

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

In the Matter of)	
)	
DIRECTV Enterprises, LLC)	File Nos. SAT-MOD-20140612-00066 &
)	SAT-MOD-20140624-00075
Applications for Modification of the)	Call Sign S2712
License to Launch and Operate)	
DIRECTV RB-2 and for Extension or)	
Waiver of the Launch and Operations Milestone)	

**REPLY OF SES AMERICOM, INC. AND
CIEL SATELLITE LIMITED PARTNERSHIP**

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SUMMARY

DIRECTV's actions to date with respect to the RB-2 payload demonstrate a pattern of violating or attempting to evade clear Commission policies and the mandates of the international coordination process. Specifically, DIRECTV chose to reprocure the RB-2 contract for its own reasons, leading to an inevitable delay in the completion of the spacecraft. Rather than seeking Commission sanction at the time, however, DIRECTV simply continued to build the spacecraft and now suggests that it should be rewarded for that behavior by a grant of milestone relief. Furthermore, although DIRECTV says that it is fully aware of its obligations to coordinate RB-2 with the higher priority Ciel-6i network, it has done nothing in the past five years to pursue such coordination and is instead proposing RB-2 operations that would clearly and impermissibly interfere with Ciel-6i. The only appropriate Commission response is denial of the RB-2 milestone and payload modification applications. At the very least, the Commission must withhold RB-2 operating authority pending completion of coordination.

DIRECTV's claims that the RB-2 delays were the result of component shortages beyond its control are simply not credible based on DIRECTV's own account of the facts. DIRECTV's stated reasons for changing satellite manufacturers more than two years into the RB-2 license term have nothing to do with expediting completion of the payload. Under long-standing Commission precedent, the choice to rebid a satellite contract mid-stream does not justify relief from system milestones.

To the contrary, excusing DIRECTV's milestone noncompliance here would directly conflict with the underlying public interest objectives of the Commission's milestone policies and set a precedent that would give future licensees *carte blanche* to ignore Commission requirements. Although DIRECTV has been out of compliance with the RB-2 milestones since it terminated its original satellite contract almost three years ago, DIRECTV chose not to file its

milestone modification application until days before the expiration of the final launch and operations milestone. The untimeliness of the DIRECTV milestone request is grounds enough to deny it, especially as DIRECTV presents no legitimate reason for putting off its milestone filing. Instead, the facts suggest that by continuing to construct RB-2 without seeking approval from the Commission, DIRECTV was attempting to bootstrap its way into unjustified milestone relief.

If it does not cancel the RB-2 license for milestone violations, the Commission must deny or defer operating authority for the payload pending completion of coordination. The RB-2 license terms expressly contemplate that further conditions may be added to effectuate U.S. international coordination obligations. Furthermore, Commission evaluation of the proposed RB-2 operating characteristics before coordination is completed would be premature, as those characteristics will need to be revised to conform to the terms of any coordination agreement.

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SES Americom, Inc. (“SES Americom”) and Ciel Satellite Limited Partnership (“Ciel,” and with SES Americom, “SES”) hereby submit this reply to the consolidated response of DIRECTV Enterprises, LLC (“DIRECTV”)¹ regarding the above-captioned applications to modify the license terms for the RB-2 17/24 GHz Broadcasting Satellite Service (“BSS”) payload.² In its petition, SES demonstrated that Commission precedent requires denial of both the RB-2 milestone extension and the RB-2 payload modification.³ DIRECTV’s response provides no new information to justify a different result. Instead, because the record makes clear that DIRECTV’s failure to meet its milestone to launch and operate RB-2 is attributable to DIRECTV’s choices, not circumstances beyond the company’s control, the Commission must cancel the RB-2 authorization. Furthermore, DIRECTV’s payload modification violates

¹ Consolidated Response of DIRECTV Enterprises, LLC, filed Sept. 15, 2014 (“DIRECTV Response”).

² *DIRECTV Enterprises, LLC*, File No. SAT-MOD-20140612-00066 (“RB-2 Payload Modification”) and File No. SAT-MOD-20140624-00075 (“RB-2 Milestone Extension”).

