

## WAIVER REQUESTS

This modification application proposes to add a new 8.1 meter antenna to Earth Station License E030115 with the operating parameters described in the Schedule B. The initial mission of this antenna will be to serve as the TT&C antenna for the ASTRA 3A satellite (operated by the SES group of companies) during its relocation and once it is on station at the 176.85W. A request for prior use special temporary authority is being simultaneously filed. Grant of this modification request will serve the public interest by ensuring safe operation of the satellite at 176.85W. The FCC has previously authorized use of a number of other U.S. earth stations to relocate and perform TT&C for the ASTRA 3A satellite at the 176.85W orbital location. (File Nos. SES-STA-20130722-00653, granted September 26, 2013; SES-STA-20130722-00654, granted September 26, 2013; and SES-STA-20130912-00800, granted September 26, 2013.)

HPT requests limited waivers of the Commission's requirements in connection with the STA request being simultaneously filed and the instant modification application. Grant of these waivers is consistent with Commission policy and is consistent with requests made by SES in its STA request:

The Commission may waive a rule for good cause shown. Waiver is appropriate if special circumstances warrant a deviation from the general rule and such deviation would better serve the public interest than would strict adherence to the general rule. Generally, the Commission may grant a waiver of its rules in a particular case if the relief requested would not undermine the policy objective of the rule in question and would otherwise serve the public interest.<sup>1</sup>

The Commission has granted identical waivers in connection with SES's earth station STA requests for the relocation of ASTRA 3A to 176.85W after full public notice and opportunity for comment. (File Nos. SES-STA-20130722-00653, granted September 26, 2013;

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<sup>1</sup> *PanAmSat Licensee Corp.*, 17 FCC Rcd 10483, 10492 (Sat. Div. 2002) (footnotes omitted).

SES-STA-20130722-00654, granted September 26, 2013; and SES-STA-20130912-00800, granted September 26, 2013.)

Sections 25.137 and 25.114. HPT requests a waiver of Section 25.137 and the other Commission rules cross-referenced therein. HPT seeks special temporary authority in connection with TT&C for ASTRA 3A, a foreign-licensed spacecraft. Section 25.137 requires that applicants proposing to use U.S.-licensed earth stations to communicate with foreign-licensed spacecraft demonstrate that the Commission's policies for U.S. market access are satisfied. Section 25.137 also incorporates by reference other requirements for Commission-licensed space stations, including the obligation to file detailed technical information as specified in Section 25.114.

By its terms, Section 25.137 is inapplicable. The rule's requirements come into play only when a non-U.S.-licensed satellite is to be used to "serve the United States."<sup>2</sup> Here, the HPT earth station will be used solely for TT&C, not for commercial operations. Thus, HPT is not seeking to have its earth station communicate with ASTRA 3A for purposes of providing U.S. service within the meaning of Section 25.137.

To the extent the Commission disagrees, HPT requests a waiver of the market access and other requirements imposed by Section 25.137. Grant of a waiver will not undermine the objectives of these requirements. The market access test described in the rule is intended to ensure that U.S.-licensed systems have "effective competitive opportunities."<sup>3</sup> Because HPT is

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<sup>2</sup> 47 C.F.R. § 25.137(a).

<sup>3</sup> *Id.*

not seeking authority to provide commercial services in the United States, the requested STA and minor modification do not raise any concerns about competitive equality.<sup>4</sup>

Strict adherence with Section 25.114's requirements for detailed technical information is also unnecessary and would be unduly burdensome. HPT is proposing only to use the earth station for the limited purpose of TT&C during on-station operations of the spacecraft at 176.85° W.L, and the relevant technical characteristics of those transmissions are described in SES Americom's corresponding application. The planned drift will be coordinated with nearby satellite operators, consistent with industry practice, and transmissions to the spacecraft will be conducted on a non-harmful interference basis. Upon arrival on-station, the spacecraft will be used to provide service outside the United States. In these circumstances, no valid purpose would be served by requiring a complete technical description of the ASTRA 3A spacecraft.

