

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

In the Matter of

SES-17 S.à r.l.

Request for U.S. Market Access for  
SES-17

File No. SAT-PDR-20190305-00014

**PETITION TO DENY OR DEFER IN PART**<sup>1</sup>

Pursuant to section 25.154(a)<sup>2</sup> of the rules of the Federal Communications Commission (“Commission” or “FCC”), AT&T Services, Inc., on behalf of DIRECTV Enterprises LLC<sup>3</sup> and its other affiliates (collectively, “AT&T”), hereby submits this Petition to Deny or Defer in part the above-captioned request for U.S. market access authority (the “Petition”) filed by SES-17 S.à r.l. (“SES”). Specifically, the Commission should deny or defer the Petition to the extent it seeks authority for SES’s Luxembourg-licensed SES-17 Ka-band spacecraft to provide nonconforming Fixed-Satellite Service (“FSS”) downlink operations on a protected basis in the 17.3-17.7 GHz

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<sup>1</sup> The deadline to file this Petition was May 6, 2019. However, the Commission’s IBFS database was down on that day, and therefore AT&T was unable to file. To the extent necessary, AT&T respectfully requests a waiver of the filing deadline.

<sup>2</sup> 47 C.F.R. § 25.154(a).

<sup>3</sup> DIRECTV is one of the nation’s largest multichannel video programming distributors (“MVPD”) and the largest DBS provider. DIRECTV currently provides satellite services to more than 19.2 million subscribers, each of which relies on DIRECTV to access high-quality service and a wide variety of content. In total, more than 29.1 million subscribers, including rural and remote-area dwellers across the country, today depend on DBS providers to access video services.

band in the United States.<sup>4</sup> As discussed in greater detail below, permitting downlink operations for an entirely new type of satellite service in the 17.3-17.8 GHz band is a matter that is more appropriately suited for consideration in the context of a formal rulemaking proceeding than a one-off request for waiver of the Commission's rules. This is especially true here given that the Commission has proposed lifting its longstanding freeze on Direct Broadcast Satellite ("DBS") applications in this frequency band in the pending *DBS Modernization* proceeding. Accordingly, the Commission should deny or defer this request for waiver in the Petition.

### **I. SES Seeks Via Waiver What Is Appropriately Accomplished Via Rulemaking**

Authorizing FSS downlink operations in the 17.3-17.7 GHz band segment is the kind of "regulatory change" that is best addressed in the context of a formal rulemaking proceeding. The Commission may exercise its discretion to grant a waiver "where particular facts would make strict compliance inconsistent with the public interest"<sup>5</sup> and "only if special circumstances warrant a deviation from the general rule."<sup>6</sup> The Petition fails to meet this standard.

SES does not seek permission to avoid "strict compliance" with the Commission's rules due to "special circumstances;" instead, it seeks a fundamental change to the basic regulation of the 17.3-17.8 GHz band. Indeed, the Petition makes no mention of any special circumstance at all. If granted, the Petition would undermine the validity of the general rules and policies

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<sup>4</sup> Petition at 7. Currently, the 17.3-17.8 GHz band is allocated for FSS, but only in the uplink direction and only for use by broadcasting-satellite service feeder links.

<sup>5</sup> *AT&T Corp. v. FCC*, 448 F.3d 426, 433 (D.C. Cir. 2006) (quoting *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990)).

<sup>6</sup> *Northeast Cellular*, 897 F.2d at 1165–66. See also 47 C.F.R. § 1.925(b)(3) (providing that the Commission may grant a waiver if it is shown that (a) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and grant of the requested waiver would be in the public interest; or (2) in light of unique or unusual circumstances, application of the rule(s) would be inequitable, unduly burdensome, or contrary to the public interest, or the applicant has no reasonable alternative.).

governing the band by throwing open the door for other parties to file similar “waiver” requests based on no “special circumstance” other than a desire to commence FSS downlink operations.<sup>7</sup>

In addition, the Petition does not meet the standard articulated by the Commission to justify waivers to the Table of Allotments.<sup>8</sup> In *Boeing*, the Commission authorized a change to the Table of Frequency Allotments where “there is little potential for interference into any service authorized under the Table of Frequency Allocations and *when the nonconforming operator accepts any interference from authorized services.*”<sup>9</sup> SES proposes nonconforming FSS downlink operations be authorized in the 17.3-17.7 GHz frequencies on a *protected* basis.<sup>10</sup> The Commission has refused to grant similar such waiver requests.<sup>11</sup>

Moreover, expanding the frequencies available to a particular service is the type of matter routinely addressed in rulemaking proceedings. In the Commission’s pending further notice of proposed rulemaking addressing Earth Stations in Motion (“ESIM”) communicating with geostationary space stations, for example, the Commission is considering whether certain ESIM

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<sup>7</sup> See *Space Expl. Holdings, LLC*, Memorandum Opinion, Order and Authorization, FCC 18-161, 2018 WL 6075368, at \*5 (rel. Nov. 19, 2018) (a waiver cannot “undermine the validity of the general rule.”).