³ Petition to Deny of SES Americom, Inc. and Ciel Satellite Limited Partnership, filed Sept. 2, 2014 (“SES Petition”). Ciel’s customer, DISH Operating L.L.C., also filed a petition requesting that the Commission impose a coordination condition if it grants the DIRECTV modifications. Petition to Condition of DISH Operating L.L.C., filed Sept. 2, 2014 (“DISH Petition”).

Commission rules and proposes operations that are at odds with treaty-based coordination requirements. Accordingly, if the RB-2 license is not otherwise revoked on milestone grounds, the Commission must either deny or defer operating authority for RB-2 until coordination is completed with higher priority networks.

I. EXTENDING OR WAIVING THE RB-2 MILESTONE WOULD UNDERMINE COMMISSION POLICY AND CONTRAVENE THE PUBLIC INTEREST

Given the strong public interest in milestone compliance, the Commission allows departures from the milestone schedule only in very limited circumstances.⁴ Specifically, the licensee must demonstrate that delay was caused by factors over which it had no control or show that overriding public interest concerns justify extension or waiver of the milestone.⁵ DIRECTV has done neither, and its request for extension or waiver of the RB-2 launch and operations milestone must consequently be denied.

A. DIRECTV Is Responsible for its Failure to Meet the Launch and Operations Milestone

The facts clearly contradict DIRECTV's claims that a lag in delivery of Ka-band travelling wave tube arrays ("TWTAs") was the root of the RB-2 construction delays and that DIRECTV's subsequent decision to switch satellite manufacturers was intended to resolve those

⁴ See, e.g., *PanAmSat Licensee Corp.*, 15 FCC Rcd 18720 (IB 2000) ("*PanAmSat*") at 18722, ¶ 8 (the Commission strictly enforces satellite milestones because "it is manifestly in the public interest to ensure that licensees proceed expeditiously in completing construction of their systems and commencing service"); *New ICO Satellite Services G.P.*, 22 FCC Rcd 2229 (Sat. Div. 2007) ("*New ICO*") at 2233, ¶ 14 (milestones are intended to "ensure prompt delivery of satellite service to the public"); *Astrolink International LLC*, 17 FCC Rcd 11267 (Sat. Div. 2002) ("*Astrolink*") at 11268-69, ¶ 5.

⁵ *New ICO*, 22 FCC Rcd at 2233, ¶ 14. See also 47 C.F.R. § 25.117(e).

issues.⁶ Specifically, there are three glaring defects in DIRECTV's suggestion that reprocurring the DIRECTV 15/RB-2 construction contract was an attempt to address TWTA delivery delays.

First, DIRECTV asserts that to ameliorate the delays it decided to obtain TWTA's from a different underlying supplier than the one relied on by the original RB-2 manufacturer, Space Systems Loral ("SS/L").⁷ But as SES has already shown, during the time period at issue, *both* of the two suppliers of Ka-band TWTA's to satellite manufacturers were unable to keep up with demand.⁸ Accordingly, DIRECTV's claim that it needed to switch to TWTA's produced by Thales instead of L3 in order to reduce scheduling delays is illogical on its face.

Second, even if DIRECTV had a reasoned basis for changing TWTA suppliers, that did not require DIRECTV to reprocur the RB-2 satellite. DIRECTV does not suggest that SS/L relied only on TWTA's supplied by L3 Communications, and spacecraft manufacturers typically used TWTA's from both L3 and Thales.⁹ In fact, DIRECTV observes that in order to finish the DIRECTV 14/RB-1 satellite, SS/L purchased some TWTA's from Thales.¹⁰ Thus, DIRECTV did not need to switch satellite manufacturers in order to use Thales TWTA's.

Third and most tellingly, the reasons DIRECTV itself cites for choosing Astrium to replace SS/L as the satellite manufacturer *have absolutely nothing to do with expediting*

⁶ DIRECTV Response at 5-8.

⁷ *Id.* at 6.

⁸ See SES Petition at 7-8 & nn.18 & 19, *citing* Peter B. de Selding, "Component Crunch Slows Delivery of Ka-band Communications Sats," Space News, Sept. 16, 2011, available at: <http://www.spacenews.com/article/component-crunch-slows-delivery-ka-band-communications-sats> ("Both companies [L3 Communications and Thales] are having trouble keeping up with demand for high-power Ka-band TWTA's").

⁹ See *id.* (quoting Astrium chief executive's remark that "all of us [satellite manufacturers] buy from both" L3 and Thales).

