

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
SES Americom, Inc.)	
)	File No. SAT-STA-20041012-00198
For Temporary Authority to)	Call Sign: S2180
Operate the AMC-15 Satellite at 117° W.L. and)	
113° W.L.)	
)	
)	

MEMORANDUM OPINION AND ORDER

Adopted: January 6, 2005

Released: January 6, 2005

By the Deputy Chief, Satellite Division, International Bureau:

I. INTRODUCTION

1. By this Order, we grant SES Americom, Inc. (SES Americom) temporary Authority to operate its AMC-15 satellite at the 117° W.L. and 113° W.L. orbital locations using spectrum in the Ka- and Ku-bands for a period of 60 days at each location. The National Rural Telecommunications Cooperative (NRTC) opposed SES Americom's request. We find, however, that grant of the temporary authority will permit SES Americom to use vacant orbital locations to provide satellite services that would not otherwise be available.

II. BACKGROUND

2. On August 18, 2004, SES Americom was authorized to operate AMC-15, a Ku/Ka-band hybrid satellite, at the 105° W.L. orbital location.¹ SES Americom launched AMC-15 on October 15, 2004 to the 136° W.L. orbital location where it was authorized to undergo in-orbit testing for both the Ka-band and Ku-band payloads. At the request of its customer, EchoStar Satellite L.L.C. (EchoStar), SES Americom applied for authority to locate AMC-15 temporarily at the 117° W.L. and 113° W.L. orbit locations to provide Ka-band services, before positioning the spacecraft at its assigned 105° W.L. location.² Under special temporary authority granted on December 10, 2004, SES Americom has moved

¹ SES Americom, Inc., Launch and Operating Authority, File Nos. SAT-LOA-20030219-00013, SAT-AMD-20030422-00069, SAT-AMD-20040615-00117, and SAT-MOD-20030214-00011. See, Policy Branch Information, *Public Notice*, DA 04-2601, Report No. SAT-00236 (Aug. 20, 2004). Specifically, the satellite is authorized to operate in the 11.7-12.2 GHz, 14.0-14.5 GHz, 18.6-18.8 GHz, 19.7-20.2 GHz, 28.4-28.4-28.6 GHz, and 29.5-30.0 GHz frequency bands.

² SES Americom, Inc., Application for Special Temporary Authority to Operate AMC-15 at 117° W.L. and 113° W.L., File No. SAT-STA-20041012-00198, filed October 12, 2004 (*SES Americom Application*).

AMC-15 to 117° W.L. and is maintaining the satellite through tracking, telemetry and command (TT&C) functions in the Ku-band.³ EchoStar was recently authorized to operate Ka-band satellites at the 117° W.L. and 113° W.L. orbital locations.⁴

3. SES Americom proposes to operate AMC-15 at 117° W.L. for two months. Operations at this location will use only the Ka-band payload and Ku-band telemetry, tracking and control (TT&C) frequencies. SES Americom will then drift AMC-15 to 113° W.L. where it will also be stationed for approximately two months. SES Americom will then move the satellite to 105° W.L. in time to commence both its Ku-band and Ka-band operations in advance of its June 2005 license requirement to commence service at that location.⁵ While drifting AMC-15, SES Americom states its Ku- and Ka-band payloads will be turned off, except for TT&C functions.⁶

4. SES Americom states that temporary operation of AMC-15's Ka-band payload at 117° W.L. and 113° W.L. will not cause harmful interference to adjacent satellites at these locations.⁷ SES Americom notes that the closest Ka-band satellites are EchoStar 9 at 121° W.L. and Telesat Canada's Anik F2 at 111.1° W.L. SES Americom states it will coordinate with EchoStar and Telesat Canada to ensure no harmful interference is caused to their operations.⁸ In addition, SES Americom states that the operation of its Ku-band TT&C payload will not cause interference at these locations. SES Americom states it will also coordinate its operations with Satmex, which is using adjacent Ku-band frequencies at 116.8° W.L.⁹

5. The NRTC filed a Petition to Deny the request.¹⁰ NRTC asserts that SES Americom has failed to justify its request, stating there is no precedent for granting temporary authorizations based on

³ SES Americom, Inc., File No. SAT-STA-20041130-00214 (grant stamped with conditions, Sat. Div., Policy Branch, Dec. 10, 2004). This 30-day authorization was granted without prejudice to our action in this underlying STA request. AMC-15 arrived at 117° W.L. on December 31, 2004 and is operating its TT&C payload functions in the 11702.0 MHz, 12198.0 MHz, and 14001.5 MHz frequency bands.

