rights and bargaining positions while continuing to provide services.

Indeed, the alternative procedure ORBCOMM proposes is nothing more than a request for six more months of ORBCOMM obstruction. It would allow ORBCOMM a period to "negotiate" based on rights it does not even possess, followed by an indeterminate mediation period of some kind, while ORBCOMM continues to delay Swarm's competitive entry internationally.[99] Instead of allowing ORBCOMM to block competitors from using frequencies it does not need and has no right to use, the Declaratory Ruling appropriately confirmed that the band segmentation between the two systems applies globally, and will remain in effect unless the operators reach another arrangement.

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[99] Application for Review at 15-16.

IV. THE DECLARATORY RULING WAS PROCEDURALLY SOUND.

Disregarding the procedural failings of its own application, ORBCOMM claims that the Declaratory Ruling was procedurally improper.

ORBCOMM is wrong. ORBCOMM argues that, under Section 1.2(b) of the Commission's rules, Swarm was required to file a letter captioned as a "petition for declaratory ruling," and that the Commission was required to docket the pleading and issue a public notice seeking comment.[100] But ORBCOMM practically ignores Section 1.2**(a)** of the Commission's rules, which allows the Commission to issue declaratory rulings "on its own motion."[101] Here, the on-the-record exchanges between Swarm and ORBCOMM apprised the Commission of an "uncertainty" and "controversy" created by ORBCOMM's misrepresentation of its license obligations.[102] The Commission responded by issuing "a declaratory ruling terminating [that] controversy [and] removing [that] uncertainty," which it is empowered to do regardless of

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[100] Application for Review at 3-5; *see* 47 C.F.R. § 1.2(b).

[101] 47 C.F.R. § 1.2(a).

[102] *See* Letter from Scott Blake Harris, Counsel to Swarm, to Karl Kensinger, Acting Chief, Satellite Division, International Bureau, FCC, IBFS File No. SAT-MOD-20070531-00076 (filed Oct. 16, 2020); Letter from Walter H. Sonnenfeldt, Esq., Regulatory Counsel, ORBCOMM License Corp. & Vice President, Regulatory Affairs, ORBCOMM Inc., to Karl Kensinger, Acting Chief, Satellite Division, International Bureau, FCC, IBFS File No. SAT-MOD-20070531-00076 (filed Oct. 29, 2020); Letter from Walter H. Sonnenfeldt, Esq., Regulatory Counsel, ORBCOMM License Corp. & Vice President, Regulatory Affairs, ORBCOMM Inc., to Karl Kensinger, Acting Chief, Satellite Division, International Bureau, FCC, IBFS File No. SAT-MOD-20070531-00076 (filed Nov. 5, 2020); Letter from Scott Blake Harris, Counsel to Swarm, to Karl Kensinger Acting Chief, Satellite Division, International Bureau, FCC, IBFS File No. SAT-MOD-20070531-00076 (filed Nov. 6, 2020); Letter from Scott Blake Harris, Counsel to Swarm, to Marlene H. Dortch, Secretary, FCC, File No. SAT-MOD-20070531-00076 (filed Dec. 23, 2020); Letter from Walter H. Sonnenfeldt, Esq., Regulatory Counsel, ORBCOMM License Corp. & Vice President, Regulatory Affairs, ORBCOMM Inc., to Marlene H. Dortch, Secretary, FCC, IBFS File No. SAT-MOD-20070531-00076 (filed Jan. 12, 2021); Letter from Kyle Wesson, Ph.D., Regulatory Engineer, Swarm, to Marlene H. Dortch, Secretary, FCC, IBFS File No. SAT-MOD-20070531-00076 (filed Jan. 15, 2021).

whether a formal petition was filed.[103] In sum, "[t]he literal language" of Section 1.2 "and the fact that the rule contemplates action by the Commission *sua sponte* remove any doubt that the Commission's action in issuing the declaratory order was in accordance with its own procedural regulations."[104] As the Supreme Court has held, agencies may issue declaratory rulings without extensive proceedings, because their authority to "terminate a controversy or remove uncertainty" often "must be exercised with dispatch"[105] to resolve issues like the matter at hand.