¹⁰ DIRECTV Response at 6-7 ("SS/L was able to procure some TWTA's from the inventory of a second supplier, Thales").

completion of the spacecraft. Instead, DIRECTV states that it “determined that the proposal made by Astrium SAS was superior to the others and also reduced the company’s reliance on a single manufacturer.”¹¹ In short, the facts demonstrate that DIRECTV simply used the TWTA delay as a pretext to reprocure the RB-2 satellite for reasons unrelated to timing.

Long-standing Commission precedent makes clear that choosing to rebid a satellite contract, as DIRECTV has done here, is not grounds for milestone relief.¹² The Commission’s decision in *AT&T* is directly applicable here.¹³ As in *AT&T*, DIRECTV’s “decision to reopen the satellite construction program does not constitute a circumstance beyond its control and does not justify a grant of additional time.”¹⁴

Contrary to DIRECTV’s arguments,¹⁵ the choice to change satellite manufacturers two years into the license term clearly did delay ultimate completion of the satellite. DIRECTV does not dispute the fact that switching manufacturers meant re-starting construction of the satellite bus from scratch and performing a new Critical Design Review – delays that DIRECTV would

¹¹ *Id.* at 6.

¹² *American Telephone and Telegraph Co.*, 2 FCC Rcd 4431 (1987) (“*AT&T*”) at 4433-34, ¶ 21 (“AT&T’s desire to reprocure a construction contract, which will consequently delay implementation, is simply an independent business judgment. Business judgments based upon economic considerations traditionally have not been considered circumstances beyond a licensee’s control and have not justified extensions of time.”).

¹³ DIRECTV’s attempt to distinguish *AT&T* on the grounds that it involved a decision to reprocure the satellite network made in the context of a proposed license assignment (DIRECTV Response at 8-9) is unavailing. The Commission made clear in *AT&T* that the rationale for choosing to re-start the procurement process is irrelevant to the milestone analysis. In fact, *AT&T* put forth a variety of justifications, some of which had nothing to do with the pending transaction, and all of them were rejected. *See AT&T* at 4434-35, ¶ 28 (factors cited by *AT&T* “may be legitimate and arguably prudent business decisions, [but] they cannot justify extensions of required system implementation milestones”). Thus, the *AT&T* case stands for the proposition that a licensee seeking to reprocure a satellite network – whatever the underlying reasons – is not entitled to milestone relief.

¹⁴ *Id.* at 4433, ¶ 21.

¹⁵ DIRECTV Response at 6.

have avoided if it had continued the program with SS/L. Furthermore, a comparison with DIRECTV 14/RB-1, which was completed by SS/L more than eight months ago, confirms that reprocurring DIRECTV 15/RB-2 resulted in delay. DIRECTV argues that DIRECTV 14/RB-1 was finished first because it was contracted for before DIRECTV 15/RB-2¹⁶ – but that simply shows that DIRECTV prioritized DIRECTV 14/RB-1 over DIRECTV 15/RB-2, a business decision that does not justify milestone relief.

Furthermore, the facts contradict DIRECTV’s claim that the multi-band, multi-mission capabilities of DIRECTV 15/RB-2 had no effect on the timing for the satellite construction.¹⁷ DIRECTV argues that “the delay was caused by the 17/24 GHz BSS payload itself.”¹⁸ However, as SES has shown, proceeding with Ka FSS payloads in addition to the 17/24 GHz Ka BSS payloads for both DIRECTV 14/RB-1 and DIRECTV 15/RB-2 clearly required more Ka-band TWTAs than would have been needed for single-band spacecraft.¹⁹ Because these TWTAs were the “gating item for completion of the satellite” by DIRECTV’s own characterization,²⁰ the choice to maintain the multiple payload design for these spacecraft inevitably slowed down completion of both satellites.

Thus, DIRECTV completely failed to take steps to minimize RB-2 construction delay once it occurred, as required by Commission policy.²¹ Having experienced issues with the timely delivery of Ka-band TWTAs, DIRECTV was obligated to pursue avenues focused on

¹⁶ *Id.* at 6.

¹⁷ *Id.* at 7.

¹⁸ *Id.*

¹⁹ SES Petition at 10.

²⁰ DIRECTV Response at 6.

