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Federal Communications Commission
Office of Secretary

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Policy Branch
International Bureau

File No. SAT-STA-20041012-00198

In the Matter of Application by)
SES AMERICOM, INC.)
For Special Temporary Authority To)
Operate AMC-15 at 117° W.L. and 113° W.L.)

REPLY COMMENTS AND OPPOSITION OF SES AMERICOM, INC.

SES Americom, Inc. ("SES Americom"), hereby submits its reply to the Comments of Telesat Canada ("Telesat")¹ and its opposition to the Petition to Deny of the National Rural Telecommunications Cooperative ("NRTC")² concerning the above-referenced application for special temporary authority to operate the Ka-band payload and Ku-band TT&C payload of AMC-15 at 117° W.L. and 113° W.L. (the "STA Request").

In response to a time-sensitive request from its customer EchoStar, SES Americom seeks authority to provide temporary Ka-band services from two locations where no Ka-band satellites currently operate. SES Americom's

¹ Comments of Telesat Canada, File No. SAT-STA-20041012-00198, filed Nov. 22, 2004 (the "Telesat Comments"). Telesat also filed comments on the separate request of EchoStar to modify its license for a Ka-band satellite to change the orbital location from 123° W.L. to 117° W.L., File No. SAT-MOD-20041008-00196.

² Petition to Deny by the National Rural Telecommunications Cooperative, File No. SAT-STA-20041012-00198, filed Nov. 22, 2004 (the "NRTC Petition"). NRTC also filed a copy of its petition in connection with the separate request of EchoStar Satellite L.L.C. ("EchoStar") for special temporary authority to operate a Ka-band earth station with AMC-15 at 117° W.L. and 113° W.L., File No. SES-STA-20041019-01564.

application is consistent with Commission policies in favor of employing unused orbital locations to allow the provision of services.

Neither Telesat nor NRTC has raised any valid objections to this request. The Telesat Comments request coordination of AMC-15's temporary operation, which SES Americom has already agreed to do. The NRTC Petition is both procedurally flawed and substantively without merit and should be summarily dismissed.

Accordingly, the FCC should expeditiously grant the AMC-15 STA Request to permit services to commence as quickly as possible. Testing of AMC-15 is already completed, and SES Americom is ready to deploy the satellite to initiate services as soon as the Commission acts.³ SES Americom's customer has targeted December 15, 2004, as the date when it requires service to commence. The Commission should not allow these two meritless filings to delay service requested by a customer.

I. SES AMERICOM WILL COORDINATE AS NEEDED WITH TELESAT CANADA'S OPERATIONS

Telesat Canada states that it does not oppose the AMC-15 STA Request, but asks the Commission to require that SES Americom coordinate its proposed operations at 113° W.L. and 117° W.L. with Telesat at 111.1° W.L. and 118.7° W.L. Telesat Comments at 2. However, the requirement Telesat requests is

³ On November 30, SES Americom filed a request for special temporary authority for a period of 30 days to commence relocation of AMC-15 to 117° W.L. and to operate the satellite's Ku-band TT&C payload at that location pending action on the STA Request. See File No. SAT-STA-20041130-00214.

unnecessary. As Telesat itself acknowledges, SES Americom has already expressly committed in the STA Request to coordinate with potentially affected adjacent operations. Telesat Comments at 4, citing STA Request at 4.

Furthermore, the Telesat Comments reflect a number of fundamental misunderstandings of the applicable facts and law. First, Telesat insists that SES Americom is required to coordinate its proposed temporary Ka-band operations at 117° W.L. with Telesat, which plans to launch a Ka-band satellite to 118.7° W.L. in mid-2006. Telesat Comments at 4. As the STA Request makes clear, AMC-15 will be at 117° W.L. only for a sixty-day period and will be operating at its assigned orbit location of 105° W.L. by June 2005. STA Request at 2-3. Thus, there will be an interval of more than a year between the departure of AMC-15 from 117° W.L. and the arrival of Anik F3 at 118.7° W.L. In these circumstances, there is no basis for Telesat's insistence that coordination of these two spacecraft is necessary.

