

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of

Intelsat License LLC)	
)	
Application for Authority to Launch and)	File Nos. SAT-LOA-20170524-00078
Operate Galaxy 15R, a Replacement)	and SAT-AMD-20170613-00086
Satellite with New Frequencies, at)	Call Sign S3015
133.0° W.L. (227.0° E.L.))	

Permit-but-Disclose Status Requested

REPLY OF EUTELSAT S.A.

Eutelsat S.A. (“Eutelsat”), pursuant to Section 25.154(d) of the Commission’s rules, 47 C.F.R. § 25.154(d), respectfully submits this Reply of Eutelsat S.A. (“Reply”) to the Response of Intelsat License LLC (“Intelsat Response”) filed in the above-captioned application proceeding. The Intelsat Response was filed, in part, to address issues raised in Eutelsat’s Petition to Defer or Deny, In Part (“Eutelsat Petition”) the Ku-band and Ka-band portions of the Intelsat License LLC (“Intelsat”) application to operate Galaxy 15R at 133° W.L., as amended and supplemented (“Application”).

I. DISCUSSION

Intelsat has requested Commission authority to launch and operate a satellite at the 133° W.L. orbital location using Ku-band and Ka-band frequencies for which the French Administration has earlier International Telecommunication Union (“ITU”) date priority. In the context of public comment on the Intelsat Application¹ and separately

¹ In the Eutelsat Petition, Eutelsat described its plans to provide near-term and longer-term satellite service to the U.S. and other markets from the 133° W.L. orbital location under French ITU filings.

through the Commission's petition for declaratory ruling process,² Eutelsat confirmed plans to operate the in-orbit Ku-band EUTELSAT 133WA satellite, as well as the new Ku/Ka-band EUTELSAT 133WB satellite, at 133° W.L. prior to launch of the satellite proposed by Intelsat.

Intelsat's proposed Ku-band and Ka-band payloads appear fundamentally incompatible with Eutelsat's higher-priority satellite operations. Although Intelsat could not have been aware of Eutelsat's commercial intentions prior to filing the Application, the deployment plans for EUTELSAT 133WA and EUTELSAT 133WB form part of the record to be evaluated by the Commission in considering the Application. Eutelsat has asked the Commission to grant the parties additional time in this proceeding to examine compatibility, explore various approaches to accommodate planned satellite operations at 133° W.L., and amend the Intelsat proposal, as appropriate, to facilitate full and final consideration by the Commission.

Intelsat asks the Commission to deny the Eutelsat Petition, thereby effectively ignoring the preclusive impact of EUTELSAT 133WA and EUTELSAT 133WB satellite operations at 133° W.L., because the "routine requirement to comply with the international coordination process" would permit grant of the Application. However, such a condition is not a panacea that justifies grant of a satellite license that would be fundamentally incompatible with the operations of a foreign satellite with earlier ITU

² Eutelsat has filed a petition for declaratory ruling to provide service to the U.S. market using the in-orbit EUTELSAT 133WA satellite (currently named EUTELSAT 33C) that will be relocated to 133° W.L. and commence operations in mid-2018. Eutelsat will shortly file a second petition to provide longer-term service to the U.S. market from this orbital location using the purpose-built EUTELSAT 133WB satellite that will operate across available Ku-band and Ka-band frequencies.

date priority. It also cannot serve as a basis to ignore Commission rules and policies that would essentially preclude Intelsat's proposed Ku-band and Ka-band operations.

It would be an inefficient use of scarce administrative resources for the Commission to examine Ku-band and Ka-band satellite operations that, as currently proposed by Intelsat, cannot be implemented. Moreover, it is not clear that the Commission can or should grant the Application, even on a conditional basis, because the proposed operations are fundamentally incompatible with foreign satellite operations with ITU earlier date priority.

A. Deferral of the Ku-Band and Ka-Band Portions of the Intelsat Application Is Warranted

The Ku-band and Ka-band portions of the Intelsat Application are fundamentally inconsistent with Eutelsat's planned operations at 133° W.L. Eutelsat has filed a petition for declaratory ruling to provide service to the U.S. market using EUTELSAT 133WA, a Ku-band satellite that will be relocated to this orbital location and commence operations in mid-2018.³ In addition, Eutelsat will shortly file a second petition to provide longer-term service to the U.S. market using EUTELSAT 133WB, a purpose-built satellite that will operate across available Ku-band and Ka-band frequencies by 2021.