²¹ *WB Holdings 1 LLC*, 20 FCC Rcd 10846, 10848, ¶ 6 (Sat. Div. 2005) (the Commission expects a licensee “to attempt to resolve issues that may impede its ability to meet its milestones”).

limiting the impact on the RB-2 schedule. Instead, DIRECTV used the delay as an excuse to change satellite manufacturers and start the RB-2 construction process anew. Given its actions, DIRECTV is clearly ineligible for milestone relief.

B. The Commission Must Not Allow DIRECTV to Rewrite its Milestone Schedule

DIRECTV does not supply any public interest rationale whatsoever – much less demonstrate “unique and overriding public interest concerns”²² – to justify the proposed departure from its milestone schedule. To the contrary, DIRECTV is the only entity that would benefit from a Commission decision to modify or waive the RB-2 licensing conditions, and DIRECTV voluntarily made the choices that resulted in its failure to meet the milestone. Allowing DIRECTV to evade the Commission’s framework for strict enforcement of milestones would undermine the public interest objectives those policies are intended to achieve.

As a threshold matter, the Commission must reject DIRECTV’s claim that extension or waiver is justified simply because DIRECTV proceeded with RB-2 construction.²³ Rather than showing the required “commitment to make productive use”²⁴ of the RB-2 license, the facts here make clear that DIRECTV has been attempting to set the terms on which it would build and launch the RB-2 payload, without regard to Commission mandates. Specifically, DIRECTV has plainly been engaged in an attempt bootstrap its way into milestone relief by expending funds at its own risk, without seeking or obtaining Commission sanction for its milestone noncompliance. Condoning that behavior by granting relief would be tantamount to giving DIRECTV an

²² *New ICO*, 22 FCC Rcd at 2233, ¶ 14. *See also* 47 C.F.R. § 25.117(e).

²³ DIRECTV Response at 8-9.

²⁴ *Id.* at 8.

override of the RB-2 license terms and would set a precedent completely at odds with the purpose of the Commission's milestone framework.

As SES has shown, DIRECTV has been in violation of its milestone requirements since October of 2011, when it terminated its agreement with SS/L and entered into a new construction contract with Astrium.²⁵ At that point, both the non-contingent contract milestone and the Critical Design Review ("CDR") completion milestone for RB-2 had passed, and DIRECTV was no longer in compliance with either of those license conditions. Specifically, the Astrium contract did not provide for completion of RB-2 within the required time period, and therefore was inconsistent with the requirement that "a non-contingent construction contract must set forth a specific construction schedule that is consistent with the licensee's milestones."²⁶ DIRECTV's decision to change manufacturers also meant that it had not yet completed CDR under the new contract.

Prior to terminating its SS/L contract, DIRECTV could have sought guidance from the Commission regarding its intention to repro cure DIRECTV 15/RB-2 and its stated reasons for doing so. At a minimum, once DIRECTV terminated the SS/L contract and was therefore out of compliance with its initial implementation milestones, DIRECTV should have immediately filed a request for extension or waiver of the milestone dates to allow the Commission to determine whether cancellation of the RB-2 license was required. DIRECTV, however, chose not to do so. By DIRECTV's own admission, DIRECTV did not even submit the Astrium contract to the

²⁵ SES Petition at 9-10.

²⁶ Letter of Robert G. Nelson, Chief, Satellite Division, International Bureau, to Bettina Eckerle, General Counsel, DigitalGlobe, Inc., dated Apr. 14, 2006, DA 06-682 at 2.

Commission until *nine months* after it was executed.²⁷ Even then, DIRECTV did not make a public filing requesting a milestone extension or waiver and presenting its case for such relief.²⁸

To the contrary, DIRECTV's actions suggest an attempt to minimize the chance that the Commission staff would be alerted to DIRECTV's milestone violations and to conceal the relevant facts from interested parties such as SES and Ciel. In particular, the publicly available copy of the July 2012 filing does not even mention the change in satellite manufacturers, but only states that DIRECTV is submitting "the most recent copy" of the construction contract.²⁹ Furthermore, unlike its initial submission of the SS/L contract, DIRECTV redacted the Astrium contract in its entirety, without ever justifying why the whole agreement needed to be treated confidentially.³⁰ As a result, the fact that DIRECTV had switched manufacturers was hidden from third parties.