Second, Telesat suggests that SES Americom is trying to "escape its coordination obligations with Telesat" by relying on the compliance of AMC-15 with the Commission's two-degree spacing rules. In fact, however, SES Americom expressly acknowledged that its proposed Ka-band operations at 113° W.L. would be spaced at less than two degrees from those of Telesat Canada. STA Request, Technical Appendix at 4-5. SES Americom supplied a technical analysis demonstrating that even with the smaller spacing, coordination of AMC-15's operations with those of Telesat Canada should be feasible. *Id.* Telesat does not dispute, or even discuss, this technical analysis.

Third, Telesat's discussion of the proposed AMC-15 Ku-band operations ignores the fact that SES Americom proposes to use only very limited TT&C frequencies in the Ku-band. Because SES Americom has not requested authority to provide Ku-band services at 113° W.L. and 117° W.L., Telesat's discussion of the Trilateral Agreement is irrelevant here. The Trilateral Agreement was intended to accommodate requirements of Canada, Mexico, and the United States with respect to provision of C- and Ku-band services.⁴ It does not apply to Ka-band operations at all, and there is no indication that it was intended to prohibit the use of Ku-band frequencies for TT&C purposes in circumstances where the TT&C operations would not preclude the use of the orbital arc by other parties for the provision of Ku-band services.

SES Americom reconfirms its willingness to coordinate its proposed use of the Ku-band for TT&C at 117° W.L. and 113° W.L. as necessary with Telesat's adjacent Ku-band operations, and has already initiated discussions with Telesat to that end. Our analysis to date suggests that there are no material issues here.

Specifically, based on information available to us regarding Telesat's operations at 118.7° W.L., SES Americom has determined that there is no overlap of the AMC-15 Ku-band TT&C frequencies with the Ku-band transponders or TT&C frequencies of Anik E2.⁵ SES Americom has requested that Telesat confirm this

⁴ See Public Notice, *Trilateral Arrangement Regarding Use of the Geostationary Orbit Reached by Canada, Mexico, and the United States*, rel. Sept. 2, 1988 at 1.

⁵ The Ku-band telemetry beacons on AMC-15 operate at 11702.0 MHz and 12198.0 MHz, and the AMC-15 command frequency is at 14001.5 MHz. These frequencies are outside the range of the Anik E2 Ku-band transponders, which

finding, which will obviate the need for further coordination of the proposed operations of AMC-15 at 117° W.L.

There is an overlap between the AMC-15 TT&C frequencies and the transponders of Anik F2 at 111.1° W.L., but the TT&C operations are cross-polarized to the Anik F2 services.⁶ The cross-polarization, combined with the 1.9 degree spacing between the satellites, will facilitate completion of the coordination of the proposed AMC-15 operations at 113° W.L. with those of Anik F2.

Telesat's comments do not suggest any significant obstacles to coordination with the temporary operations of AMC-15 proposed in the STA Request. To the contrary, the evidence indicates that concluding coordination with Telesat's adjacent operations should be straightforward. Accordingly, consistent with long-standing Commission policies, SES Americom requests that the

operate between 11703 and 12197 MHz on the downlink, and between 14003 and 14497 MHz on the uplink. Similarly, there is no overlap with the Anik E2 TT&C frequencies. Anik E2 has beacons operating at 12199 and 12199.5 MHz and has a command frequency at 14499.25 MHz.

⁶ Specifically, the AMC-15 command frequency partially overlaps with the lowest uplink frequency transponder on Anik F2, which extends down to 14001.25 MHz. However, the AMC-15 command carrier at 14001.5 MHz is vertically polarized, while the overlapping Telesat transponder is horizontally polarized.

