

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

In the Matter of)	
)	
Applicability of NVNG MSS Frequency)	IB Docket No. 21-___
Assignments Outside the National Territory of)	
the United States)	ORBCOMM Licensee Corp., IBFS File
)	No. SAT-MOD-20070531-00076
March 10, 2021, International Bureau Satellite)	
Division Letter Declaratory Ruling)	Swarm Technologies, Inc., IBFS File No.
)	SAT-LOA-20181221-00094, SAT-
)	MOD-20200501-00040, SAT-AMD-
)	20200504-00041
)	

REPLY TO OPPOSITION

ORBCOMM License Corp. (“ORBCOMM”) cannot possibly respond in the allotted five pages (47 C.F.R. 1.115(f)) to each of the countless mischaracterizations, misstatements, and misdirections set forth in Swarm’s Opposition. Simply put, the Commission should disregard Swarm’s divisive smoke screen. As explained in ORBCOMM’s Application for Review, the above-captioned letter (the “*Satellite Division Letter*”) misapplied Commission decisions for the NVNG MSS and exceeded authority delegated to the International Bureau. Nothing in the Swarm Opposition refutes ORBCOMM’s demonstration of these facts.

In establishing the NVNG MSS Rules, the Commission explicitly declined to apply the band plan globally.¹ The Commission did not change that policy in the Second NVNG MSS processing round.² That policy was never addressed or altered by the 2008 Bureau decision

¹ *In the Matter of Application of Orbital Communications Corporation*, 9 FCC Rcd. 6476 (1994), at ¶ 15.

² *In the Matter of Amendment of Part 25 of the Commission’s Rules to Establish Rules and Policies Pertaining to the Second Processing Round of the Non-Voice, Non-Geostationary Mobile Satellite Service*, 13 FCC Rcd. 9111 (1997), at ¶ 128. *See also*, *Orbital Communications Corporation*, 13 FCC Rcd. 10828 (1998) at ¶ 28. That discussion occurred in the context of the

modifying ORBCOMM's space segment license to add spectrum and construct and launch its second generation constellation, even though the Commission was actively considering doing so in the Big LEO service at that time. And that policy also was never altered in any of the several subsequent ORBCOMM space segment license modification grants, or in the Swarm space segment license issued by the Bureau.³ Moreover, neither Swarm's mischaracterization of the Bureau's licensing decisions nor the *Satellite Division Letter*'s revisionist history (at pp. 4-5) alters the Commission's explicit decisions not to apply NVNG MSS bandsharing plans globally.

ORBCOMM has *never* claimed "that it may operate outside the United States in whatever frequencies it wishes because the Commission declined to adopt a global bandsharing plan." (Swarm Opposition at p. 17). The Commission's original licensing decision authorized ORBCOMM to construct, launch and operate satellites in the 148-149.9 MHz and 137-138 MHz bands, and limited operations in the United States to portions of those bands consistent with a domestic sharing plan with the other applicant.⁴ Moreover, the United States coordinated ORBCOMM (LEOTELCOM-1) internationally to operate across the 148-150.05 MHz and 137-138 MHz bands globally. Contrary to Swarms assertions, ORBCOMM believes it is operating in full accordance with its FCC authorization. Furthermore, ORBCOMM's rightful participation in current CEPT proceedings regarding spectrum sharing with Swarm and other new entrants under

rule that prohibits an NVNG MSS provider from acquiring or enjoy any exclusive rights created by contracts or working arrangement. ORBCOMM has no such agreements.

³ In any event, a Bureau does not have authority to reverse a Commission policy decision on delegated authority (47 C.F.R. §0.261(b)(1)(i) and (ii)).

⁴ ORBCOMM subsequently obtained authority from the Commission to add additional spectrum for use inside and outside the United States, including the 149.9-150.05 MHz, 400.15-401 MHz and the 435 MHz bands, but such requests for additional frequencies are not at all inconsistent with ORBCOMM's having been licensed to operate outside the United States throughout the 148-149.9 MHz band since 1994. Thus, those subsequent modification requests are not an admission by ORBCOMM that the Commission changed its policy of not applying the NVNG MSS band plan globally.

the applicable CEPT regulatory structure is by no means an attempt to stifle competition, and ORBCOMM's conduct in those proceedings in fact proves the opposite.

