

April 16, 2021

**VIA IBFS and ECES**

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
45 L Street, NE  
Washington, DC 20554

**Re:** Application For Review & Request For Stay

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 License Corp., IBFS File No. SAT-MOD-20070531-00076, FCC Call Sign: S2103

Swarm Technologies, Inc., IBFS File Nos. SAT-LOA-20181221-00094, SAT-MOD-20200501-00040, SAT-AMD-20200504-00041, FCC Call Sign S3041

Dear Ms. Dortch:

ORBCOMM License Corp. (“ORBCOMM”) wants to respond briefly to the Notice of Ex Parte letter filed on April 14, 2021 by counsel for Swarm Technologies, Inc. (“Swarm”) (the “Swarm Letter”) regarding the above-referenced matter. The Swarm Letter indicates that ORBCOMM’s argument for an automatic stay was “beyond frivolous” and “an obvious delay tactic.” Neither of these accusations are true.

As ORBCOMM explained in its April 9, 2021, Request for Stay pursuant to Section 1.102 of the Commission’s Rules, the challenged March 10, 2021, letter issued by the Satellite Division (“*Satellite Division Letter*”)<sup>1</sup> stated that it was issued under Section 1.2 of the

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<sup>1</sup> The Swarm letter incorrectly characterized the *Satellite Division Letter* as a “bureau decision.”



Commission's Rules. Section 1.2 cites to Section 5(d) of the Administrative Procedures Act (codified at 5 U.S.C. 554), and that provision of the APA addresses "adjudications." Thus, as ORBCOMM recognized in its Request For Stay, it is unclear whether the automatic stay provisions, which apply to "hearings," is applicable to declaratory rulings under Section 1.2. Taking due account of that ambiguity, ORBCOMM separately requested a stay under the Commission's discretionary authority to issue a stay. For these reasons, the case cited in the Swarm Letter<sup>2</sup> to support Swarm's assertion that ORBCOMM should be "admonished" is wholly inapposite to current situation, both because ORBCOMM has requested a stay, and because that cited case did not address the status of declaratory rulings issued under Section 5(d) of the APA.

The assertion in the Swarm Letter that ORBCOMM's Request For Stay is a delay tactic is also entirely without merit. Indeed, as ORBCOMM explained in its Request for Stay, a stay is warranted under the four-factor test, even if it is not granted automatically. Moreover, far from seeking to delay resolution of the issues, ORBCOMM in its Application for Review again documented its longstanding efforts to resolve matters with Swarm, and suggested specific steps the Commission should take to ensure that all the affected parties engage in good-faith negotiations to reach a settlement agreement expeditiously.

Finally, ORBCOMM requests clarification of the *ex parte* status of this proceeding. Although the *Satellite Division Letter* asserts that it is issued pursuant to the declaratory ruling provision of the Commission's rules, Swarm never filed a petition for declaratory ruling, and the Commission never docketed such a proceeding. The *Satellite Division Letter* is captioned solely with the File Number for ORBCOMM's 2007 Modification Application, which unlike the original Swarm application, was never made subject to the "permit-but-disclose" rules.<sup>3</sup>

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<sup>2</sup> *Fox Sports Net Ohio, LLC v. Massillon Cable TV, Inc.*, Order, 28 FCC Rcd. 431 ¶ 2-3 (Media Bur. 2013).

<sup>3</sup> *Public Notice*, Report No. SAT-01376, DA No. 19-164, released March 8, 2019.

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Swarm's *ex parte* meeting may thus have been a violation of the *ex parte* Rules.<sup>4</sup> Moreover, Swarm also did not serve a copy of its April 14<sup>th</sup> Notice of Ex Parte letter on ORBCOMM.

Respectfully submitted,



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<sup>4</sup> 47 C.F.R. §1.1214.