There is also overlap between the AMC-15 telemetry beacons at 11702.0 MHz and 12198.0 MHz and the Telesat downlink transponders, which extend from 11701.25 MHz to 12198.75 MHz. However, the AMC-15 11702.0 MHz beacon is horizontally polarized, while the overlapping Telesat transponder is vertically polarized. Similarly, the AMC-15 12198.0 MHz beacon is vertically polarized, while the overlapping Telesat transponder is horizontally polarized.

Commission grant the STA on a non-harmful interference basis, and leave the coordination issues to be resolved by the parties.⁷

II. THE COMMISSION SHOULD DISMISS THE NRTC PETITION

The Communications Act requires that a petitioner to deny demonstrate both that it is a party in interest entitled to object to the proposed action, and that the requested authority is inconsistent with the public interest. NRTC has failed to satisfy both these requirements.

A. NRTC Has No Cognizable Interest in the Outcome of the AMC-15 STA Request

As a threshold matter, NRTC lacks standing to petition to deny the AMC-15 STA Request. By statute, a petition to deny can be filed only by a “party in interest” and must be supported by facts that demonstrate the basis for the petitioner’s standing. 47 U.S.C. § 309(d)(1). The only statement NRTC makes regarding its interest here is in footnote 2 of its Petition. NRTC explains that it is an investor in WildBlue, which holds a Ka-band license, and that NRTC plans to provide high speed Internet and video using a single satellite dish. NRTC Petition at 1 n.2.

⁷ See, e.g., *GE American Communications, Inc.*, 15 FCC Rcd 19671 (Sat. & Radiocomm. Div. 2000), citing *Assignment of Orbital Locations to Space Stations in the Domestic Fixed-Satellite Service*, 5 FCC Rcd 179, 183 (1990) (Commission expects licensees to bear responsibility for coordinating adjacent satellites because “they are in the best position to determine the technical and economic tradeoffs inherent in reaching a coordination agreement”).

This statement clearly is insufficient to confer party in interest status on NRTC. Commission and judicial precedent establish clear standards for evaluating whether a party has standing:

To have standing under Section 309(d)(1) of the Communications Act to file a petition to deny, an entity must demonstrate that it is a "party in interest." A petitioner must make specific allegations of fact sufficient to demonstrate that grant of the challenged application would cause the petitioner to suffer a direct injury. The petitioner also must establish a causal link between the claimed injury and the challenged action by demonstrating that the injury can be traced to the challenged action. Additionally, it must be likely, as opposed to merely speculative, that the injury would be prevented or redressed by the relief requested. *Applications of Alaska Native Wireless, L.L.C.*, 18 FCC Rcd 11640, 11644 (2003) (footnotes omitted).

NRTC fails to satisfy this test on every count. It provides no evidence that SES Americom's proposed temporary operation at 117° W.L. and 113° W.L. would have any effect on NRTC at all, much less cause it a direct injury. NRTC does not suggest that it has any interest in either of the orbital locations at which SES Americom seeks to temporarily operate AMC-15. Nor does it make any claims concerning interference resulting from SES Americom's proposed operations. Because it has failed to demonstrate that it would be injured by grant of the STA Request, the other elements of the standing test (causation and redressability) do not even come into play.

Under these circumstances, the Commission must conclude that NRTC lacks standing and dismiss its Petition.

B. Grant of the AMC-15 STA Request Is Fully Consistent with Commission Policies

Even if considered on its merits, the NRTC Petition provides no valid basis for denial of the STA Request. The matters addressed by NRTC are simply irrelevant to the public interest considerations applicable to the Commission's decision here.

The Commission has routinely granted requests for temporary operation of spacecraft in order to permit licensees to respond to customer demand. It has found that:

Allowing the temporary use of unused orbital resources permits the public to receive services that would not otherwise be available. Consequently, over the past two decades, the Commission has granted a variety of satellite providers temporary authority to operate at orbit locations that are not regularly assigned to them. *PanAmSat Licensee Corp.*, 19 FCC Rcd 2012 at ¶ 11 (Sat. Div. 2004).

