

July 30, 2021

VIA IBFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

**Re: Ex Parte Notification
Space Exploration Holdings, LLC, File No. SES-LIC-20210309-00698;
GEE Licensing Holdings, LLC, File Nos. SES-AMD-20210520-00826 and SES-MFS-
20210127-00153**

Dear Ms. Dortch:

On Wednesday, July 28, 2021, representatives of RS Access, LLC (“RS Access”) discussed the above-captioned applications of Space Exploration Holdings, LLC (“SpaceX”) and GEE Licensing Holdings, LLC (“Global Eagle”) with Karl Kensinger, Merissa Velez, Kerry Murray, Jae Lim, Cindy Spiers, Kal Krautkramer, and Alyssa Roberts.¹

In separate applications, SpaceX and Global Eagle sought authority to deploy earth stations in motion (“ESIMs”) in the entirety or segments of the 12.2-12.7 GHz (“12 GHz”) band, among other Ku-band frequencies.² RS Access opposed both applications with respect to their proposed use of the 12 GHz band.³ At the meeting, RS Access representatives explained that granting SpaceX’s and Global Eagle’s ESIM applications would: (i) run counter to existing 12 GHz allocations and service rule constraints; (ii) upend the carefully balanced 12 GHz sharing regime the Federal Communications Commission (“Commission”) established in 2002; (iii) disrupt existing and planned 12 GHz services;

¹ Meeting participants on behalf of RS Access included V. Noah Campbell of RS Access and Trey Hanbury of Hogan Lovells US LLP.

² See Application of SpaceX Services, Inc. for Blanket-Licensed Earth Stations in Motion, IBFS File No. SES-LIC-20210309-00698 (filed Mar. 5, 2021); Amendment Application of GEE Licensing Holdings LLC to Modify its Earth Stations Aboard Aircraft Blanket License, IBFS File No. SES-AMD-20210520-00826 (filed May 20, 2021); Application of GEE Licensing Holdings LLC to Modify its Earth Stations Aboard Aircraft Blanket License, IBFS File No. SES-MFS-20210127-00153 (filed Jan. 27, 2021).

³ See Petition to Deny in Part of RS Access, LLC, IBFS File No. SES-MFS-20210127-00153 et al. (filed May 7, 2021) (“RS Access Petition for Global Eagle”); Reply of RS Access, LLC, IBFS File No. SES-MFS-20210127-00153 et al. (filed June 2, 2021) (“RS Access Reply for Global Eagle”); Petition to Deny in Part of RS Access, IBFS File No. SES-LIC-20210309-00698 (filed May 21, 2021) (“RS Access Petition for SpaceX”).

and (iv) preempt decision-making by the Commission in the ongoing rulemaking proceeding concerning whether or not to allow more intensive use of the 12 GHz band by terrestrial licensees.

RS Access representatives underscored the following points that it has made in earlier phases of these proceedings.

1. ESIMs do not have authority to operate in the 12 GHz band.

The Commission's May 2020 ESIM decision and the table of frequency allocations expressly exclude ESIMs from the 12 GHz band.⁴ The Commission has not authorized 12 GHz ESIMs due to the other co-primary allocations and licensed operations in the band.⁵ And other earth station applicants have acknowledged the lack of ESIM authority in the band.⁶ Panasonic, for example, clarified that it sought authorization for 12 GHz ESIM operations only outside the United States because it recognized the ESIM exclusion in the 12 GHz band.⁷ SpaceX's claim that the FCC's rules contemplate blanket licensing for ESIMs operating in the 12 GHz band has no basis in fact.

2. Neither SpaceX nor Global Eagle has satisfied the Commission's criteria for a rule waiver.

The Commission will only grant a waiver where (i) special circumstances warrant a deviation from the general rule and (ii) the proposed deviation will serve the public interest.⁸ SpaceX and Global Eagle fall short of this standard for at least four reasons.⁹

No special circumstances. NGSO ESIM operators, like SpaceX, may use 3,500 megahertz of Ku-band and Ka-band downlink spectrum outside 12 GHz.¹⁰ GSO ESIM operators, like Global Eagle, may use 3,700 megahertz of Ku-band and Ka-band downlink spectrum outside 12 GHz.¹¹

⁴ See *Amendment of Parts 2 and 25 of the Commission's Rules to Facilitate the Use of Earth Stations in Motion Communicating with Geostationary Orbit Space Stations in Frequency Bands Allocated to the Fixed Satellite Service et al.*, Second Report and Order et al., 35 FCC Rcd 5137 ¶¶ 45-46 (2020) ("ESIM Order"); see also 47 C.F.R. § 2.106 n.NG527A; RS Access Petition for Global Eagle at 2; RS Access Reply for Global Eagle at 1-2; RS Access Petition for SpaceX at 2.

⁵ See 47 C.F.R. § 2.106.

⁶ See RS Access Petition for Global Eagle at 3; RS Access Petition for SpaceX at 2.

⁷ See, e.g., Letter from Carlos M. Nalda, Counsel for Panasonic Avionics Corporation, to Marlene H. Dortch, Secretary, FCC, IBFS File No. SES-MFS-20200513-00528 (filed Apr. 20, 2021) ("Panasonic has requested authority to conduct [12 GHz ESAA] operations *only outside the United States* on a non-conforming, non-interference basis consistent with Commission practice of permitting such operations because they present a negligible risk of interference to other spectrum users. For the avoidance of doubt, Panasonic does not seek authority to operate in the 12.2-12.7 GHz band within the United States.") (emphasis in original); see also RS Access Petition for SpaceX at 2 nn.4-5; RS Access Petition for Global Eagle at 3.