²⁷ Specifically, although DIRECTV entered into the Astrium contract in October of 2011 (DIRECTV Response at 6), it did not file the contract with the Commission until July 27, 2012 (DIRECTV Response at 8 & n.19). DIRECTV makes no attempt to justify this lag in advising the Commission that it had cancelled the SS/L contract and entered into a new, non-milestone-compliant, agreement with Astrium.

²⁸ As a result, DIRECTV's assertion that its submission of the Astrium contract sufficed to raise the underlying issues relating to milestone compliance (DIRECTV Response at 7-8) is baseless.

²⁹ Letter from William M. Wiltshire to Marlene H. Dortch, File Nos. SAT-LOA-20060908-00100, SAT-AMD-20080114-00014, and SAT-AMD-20080321-00077 (filed July 27, 2012), Request for Confidential Treatment at 1.

³⁰ *See id.* ("The actual submitted materials have been redacted in their entirety from this public filing."). Although DIRECTV heavily redacted the original SS/L contract before filing it in 2010, the basic contractual framework was publicly available, including the identification of the parties. *See* Fixed Price Satellite Contract for the DIRECTV RB-2 Satellite Program between Space Systems/Loral, Inc. and DIRECTV Enterprises, LLC, submitted as an attachment to letter from William M. Wiltshire to Marlene H. Dortch, File Nos. SAT-LOA-20060908-00100, SAT-AMD-20080114-00014, and SAT-AMD-20080321-00077 (filed July 26, 2010). The confidentiality request submitted with the Astrium agreement provides no justification for DIRECTV's departure from its earlier practice regarding contract confidentiality, and there is no reason why *every* element of the Astrium contract, including the contracting parties' names, should be deemed a trade secret or considered competitively sensitive.

Rather than seeking milestone relief before abandoning the SS/L contract, or in October of 2011 when DIRECTV's decision to reprocur RB-2 caused the company to be in violation of the RB-2 license terms, or even in July of 2012 when it filed the Astrium agreement, DIRECTV waited for years longer, finally submitting the instant modification in late June of 2014. DIRECTV's assertion that this submission was nevertheless timely³¹ does not pass the straight face test. DIRECTV observes that in one of the cases cited by SES, the licensee had waited until after the applicable milestone passed before advising the Commission of the reason for delay and seeking extension or waiver.³² But that is what DIRECTV has done as well. Again, the non-contingent contract and CDR deadlines had already expired when DIRECTV went back to square one, terminating its presumably milestone-compliant SS/L contract and making the CDR performed pursuant to that contract meaningless. Thus, the Commission's finding in *Motorola* is equally applicable here:

The Applicants failed to apprise us in a diligent manner . . . of the problem that allegedly thwarted timely compliance with the milestone requirement. . . . Not having even taken the basic step of apprising us of the alleged difficulty prior to expiration of the time allowed for compliance, the Applicants must accept the consequences of their failure to satisfy the milestone requirement within that time-period.³³

Even relative to the launch and operations milestone, DIRECTV's decision to file in June for relief from a July milestone date must be viewed as unacceptably late in the process under Commission precedent. For example, in the *PanAmSat* decision, the Commission denied a request for milestone relief submitted "just days before the expiration" of the applicable

³¹ DIRECTV Response at 7-8.

³² *Id.* at 7 & n.18, citing *Motorola, Inc.*, 17 FCC Rcd 16543 (IB 2002) ("*Motorola*") at 16550-51, ¶ 21.

³³ *Motorola*, 17 FCC Rcd at 16550-51, ¶ 21.

milestone.³⁴ In contrast, in ruling on a GE Americom milestone filing with the same underlying rationale – proposed addition of inter-satellite links to a licensed Ka-band constellation – the Commission granted a waiver based in part on the fact that GE Americom had filed its request for milestone extension “well before its first milestone deadline . . . and kept in close contact with [the] Commission to monitor this request.”³⁵ DIRECTV’s actions with respect to RB-2 follow the PanAmSat, not the GE Americom, model.

Similarly, in the EchoStar case that DIRECTV cites in its response,³⁶ EchoStar’s request for milestone extension was considered “timely” because it was filed six months prior to the applicable deadline.³⁷ The Commission, however, did not act on the EchoStar request until more than four years later, when the satellite had been completed and its launch was imminent.³⁸ Thus, unlike DIRECTV, EchoStar submitted an extension with ample time for consideration before the milestone at issue, and as required, proceeded with work on the satellite while the extension request was pending before the Commission.