Section 25.156(a) of the Commission's Rules, 47 C.F.R. § 25.156(a), requires the Commission to examine an application, any pleadings or objections filed, and "such other matters as it may officially notice" in considering satellite applications, and provides that the Commission will grant such applications if (i) the applicant is legally, technically, and otherwise qualified; (ii) "the proposed facilities and operations comply with all applicable

³ See Petition for Declaratory Ruling of Eutelsat S.A., File No. SAT-PPL-20180122-00009, Call Sign S3027.

rules, regulations, and policies”; and (iii) “grant of the application will serve the public interest, convenience and necessity.”

Eutelsat’s near-term and longer-term commercial plans constitute information of decisional significance that must be considered pursuant to Section 25.156(a) of the rules, particularly because the Commission’s policies effectively prohibit U.S. satellite operations that are incompatible with those of foreign satellites with earlier ITU date priority.⁴ Eutelsat will implement the EUTELSAT 133WA and EUTELSAT 133WB satellites well before the launch of Intelsat’s proposed satellite, thereby effectively precluding other Ku-band and Ka-band operations at the 133° W.L. orbital location.

Eutelsat has reasonably requested deferral of these portions of the Application to provide time for compatibility discussions, rather than requiring the Commission to consider and potentially deny authority for operations that cannot be implemented as presently proposed. Additional time for such discussions would preserve scarce administrative resources and would facilitate ultimate implementation of viable satellite services across available spectrum bands at 133° W.L. for the benefit of U.S. consumers.

B. Substantive Commission Rules and Policies Appear To Preclude Grant of the Ku-band and Ka-band Portions of the Application

Section 25.156 provides that the Commission will grant a satellite application if it finds “that the applicant is legally, technically, and otherwise qualified, that the proposed facilities and operations comply with all applicable rules, regulations, and policies, and that grant of the application will serve the public interest, convenience and necessity.”⁵

⁴ See Eutelsat Petition at 4-6.

⁵ 47 C.F.R. § 25.156(a).

Eutelsat does not dispute that Intelsat is legally, technically, and otherwise qualified to be a Commission satellite licensee. However, it is not clear that the Commission can or should conclude that Intelsat's proposed Ku-band and Ka-band facilities and operations at 133° W.L. "comply with all applicable rules, regulations, and policies" or that grant of the Application "would serve the public interest, convenience and necessity."

Well-settled Commission policies regarding ITU date priority suggest that the Ku-band and Ka-band proposed in the Application cannot comply with applicable rules, regulations, and policies. The Commission has made clear that, absent successful coordination with earlier date-priority satellite, "a U.S. licensed satellite making use of an ITU filing with a later protection date would be required to cease service to the U.S. market immediately upon launch and operation of a non-U.S. licensed satellite with an earlier protection date, or be subject to further conditions."⁶ In this case, the EUTELSAT 133WA and EUTELSAT 133WB satellites will operate across Ku-band and Ka-band frequencies at 133° W.L. prior to the deployment of Intelsat's proposed satellite. Because the Commission's own ITU date priority policies would prevent Intelsat's proposed satellite from operating in these bands, it would seem difficult to conclude the proposed facilities and operations comply with all applicable rules, regulations, and policies.

Similarly, it would seem difficult to conclude that grant of these portions of the Application would serve the public interest, convenience and necessity if the ultimate objective is to provide service to U.S. consumers, such as that to be provided in the near term by EUTELSAT 133WA and in the longer term by EUTELSAT 133WB. It is

⁶ *Amendment of the Commission's Space Station Licensing Rules and Policies*, IB Docket No. 02-34, Second Order on Reconsideration, FCC 16-108, 31 FCC Rcd 9398 (2016), at ¶ 32.

simply unclear how the public interest, convenience and necessity could possibly be served by granting authority to launch and operate Ku-band and Ka-band satellite payloads that cannot be implemented as currently proposed.

C. Effect of the Commission’s Satellite Application Processing Rules

The Commission’s queue procedure for processing GSO satellite applications is designed to facilitate more effective spectrum utilization by reducing the amount of time spectrum lies fallow.⁷ However, these processing rules do not alter the impact of the Commission’s ITU date priority policies on the Application.

Although the Commission “generally will defer action on the market access request until after we have resolved the earlier-filed application or mutual exclusivity concerns have been eliminated.... even in cases where the foreign operator makes use of an ITU filing with an earlier date of protection,”⁸ this procedural pronouncement does not address the impact of incompatible, foreign satellite operations with earlier ITU priority and commencement dates on substantive Commission consideration of a U.S. satellite application.

