

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

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Federal Communications Commission
Office of Secretary

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

File No. SAT-STA-20041012-00198

Received

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Policy Branch
International Bureau

**REPLY OF THE NATIONAL RURAL
TELECOMMUNICATIONS COOPERATIVE**

The National Rural Telecommunications Cooperative (NRTC)¹ hereby replies to the Opposition and Reply Comments of EchoStar Satellite LLC (EchoStar),² and the Reply Comments and Opposition of SES Americom, Inc. (SES).³ Despite SES's argument that the International Telecommunications Union (ITU) bring-into-use (BIU) dates are "irrelevant" in this proceeding,⁴ there is no doubt that preservation of ITU date priority is the real purpose behind SES's request for special temporary authority ("STA").⁵ EchoStar itself makes clear that the STA -- which would allow SES to park its AMC-15 satellite at 117° W.L. and 113° W.L. for 60 days each while en route to 105°

¹ See, Petition to Deny by the National Rural Telecommunications Cooperative, File No. SAT-STA-20041012-00198 (November 22, 2004) (*NRTC Petition to Deny*).

² Opposition and Reply Comments of EchoStar Satellite LLC, File No. SAT-STA-20041012-00198; File No. SES-STA-20041019-01564, Call Sign E030038 (December 1, 2004) (*EchoStar Opposition*).

³ Reply Comments and Opposition of SES Americom, Inc., File No. SAT-STA-20041012-00198 (December 2, 2004) (*SES Opposition*).

⁴ *SES Opposition*, p. 9.

⁵ The SES STA requests authority for short-term operations of AMC-15 at the 117° W.L and 113° W.L. orbital locations while the satellite travels to its final, licensed destination at 105° W.L. The satellite will remain at 117° W.L and 113° W.L. for 60 days at each location, before final positioning at 105° W.L.. FCC File No. SAT-STA-20041012-00198, p. 2 (*SES Application*).

W.L. -- is nothing more than a vehicle for EchoStar to warehouse these orbital locations internationally.

EchoStar argues that the *STA* is in the public interest, since the proposed temporary operations will have the effect of “preserving the ITU date priority of the U.S. Ka-band satellite network filing at each of those locations to the benefit of all potential U.S. licensees.”⁶ But less than four months ago, the Commission specifically *rejected* the identical argument (also made by EchoStar) while canceling the Ka-band license of VisionStar (a company controlled by EchoStar) for 113° W.L. (one of the slots EchoStar now seeks to use under the *STA*).⁷

In the *VisionStar* proceeding, the Commission found that “the Administration has not identified maintenance of U.S. priority over orbital locations as a policy goal.”⁸ Neither SES nor EchoStar has presented any new evidence to rebut that recent conclusion.

Even if the United States were to lose date priority at the 113° W.L orbital location, the Commission noted in *VisionStar* that the U.S. public would not necessarily lose service from this slot. Under its *DISCO II* process, non-U.S.-licensed space stations would still be free to serve the U.S. market from this orbital location.⁹

Rather than artificially preserving the U.S.’s international satellite locations, as EchoStar proposes, the Commission was far more concerned in the *VisionStar* proceeding

⁶ *EchoStar Opposition*, pp. 3-4 (see also, p. 2).

⁷ Memorandum Opinion and Order, *VisionStar Incorporated, Application for Modification of Authority to Construct Launch and Operate a Ka-band Satellite System in the Fixed Satellite Service*, 19 FCC Rcd. 14820, ¶11 (Int’l Bur. 2004) (*VisionStar Order*).

⁸ *VisionStar Order*, ¶11.

⁹ *Id.* See Report and Order, *Amendment of the Commission’s Regulatory Policies to Allow Non-U.S. Licensed Satellites Providing Domestic and International Service in the United States*, IB Docket No. 96-111, 12 FCC Rcd 24094 (1997).

that Ka-band services actually be made available to the U.S. public, regardless of which nation's regulatory body licensed the service.¹⁰ EchoStar's failure to deploy any type of Ka-band service from 113° W.L. after more than three years -- while using the *STA* in an attempt to preserve that slot and another one internationally -- confirms the Commission's worst fears regarding the warehousing of orbital locations through the ITU process.¹¹

EchoStar has placed the Commission on clear notice that it expects the *STA* to meet the BIU dates for 117° W.L. and 113° W.L.. As a result, the Commission is compelled to clarify that an artificial and temporary "fly by" does not satisfy the BIU requirements under the facts of this case. Instead, as the Commission held in the *VisionStar Order*, this valuable spectrum should be made available to a truly motivated licensee -- whether foreign or domestic -- to provide service to the American public.

