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March 16, 2020

By Electronic Filing

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: HNS License Sub, LLC
IBFS File Nos. SES-LIC-20170807-00877, SES-LIC-20170807-00882, SES-LIC-20170807-00888, SES-LIC-20170807-00891, SES-LIC-20170807-00893, SES-LIC-20170807-00894, SES-AMD-20190221-00283, SES-AMD-20190221-00299, SES-AMD-20190221-00302, SES-AMD-20190221-00305, SES-AMD-20190221-00307, SES-AMD-20190221-00309
Call Signs: E170152, E170157, E170163, E170166, E170168, E170169

Dear Ms. Dortch:

Verizon responds to the various claims in Hughes' March 5, 2020 letter. Hughes fails to carry its burden to show good cause for the waiver of 47 C.F.R. § 25.136(a)(4)(iii) it needs to deploy new earth stations that would use the 28 GHz band in Santa Clara, CA; Rapid City, SD; Simi Valley, CA; Rifle, CO; Missoula, MT; and Bismarck, ND (collectively, "Noncompliant Areas"). The Commission should deny these applications to ensure that customers in these areas can benefit from 5G service using 28 GHz spectrum.

Contrary to Hughes' claim (at 2) that Verizon has made no statements about operating planned UMFUS facilities in the Noncompliant Areas, Verizon made clear in its February 21, 2020 letter (at 1-2) that Verizon intends to deploy 5G service in each of these areas to satisfy its buildout requirements. Hughes notably does not dispute that granting the waiver it requires would deny consumers in these areas the benefits of 5G service on 28 GHz spectrum, including while traversing a major roadway in each area.

In asserting (at 3) that Verizon has not shown a sufficient basis for applying 47 C.F.R. § 25.136(a)(4) as written, Hughes gets the law backwards. It is Hughes that "bears the burden of proof to show that good cause exists to support the [waiver] request."¹ That is a "heavy burden" and a "high hurdle" for Hughes to clear.² Hughes does not come close.

¹ Report and Order and Further Notice of Proposed Rulemaking, *Rates for Interstate Inmate Calling Servs.*, 28 FCC Rcd 14107, ¶ 82 (2013).

² Order, *Waiver Requests by Clarity Media Sys., LLC, to Operate Cars Station Sat Flying J Travel Plazas*, 28 FCC Rcd 9629, ¶ 13 (2013).

First, Hughes continues to argue (at 3) that a waiver is warranted for the three Noncompliant Areas where new earth stations are proposed to be collocated with existing, grandfathered earth stations. But Verizon showed (at 4-5) – and Hughes does not dispute – that the Commission rejected this very argument in the *Spectrum Frontiers Reconsideration Order*.³ Hughes suggests (at 4) that the Commission’s rejection of its collocation argument is irrelevant because the Commission did not also expressly foreclose allowing collocated new earth stations through a waiver. But the Commission should not grant the waiver here for the same reasons it rejected Hughes’ request to create the exception to the rule the Commission established in the original order.⁴

The Bureau’s recent modification of an O3b Limited (“O3b”) license, which Hughes cites (at 3), provides no support for granting a waiver to Hughes. O3b sought to modify a license for a Hawaii earth station to add, among other things, the 27.5-27.6 GHz uplink band to its existing authorization to use the 27.6-28.4 GHz uplink bands.⁵ O3b made a showing that adding those 100 MHz was “fully consistent with” 47 C.F.R. § 25.136(a)(4), including that no “major roadways [are] within the Hawaii Gateway’s PFD contour.”⁶ Even though O3b showed that adding the 27.5-27.6 GHz uplink band “meets each element of Section 25.136(a)(4),” O3b requested a waiver of that rule, just in case the Bureau disagreed.⁷ But the Bureau *agreed* with O3b, finding that O3b sought “a permissible modification” of its existing license.⁸ The Bureau, therefore, did not “effectively grant[] the waiver,” as Hughes asserts (at 4). The Bureau found that no waiver was necessary because this aspect of O3b’s application *complied fully* with 47 C.F.R. § 25.136(a). The same is not true of Hughes, which concedes that its applications *violate* that rule in the Noncompliant Areas.

