

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

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Federal Communications Commission
Office of Secretary

In the Matter of)
)
Spectrum Five LLC) File Nos. SAT-LOI-20050312-00062/63
)
Petition for Declaratory Ruling To)
Serve the U.S. Market from the)
114.5° W.L. Orbital Location)

Received

JUN 14 2005

Policy Branch
International Bureau

REPLY OF SES AMERICOM, INC.

SES Americom, Inc. ("SES Americom"), by its attorneys and pursuant to Section 25.154 of the Commission's Rules, 47 C.F.R. § 25.145, hereby submits its reply to the Consolidated Response of Spectrum Five LLC ("Spectrum Five Response") in the above-captioned proceeding. In its comments, SES Americom requested that the Commission impose a coordination requirement as a condition of any authority Spectrum Five is granted to serve the U.S. market from its proposed BSS network at 114.5° W.L. Spectrum Five opposes such a condition, claiming that it would be inconsistent with Commission precedent. In fact, however, when granting U.S. market access the Commission routinely adopts provisions designed to protect the rights of systems with ITU priority, and it should do so here.

As SES Americom explained in its comments, the United Kingdom has made filings for a BSS network at 114.5° W.L. on behalf of the Gibraltar Regulatory Authority. These filings are in support of a network to be deployed by SES Satellites (Gibraltar) Limited ("SES Gibraltar"), a wholly-owned subsidiary of SES

Americom, and have date priority over the Netherlands filings on which Spectrum Five relies. SES Americom Comments at 1-2. We noted that Spectrum Five had acknowledged the U.K. filings and had recognized that operation of its system would not be possible once the U.K. network commenced service. *Id.*, citing Spectrum Five Petition, Technical Appendix, Exh. 1 at 4.

In order to ensure that the rights of SES Gibraltar are protected, SES Americom requested that the Commission make clear to Spectrum Five that its operations would not be entitled to interference protection from networks operating pursuant to prior ITU filings. SES Americom also asked that the Commission condition any grant of authority to Spectrum Five to require coordination with affected systems of other administrations that have date priority under ITU procedures. *Id.* at 3.

In its Response, Spectrum Five states that it “will abide by its obligations to protect other systems as required under international law.” Spectrum Five Response at 8 n.33. Nevertheless, Spectrum Five opposes the condition requested by SES Americom. Spectrum Five claims that the “FCC does not condition or delay market entry pending coordination between or among *foreign* administrations.”¹

Part of Spectrum Five’s statement is irrelevant, and the remainder is wrong. SES Americom never suggested that the Commission should defer action on

¹ *Id.* at 7 (emphasis in original), citing *Telesat Canada Petition for Declaratory Ruling for Inclusion of ANIK F1 on the Permitted Space Station List*, Order, 15 FCC Rcd 24828, 24833 (¶ 14) (Sat. & Radiocomm. Div. 2000).

the Spectrum Five Petition until after coordination of the Netherlands filing with the prior U.K. submissions had occurred. Instead, we asked that the Commission make clear that Spectrum Five is not entitled to protection from interference from networks with ITU date priority.

Spectrum Five's suggestion that the Commission does not impose conditions on market access to ensure compliance with coordination requirements and ITU priority is simply false. The Commission has made clear that it will consider ITU date priority in processing applications seeking authority to use foreign-licensed satellites for U.S. service. For example, in authorizing Loral to operate the C-band Telstar 13 satellite pursuant to a license from Papua New Guinea, the FCC adopted conditions designed to ensure that New Skies' rights under a Netherlands filing with date priority were protected. Specifically, the Bureau stated that:

As the Commission has recently affirmed, a lower ITU priority network may be permitted to access the U.S. market if a higher ITU priority satellite has not been launched, but in such a case the lower ITU priority network is subject to proof of coordination with the higher ITU priority satellite. Absent such demonstration, the lower ITU priority satellite must cease service to the U.S. market immediately upon launch and operation of the higher ITU priority satellite, or be subject to further conditions designed to address potential harmful interference to a satellite with ITU date precedence. We condition Loral's authorization accordingly. . . . We also condition Loral's authority to serve the U.S. on its compliance with applicable current and future operational requirements as a result of coordination agreements reached with

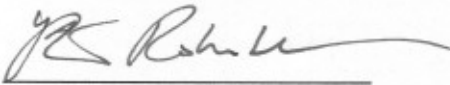
other satellite systems, including the Netherlands's
NSS-11 system at 120.8° W.L.²

Spectrum Five's objection to Commission imposition of a coordination condition is puzzling given its commitment to comply with applicable ITU requirements. In any event, however, prior cases make clear that the Commission's policy is to ensure that systems granted access to the U.S. market fulfill their obligations to protect networks with ITU priority. The conditions typically imposed by the Commission go well beyond the coordination condition requested by SES Americom here and include requirements to terminate service upon launch of a spacecraft with higher ITU priority. SES Americom respectfully requests that the Commission, consistent with past practice, make any grant of authority to Spectrum Five subject to the requirement that Spectrum Five coordinate with the U.K. and protect the SES Gibraltar network.

Respectfully submitted,

SES AMERICOM, INC.

Nancy J. Eskenazi
Vice President &
Assoc. General Counsel
SES Americom, Inc.
Four Research Way
Princeton, NJ 08540

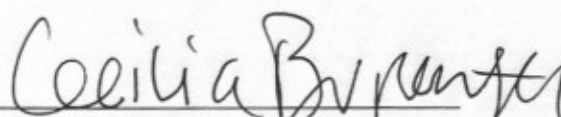
By: 
Peter A. Rohrbach
Karis A. Hastings
Hogan & Hartson L.L.P.
555 Thirteenth Street, N.W.
Washington, D.C. 20004
(202) 637-5600

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² *Loral Spacecom Corporation Petition for Declaratory Ruling to Add Telstar 13 to the Permitted Space Station List*, 18 FCC Rcd 16374 (Sat. Div. 2003) at ¶ 16 (footnotes omitted). See also *Amendment of the Commission's Space Station Licensing Rules and Policies*, First Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 10760, 10870-71 (¶ 296) (2003).

CERTIFICATE OF SERVICE

I, Cecelia Burnett, do hereby certify that on this 8th day of June, 2005, copies of the foregoing "Reply of SES Americom, Inc." were served to the following parties by first class mail:



Cecelia M. Burnett

David Wilson
President
Spectrum Five LLC
626 S. 25th Street
Arlington, VA 22202

Richard E. Wiley
Todd M. Stansbury
Wiley Rein & Fielding LLP
1776 K Street, N.W.
Washington, D.C. 20006