EchoStar argues that NRTC's *Petition to Deny* should be dismissed due to NRTC's silence regarding a separate application filed by Wildblue.¹² But as pointed out in NRTC's *Petition*, those two applications are readily distinguishable.¹³

¹⁰ *Id.* In fact, future customers of WildBlue Communications, Inc. ("WildBlue") will be the beneficiaries of this policy since WildBlue currently plans to provide Ka-band service to the United States from Telesat Canada's ANIK F-2 satellite at 111.1 W.L. See Order, *In the Matter of Telesat Canada Petition for Declaratory Ruling For Inclusion of Anik F2 on the Permitted Space Station List Petition for Declaratory Ruling to Serve the U.S. Market Using Ka-band Capacity on Anik F2*, 17 FCC Rcd. 25287 (Int'l Bur. 2002) (*Telesat Order*). In its *Telesat Order*, the Commission concluded that grant of Telesat's request to use the Ka-band capacity of Anik F2 to provide two-way broadband communications services in the United States should "stimulate competition in the United States, and expand provision of broadband service in rural areas." *Id.*, ¶1.

¹¹ VisionStar's authorization for the 113° W.L. orbital location was issued by the Commission on October 30, 2001. Order and Authorization, *Application of VisionStar, Incorporated, Licensee Shant Hovnanian, Transferor And Echostar Visionstar Corporation, Transferee For Consent to Transfer of Control Over Authorization to Construct, Launch and Operate a Ka-Band Satellite System in the Fixed-Satellite Service at the 113° W.L. Orbital Location*, 16 FCC Rcd 19187 (Int'l Bur. 2001).

¹² *EchoStar Opposition*, p. 4, n.8; See, FCC File No. SAT-STA-20040915-00179. That application -- which was not opposed -- was subsequently withdrawn. See Public Notice, DA 04-3579 (rel. Nov. 12, 2004).

WildBlue has invested over \$350 million and several years of effort to develop its Ka-band satellite system at 109.2° W.L. Due to circumstances beyond its control (*i.e.*, the bankruptcy of its satellite contractor), WildBlue may not be able to launch its own nearly-completed WildBlue-1 satellite before its June 2005 BIU date. There is every reason to believe, however, that WildBlue will be in a position to begin regular operations at its licensed orbital location within months after its BIU date (and certainly far in advance of the two years that would be made available to EchoStar). Thus, WildBlue's proposal involved the short-term preservation of an orbital location by a long-term licensee with a nearly completed satellite and a delay beyond its control.

SES's *STA* involves none of these factors. EchoStar does not have a Ka-band satellite (let alone two such satellites) nearing completion. It has not been working diligently for a number of years to develop these slots.¹⁴ It will not be in a position to begin regular operations at the licensed locations within months after the applicable BIU dates. And, most importantly, it has not been prevented from meeting the BIU dates due to any factors beyond its control. Instead, it has been sitting on the 113° W.L. license for three years and still has nothing to show for it and only recently became interested in the 117° W.L. slot.¹⁵

EchoStar had only seven months remaining on its BIU date when it received the 113° W.L. authorization (although VisionStar was issued the license 2001), and only

¹³ *NRTC Petition to Deny*, p. 5, n. 13.

¹⁴ EchoStar-controlled VisionStar's license was cancelled specifically because it had not met its diligence requirements with respect to the 113° W.L. slot. *VisionStar Order*, ¶1.

¹⁵ *Cf. EchoStar Opposition*, p. 3, which purports to depict EchoStar's stellar Ka-band progress to date.

seven months left when it applied for the 117° W.L. authorization.¹⁶ Given the time it takes to design and construct a Ka-band satellite, EchoStar has no reasonable expectation that it will be able to meet the current BIU dates for either slot. Nonetheless, it now seeks to use the Commission's *STA* processes in an attempt to foreclose international development of the slot for an additional two years through an artificial, temporary "fly by" of AMC-15. Whether or not temporary operations could be used to meet a BIU date, there is no equitable justification for facilitating such a scheme under the facts presented in this case.

