

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)
)
Application of Global Eagle Telecom) IBFS File Nos.: SES-MFS-20210127-00153
Licensing Subsidiary, LLC, Debtor-in-) SES-AMD-20210520-00826
Possession to Modify its Earth Stations Aboard)
Aircraft Blanket License)

**REPLY OF DISH NETWORK CORPORATION TO CONSOLIDATED OPPOSITION
TO PETITIONS TO DENY IN PART**

DISH Network Corporation (“DISH”) replies to the Consolidated Opposition to Petitions to Deny in Part (“Opposition”) of GEE Licensing Holdings LLC (“Global Eagle”). In the Opposition, Global Eagle argues that DISH has not provided any justification for the denial of Global Eagle’s request to receive signals in the 12.2-12.7 GHz band (“12 GHz band”) from the Eutelsat 139 WA satellite (“Eutelsat 139”) and the Hispasat 143 W-1 satellite (Hispasat 143”); therefore, its application, as amended, should be processed and granted without delay. But Global Eagle may not flip its burden to DISH. The requested operation of earth stations in motion (“ESIMs”) is not allowed in the 12 GHz band, by either the Commission’s rules¹ or the authorizations for Eutelsat 139 and Hispasat 143 W-1. Thus, it is Global Eagle that must, first, request a waiver, and, second, make a showing that it is in the public interest. Global Eagle’s initial application had done neither. Global Eagle’s belated amendment, filed after DISH filed its petition to deny, purports to correct the first omission—the failure to even request a waiver. But that amendment, too, is deficient, as well as late; it fails to address, let alone demonstrate, key factors bearing on the public interest analysis, such as why the vast amounts of spectrum already

¹ See 47 C.F.R. §§ 2.106, 25.202(a)(10)(i).

allocated for ESIM operations are insufficient. Finally, Global Eagle intimates that this is not the Commission's or DISH's business because customers receiving degraded service will complain to the airline, not the Commission or DISH. This displays a cavalier attitude toward the potentially serious consequences of a service disruption during a flight.

I. GLOBAL EAGLE HAS NOT MADE THE PUBLIC INTEREST SHOWING REQUIRED FOR WAIVER OF THE COMMISSION'S RULES

Global Eagle argues that the "critical waivers" required for Global Eagle to operate its ESIMs in the 12 GHz band have already been granted, because the authorizations for Eutelsat 139 and Hispasat 143 W-1 allow each of them to transmit from space-to-Earth in parts of the 12 GHz band, subject to identical conditions providing that each "shall not cause any harmful interference to existing and future authorized users operating in the United States in accordance with the U.S. Table of Frequency Allocations and shall accept any interference in the United States from such authorized users."² This is incorrect. Each of the two authorizations grant a waiver of Section 2.106 of the Commission's rules, authorizing them to provide fixed satellite service using the 12 GHz band on an unprotected, non-interference basis; but neither grants a waiver of Section 25.202(a)(1)(i), which excludes the 12 GHz band from the list of frequencies available for use by ESIMs communicating with GSO FSS space stations.³ The fact that Global Eagle's earth stations will only receive transmissions in the 12 GHz band does not place them

² Opposition at 2.

³ See Eutelsat S.A., Request for Market Access, IBFS File No. SAT-PDR-20191017-00115 (granted Apr. 8, 2020) (granting Eutelsat's request for a waiver of 47 C.F.R. § 2.106 of the Commission's rules to allow the use of the 12.5-12.7 GHz frequency on an unprotected, non-interference basis); Intelsat License LLC, Request to Add Satellite to Permitted List, IBFS File No. SAT-PDR-20191205-00143 (granted Apr. 29, 2020) (granting Intelsat's request for a waiver of 47 C.F.R. § 2.106 of the Commission's rules to provide FSS to the United States and its territories using the 12.2-12.7 GHz (space-to-Earth) frequency band on an unprotected, non-interference basis).

beyond the scope of the Commission’s duty to conduct a public interest analysis, both because these are transmit/receive earth stations whose authorization is subject to a public interest finding, and because a waiver of the Commission’s rules is necessary.⁴

Recognizing this, Global Eagle has amended its modification application to request waiver of both Section 2.106 and Section 25.202(a)(10)(i) of the Commission’s rules. But Global Eagle’s waiver requests fail to make the required public interest showing. Section 1.3 of the Commission’s rules authorizes the Commission to waive its rules for “good cause shown.”⁵ Waiver is appropriate only if special circumstances warrant a deviation from the general rule and such deviation would better serve the public interest than would adherence to the general rule.⁶ The Commission may grant a waiver of its rules in a particular case only if the applicant pleads facts demonstrating that the relief requested would not undermine the policy objective of the rule in question and would otherwise serve the public interest.⁷

The Commission denies applications for waiver to allow earth stations to operate in certain frequency bands when there is sufficient spectrum in allocated frequency bands to accommodate the service.⁸ Here, Global Eagle fails to even mention the 3.2 GHz of spectrum

⁴ See 47 C.F.R. § 25.115(a)(5)(v) (applications for authority to operate a transmitting earth station must contain, as an attachment, “[i]dentification of a specific rule or rules for which a waiver is requested”).