Where necessary, the Commission has conditioned grants of temporary authority to ensure that no harmful interference is caused to regularly-licensed operations. *Id.*

The SES Americom request falls squarely within this long-standing precedent. Grant of the request will permit SES Americom to meet customer demand by providing Ka-band services at locations where there are currently no spacecraft operating in those frequencies. No party has suggested that the planned use of AMC-15 at the 117° W.L. and 113° W.L. orbital locations would result in

harmful interference to other spacecraft.⁸ In any event, SES Americom has agreed to operate on a non-harmful interference basis. See STA Request, Narrative at 4.

Nothing in the NRTC Petition refutes SES Americom's showing that it is entitled to a grant of special temporary authority under established Commission policies.⁹ Virtually all of NRTC's Petition addresses ITU matters that are irrelevant to SES Americom's STA Request and need not be addressed here. Similarly, NRTC's suggestion that grant of the STA would allow EchoStar to warehouse spectrum is frivolous because EchoStar does not seek to rely on the requested STA to satisfy the Commission's due diligence requirements for these orbital locations.

SES Americom has demonstrated that temporary operation of AMC-15 as proposed will serve the public interest and permit SES Americom to meet

⁸ Telesat's comments request that the proposed operations be coordinated but do not allege that they will result in harmful interference.

⁹ NRTC states that it could find no precedent to suggest that providing service in response to customer requirements is sufficient to satisfy the Commission's public interest mandate. NRTC Petition at 3. SES Americom refers NRTC to the following decisions, which are representative of the Commission's rulings in this area: *PanAmSat Licensee Corp.*, DA 04-2680 (Sat. Div. rel. Aug. 26, 2004) at ¶ 1 (finding that grant of request for special temporary authority to operate PAS-9 at 26.15° E.L. pursuant to a lease agreement with Arabsat "will permit PanAmSat to make maximum use of existing orbital resources and satisfy customer requirements"); *SES Americom, Inc.*, 18 FCC Rcd 13143, 13144 (Sat. Div. 2003) (granting request for temporary operation of AMC-9 at 105° W.L. and noting that the Commission generally gives satellite operators the flexibility "to design and modify their networks in response to customer requirements"); *GE American Communications, Inc.*, 13 FCC Rcd 2425, 2425 (Sat. & Radiocomm. Div. 1998) (granting authority for continued operation of Satcom K-2 in inclined orbit "will serve the public interest because it will allow GE Americom to continue to meet customer needs.").

customer requirements. Accordingly, consistent with its established policies, the Commission should grant the requested STA.

IV. CONCLUSION

For the foregoing reasons, the Commission should reject the request by Telesat Canada for the imposition of unnecessary conditions, and dismiss the NRTC Petition. The Commission should promptly grant the AMC-15 STA Request to permit SES Americom to respond to time-critical customer service requirements. The customer has targeted December 15 as the date when it requires service to commence at 117° W.L., and we urge the Commission to grant this temporary authority as soon as possible in advance of that date.

Respectfully submitted,

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December 2, 2004

DECLARATION OF KIMBERLY M. BAUM

I, Kimberly M. Baum, hereby certify under penalty of perjury that I have reviewed the foregoing "Reply Comments and Opposition of SES Americom, Inc.," and that the factual statements therein are true and correct to the best of my knowledge, information and belief.

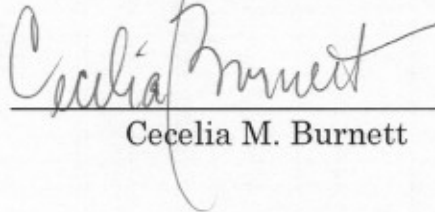
A handwritten signature in cursive script, appearing to read "Kimberly M. Baum", is written over a horizontal line.

Kimberly M. Baum
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Dated: December 2, 2004

CERTIFICATE OF SERVICE

I, Cecelia Burnett, do hereby certify that on this 2nd day of December, 2004, copies of the foregoing "Reply Comments and Opposition of SES Americom, Inc." were served by hand or by e-mail to the following:


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