EchoStar argues that NRTC's observations regarding EchoStar's character before the Commission are "unfounded and extraneous to this proceeding."¹⁷ NRTC's observations, however, are hardly unfounded -- they merely quote previous Commission findings.¹⁸ Nor is EchoStar's character extraneous to this proceeding, since the *STA* is only the latest in a long line of EchoStar's dubious dealings with the Commission. Questions of character and integrity always must be weighed carefully by the Commission in determining whether a licensee has any intentions of actually deploying services.

With regard to SES, any arguments it offers in support of its *STA* have been completely undercut by its customer's admissions. SES's basic argument -- that the *STA* should be granted because it will "meet customer demand by providing Ka-band

¹⁶ EchoStar only received its authority two days ago to relocate its authorized satellite from the 123° W.L. orbital location to the 117° W.L. orbital location. See Public Notice, Policy Branch Information, Actions Taken, Report No. SAT-00259 DA 04- 3839 (released December 7, 2004).

¹⁷ *EchoStar Opposition*, n. 3.

¹⁸ *NRTC Petition to Deny*, p. 5, n. 14.

services”¹⁹ -- has been thoroughly discredited by the admissions of the only customer at issue, EchoStar. EchoStar has confirmed beyond any doubt that the purpose of the *STA* is not to provide Ka-band services, as SES claims, but rather to secure ITU date priority for the United States (and its licensee, EchoStar). The *STA* is just an attempt by SES to facilitate EchoStar’s efforts.

SES’s argument that NRTC lacks standing is without foundation and easily dismissed. As NRTC pointed out in its *Petition to Deny*, NRTC’s mission since its founding in 1986 has been to provide advanced technologies and telecommunications services to rural America.²⁰

NRTC was an early investor in DIRECTV, and last year, NRTC joined Liberty Satellite, LLC and Intelsat USA Sales Corporation in investing \$156 million (NRTC itself invested \$29 million) in WildBlue. WildBlue is expected to begin offering the first viable Ka-band satellite service in 2005, using technology designed to lower the cost of providing consumers throughout the country with high-speed Internet access via satellite. NRTC’s plans also include bundling high speed Internet service with video on a single satellite dish. WildBlue’s service initially will be provided using a non-U.S.-licensed satellite -- precisely the sort of arrangement that would be precluded under SES/EchoStar’s scheme to foreclose international access to two Ka-band slots for an additional two years.

¹⁹ *SES Opposition*, p. 8.

²⁰ *NRTC Petition to Deny*, p. 1, n. 2.

There is no question that NRTC has ample standing to challenge SES's abusive *STA* designed to skirt the ITU's Ka-band requirements and further delay deployment of advanced services to rural America.²¹

* * *

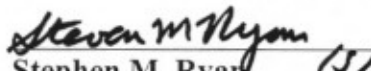
As demonstrated in *EchoStar's Opposition*, the improper motives behind SES's *STA* are clear. The Commission should not allow its processes to be manipulated as a means of international spectrum speculation. The *STA* should be DENIED.

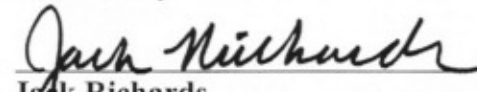
²¹ NRTC has a long record of commenting in Commission proceedings relating to the importance of Ka-band spectrum resources to rural America. At last count, NRTC has commented in three such proceedings, and the Commission has never accepted any arguments regarding NRTC's alleged lack of standing in such proceedings, despite having the opportunity to do so. See Petition for Reconsideration of the National Rural Telecommunications Cooperative, submitted in response to, Order, *Second Round Assignment of Geostationary Satellite Orbit Locations to Fixed Satellite Service Space Stations in the Ka-Band*, 17 FCC Rcd. 14400 (2002) (*Ka-band Order*); see also Petition to Deny of the National Rural Telecommunications Cooperative, submitted in response to, SAT-MOD-20020430-00075; Letter to Marlene H. Dortch from the National Rural Telecommunications Cooperative, *VisionStar Incorporated Application for Modification of Authority to Construct, Launch, and Operate a Ka-band Satellite System in the Fixed Satellite Service*, Notice of Intent to File Application (dated Aug. 8, 2002). In the *Ka-band Order* proceeding, Pegasus Development Corporation (Pegasus) raised an argument similar to SES's regarding NRTC's standing. In its *Ka-band Order*, the Commission declined to adopt Pegasus's view.