<sup>8</sup> Petition at 7 (citing *The Boeing Company*, 16 FCC Rcd 22645, 22651 & n.48 (2001)).

<sup>9</sup> *Boeing*, 16 FCC Rcd at 22651 (emphasis added).

<sup>10</sup> Petition at 7-8 (“...SES asks that the Commission waive its rules to allow SES-17 to transmit to gateway earth stations in the 17.3-17.7 GHz frequencies without a requirement to modify its operations to accommodate future BSS facilities and with protection from harmful interference caused by such future FSS deployments.”).

<sup>11</sup> See, e.g., *In re GUSA Licensee, LLC*, 22 FCC Rcd. 61, 64–65 (2007) (denying GUSA’s request for waiver of the Table of Frequency Allocations where GUSA proposed to accept any interference resulting from currently licensed BAS operations at its proposed earth station site as a condition of license, but sought protection from interference from any future BAS operations in the vicinity of the proposed site).

operations should be allowed in the FSS downlink frequency bands 10.7-10.95 GHz, 11.2-11.45 GHz, and 17.8-18.3 GHz.<sup>12</sup>

SES itself appears to recognize that its request is more appropriately addressed via rulemaking. On the same day it filed the Petition, it also filed a Petition for Rulemaking seeking modification of the Commission's rules to permit FSS downlink operations in the 17.3-17.8 GHz band on a protected, co-primary basis.<sup>13</sup> The Petition for Rulemaking touches on a wide range of issues that would need to be considered to authorize FSS downlink operations in the 17.3-17.7 GHz band segment, thereby highlighting the complexity of the proposal and underscoring the need for a rulemaking.

Indeed, unlike in the context of a waiver request, notice and comment rulemaking provides interested parties a meaningful opportunity to fully participate in the regulatory (or deregulatory) process and provides the Commission with the inputs and perspectives necessary to carefully consider the requested change and its implications. Thus, to the extent that the Commission considers SES's request at all, it should do so only in the context of a formal rulemaking proceeding.

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<sup>12</sup> *In re Amendment to Parts 2 and 25 of the Commission's Rules to Facilitate the Use of Earth Station in Motion Communicating with Geostationary Orbit Space Stations in Frequency Bands Allocated to the Fixed Satellite Service*, Report and Order and Further Notice of Proposed Rulemaking, FCC 18-138 (rel. Sept. 27, 2018).

<sup>13</sup> *See In re Amendment of Parts 2 and 25 of the Commission's Rules to Enable Primary Fixed-Satellite Service (Space-to-Earth) Operations in the 17.3-17.7 GHz Band*, Petition for Rulemaking of SES Americom, Inc., RM-11839 (Mar. 5, 2019).

## **II. SES's Request Is Premature Given the Commission's Pending DBS Modernization Proceeding**

Moreover, introducing FSS downlink operations into the 17.3-17.8 GHz band now is particularly inappropriate given the Commission's pending *DBS Modernization* proceeding.<sup>14</sup> There, the Commission has proposed lifting its long-standing freeze on requests for new DBS systems.<sup>15</sup> Lifting the freeze, in place since 2005, will allow the Commission to begin accepting new applications for DBS licenses after a to-be-specified date.<sup>16</sup> Because DBS feeder uplinks are the primary service allocated to the 17.3-17.8 GHz frequencies in the United States, granting SES's Petition now – before the DBS freeze is lifted – would have the illogical effect of introducing new FSS downlink operations in the band *before* applicants are allowed to submit applications for new primary uses of the band. Granting SES's request would impose undue restrictions on current and prospective DBS operators whose services are already authorized in the 17.3-17.8 GHz band. The Commission should therefore deny or defer the Petition so as not to prejudice the outcome of that proceeding.

## **III. Conclusion**

AT&T respectfully submits that a waiver is the wrong vehicle for SES's request. Re-writing the Commission's rules to authorize FSS downlink operations in the 17.3-17.8 GHz band is a significant change that is most appropriately addressed in a rulemaking proceeding. Moreover, authorizing FSS downlink operations on a protected basis in the 17.3-17.8 GHz band is

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<sup>14</sup> *In re Amendment of the Commission's Policies and Rules for Processing Applications in the Direct Broadcast Satellite Service*, Second Notice of Proposed Rulemaking, FCC 18-157 (rel. Nov. 13, 2018) at para. 33.

<sup>15</sup> *Id.* at para. 33.

<sup>16</sup> *Id.*

premature given the FCC's proposal to lift the freeze applicable to new applications for the band's primary DBS service. Accordingly, the Commission should deny or defer the Petition.

Respectfully submitted,

AT&T Services, Inc.

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Dated: May 7, 2019

**Certificate of Service**

I, Jacquelyn Martin, a secretary in the law firm of Wiley Rein LLP, do hereby certify that I have on this 7th day of May 2019 caused a copy of the foregoing “Petition to Deny or Defer in Part” to be served by First Class U.S. Mail, postage prepaid, upon the following:

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