⁴ EchoStar Satellite LLC, Authorization to Launch and Operate Geostationary Satellite Using Ka-band Frequencies at 113° W.L., file no. SAT-LOA-20040803-00154 (grant stamped with conditions, Sat. Div., Engineering Branch, Oct. 8, 2004); EchoStar Satellite LLC, Authorization to Modify Ka-band Authorization to relocate from 123° W.L. to 117° W.L., File no. SAT-MOD-20041001-00196 (grant stamped with conditions, Sat. Div., Engineering Branch, Dec. 6, 2004).

⁵ *SES Americom Application* at 3.

⁶ *SES Americom Application* at 3.

⁷ *SES Americom Application* at 3.

⁸ *SES Americom Application* at 3.

⁹ *SES Americom Application* at 4.

¹⁰ Petition to Deny by the National Rural Telecommunications Cooperative, filed Nov. 22, 2004 (*NRTC Petition*). NRTC is a not-for-profit cooperative comprised of rural electric cooperatives, rural telephone cooperatives and independent rural telephone companies. NRTC provides advanced technologies and telecommunications services to rural America.

“customer requirements.”¹¹ Rather, the NRTC maintains that the request for temporary authority is only a means for EchoStar to warehouse spectrum at the 117° W.L. and 113° W.L. orbital locations.¹² The NRTC states that the International Telecommunication Union (ITU) bringing-into-use date (BIU) for both orbital locations is fast approaching, and EchoStar has not undertaken any serious construction efforts for satellites at either location. Instead, according to NRTC, EchoStar seeks to use AMC-15 to satisfy the ITU BIU requirements, acting as a “regulatory placeholder” to preserve both locations for later use.¹³ NRTC suggests that the Commission should only consider allowing temporary placement of another satellite at a licensee’s authorized location under circumstances in which the licensee has made substantial progress toward constructing the satellite and its progress is hindered by events beyond its control.¹⁴ EchoStar, NRTC asserts, has done “virtually nothing” to satisfy its construction requirements and is seeking to circumvent the ITU BIU dates.¹⁵

6. Telesat Canada commented on the request, stating that while it does not oppose the temporary authority, SES is required to coordinate its temporary operations with Telesat.¹⁶ Telesat is licensed by Industry Canada to operate Ku- and Ka-band payloads on the Anik F2 satellite at the 111.1° W.L. orbital location. Telesat is also authorized to operate the Anik F3 satellite, scheduled for launch in mid-2006, that will provide Ku- and Ka-band services from the 118.7° W.L. location.¹⁷ Telesat asserts that two conditions should be imposed on any temporary authorization. First, that SES Americom must coordinate its temporary operations with Telesat’s in-orbit Ka-band satellite at 111.1° W.L. and its authorized but unlaunched satellite at 118.7° W.L.¹⁸ Telesat maintains that SES Americom must coordinate its Ka-band operations because Canada’s ITU filings for the 111.1° W.L. and 118.7° W.L. orbital locations have priority over the United States’ ITU filings at 117° W.L. and 113° W.L.¹⁹ Second, Telesat states that SES Americom must obtain approval from the Mexican and Canadian Administrations for its proposed Ku-band TT&C operations, which are not permitted under a 1988 U.S.- Mexico-Canada Trilateral Arrangement.²⁰

7. SES Americom and EchoStar filed responses to NRTC’s petition and Telesat’s comments.²¹ SES Americom maintains that grant of the temporary authority is consistent with the

¹¹ *NRTC Petition* at 3.

¹² *NRTC Petition* at 3.

¹³ *NRTC Petition* at 4.

¹⁴ *NRTC Petition* at 4.

¹⁵ *NRTC Petition* at 5.

¹⁶ Comments of Telesat Canada, filed November 22, 2004 (*Telesat Comments*).

¹⁷ *Telesat Comments* at 2.

¹⁸ Reply of Telesat Canada filed December 9, 2004 (*Telesat Reply*) at 2.

¹⁹ *Telesat Comments* at 2.

²⁰ *Telesat Comments* at 4; *Telesat Reply* at 2.

²¹ Reply Comments and Opposition of SES Americom, Inc., filed December 2, 2004 (*SES Americom Reply*) and Opposition and Reply Comments of EchoStar Satellite L.L.C., filed December 1, 2004 (*EchoStar Reply*). In its (continued....)