Where, as here, the Commission is aware of specific implementation plans that would effectively preclude the operation of a proposed U.S. satellite, it is unclear whether even a conditional grant could serve the public interest, convenience and necessity. Furthermore, allowing a U.S. satellite application with no real possibility of

⁷ See Amendment of the Commission's Space Station Licensing Rules and Policies, First Report and Order and Further Notice of Proposed Rulemaking in IB Docket No. 02-34, and First Report and Order in IB Docket No. 02-54 (FCC 03-102, rel. May 19, 2003) at ¶74.

⁸ See Intelsat Response at 4 (*citing Comprehensive Review of Licensing and Operating Rules for Satellite Services*, Second Report and Order, 30 FCC Rcd. 14713, ¶42 (2015)).

implementation to delay or prevent service to U.S. consumers from a foreign satellite with earlier ITU date priority would be contrary to the public interest.

D. Other Issues

1. Additional Filings Related to the Application

In addition to the Eutelsat Petition, the Intelsat Application was the subject of a Petition to Deny of Iridium Satellite LLC (“Iridium”) and an Informal Objection of O3b Limited and SES Americom, Inc. (the “SES Companies”).⁹ These parties suggest that Intelsat should be required to provide additional technical information associated with access to spectrum shared with NGSO systems.¹⁰ In addition, the SES Companies note the initial absence of a two-degree spacing analysis – which should have precluded a finding that the Application was acceptable for filing – and therefore require dismissal of the Application.¹¹

Eutelsat takes no position on the Application’s purported informational deficiencies with respect to spectrum sharing with NGSO systems. However, the SES Companies raise important procedural concerns that require careful Commission consideration. Eutelsat’s understands that post-filing submissions may not remedy

⁹ See Petition to Deny of Iridium Satellite LLC, Call Sign S3015, File Nos. SAT-LOA-20170524-00078 and SAT-AMD-20170613-00086 (filed Dec. 22, 2017) (“Iridium Petition”); see also Informal Objection of O3b Limited and SES Americom, Inc., Call Sign S3015, File Nos. SAT-LOA-20170524-00078 and SAT-AMD-20170613-00086 (filed Jan. 5, 2018) (“SES Companies Informal Objection”).

¹⁰ See generally Iridium Petition; see also SES Companies Informal Objection at 2-7.

¹¹ See SES Companies Informal Objection at 7-9.

underlying application deficiencies,¹² so the Commission should carefully consider the precedential impact of its determination on this issue.

2. Permit-but-Disclose Status

The Commission has discretion to modify the application of its *ex parte* rules in any proceeding where the public interest warrants doing so.¹³ The Intelsat Application raises significant procedural and substantive issues and Eutelsat reiterates its request for permit-but-disclose status in this proceeding.

Designating this application proceeding as permit-but-disclose under Section 1.1206 of the Commission's rules, rather than "restricted" under Section 1.1208 of the rules,¹⁴ would facilitate more thorough consideration of the unique application processing and public interest issues presented here and would ensure a more complete record for the Commission to take appropriate action on the Application.

II. CONCLUSION

The Ku-band and Ka-band portions of the Intelsat Application are fundamentally incompatible with Eutelsat's planned operation of the EUTELSAT 133WA and EUTELSAT 133WB satellites at 133° W.L., which have earlier ITU date priority and will commence well before launch of Intelsat's proposed satellite. It would be inefficient to substantively examine, and contrary to the public interest to grant (even on a conditional

¹² See, e.g., EchoStar Satellite LLC (f/k/a EchoStar Satellite Corporation), *Order on Reconsideration*, DA 04-4056 (Int'l Bur., Dec. 27, 2004) (describing the "substantially complete" standard as providing the information required by the FCC rules when a satellite application is initially filed).

¹³ See 47 C.F.R. § 1.1200(a).

¹⁴ See 47 C.F.R. §§ 1.1206, 1.1208.

basis), an application for operations that cannot be implemented under well-settled Commission policies. Eutelsat's request for deferral is therefore a reasonable measure which would afford the parties an opportunity to explore potential compatibility of proposed satellite operations at 133° W.L., and would allow Intelsat to amend its present proposal to reflect the outcome of such discussions.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Carlos M. Nalda". The signature is fluid and cursive, written in a professional style.

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On behalf of Eutelsat S.A.

January 22, 2018

CERTIFICATE OF SERVICE

I, Jennifer White, do hereby certify that on January 22, 2018, I served a true and correct copy of the Reply of Eutelsat S.A. by first-class mail on the following:

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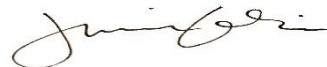
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