



WASHINGTON, DC

DAVID S. KEIR
202.416.6742
DKEIR@LERMANSENTER.COM

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Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

**Re: Swarm Technologies, Inc, Petition for Declaratory Ruling
IBFS File No. SAT-PDR-20200228-00021**

Dear Ms. Dortch:

Kinéis¹ replies to the “Consolidated Opposition and Response of Swarm Technologies, Inc.” (“Opposition”) concerning Swarm’s February 28, 2020 petition for declaratory ruling (“Petition”). Kinéis, along with two other entities with pending filings in the current non-voice, non-geostationary mobile-satellite service (“NVNG MSS”) processing round – Hiber, Inc. and Myriota Pty. Ltd. – opposed Swarm’s unsupported request for waiver of the Commission’s Rules through which Swarm seeks to have its Petition considered in the current processing round.² Swarm has failed to articulate any basis for the one-of-a-kind waiver it seeks to excuse it from the Commission’s clear and consistently applied processing requirements.

Denial of the Swarm waiver request is a simple matter because Swarm has provided no legal basis that would support favorable action. As Kinéis pointed out in its initial filing, because the Commission has already rejected requests by Hiber and Myriota for waiver of the same rule, and instead initiated a processing round by issuing a cut-off notice, it could not reasonably reopen this round, post-cut-off, by waiving its rules to accept the late-filed Swarm Petition. The Commission has consistently rejected reopening closed satellite processing rounds to allow late-filed applications after a cut-off notice has been issued.³

¹ Kinéis is a petitioner seeking U.S. market access in the ongoing NVNG MSS processing round. *See* Kinéis Petition for Declaratory Ruling, IBFS File No. SAT-PDR-20191011-001114 (Call Sign S3054).

² *See* Swarm Petition at 33-38.

³ *See, e.g., EchoStar Satellite Corp.*, 16 FCC Rcd 14300, 14304-05 (IB 2001) (“*EchoStar*”), *recon. denied*, 17 FCC Rcd 8305 (IB 2002); *LEOSAT Corporation*, 8 FCC Rcd 668, 670-71 (1993).



Faced with the absence of any legal justification for the unprecedented relief it seeks, Swarm resorts exclusively to rhetorical hyperbole and hollow puffery, rejecting arguments grounded in Commission precedent as “frivolous,”⁴ while irrelevantly extolling itself as “a dynamic, technologically innovative, and well-funded competitor.”⁵ With respect to precedent, Swarm argues incorrectly that prior cases relied upon by the processing round participants “involves applicants that arrived several years after the initial processing round cut-off date.”⁶ It simply ignores case law that Kinéis cited in which an applicant filed on an established cut-off date, but submitted an application deemed incomplete due to failure to include the proper fee remittance form. Though refiled three weeks later with the correct form, the application was excluded from the processing round due to its failure to submit a complete application by the cut-off date.⁷ Given this precedent, Swarm’s claim that it “narrowly missed the deadline”⁸ – by no less than four and a half months – is itself frivolous. Granting such a request would create a dangerous precedent, undermining the efficacy of the cut-off rules by opening the door to countless waiver requests that would hinder and delay the satisfactory resolution of NGSO processing rounds, both currently and in the future.

Swarm also places great emphasis on bare, self-aggrandizing claims that it is “a technological leader driving small satellite innovation,”⁹ that its network proposal is “a robust, capable, and low-cost solution,”¹⁰ and that its “manufacturing and design is vertically integrated.”¹¹ These are the kinds of vague, generic claims that the Commission has previously rejected as insufficiently compelling to waive its rules to allow consideration of an untimely application filed after issuance of a cut-off notice.¹²

Finally, Swarm’s attempt to take advantage of the statements of parties to the current processing round that they expect to be able to coordinate and share spectrum with the other participants in the processing round is disingenuous at best.¹³ These statements are premised on

⁴ Swarm Opposition at 1.

⁵ *Id.*

⁶ *Id.* at 2.

⁷ *LEOSAT*, 8 FCC Rcd at 670-71.

⁸ Swarm Opposition at 2. It is also telling that when Swarm asserts that the waiver it seeks “aligns with the FCC’s NGSO policy goals and objectives, as well as with prior Commission precedent,” it cites no precedent at all in support of the claim. *Id.* at 3.

⁹ Swarm Opposition at 4.

¹⁰ *Id.* at 9.

¹¹ *Id.* at 4.

¹² *EchoStar*, 16 FCC Rcd at 14304 (rejecting EchoStar’s claims of “increased competition” and “first use of the spectrum” as insufficient to justify grant of a waiver). *See also* Hiber Petition at 4-5.

¹³ *See* Swarm Opposition at 7.



their face on examination of the previously filed applications properly included in the processing round. Such statements can hardly be held up as an open-ended sharing commitment applicable to all comers regardless of when submitted or what sort of operating approach is proposed. More importantly, it does not address at all whether a network such as Swarm's will be able to avoid interference to Kinéis and the other previously filed system proposals with which Swarm must coordinate. To address this omission in its own technical exhibit, Swarm must provide the requisite information and analysis to demonstrate that it can avoid harmful interference to the NVNG MSS systems in the current round in order to warrant consideration in the next, whether that round is limited to Swarm's application on a standalone basis or is subject to a new cut-off notice.¹⁴

For all of the foregoing reasons, Kinéis concurs with Hiber and Myriota that, at a minimum, any action with respect to the Swarm Petition should be deferred until after the conclusion of the current processing round. Please contact the undersigned if you have any questions regarding this matter.

Respectfully submitted,

s/ David S. Keir

David S. Keir
Counsel to Kinéis

cc: Tim Bransford (Counsel to Swarm Technologies, Inc)
Bruce Henoeh (Counsel to Hiber, Inc.)
Carlos Nalda (Counsel to Myriota Pty. Ltd.)

Jose Albuquerque
Karl Kensinger
Kathyrn Medley
Jay Whaley
Jameyanne Fuller
Samuel Karty

¹⁴ See also Hiber Petition at 7-8; Myriota Petition at 7.