Commission's policy of authorizing temporary operations to permit licensees to respond to customer demand.²² SES Americom further states that the ITU matters raised by NRTC are irrelevant to its request for temporary authority.²³ The assertion that the temporary authority would allow EchoStar to warehouse spectrum is frivolous, SES Americom asserts, because EchoStar is not relying on the temporary operations to satisfy the Commission's milestone requirements for these locations.²⁴ EchoStar states that NRTC's objection is misdirected, asserting that the purpose of the proposed temporary authority is not to preserve or promote EchoStar's rights to the orbital locations, or to satisfy any domestic milestones. NRTC, EchoStar asserts, has confused the ITU BIU regulations and the Commission's rules for ensuring timely deployment of orbital spectrum resources.²⁵ Regardless of whether the temporary authority is granted, EchoStar notes that it must comply with the milestone conditions in its authorizations for 113° W.L. and 117° W.L.²⁶ Consequently, the assertion that EchoStar would be warehousing spectrum is baseless. EchoStar further states the public interest would be served by granting the temporary authority because the operation of AMC-15 at 113° W.L. and 117° W.L. would effectively preserve the ITU date priority for the benefit of all potential U.S. licensees.²⁷ NRTC and Telesat both filed replies.²⁸

III. DISCUSSION

8. *Temporary Authority.* We find that grant of the temporary authority is in the public interest. The operations of AMC-15 at 117° W.L. and 113° W.L. will allow SES Americom to provide Ka-band services, if only on a temporary basis, at locations where there are no satellites currently operating in the requested frequencies. Allowing the temporary use of unused orbital resources permits the public to receive services that would not otherwise be available.²⁹ Indeed, over the past two decades, the Commission has granted a variety of satellite operators temporary authority to operate satellites at

(Continued from previous page)

reply, SES Americom states, among other things, that NRTC's petition to deny should be dismissed because NRTC lacks standing to file the petition under the Communications Act because NRTC is not a party in interest. SES Americom claims that NRTC provided no evidence that grant of the STA would have any effect on it, much less a direct injury. Although the NRTC refutes this assertion (*NRTC Reply* at 6), we do not address this issue here because we find it is in the public interest to address the issues raised by NRTC. See, e.g., *Comsat Corporation, Memorandum Opinion and Order*, 13 FCC Rcd 2714, 2715 n. 4 (1998).

²² *SES Americom Reply* at 8.

²³ *SES Americom Reply* at 9.

²⁴ *SES Americom Reply* at 9.

²⁵ *EchoStar Reply* at 2.

²⁶ *EchoStar Reply* at 3.

²⁷ *EchoStar Reply* at 4.

²⁸ Reply of the National Rural Telecommunications Cooperative, filed December 9, 2004 (*NRTC Reply*), and *Telesat Reply*.

²⁹ PanAmSat Licensee Corp., Application for Launch Authority, *Order and Authorization*, 19 FCC Rcd 2012, 2014 (Sat. Div., Int'l Bur. 2004).

orbital locations that are not regularly assigned to them.³⁰ In issuing these grants, the Commission has not mandated a minimum length of time during which temporary service must be provided nor a minimum number of customers that must receive service. Rather, the Commission's regulatory policies for the commercial satellite service have always been premised on providing licensees the flexibility to offer whatever services they decide will best meet their customer's needs.³¹

9. Nevertheless, in granting temporary authority, the Commission has sought to ensure that temporary operations do not adversely impact regularly licensed systems and has conditioned grants accordingly. We recognize that SES Americom has initiated Ku-band coordination with Satmex, which holds licenses for the Mexican Satmex 5 satellite at 116.8° W.L. and the Solidaridad 2 satellite at 113° W.L.³² SES Americom has also initiated coordination with Telesat with respect to its Canadian licensed Ku- and Ka-band satellite at 111.1° W.L. AMC-15's operations will not overlap with operations on Telesat's Ka and Ku-band satellite, Anik F3, which is not scheduled for launch to 118.7° W.L. until mid-2006. Further, in light of the 1988 Trilateral Arrangement, the Commission has notified the Canadian and Mexican licensing administrations regarding AMC-15's temporary use, on a non-harmful interference basis, of a limited number of Ku-band frequencies for TT&C functions.³³ Under these circumstances, the conditions to this authorization are sufficient to address the concerns raised by Telesat.³⁴ As with all operations for which coordination has not been completed, the Commission cannot guarantee protection of AMC-15's Ka-band operations at 117° W.L. and 113° W.L., and such operations may be subject to additional terms and conditions.³⁵ Bearing in mind these limitations, we see no reason to prevent SES Americom from implementing its plans to provide temporary service from these locations.