In a footnote (*see* Application for Review at n.4), ORBCOMM suggests that Section 1.2(a) does not empower the *Bureau* to issue declaratory rulings on its own motion. But the Commission's delegations of authority, and not Rule 1.2, govern the powers of the International Bureau. Those delegations give the Bureau explicit authority to "interpret and enforce" prior decisions,[106] "administer policies, rules, standards, and procedures for the authorization and regulation of . . . satellite systems,"[107] and ensure compatible global operations among U.S. licensees,[108] using the procedural tools available to the Commission. Those powers are subject only to the limitations enumerated in Section 0.261(b)—which make no mention of declaratory rulings.[109] Just as the Commission's bureaus may issue waivers on delegated authority,[110] so too can they issue declaratory rulings on their own motion on matters within their jurisdiction. Indeed, the Consumer and Governmental Affairs Bureau issued such a ruling on its own motion just last year to remove uncertainty regarding the application of a statute against the backdrop of

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[103] 47 C.F.R. § 1.2(a).

[104] *Chisholm v. FCC*, 538 F.2d 349, 365 n. 336 (D.C. Cir. 1976).

[105] *Weinberger*, 412 U.S. at 626; *see also Wilson*, 87 F.3d at 397.

[106] 47 C.F.R. § 0.261(a)(15).

[107] *Id.* § 0.51(c).

[108] *Id.* §§ 0.51(l).

[109] *See id.* § 0.261(b).

[110] *Id.* § 1.3 (permitting "the Commission" to waive its own rules).

an unprecedented pandemic.[111]

In any event, the procedure observed by the Commission was more than fair to ORBCOMM and met the optional procedures set forth in Section 1.2(b). As an initial matter, Section 1.2(b) merely employs non-mandatory language to encourage certain procedures when a formal petition for declaratory ruling is filed. Under the recommended procedure, the Bureau "should docket" the petition "within an existing or current proceeding," "should seek comment on the petition via public notice," and should allow 45 days for response and reply, though shorter periods are permissible.[112]

While Section 1.2(b)'s recommendations are not required for the Declaratory Ruling, the Commission followed the materially same procedure here. First, Swarm filed a letter apprising the Commission of the controversy and requesting relief, which the Bureau appears to have treated as similar to a petition for declaratory ruling. Second, the Bureau docketed the letter in the proceedings in which it was filed, all of which relate to ORBCOMM and Swarm's licenses. Third, Swarm served the letter on ORBCOMM. Fourth, well more than 45 days prior to ruling, the Commission issued a public notice indicating that the matter had been designated as "permit-but-disclose," meaning that input from interested parties was welcome so long as it was documented on the record.[113] In fact, even prior to the public notice, the Commission *directly contacted* ORBCOMM (along with Swarm and another operator, Myriota Pty. Ltd.) to confirm

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[111] *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991,* Declaratory Ruling, DA 20-318 (CGAB rel. Mar. 20, 2020).

[112] 47 C.F.R. § 1.2(b).

[113] *Satellite Policy Branch Information: Actions Taken*, Public Notice, Report No. SAT-01520, DA No. 21-26 (Jan. 8, 2021) (designating the "proceeding relating to the terms of a space station license held by ORBCOMM License Corp." and "associated with [IBFS File No SAT-LOA-20181221-00094], as well as IBFS File Nos. SAT-MOD-20070302-0041, SAT-MOD-20070531-00076, and SAT-AMD-200711600161" to be "'permit-but-disclose'" to "facilitat[e] the resolution of broad policy issues raised in the proceeding").

that the proceedings were permit-but-disclose and thus open for input, which ORBCOMM had *already* been providing as of that date.[114] In the end, ORBCOMM had no trouble commenting under the procedure employed. ORBCOMM understood all-too-well the nature of the controversy it itself created, and submitted numerous letters arguing for a favorable result.[115]

CONCLUSION

The Commission should dismiss or deny ORBCOMM's Application for Review and all the relief requested therein.