In the Application for Review, ORBCOMM also raised questions regarding the extent of the Commission's authority to regulate earth station transmit operations in foreign countries, both with regard to the Commission's regulatory authority over satellite receivers outside the United States, and with regard to issues of foreign countries' sovereignty. In doing so, ORBCOMM distinguished the NVNG MSS case with the Globalstar/Iridium rulemaking and license modification proceedings, where the record was clear that co-frequency sharing was not possible.⁵

The Commission does not have to address these difficult issues in this current proceeding, however, because regardless of the outer bounds of the Commission's authority outside the United States and its obligation to respect foreign countries control over uplink operations within their territory, the Commission explicitly declined to adopt a global bandsharing plan for NVNG MSS, and has not yet modified that decision with regard to the NVNG MSS. Thus, the Commission can revoke the *Satellite Division Letter* on the procedural grounds that the Satellite Division exceeded its authority in issuing a declaratory ruling that reverses the Commission's NVNG MSS policies in response to Swarm's request that the Bureau send ORBCOMM a letter

⁵ See, Reply of ORBCOMM, SAT-AMD-20200504-00041, September 14, 2020, at pp. 8-13. Thus, Swarm's claim in its Opposition to the Stay Request (at p. 12) that ORBCOMM has set an impossible standard is at best misleading. We have said that sharing is more efficient, and the Second Round sharing agreement, and as suggested by recent Swarm CEPT submissions, demonstrate that it can be feasible for TDMA/FDMA NVNG MSS systems to share uplinks on a co-frequency co-coverage basis. As a separate matter, to the extent that Swarm included arguments in its Opposition to the Stay Request with regard to "likelihood of success on the merits" that were not included in its Opposition to the Application for Review, it is not clear whether Swarm has abandoned those arguments, or whether it is attempting an end-run around the 25-page limit for oppositions to Applications for Review.

(not that the Bureau undertake the procedures for issuing a declaratory ruling and formally issue such a ruling in accordance with the applicable procedural Rules and law).⁶

The Commission also easily can and should reject Swarm's procedural challenges to the Application for Review. With regard to ORBCOMM's standing, Swarm confuses "injury" for standing purposes with "irreparable harm" for stay purposes. Requiring ORBCOMM to shut down permissible operations outside the United States provides ORBCOMM with standing, reinforced by the fact that the *Satellite Division Letter* is only captioned with ORBCOMM's file number.⁷ Nor is there any merit to Swarm's claim that the Application for Review is an untimely challenge to Swarm's initial license or the 2008 ORBCOMM Modification order. Both of those orders were silent with regard to the global applicability of the NVNG MSS bandsharing plan.⁸

ORBCOMM continues to believe that the best path forward for all the parties is for the Commission to set a deadline (six months, or shorter if Swarm prefers) for negotiation amongst the parties of a sharing agreement, which the parties can certainly agree to on a global basis, regardless of the extent of the Commission's jurisdiction. That is normally the Commission's preference, as well as that of CEPT, because the parties are best positioned to deal with the

⁶ Swarm October 16 letter at pp. 1 and 3. Swarm's Opposition (at p. 24) cited one case where a Bureau issued a declaratory ruling on its own motion. A search of EDOCS revealed only one other decision where a Bureau issued a declaratory ruling on its own motion (DA 07-2863), and neither that case nor the case cited by Swarm were subject to an Application for Review that could have addressed whether such an action is permissible under delegated authority.

⁷ In claiming ORBCOMM is not harmed, Swarm (at p. 9) also repeats a previously debunked argument that ORBCOMM is not using all of its assigned spectrum. The quoted language refers to downlink spectrum, which is not shared with terrestrial users, and is not as heavily used because of the asymmetric nature of ORBCOMM's user traffic.

⁸ As for Swarm's argument that the Application somehow failed to "concisely and plainly state the questions presented for review," ORBCOMM did so in its Summary at p. i. Swarm seems to think that this is the game show "Jeopardy," where it must be in the form of a question.

technical issues involving their systems. Swarm, however, has refused ORBCOMM's numerous invitations to constructively pursue such sharing discussions,⁹ instead baselessly accusing ORBCOMM of merely seeking to delay. Rather than continuing to disingenuously stonewall ORBCOMM's good faith efforts to resolve inter-system sharing matters, it should be in Swarm's interest to immediately engage in such discussions. Among other things, Swarm's pending modification application in the current processing round re-opened the sharing issues across the band.¹⁰ ORBCOMM's invitation to have the Commission serve as a mediator is yet another affirmation that ORBCOMM has and will consistently act in good faith to reach a sharing agreement with Swarm. ORBCOMM continues to believe that a negotiated settlement is likely to be faster than the Commission initiating the requisite rulemaking and/or license modification proceedings to change the policy of not applying the NVNG MSS band plan globally. Accordingly, the Commission should disregard the Swarm Opposition, and act expeditiously to grant the relief requested in ORBCOMM's Application for Review.

Respectfully submitted,



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⁹ Indeed, the October 19 ORBCOMM email that Swarm appended to its pleading included such an invitation, but Swarm chose instead to plow ahead with litigating these issues at the FCC, while complaining to Chairman Pai of the costs of its chosen route (Jan. 15 *ex parte*).

¹⁰ *Final Analysis Communications Services, Inc., et al.*, 16 FCC Rcd 21453 (2001). That is why the other parties to the processing round should participate in the sharing negotiations. Alternatively, Swarm could withdraw its Modification and Amendment applications.

CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of May, 2021, I caused a true and correct copy of the foregoing "REPLY TO OPPOSITION" of ORBCOMM License Corp. to be sent by first class mail, postage prepaid, and E-Mail to the following:

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