³⁰ See, e.g., *Satellite Business Systems*, Mimeo No. 5207 (Com. Car. Bur. 1984) (SBS granted temporary authority to operate SBS-4 satellite at 101° W.L. until that location was ready to be occupied by a regularly assigned licensee); *ARC Professional Services Group*, *Order and Authorization*, 5 FCC Rcd 5398 (Com. Car. Bur. 1990) (ARC granted temporary authority to operate tracking and data relay satellite system C-band transponders until the location was ready to be occupied by a regularly assigned licensee).

³¹ See *Second Round Assignment of Geostationary Satellite Orbit Locations to Fixed Satellite Service Space Stations in the Ka-band*, *Order*, 16 FCC Rcd 14389 (Int'l Bur. 2001) (the Commission's fixed-satellite service policies are designed to allow qualified applications to provide a variety of satellite services); *Earth Watch Incorporated*, *Order and Authorization*, 16 FCC Rcd 15985 (Sat. and Radiocommunication Div., Int'l Bur. 2001) (the Commission's satellite licensing policies are designed to provide satellite operators with the flexibility to respond to changing technological, market and regulatory conditions); *SES Americom, Inc.*, *Order and Authorization*, 18 FCC Rcd 18061 (Sat. Div., Int'l Bur. 2003) (the Commission generally permits satellite operators the flexibility to design and modify their networks in response to customer requirements).

³² SES Americom represents that the Solidaridad 2 spacecraft at 113 W.L. uses C-band frequencies for TT&C so there is no overlap with AMC-15's operations. SES Americom states it will coordinate with Solidaridad 2 on stationkeeping matters with respect to the temporary co-location of AMC-15 at 113° W.L. *SES Americom Application* at 3.

³³ See *Trilateral Arrangement Regarding Use of the Geostationary Orbit Reached By Canada, Mexico, and the United States*, FCC Public Notice 4406, released Sept. 2, 1988.

³⁴ *Telesat Comments* at 2, 4.

³⁵ 47 C.F.R. § 25.111(b).

10. *Milestone requirements.* NRTC's objection to grant of temporary authority is premised on the concern that such authority will allow EchoStar to warehouse spectrum at these orbital locations. Under the terms of its recently issued Ka-band licenses, EchoStar is required to execute contracts for the satellite at 113° W.L. by October 8, 2005, and for its satellite at 117° W.L. by December 8, 2004.³⁶ The licenses also require EchoStar to launch and operate these satellites by October 8, 2009 and December 8, 2008, respectively. The operation of AMC-15 at either of these orbit locations is not, in any way, relevant to EchoStar's satisfaction of its license milestone conditions, nor does it relieve EchoStar of its obligation to implement its own satellites at these locations consistent with the milestone schedules.³⁷ Therefore, grant of this temporary authority will not serve as a "vehicle for EchoStar" to warehouse spectrum at the 117° W.L. and 113° W.L. orbital locations.

11. *ITU Bringing- into-Use Dates.* NRTC correctly notes that the ITU BIU dates for a U.S. Ka-band satellite at 117° W.L. and 113° W.L. are approaching. We disagree, however, with NRTC that we should deny SES Americom's request for temporary authority on the ground that EchoStar will in effect, use the temporary authority to meet the ITU dates. Whether or not EchoStar ultimately requests the Commission to submit information concerning the operations of AMC-15 at 117° W.L. and 113° W.L. to the ITU Radiocommunication Bureau is irrelevant to our consideration of SES Americom's pending application concerning the temporary operations of AMC-15. As noted, we find no reason to preclude SES Americom from providing services on AMC-15 from a vacant orbit location provided that AMC-15's operations do not affect any other lawfully operating communications system.