⁸ See *NetworkIP, LLC v. FCC*, 548 F.3d 116, 125-28 (D.C. Cir. 2008); *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969), cert. denied, 409 U.S. 1027 (1972); see also RS Access Reply for Global Eagle at 2.

⁹ See generally RS Access Petition for Global Eagle; RS Access Reply for Global Eagle; RS Access Petition for SpaceX.

¹⁰ See 47 C.F.R. § 25.202(a)(10)(i)-(ii).

¹¹ See *id.*

No protection for ESIM customers. SpaceX and Global Eagle have not demonstrated that they have designed their ESIM receivers in a manner that will avoid exposing U.S. fixed-satellite service (“FSS”) consumers to interference from authorized, primary services in the band.¹² Granting the applications would likely cause service disruptions to U.S. FSS consumers while burdening the FCC’s administrative resources with complaints from applicants’ customers.¹³

No plan to avoid disruption to the existing 12 GHz sharing framework. Allowing ESIMs in the 12 GHz band would collapse the carefully crafted existing spectrum sharing framework for co-primary spectrum users.¹⁴ When permitting non-geostationary orbit FSS and multichannel video distribution and data service entry into the 12 GHz band, the Commission adopted a detailed site selection and coordination process.¹⁵ Fundamental changes to the existing 12 GHz sharing framework, including SpaceX’s proposed removal of terminal separation and coordination rules, require a holistic evaluation of the cost and benefits of the proposed reordering of the existing rules governing coexistence in the 12 GHz band.¹⁶

No plan to avoid prejudicing the FCC’s ability to issue a decision on the 12 GHz proceeding. The Commission has initiated a notice of proposed rulemaking on whether and how to update the 12 GHz sharing rules and mechanisms to increase the efficiency and intensity of terrestrial operations in the band without harmful interference to established services.¹⁷ That proceeding is ongoing. SpaceX and Global Eagle ignore this proceeding and seek to lull the Commission into haphazard waiver grants that threaten to rob the Commission of discretion to adopt decisions that serve the broader public interest.¹⁸ Rejecting efforts to sidestep the deliberative process will protect Commission discretion for reasoned decision-making.

3. The space station authorizations of Eutelsat and Intelsat do not include terrestrial authority.

No text in the Eutelsat and Intelsat space station grants authorize ESIMs.¹⁹ Good reason exists for the omission. The Commission does not typically impose restrictions on earth stations in a space station license.²⁰ The Commission explained why in its recent rewrite of satellite and earth station licensing rules:

¹² See RS Access Petition for SpaceX at 4-5; RS Access Reply for Global Eagle at 4.

¹³ See *id.*

¹⁴ See *ESIM Order* ¶¶ 45-46; see also *Amendment of Parts 2 and 25 of the Commission’s Rules to Permit Operation of NGSO FSS Systems Co-Frequency with GSO and Terrestrial Systems in the Ku-Band Frequency Range et al.*, Second Report and Order et al., 17 FCC Rcd 9614 ¶ 23 (2002) (“*Ku-band Order*”); RS Access Petition for SpaceX at 6.

¹⁵ See 47 C.F.R. § 101.129(b); RS Access Petition for SpaceX at 6.

¹⁶ See *Ku-band Order* ¶¶ 68, 108; RS Access Petition for SpaceX at 7.

¹⁷ See *generally Expanding Flexible Use of the 12.2-12.7 GHz Band*, Notice of Proposed Rulemaking, 36 FCC Rcd 606 (2021).

¹⁸ See RS Access Petition for Global Eagle at 2-3; RS Access Reply for Global Eagle at 5-6; RS Access Petition for SpaceX at 2-3.

¹⁹ See RS Access Reply for Global Eagle at 3. See *generally* Intelsat, Stamp Grant, IBFS File No. SAT-PDR-20191205-00143 (granted Apr. 29, 2020); Eutelsat, Stamp Grant, IBFS File No. SAT-PDR-20191017-00115 (granted Apr. 8, 2020).

²⁰ See, e.g., *Space Exploration Holdings, LLC*, Order and Authorization et al., IBFS File No. SAT-MOD-20200417-00037, FCC 21-48 ¶ 25 (rel. Apr. 27, 2021) (“We note that typically in issuing a space station grant we do not limit the number of gateway earth stations that can be deployed.”).

The Commission issues separate licenses for earth stations and space stations in a satellite network based on the different application requirements in Section 25.114, for space stations, and Section 25.115, for earth stations. The goal of these decades-old, dual licensing paths is to provide for interference-free operation of both the ground component and space component of the satellite network. . . . Observance of restrictions from terrestrial coordination is the responsibility of earth station licensees, who may or may not be owned or controlled by the space station operator.²¹

Contrary to the claims of Global Eagle and its allied companies, therefore, space station licenses do not extend to earth station operations.²² Eutelsat itself already explained why in a related proceeding: “all earth station operations in this 12.5-12.75 GHz band require separate licensing by Commission, [therefore the Commission] will have an opportunity to fully review any proposed operations to ensure compliance with its rules and policies (including compatibility with BSS downlinks).”²³

For these reasons, RS Access renews its request that the Commission deny the applications of Global Eagle and SpaceX to deploy ESIMs in the 12 GHz band.

Please contact me with any questions regarding this submission.

Respectfully submitted,

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²¹ *Further Streamlining Part 25 Rules Governing Satellite Services*, Notice of Proposed Rulemaking, 33 FCC Rcd 11502 ¶ 4 (2018).

²² See RS Access Reply for Global Eagle at 3.

²³ Application of Eutelsat, IBFS File No. SAT-PDR-20191017-00115, Narrative at 5-6 (filed Dec. 13, 2019); see also RS Access Reply for Global Eagle at 3.