⁵ 47 C.F.R. § 1.3.

⁶ *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (in granting a waiver, “[t]he agency must explain why deviation better serves the public interest and articulate the nature of the special circumstances to prevent discriminatory application and to put future parties on notice as to its operation).

⁷ See *WAIT Radio v. FCC*, 418 F.2d at 1153, 1157 (D.C. Cir. 1969) (“[A] general rule, deemed valid because its overall objectives are in the public interest, may not be in the ‘public interest’ if extended to an applicant who proposes a new service that will not undermine the policy, served by the rule, that has been adjudged in the public interest.”).

⁸ See GUSA Licensee, LLC, *Order and Authorization*, 22 FCC Rcd. 61, 62 ¶ 1 (2007) (“We deny . . . GUSA’s request to operate the earth stations in the 7025-7055 MHz frequency band (space-

made available for downlink transmissions to ESIM pursuant to Section 25.202(a)(1)(i) (and another 2 GHz of spectrum made available for uplink transmissions), let alone attempt to meet its burden of explaining why those bands are insufficient to meet its service needs.⁹ Indeed, Global Eagle appears to be contending the opposite—that its use of the 12 GHz band would be very limited and that alternative ways of providing service to its ESIMs are available. Global Eagle “not[es] that only a fractional portion of Global Eagle’s remote terminals would operate simultaneously,” that “those terminals that are active within CONUS at any one time will utilize multiple satellites,” that Eutelsat 139 and Hispasat 143 W-1 are limited in geographic scope—serving only the Western portion of the U.S., and that these satellites are active for downlink using multiple frequency bands (service from which DISH does not oppose).¹⁰

II. GLOBAL EAGLE DOES NOT ADDRESS DISH’S UNDERLYING CONCERNS ABOUT DISRUPTIVE CONSEQUENCES OF A SERVICE DISRUPTION IN FLIGHT

Global Eagle’s argument that customers receiving degraded service will complain to the airline, not the Commission or DISH,¹¹ about degraded service is factually insufficient. Airline advocacy to the FCC is informed by passenger complaints, particularly with regard to interference

to-Earth) and its accompanying request for a waiver of the U.S. Table of Frequency Allocations (“Table of Allocations”) because there is sufficient spectrum in the allocated frequency bands to accommodate GUSA’s feeder link service needs.”).

⁹ See 47 C.F.R. § 25.115(a)(5)(v) (“The following frequencies are available for use by Earth Stations in Motion (ESIMs) communicating with GSO FSS space stations, subject to the provisions in § 2.106 of this chapter: 10.7-11.7 GHz (space-to-Earth); 11.7-12.2 GHz (space-to-Earth); 14.0-14.5 GHz (Earth-to-space); 17.8-18.3 GHz (space-to-Earth); 18.3-18.8 GHz (space-to-Earth); 18.8-19.3 GHz (space-to-Earth); 19.3-19.4 GHz (space-to-Earth); 19.6-19.7 GHz (space-to-Earth); 19.7-20.2 GHz (space-to-Earth); 28.35-28.6 GHz (Earth-to-space); 28.6-29.1 GHz (Earth-to-space); 29.25-30.0 GHz (Earth-to-space)).

¹⁰ Opposition at 4.

¹¹ See *id.* at 4-5.

concerns.¹² Service disruptions because of Global Eagle’s use of the 12 GHz band should not be countenanced on the ground that the Commission may not hear about them, especially since Global Eagle can avoid disruptions by using other spectrum. Thus, even assuming that Global Eagle is right that its customers’ complaints will be misdirected to the airline, and even setting aside the indifference to consumer welfare that argument displays, these complaints, and their cause, are a source of legitimate concern for the Commission.

III. CONCLUSION

For these reasons, and those in DISH’s partial petition to deny, permitting Global Eagle’s ESAAs to utilize the 12 GHz band frequencies on Eutelsat 139 WA and Hispasat 143 W-1 would be an unjustified departure from the Commission’s rules and precedent for the band, and contrary to the public interest.

Respectfully submitted,

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¹² See, e.g., Comments of United Airlines, Inc., GN Docket No. 13-114, RM-11640, at 1-2 (filed Aug. 26, 2013) (stating that United’s customers are telling the airline that expanding in-flight wireless Internet connectivity is important, and advocating spectrum policies that protect Earth Stations Aboard Aircraft service from interference).

CERTIFICATE OF SERVICE

I certify that on June 2, 2021 a copy of the foregoing pleading was served via U.S. Mail and email delivery upon:

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