

August 20, 2020

Via IBFS

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

Re: Notice of *Ex Parte* Communication - Petition of Swarm Technologies, Inc. IBFS File No. SAT-PDR-20200228-00021 (Call Sign S3064); Application of Astro Digital US, Inc., IBFS File Nos. SAT-LOA-20170508-00071 and SAT-AMD-20200528-00064 (Call Sign S3014); Application of Spire Global, Inc., IBFS File Nos. SAT-LOA-20151123-00078, SAT-AMD-20161114-00107 and SAT-AMD-20180102-00001 (Call Sign S2946)

Dear Ms. Dortch:

On August 18, 19, and 20, 2020, representatives and counsel for Hiber Inc., Myriota Pty. Ltd., and Kinéis (the “First Round Parties”)¹ met separately by conference call with Will Adams, Legal Advisor to Commissioner Brendan Carr, William Davenport, Chief of Staff and Senior Legal Advisor to Commissioner Geoffrey Starks, Erin McGrath, Legal Advisor to Commissioner Michael O’Rielly, and Umair Javed, Legal Advisor to Commissioner Jessica Rosenworcel, to discuss several matters related to the current Ultra High Frequency non-voice, non-geostationary mobile-satellite service processing round and recent *ex parte* letters filed by Swarm Technologies, Inc. (“Swarm”).² A complete list of the participants in the call is attached hereto.

The First Round Parties reported that they have been working diligently and cooperatively since last fall to pursue an equitable spectrum sharing agreement in the near term. These discussions have been fruitful and have been based on the certainty under the FCC’s longstanding rules that the processing round cut-off date set the number of systems among which

¹ The “First Round Parties” acknowledge that there are other applicants with pending spectrum access requests in the current processing round – Astro Digital US, Inc. and Spire Global, Inc. – but these applicants require smaller amounts of spectrum for discrete uses that should not pose significant coordination difficulties. While the First Round Parties have engaged with the two companies, those companies have not been part of the trilateral coordination discussions among the three parties seeking to use the subject bands for primary service links.

² See, e.g., Letter from Timothy Bransford, Counsel to Swarm Technologies, Inc., to Marlene H. Dortch, Secretary, FCC (dated July 6, 2020) (“Swarm July 6th *Ex Parte* Notice”) (summarizing a July 1, 2020 teleconference with International Bureau staff).

initial coordination is required. The First Round Parties have been negotiating based on a set of agreed general principles, which include the following points:

- The upper 30 kHz (400.02-400.05 MHz) will be used for TT&C at higher power levels than IoT service link bands, and its potential future use for service links is, therefore, uncertain.
- Due to the high noise floor in the 399.9-400.02 MHz band, the small amount of available bandwidth (120 kHz), and the uncertainty of protection from TT&C near the 400.02 MHz boundary, there are significant challenges in establishing suitable sharing solutions that are fair and satisfy each company's technical requirements.
- After significant discussion and technical consideration of system requirements, the parties believe it will be possible to accommodate all three First Round Parties in the band without constraining their planned operations.
- The First Round Parties agree that the tiny amount of spectrum available in the uplink makes realistic sharing very challenging. Accordingly, they urge the FCC to adhere to the processing round framework to avoid the disruption to current coordination discussions that would necessarily result from admitting additional applicants in the 399.9-400.02 MHz band at this late stage.

The First Round Parties also addressed several matters arising from recent Swarm *ex parte* notices. Swarm has asserted that it is "spectrally-efficient" because it only uses 140 kHz out of 850 kHz in the downlink band but omits any discussion of the smaller 120 kHz allocation of spectrum in the uplink band. Leaving aside the potential issues related to sharing the downlink band, the First Round Parties already face challenges in equitably sharing the small amount of uplink spectrum.

To the extent that Swarm now claims that it has a spectrum capacity shortfall in its VHF operations, where it already has access to 500 kHz of spectrum (more than four times the total UHF spectrum essentially available for all IoT operators), it is relevant that if the FCC were required to divide the 120 kHz uplink band among four co-equal users, it's very unlikely there would be any significant improvement to Swarm's spectrum position. In that circumstance, there would likely be less than 30 kHz of usable additional bandwidth per operator. It is difficult to see how that small quantity of additional spectrum would be helpful, given that Swarm already has been licensed to operate using 500 kHz in the VHF uplink.

The First Round Parties reiterated the arguments included in their comments and petitions concerning Swarm's late-filed petition and request for waiver of the FCC's rules to permit it to participate in the ongoing processing round. Grant of such a waiver would be contrary to the FCC's clear rules and established precedent. Swarm's assertion that ignoring the FCC's processing round rules would not harm or otherwise prejudice the current parties in the round is unfounded. The First Round Parties have been in coordination discussions and resolving associated issues for months on the very reasonable expectation, based on the FCC's consistently applied processing rules, that their number was fixed as of October 15, 2019.

Equally misplaced is Swarm’s opposite contention that it would be affirmatively harmed by the FCC’s adherence to its processing round rules. If application of the rules is harmful to Swarm, it is harm of its own making. Had Swarm reasonably identified access to UHF spectrum as important to its service objectives, it should have complied with the FCC’s rules and timely filed a market access petition during the filing window that closed in October 2019. Adding a late-filed party into the mix now with equal coordination rights as the first-round participants – contrary to the very rationale for having a processing round – would jeopardize the progress made thus far and would raise concerns about the finality of any such solution or agreement.

If the Commission were to admit a new party that failed to meet a cut-off deadline for an established processing round, it would encourage late-filed applications by other parties which will disrupt coordination discussions that have been based on the expectations of the timely-filed parties. The result would be substantial delay in resolving inter-system coordination, resulting in harm to both the timely-filed parties and potential users of the services they propose.

Finally, the parties corrected the record with respect to Swarm’s contention that it has “undertaken outreach” to the First Round Parties “to discuss the assertions *made in the petitions* regarding their respective capabilities to coordinate and share spectrum” (emphasis added).³ The fact is that the only communication from Swarm directed to the First Round Parties was a single email sent two days after Swarm filed its application, in which it requested to coordinate. This contact occurred long before the First Round Parties filed pleadings in the proceeding, which renders Swarm’s statement inaccurate. Swarm did not engage with these parties in any manner that could realistically be construed as outreach on UHF coordination or spectrum sharing. To the extent that the First Round Parties have expressed confidence in the ability to share and coordinate in the UHF band, these comments were made in good faith specifically with respect to coordination with each other rather than with parties that might seek access in the future.

Respectfully submitted,

By: <u>s/ Bruce Henoch</u> Bruce Henoch General Counsel Hiber Inc.	By: <u>s/ Assia Bahri</u> Assia Bahri Head, Regulations and Spectrum Affairs Kinéis	By: <u>s/ Eric Graham</u> Eric Graham Consulting Principal LMI Advisors LLC for Myriota Pty. Ltd.
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cc: Attached List of Teleconference Participants

³ Swarm July 6th *Ex Parte* Notice at 2.

List of Teleconference Participants

FCC

Will Adams (8/18)
William Davenport (8/19)
Erin McGrath (8/19)
Umair Javed (8/20)

Hiber Inc.

Bruce Henoch
Tony Lin of Hogan Lovells US LLP

Kinéis

Assia Bahri
David S. Keir of Lerman Senter PLLC

Myriota Pty. Ltd.

Eric Graham of LMI Advisors LLC