Second, Hughes again asserts (at 5) that its earth stations cover lightly populated areas and cross only short segments of major roadways. But residents in those areas – and travelers along those major roadways – will benefit from 5G services and will be harmed by losing service while in transit. The Commission should reject Hughes’ assertion that these impacts warrant a waiver. As this Bureau has correctly noted, when “the Commission grants a waiver, it must identify and articulate reasonable standards that are predictable, workable, and not susceptible to discriminatory

³ See Second Report and Order, Second Further Notice of Proposed Rulemaking, *Order on Reconsideration, and Memorandum Opinion and Order, Use of Spectrum Bands Above 24 GHz for Mobile Radio Services*, 32 FCC Rcd 10988, ¶¶ 140-141 (2017) (“*Spectrum Frontiers Reconsideration Order*”).

⁴ See *id.*

⁵ O3b Application, Exh. 1 at 1, IBFS File No. SES-MOD-20190207-00084 (Feb. 7, 2019).

⁶ O3b Supplemental Showing at 1-5, IBFS File No. SES-MOD-20190207-00084 (June 20, 2019).

⁷ *Id.* at 5-6.

⁸ Radio Station Authorization at 5, IBFS File No. SES-MOD-20190207-00084 (Nov. 6, 2019).

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application.”⁹ Hughes makes no attempt to articulate such standards, instead urging the Commission to adopt an impermissible “we-know-it-when-we-see-it’ standard.”¹⁰

Hughes continues to complain (at 1-2, 6) about the timing of Verizon’s objections to Hughes’ waiver request. Those complaints are irrelevant because, as shown above, Hughes always bore the burden of proving that good cause exists to justify the waiver, regardless of whether or when any objections are raised. Hughes also does not identify any existing precedent or guideline that would allow the Bureau to grant its waiver requests under its delegated authority. The sole Commission decision Hughes cites did not involve a waiver request and also found the question whether the Bureau had exceeded its delegated authority was moot, because the Commission resolved the question on the merits.¹¹ And none of the prior waiver grants Hughes cites would have allowed an interfering use – much less done so by adopting arguments the Commission itself previously rejected.¹²

⁹ Memorandum Opinion and Order, *Star One, S.A.*, 23 FCC Rcd 3915, ¶ 4 (Chief, Satellite Div., Int’l Bur. 2008).

¹⁰ *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1167 (D.C. Cir. 1990).

¹¹ See Memorandum Opinion and Order, *Advanced Communications Corp. Application for Extension of Time*, 11 FCC Rcd 3399, ¶ 18 n.33 (1995).

¹² See Order and Authorization, *Space Exploration Holdings, LLC*, 34 FCC Rcd 12307, ¶ 17 (Chief, Int’l Bur. 2019) (waiving requirements of Schedule S where the applicant had “implemented a workaround” to limitations in the Commission’s form that enabled “entry of the required implementation”); Order, *Temporary Waiver of Section 25.281(b) Transmitted Identification Requirements for Video Uplink Transmissions*, 31 FCC Rcd 1752, ¶¶ 5, 7 (Chief, Int’l Bur. 2016) (waiving, for an additional year, a two-year grace period because equipment the Commission had assumed would be available in the marketplace had not become available); Order and Authorization, *Lockheed Martin Corp.*, 20 FCC Rcd 11023, ¶¶ 10, 15 (Chief, Int’l Bur. 2005) (waiving a processing round approach when applying procedural rules adopted in 2003 to an application filed in 1999 and finding Lockheed’s satellite operations would be “fully compatible” with existing and future uses).

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For these reasons and the reasons outlined in Verizon's informal objection, the Bureau should deny Hughes's applications for the Noncompliant Areas. Hughes fails to satisfy the requirements in 47 C.F.R. § 25.136(a) for the licensing of additional 28 GHz earth stations and has not carried its burden of proving that there is good cause for a waiver. Granting a waiver under the facts here would prevent Verizon from using 28 GHz spectrum to provide 5G services in the Noncompliant Areas.

Sincerely,

/s/

Gregory M. Romano

cc: Jose Albuquerque
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