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

In the Matter of	
KUIPER SYSTEMS LLC	File No. SAT-MOD-20210806-00095
Application for Modification of Authorization for the Kuiper System	
SPACE EXPLORATION HOLDINGS, LLC	File No. SAT-MOD-20200417-00037
Application for Modification of Authorization for the SpaceX NGSO System	

RESPONSE OF SPACE EXPLORATION HOLDINGS, LLC

Space Exploration Holdings, LLC ("SpaceX") files this response to comments filed by SES Americom, Inc. and O3b Limited (collectively, "SES/O3b")[1] that propose the Commission abandon its clearly stated rules determining whether non-geostationary orbit ("NGSO") satellite systems meet applicable equivalent power flux-density ("EPFD") limits. SES/O3b would instead substitute itself and other competitors as the sole arbiters of a new rule that conflicts with the ones set and administered by the International Telecommunication Union ("ITU"). The Commission must reject such efforts that will ultimately harm service to otherwise unserved consumers and run counter to Commission and ITU regulations.[2]

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1 *See* Comments of SES Americom, Inc. and O3b Limited, IBFS File Nos. SAT-MOD-20210806-00095 and SAT-MOD-20200417-00037 (Sept. 20, 2021) ("SES/O3b Comments").

2 With respect to SpaceX, SES/O3b's comments are also untimely. Although SES/O3b filed a petition for reconsideration of the SpaceX modification order, it did not raise any issue related to EPFD compliance. *See* Petition for Reconsideration of SES Americom, Inc. and O3b Limited, IBFS File No. SAT-MOD-20200417-00037 (May 27, 2021). Moreover, the pleading cycle in that proceeding closed months ago.

The Commission has established a system that relies upon the ITU to determine EPFD compliance, obviating the need for the Commission itself (or anyone else—least of all interested parties) to conduct a duplicative or biased analysis. SES/O3b would prefer to mandate its own preferred EPFD requirements and delegate enforcement of this new rule to itself. Specifically, SES/O3b would compel NGSO operators to provide evidence to demonstrate compliance with that novel standard for review by geostationary orbit ("GSO") satellite operators and other third parties. The Commission cannot, consistent with its obligations under the Administrative Procedure Act, apply the new approach proposed by SES/O3b in derogation of the formally promulgated EPFD rules. The SES/O3b proposal must be rejected.

Under Section 25.289 of the Commission's rules, NGSO systems are required not to cause unacceptable interference to GSO satellite networks.[3] By that same rule, an NGSO system operating in compliance with the ITU's EPFD limits "will be considered as having fulfilled this obligation with respect to any GSO network."[4] To establish compliance with these EPFD limits, the Commission has adopted a straightforward two-step process, set forth in Section 25.146. First, an NGSO applicant must certify that it will comply with the ITU's EPFD limits.[5] Second, the NGSO operator subsequently confirms its compliance by obtaining a "favorable" or "qualified favorable" EPFD finding from the ITU.[6]

In adopting this regime, the Commission concluded that it could rely on the ITU's review as a technical matter and that there would *not* be a separate compliance review by the Commission

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3 *See* 47 C.F.R. § 25.289.

4 *Id.*

5 *See* 47 C.F.R. § 25.146(a)(2). The ITU EPFD limits have been incorporated by reference into the Commission's rules in Section 25.108.

6 *See* 47 C.F.R. § 25.146(c).

because that would be unnecessary and duplicative.[7] Accordingly, if the ITU finds that an NGSO system complies with the ITU's EPFD limits, the Commission will find (pursuant to Section 25.289 of its rules) that the system will not cause harmful interference to GSO satellites. That is the end of the inquiry under the Commission's rules.

SES/O3b wishes to rewrite the rules to become the judge and jury. In place of the Commission's and ITU's rules, SES/O3b would make itself and other GSO operators the ultimate arbiters of EPFD compliance. Specifically, SES/O3b proposes that an NGSO applicant relying on multiple ITU filings be required to provide to any requesting party: (1) the input data used for analysis with the ITU's validation software; (2) the results obtained by running that validation software; and (3) confirmation that the EPFD input data files and results reflect the operations of its complete system pursuant to all ITU filings associated with its NGSO satellite constellation.[8] This is an odd request given SES/O3b's recognition that "[c]urrent ITU regulations require an evaluation of EPFD compliance for each ITU filing related to an NGSO system, but not for the NGSO system as a whole if the system relies on multiple ITU filings."[9] In other words, SES/O3b proposes to require NGSO operators undertake an EPFD analysis that is directly at odds with the one conducted by the ITU that the Commission's rules rely upon.

As the D.C. Circuit has long recognized, "it is elementary that an agency must adhere to its own rules and regulations."[10] The Commission's rules and regulations on EPFD compliance are clear—an NGSO operator must receive a "favorable" or "qualified favorable" finding from the

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7 *Update to Parts 2 and 25 Concerning Non-Geostationary, Fixed-Satellite Service Systems and Related Matters*, 32 FCC Rcd. 7809, ¶ 41 (2017).

8 SES/O3b Comments at 6.

9 *Id.* at 4.

10 *AT&T Corp. v. FCC*, 448 F.3d 426, 434 (D.C. Cir. 2006) (quoting *Reuters Ltd. v. FCC*, 781 F.2d 946, 950 (D.C. Cir. 1986)).

ITU. The Commission never adopted a provision for second-guessing that determination. To the contrary, the Commission has specifically disclaimed any intention to review the ITU's findings. Yet somehow SES/O3b contends that third parties should feel free to mandate their own version of EPFD analysis and require not only that NGSO operators comply, but that they provide confirming evidence for analysis by GSO operators. Such an approach is entirely inconsistent with the Commission's rules and would be arbitrary and capricious if imposed by the Commission on SpaceX.

At some point, the ITU may revise its EPFD analysis, ideally making it more fair for NGSOs. Under the Commission's rules, NGSO applicants will then be required to follow the new standard. But the Commission has specifically rejected the use of a duplicative review of the ITU's determination. SES/O3b may wish that the ITU had a different EPFD regime. Certainly, NGSO operators would prefer that the validation software did not make so many unfavorable assumptions about potential interference from NGSO systems. But no one—not SES/O3b, GSO operators, or NGSO operators—has the unilateral right to dictate a different analysis or a different EPFD standard. The Commission must reject SES/O3b's attempt to achieve that goal through a backdoor by proposing a license condition that runs directly contrary to the rules the Commission has validly promulgated.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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