12. In asserting that preservation of the ITU date priority is the "real purpose" behind the request, NRTC states that the Commission specifically rejected this rationale when it cancelled the Ka-band authorization of VisionStar, Inc. for the 113° W.L. orbital location.³⁸ NRTC is correct that the Bureau stated that VisionStar's argument concerning the preservation of ITU date priority did not justify an extension of its Commission milestone. However, here neither SES Americom's request nor our action herein is in any way based on an effort to preserve an ITU priority date.³⁹

³⁶ EchoStar recently submitted a contract dated December 8, 2004 which is being reviewed to determine whether it satisfied its first milestone for its authorization at 117° W.L. At this time, there has been no finding that EchoStar has not satisfied this milestone. In any event, EchoStar's milestone obligations pertain to its own Ka-band authorizations, not its right to lease capacity on AMC-15. As EchoStar notes, regardless of whether the temporary authority is granted it is still obligated to meet the milestone deadlines in its authorizations. *EchoStar Reply at 3.*

³⁷ All licensees must adhere strictly to the milestone schedule included in their licenses unless ~~extended for good~~ cause. Failure to meet a milestone renders that authorization null and void. This prevents orbital locations from being warehoused by licensees to the exclusion of qualified entities that are prepared to implement systems immediately, and ensures that the scarce orbit spectrum resource is being used efficiently. Morning Star Satellite Co., LLC, *Memorandum Opinion and Order*, 15 FCC Rcd 11350, 11352 (Int'l Bur. 2000); Constellation Communications Holdings, Inc., *Memorandum Opinion and Order*, 17 FCC Rcd 22584 (Int'l Bur. 2002).

³⁸ VisionStar Incorporated, *Memorandum Opinion and Order*, 19 FCC Rcd 14820 (Int'l Bur. 2004). In *VisionStar*, the International Bureau denied VisionStar's request to waive or extend its construction completion and launch milestone for a Ka-band satellite because VisionStar had not met the Commission's established standard for justifying milestone extensions, that is, it had not demonstrated that delay was due to unforeseen circumstances beyond the licensee's control.

³⁹ The fact that EchoStar gratuitously refers to this matter and the fact that our grant herein may have the incidental effect of preserving certain ITU filings is irrelevant to our public interest determination and ultimate findings and conclusions in this matter.

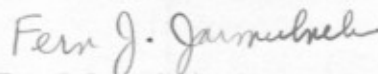
IV. CONCLUSION AND ORDERING CLAUSES

13 We find that the public interest will be served by allowing SES Americom to operate its AMC-15 satellite to provide temporary Ka-band service from orbit locations that are presently unused. NRTC's petition failed to persuade us otherwise. Accordingly, the application filed by SES Americom, Inc. for Temporary Authority to Operate AMC-15 at 113° and 117° W.L., File No. SAT-STA-20041012-00198, is GRANTED, subject to the following conditions:

- a) This temporary authority is limited to the Ka-band frequencies and Ku-band TT&C frequencies for which AMC-15 is regularly authorized, File Nos. SAT-LOA-20030219-00013, SAT-AMD-20030422-00069, SAT-AMD-20040615-00117, and SAT-MOD-20030214-00011. *See* Policy Branch Information, *Public Notice*, DA 04-2601, Report No. SAT-00236 (Aug. 20, 2004).
- b) With respect to AMC-15's Ku-band TT&C operations, no harmful interference will be caused to any lawfully operating satellite network or radio communication system, and SES Americom will immediately cease the operations of AMC-15 upon notification of harmful interference. SES Americom must notify the Commission, in writing, that it has received such a notification within 48 hours of receipt.
- c) SES Americom is required to accept interference to its Ku-band TT&C operations from other lawfully operating in-orbit satellites.
- d) With respect to AMC-15's Ka-band operations, no protection from interference caused by radio stations authorized by other administrations is guaranteed unless coordination and notification procedures are timely completed or, with respect to individual administrations, by successfully completing coordination agreements. Any radio station authorization for which coordination has not been completed may be subject to additional terms and conditions as required to effect coordination of the frequency assignments of other administrations. *See* 47 C.F.R. § 25.111(b).
- e) SES Americom is authorized to operate AMC-15 at 117° W.L. from January 7, 2005 to March 7, 2005. SES Americom is then authorized to drift AMC-15 to 113° W.L. and operate AMC-15 at this location from March 21, 2005 to May 21, 2005. Following its temporary operations at 113° W.L., SES Americom must move AMC-15 to its authorized location at 105° W.L. This authorization expires on May 21, 2005 or on the date that AMC-15 begins its drift to 105° W.L., whichever comes first.
- f) SES Americom must notify the Commission in writing no later than three days after it has completed operations of AMC-15 at each orbital location and commenced the move of AMC-15 to the next orbital location.

- g) Any action taken or expense incurred as a result of operations pursuant to this temporary authorization is solely at the risk of SES Americom.

FEDERAL COMMUNICATIONS COMMISSION



Fern J. Jarmulnek
Deputy Chief
Satellite Division