Respectfully submitted,

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April 26, 2021

Counsel for Swarm Technologies, Inc.

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[114] Email from Karl Kensinger, Acting Chief, Satellite Division, FCC International Bureau, to Walter Sonnenfeldt, Vice President, Regulatory Affairs, ORBCOMM Inc. & Regulatory Counsel, ORBCOMM License Corp.; Scott Blake Harris and Shiva Goel, Counsel to Swarm; and Eric Graham, Counsel to Myriota Pty. Ltd. (sent Dec. 22, 2020), attached as Exhibit B.

[115] *See supra* note 102 (citing submissions); *U.S. Telecom Ass'n v. FCC*, 825 F.3d 674, 726 (D.C. Cir. 2003) (harmless procedural errors do not warrant reversal).

CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of April 2021, I caused a true and correct copy of the foregoing Opposition of Swarm Technologies, Inc. to the Application for Review of ORBCOMM License Corp. to be sent by first class mail and email to the following:

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Counsel for Swarm Technologies, Inc.

EXHIBIT A

From:	Walter Sonnenfeldt
To:	Scott Blake Harris; Shiva Goel
Cc:	StephenLGoodman
Subject:	RE: Swarm Technologies, Inc. Commencement of Operations
Date:	Monday, October 19, 2020 9:58:48 PM

Scott & Shiva:

Please send me a reply E-Mail to confirm your receipt of this message.

I am sending this E-Mail to follow up on my October 5th call with Shiva acknowledging receipt of your October 5th letter to us advising of us Swarm's commencement of operations. We note that Swarm's two earlier September 8th letters to the Commission indicated that (i) "in-orbit testing for SPACEBEE-10 to SPACEBEE-21 is complete," and (ii) that "the operation of an initial space station is compliant with the license terms and conditions of the Swarm Grant and that the space station has been placed in its authorized orbit." Consistent with our license conditions, now that we have been notified that Swarm commenced operations, we have shut down ORBCOMM user terminal operations in the United States in the uplink bands in which Swarm was licensed to operate last year. There is no overlap between authorized ORBCOMM downlink operations and the 137.0250-137.1750 MHz, 137.3275-137.3750 MHz, 137.4725-137.5350 MHz, 137.5850-137.6500 MHz, and 137.8125-138.0000 MHz downlink bands currently authorized for Swarm downlink operations, so no action by ORBCOMM is required.

As you are aware, we respectfully disagree with Swarm's assertions in your October 5th letter, as reiterated an augmented in your October 16th letter to the Commission, regarding the applicability of the FCC's NVNG MSS band plan outside of the United States. We will be submitting a detailed response on these matters to the Commission.

We also stand ready to continue the preliminary discussions that commenced with Swarm late last month to work towards a mutually agreeable resolution of spectrum sharing matters. As you know, the Commission has a strong preference for parties to resolve conflicts outside of the formal process. The CEPT has also urged Swarm and ORBCOMM to reach a mutually acceptable "operator to operator" agreement on spectrum sharing in the CEPT member countries.

Please contact me if there are any questions or if any additional information is needed.

Best Regards,

Walter Sonnenfeldt
Vice President, Regulatory Affairs
ORBCOMM Inc.
E-Mail:
Direct Tel:
Cell:

EXHIBIT B

From:	Karl Kensinger
To:	Walter Sonnenfeldt; Scott Blake Harris; Shiva Goel; egraham
Cc:	Merissa Velez; Sean O"More; David Konczal
Subject:	Swarm's October 16th letter and related filings
Date:	Tuesday, December 22, 2020 12:25:22 PM

Gentlemen,

The above-captioned matter is hereby formally designated as permit-but-disclose, effective today. An informative Public Notice will also be issued at a later date concerning this change as part of the Satellite Divisions regular "actions taken" public notice.

Best regards,

Karl Kensinger
Acting Chief, Satellite Division
FCC International Bureau