DIRECTV does not even attempt to explain its decision to put off filing for milestone relief until almost the last possible minute. To the contrary, the facts relating to TWTA supplier delays that DIRECTV claims support its request for relief date back three years. As a result, only one conclusion can be drawn from DIRECTV’s delayed submission – the company

³⁴ *PanAmSat Licensee Corp.*, 15 FCC Rcd 18720 (IB 2000) (“*PanAmSat*”) at 18723, ¶ 11.

³⁵ *GE American Communications, Inc.*, 16 FCC Rcd 11038 (IB 2001) at 11042, ¶ 10. *See also id.* at 11040, ¶ 7 (GE Americom “filed its request for milestone extension six months after receiving its initial license and six months prior to the date of its first milestone”).

³⁶ DIRECTV Response at 8 & n.22, *citing EchoStar Satellite Corp.*, 18 FCC Rcd 15875 (IB 2003) (“*EchoStar*”).

³⁷ *EchoStar*, 18 FCC Rcd at 15876, ¶ 3.

³⁸ *Id.* at 15878, ¶ 9 (“Although EchoStar’s construction completion milestone has expired, EchoStar filed a milestone extension request in a timely manner and has in fact completed construction of Echostar 9, which is scheduled for an imminent launch.”) (footnote omitted).

intentionally waited to seek milestone relief and continued to expend money on construction of the satellite in order to present the Commission with the *fait accompli* of a nearly finished satellite. Rather than giving the Commission the opportunity to review and pass on DIRECTV's allegations in support of milestone relief, DIRECTV decided to keep building, presumably on the theory that the Commission would be loath to cancel the RB-2 license once the satellite was complete.

The Commission cannot countenance such a blatant and cynical attempt to circumvent Commission requirements, regardless of how much money DIRECTV has spent on RB-2. The Commission has previously rejected suggestions that a milestone deadline represents a "flexible, qualitative assessment of a licensee's construction progress," rather than a "cut-off date."³⁹ Granting relief to DIRECTV would conflict with this determination by allowing DIRECTV to treat its milestones as optional guidance, not mandatory obligations.

Furthermore, extension or waiver here would undermine the express purpose of the milestone rules – expediting service to the public. By deferring Commission consideration of its milestone compliance for three years, DIRECTV has essentially robbed the Commission of the opportunity to let other ready, willing and able parties to bring timely service to the public. Granting a waiver or extension now would also set an unacceptable precedent that a licensee can ignore its milestone schedule with impunity by failing to seek relief until just before the milestone date while continuing to build its satellite. As long as the licensee had paid for the bulk of construction and launch costs, it could claim that any delay in service to the public was justified. This would render the Commission's milestone framework meaningless, thwarting its public interest goals.

³⁹ *Columbia Communications Corp.*, 15 FCC Rcd 16496 (IB 2000) ("*Columbia IP*") at 16502, ¶ 17.

II. RB-2 OPERATING AUTHORITY MUST BE DENIED OR CONDITIONED ON COMPLETION OF COORDINATION

The SES Petition also demonstrated that the RB-2 payload modification must be denied for noncompliance with Commission rules and policies.⁴⁰ In particular, DIRECTV has failed to take into account Ciel's higher-priority Ciel-6i payload, and has proposed RB-2 operations that would clearly and impermissibly interfere with Ciel-6i.⁴¹ This fact alone renders DIRECTV's technical submission defective because DIRECTV has provided purely theoretical operational characteristics, not a concrete proposal for implementing the required protection of Ciel-6i.⁴²

At a minimum, as both SES and DISH have shown, the Commission must defer or condition grant of operating authority until the required coordination is completed.⁴³ DIRECTV opposes deferral⁴⁴ but makes no attempt to reconcile its position here with its insistence that operating authority for the SES-3 C- and Ku-band payloads be withheld pending coordination in the 17/24 GHz BSS band.⁴⁵ SES has pointed out that the SES-3 decision acceding to DIRECTV's demands⁴⁶ represented an unjustified departure from Commission precedent.⁴⁷ However, having determined that the 17/24 GHz BSS band at 103° W.L. must be coordinated

⁴⁰ SES Petition at 19-23.