Respectfully Submitted,

NATIONAL RURAL TELECOMMUNICATIONS
COOPERATIVE
2121 Cooperative Way, Suite 500
Herndon, VA 20171

Its Attorneys:


Stephen M. Ryan
NRTC, General Counsel
Manatt, Phelps & Phillips, LLP
One Metro Center
700 12th Street, NW, Suite 1100
Washington, DC 20005-4075
(202) 585-6550


Jack Richards
Kevin G. Rupy
Keller and Heckman LLP
1001 G Street, NW
Washington, D.C. 20001
(202) 434-4210

Dated: December 9, 2004

Attachment: Declaration of B. R. Phillips, III

Before the
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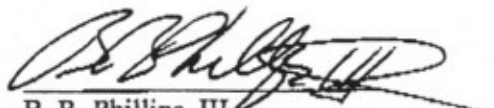
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DECLARATION OF B. R. PHILLIPS, III

I, B. R. Phillips, III, declare under penalty of perjury under the laws of the United States of America that:

1. I am President and Chief Executive Officer of the National Rural Telecommunications Cooperative (NRTC).
2. I am familiar with the application of SES AMERICOM, INC., for Special Temporary Authority to Operate the AMC-15 Satellite at 113' W.L. and 117' W.L..
3. I have personal knowledge of the assertions of fact contained in the foregoing Reply of the National Rural Telecommunications Cooperative, and they are true and correct to the best of my knowledge, information and belief.

Executed on December 7, 2004.


B. R. Phillips, III
President and Chief Executive Officer
NATIONAL RURAL
TELECOMMUNICATIONS
COOPERATIVE
2121 Cooperative Way, Suite 500
Herndon, VA 20171

CERTIFICATE OF SERVICE

I, HEREBY CERTIFY that on this 9th day of December, 2004, a true and correct copy of the foregoing Reply of the National Rural Telecommunications Cooperative in the matter of the Application of SES AMERICOM, Inc., for Special Temporary Authority to Operate the AMC-15 Satellite at 113° W.L. and 117° W.L., File No. SAT-STA-20041012-00198, was submitted via hand delivery to the Federal Communications Commission, and served via electronic mail and First Class Mail upon the following:

Served via Electronic Mail:

Donald Abelson
Chief, International Bureau
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Tom Tycz
Chief
Satellite Division, International Bureau
Federal Communications Commission
445 Twelfth Street, S.W., 6th Floor
Washington, D.C. 20554

Jennifer Gilsean
Deputy Division Chief
Strategic Analysis and Negotiations
Division
International Bureau
Federal Communications Commission
445 Twelfth Street, S.W., 6th Floor

Fern Jarmulnek
Deputy Chief
Satellite Division, International Bureau
Federal Communications Commission
445 Twelfth Street, S.W., 6th Floor
Washington, D.C. 20554

Rosalee Chiara
Satellite and Radiocommunications
Division, International Bureau
Federal Communications Commission
445 Twelfth Street, S.W., 6th Floor
Washington, D.C. 20554

Served via Electronic Mail:

Anna M. Gomez
Deputy Bureau Chief, International
Bureau
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Cassandra Thomas
Deputy Chief
Satellite Division, International Bureau
Federal Communications Commission
445 Twelfth Street, S.W., 6th Floor
Washington, D.C. 20554

JoAnn Lucanik
Associate Division Chief
Satellite Division, International Bureau
Federal Communications Commission
445 12th Street, S.W.
Room 6-C416
Washington, D.C. 20554

Served via Hand Delivery:

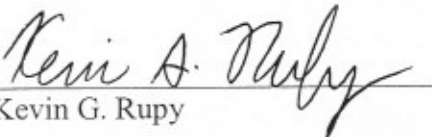
Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
c/o Natek, Inc., Inc.
236 Massachusetts Avenue, N.E.
Suite 110
Washington, DC 20002

**Served via Electronic Mail and First
Class Mail:**

Nancy J. Eskenazi
Vice President and Associate General
Counsel
SES AMERICOM, INC.
Four Research Way
Princeton, NJ 08540

Peter A. Rohrbach
Karis A. Hastings
HOGAN & HARTSON LLP
555 Thirteenth Street, NW
Washington, DC 20004-1109
Counsel for SES AMERICOM, Inc.

Panetlis Michalopoulos
Chung Hsiang Mah
Steptoe & Johnson LLP
1330 Connecticut Avenue, N.W.
Washington, DC 20036
Counsel for EchoStar Satellite L.L.C.


Kevin G. Rupy