HPT's request is consistent with Commission precedent. In similar cases in which limited communications by U.S. earth stations with a foreign-licensed satellite were proposed, the Commission has granted STA without requiring a market access showing under Section 25.137 or full technical data as required by Section 25.114.<sup>5</sup>

Section 2.106 Footnote NG104 and Section 25.202(a)(1) Footnote 2. To the extent that reception of telemetry at 11450.25 MHz and 11699.50 MHz constitutes a domestic (i.e., non-international) service, HPT respectfully requests a limited waiver of the international-service-only restriction.<sup>6</sup> Such a waiver is warranted in the circumstances for the limited purpose of TT&C. As the Commission has recognized, TT&C operations generally require uplink and

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<sup>4</sup> In any event, the ASTRA 3A spacecraft at 176.85° W.L. will be operating under the authority of the Netherlands, a WTO member country, and therefore is exempt from the requirement to make a showing of effective competitive opportunities. 47 C.F.R. § 25.137(a)(2).

<sup>5</sup> See, e.g., PanAmSat Licensee Corp., File Nos. SES-STA-20090922-01211 (Call Sign E4132) & SES-STA-20090922-01212 (Call Sign E040125), both grant-stamped Oct. 16, 2009 (granting authority for earth stations to communicate with foreign-licensed NSS-12 spacecraft for purposes of providing launch and early operations services).

<sup>6</sup> 47 U.S.C. § 2.106 Footnote NG104; 47 U.S.C. § 25.202(a)(1) Footnote 2.

downlink capability from the same earth station. For this reason, the Commission has previously granted waivers of the international service restriction to enable TT&C to be performed in the U.S. using the extended Ku-band frequencies.<sup>7</sup>

Grant of the requested waiver would not undermine the purpose of the restriction, which is to ensure that earth station deployments in the extended Ku-band do not negatively impact the deployment of fixed service (“FS”) in the same band or cause interference to such operations. The telemetry downlink from ASTRA 3A in the extended Ku-band is narrow in bandwidth, and will comply with the power flux density limits in the Commission’s rules and, thus, will not interfere with FS station operations. Moreover, only a small number of U.S. earth stations will be used to perform TT&C in the extended Ku-band.<sup>8</sup> Once ASTRA 3A is on-station at 176.85W, TT&C will be performed by two U.S. earth stations: (1) the KA288 earth station in Somis, California, operated by SES Americom, and (2) the E030115 earth station in Kapolei, Hawaii, operated by HPT. As a result, there will be no significant restrictions placed on the deployment of FS in this band.

Section 25.210(j). The ASTRA 3A satellite is authorized by the Netherlands to operate at 176.85° W.L. within a +/- 0.10° east/west stationkeeping box. To the extent necessary, HPT respectfully requests a waiver of Section 25.210(j) of the Commission’s rules, which requires geostationary space stations to be operated within a +/- 0.05° east/west stationkeeping box. The Commission has previously waived this rule based on a finding that allowing an increased

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<sup>7</sup> See, e.g., EchoStar KuX Corporation, 20 FCC Rcd 919 (Int’l Bur. 2004) (“EchoStar 83W Order”); EchoStar Satellite LLC, 20 FCC Rcd 930 (Int’l Bur. 2004) (“EchoStar 109W Order”); EchoStar KuX Corporation, 20 FCC Rcd 942 (2004) (“EchoStar 121W Order”).

<sup>8</sup> See EchoStar 83W Order at ¶ 16 (“The Commission has waived this [NG104] requirement where the number of potential earth stations in a particular service is inherently small.”); EchoStar 109W Order at ¶ 16 (same); EchoStar 121W Order at ¶ 17 (same).

stationkeeping volume would “not adversely affect the operations of other spacecraft, and would conserve fuel for future operations.”<sup>9</sup>

The facts here fit squarely within this precedent. Allowing ASTRA 3A to be maintained within an increased stationkeeping volume will not harm other operators. ASTRA 3A’s stationkeeping volume will not overlap with that of any other satellites. In addition, allowing ASTRA 3A to be flown at 176.85° W.L. in an expanded east-west stationkeeping volume of +/- 0.1 degrees will result in fuel savings for the spacecraft. This will prolong the time during which ASTRA 3A will be available to provide service to eastern Russia. Under these circumstances, grant of any necessary waiver of Section 25.210(j) will serve the public interest.

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<sup>9</sup> See File Nos. SAT-MOD-20080124-00030 & SAT-AMD-20080311-00070, grant-stamped May 19, 2008, Attachment at ¶ 1.