⁴¹ The DISH Petition includes a demonstration that a representative 36 MHz carrier on Ciel-6i would have a negative margin of 17.6 dB when interference from the proposed RB-2 operations is taken into account. DISH Petition, Appendix A.

⁴² See 47 C.F.R. §§ 25.114(d)(4) & 25.140.

⁴³ SES Petition at 22-23; DISH Petition at 5-6.

⁴⁴ DIRECTV Response at 9-10.

⁴⁵ Petition to Deny or Defer of DIRECTV, LLC, File Nos. SAT-RPL-20121228-00227 & SAT-AMD-20131113-00132, filed Dec. 16, 2013, at 14.

⁴⁶ *SES Americom, Inc.*, 29 FCC Rcd 3678 (IB 2014).

⁴⁷ SES Petition at 22-23 & n.60 (citing cases in which the Commission rejected requests that it defer grant of operating authority in a frequency band pending completion of coordination in that band).

before SES-3 can operate in other bands (and causing significant hardship for SES as a result), the Commission cannot possibly rationalize allowing DIRECTV to operate in the 17/24 GHz BSS frequencies at this location when it has not completed coordination with the higher priority Ciel network.⁴⁸

DIRECTV argues that because there is already a coordination condition in the RB-2 license and coordination discussions are under way, “there is nothing more for the Commission to do.”⁴⁹ But DIRECTV has simply ignored the existing RB-2 coordination condition, and the negotiations that have occurred to date were started only recently at Ciel’s instigation. Thus, there is no evidence that DIRECTV on its own would ever have taken steps to fulfill its coordination obligations, and the Commission cannot justify taking a “hands off” approach going forward.

Instead, the Commission has made clear that when justified by the facts, it will go beyond the standard licensing provisions in order to ensure protection of higher priority networks.⁵⁰ The RB-2 license, tracking the language of Section 25.111(b), specifically contemplates that

⁴⁸ Granting preferential treatment to DIRECTV here would be particularly unfair as DIRECTV would not suffer material harm from a Commission decision denying RB-2 operating authority or imposing a coordination condition. As SES has observed, DIRECTV assumed the risk that it would not be able to operate RB-2 if it could not successfully coordinate the payload. SES Petition at 19. Furthermore, even if DIRECTV is barred from operating the 17/24 GHz BSS payload at 103° W.L., DIRECTV 15/RB-2 would still be available for other missions and other orbital locations, consistent with DIRECTV’s plan for the spacecraft. *See id.* at 17-18.

⁴⁹ DIRECTV Response at 2.

⁵⁰ *The Establishment of Policies and Service Rules for the Broadcasting-Satellite Service at the 17.3-17.7 GHz Frequency Band and at the 17.7-17.8 GHz Frequency Band Internationally, and at the 24.75-25.25 GHz Frequency Band for Fixed Satellite Services Providing Feeder Links to the Broadcasting-Satellite Service and for the Satellite Services Operating Bi-directionally in the 17.3-17.8 GHz Frequency Band*, Second Order on Reconsideration, 25 FCC Rcd 15718 (2010) (“17/24 GHz Reconsideration Order”) at 15725, ¶ 13 (declining to adopt “additional blanket coordination conditions” but making clear that the Commission “may adjust licensing conditions if circumstances warrant”).

additional conditions may be imposed on radio authorizations “for which coordination has not been completed” (as is the case here) and “to effect coordination of the frequency assignments with other Administrations.”⁵¹ Commission precedent supports imposing a more explicit condition here to ensure compliance with the “treaty obligation” that requires the U.S. to adhere to International Telecommunication Union (“ITU”) “procedures regarding coordination and notification of satellite networks licensed by the United States.”⁵²

For example, the Commission added a provision to the license for the EchoStar 11 spacecraft requiring EchoStar “to tailor its EchoStar 11 operations to avoid interference to any operational system that has a higher ITU priority than the priorities obtained by EchoStar.”⁵³ In both *EchoStar 11* and *Star One C5* the added restrictions took effect only upon launch and operation of a higher priority spacecraft, but here the higher priority Ciel-6i payload is already operating. As a result, no hypothetical or prospective language is needed – the Commission must expressly instruct DIRECTV that it cannot operate the RB-2 payload unless and until it has successfully completed coordination with Ciel. This constraint is necessary to effectuate U.S. obligations under the ITU rules and prevent impermissible harmful interference to the Ciel-6i satellite network.

⁵¹ *DIRECTV Enterprises, LLC*, Order and Authorization, 24 FCC Rcd 9393 (IB 2009) (“*RB-2 Order*”) at 9407, ¶ 41, *recon. denied*, 27 FCC Rcd 5932 (IB 2012). See also 47 C.F.R. § 25.111(b).

⁵² *17/24 GHz Reconsideration Order*, 25 FCC Rcd at 15272, ¶ 8.

⁵³ *Spectrum Five, LLC Petition for Clarification of Condition in EchoStar 11 License*, Order, 23 FCC Rcd 12786 (IB 2008) (“*EchoStar 11*”) at 12788, ¶ 8. See also *Star One S.A.*, 23 FCC Rcd 10896 (Sat. Div. 2008) (“*Star One C5*”) at 10896-97, ¶ 3 (adding conditions to “address the situation in which, in the absence of a coordination agreement, a satellite network with higher ITU filing-date priority than Star One C5 goes into operation, and Star One C5’s operations interfere with the operations of the higher priority space station”).

At such time as it has finalized a coordination agreement with Ciel, DIRECTV will certainly need to update the technical terms of the proposed RB-2 operations accordingly. DIRECTV suggests that there is no rule or precedent supporting a requirement to file such an update, and even claims that mandating it would compromise the confidentiality of coordination discussions.⁵⁴ This reaction is puzzling at best. As discussed above, the RB-2 license itself contains a provision specifying that it is subject to further modification “to effect coordination.”⁵⁵ Furthermore, the Commission has previously imposed a requirement to file updated technical data following completion of coordination as part of a proceeding in which DIRECTV actively participated.⁵⁶ For the same reasons expressed in *Spectrum Five*, any changes to the RB-2 parameters agreed to during the coordination process must be incorporated into a further modification and subject to notice and comment before operation of the RB-2 payload can be authorized.

⁵⁴ DIRECTV Response at 10.

⁵⁵ *RB-2 Order*, 24 FCC Rcd at 9407, ¶ 41.

⁵⁶ *See Spectrum Five, LLC*, Order and Authorization, 21 FCC Rcd 14023 (IB 2006) (“*Spectrum Five*”) at 14033, ¶ 18:

we recognize that Spectrum Five will have to conduct coordination negotiations with the affected DBS operators at the 110° W.L. and 119° W.L. orbital locations, and that the characteristics of its downlink antenna beams may change in order to achieve agreement with those operators. Therefore, we condition grant of Spectrum Five’s Petitions on its supplying, within 30 days of completing critical design review, the final characteristics of its beams to the Commission.

III. CONCLUSION

For the foregoing reasons and those set forth in the SES Petition, the Commission should deny DIRECTV's requests for extension of the RB-2 milestones and modification to the payload's parameters. At a minimum, the Commission must withhold operating authority for RB-2 pending the completion of coordination.

Respectfully submitted,

SES Americom, Inc.

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Dated: September 25, 2014


Ciel Satellite Limited Partnership

/s/ Scott Gibson

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AFFIDAVIT

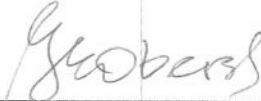
I, Michael Bernard Haughian, hereby declare under penalty of perjury that I am Managing Director of Ciel Satellite Limited Partnership ("Ciel") and that I have reviewed the foregoing Reply and that all the factual statements therein relating to Ciel are true and correct to the best of my knowledge, information, and belief.


Michael Bernard Haughian
Managing Director
Ciel Satellite Limited Partnership

Dated: September 25, 2014

AFFIDAVIT

I, Gerald E. Oberst, hereby declare under penalty of perjury that I am President and CEO of SES Americom, Inc. ("SES Americom") and that I have reviewed the foregoing Reply and that all the factual statements therein relating to SES Americom are true and correct to the best of my knowledge, information, and belief.



Gerald E. Oberst
President and CEO
SES Americom, Inc.

Dated: September 25, 2014

CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of September, 2014, a true copy of the foregoing "Reply of SES Americom, Inc. and Ciel Satellite Limited Partnership" is being sent by first class, U.S. Mail, postage paid, to the following:

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