

## WAIVER REQUEST

In this application, Hawaii Pacific Teleport, L.P. (“HPT”) requests special temporary authority (“STA”) for its Guam earth station to transmit to and receive from SES-12, a Netherlands-licensed satellite, pending Commission processing of the pending application for permanent authority (SES-MFS-20200818-00887). The technical parameters sought for the STA are identical to those of the pending application for permanent authority. The term of the STA sought is through: (1) Commission action on the pending application or (2) 180 days from September 1, 2020.

In its permanent application, HPT seeks a modification of the license for its E190068 earth station in Pulantat, Guam<sup>1</sup> to add frequencies and permit the earth station to communicate with the Netherlands-licensed SES-12 spacecraft at 95° E.L. HPT requests limited waiver of Section 25.137 and the other Commission rules cross-referenced therein in connection with this modification application. Grant of the waiver will serve the public interest in national security communications, and is consistent with Commission precedent and policy:

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>2</sup>

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<sup>1</sup> Hawaii Pacific Teleport, L.P., Call Sign E190068, File No. SES-LIC-20190222-00179, granted June 26, 2020 (the “E190068 License”).

<sup>2</sup> *PanAmSat Licensee Corp.*, 17 FCC Rcd 10483, 10492 (Sat. Div. 2002) (footnotes omitted).

HPT seeks authority to communicate with SES-12, a foreign-licensed spacecraft, for service to Guam. 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. However, because SES-12 is operating under the authority of The Netherlands, a WTO member country, no showing regarding the availability of effective competitive opportunities for U.S.-licensed space stations is required in this instance. See 47 C.F.R. § 25.137(a)(2).

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. HPT understands that SES-12 has no coverage of the fifty U.S. states and has not previously been authorized to communicate with U.S.-licensed earth stations except for earth station aboard aircraft ("ESAA") terminals.<sup>3</sup> An orbital debris mitigation statement and coverage maps for SES-12 were supplied in support of the SES ESAA Application,<sup>4</sup> and HPT incorporates those materials by reference herein. HPT requests that the Commission authorize E190068 to communicate with SES-12 on a limited basis for service to Guam without requiring HPT to submit additional information about the SES-12 satellite.

Given the narrow scope of HPT's proposed operations with SES-12, and SES-12's previously filed information, waiving Section 25.137 is consistent with the purpose of the rule. The Commission has permitted U.S.-licensed ESAA terminals to

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<sup>3</sup> SES Americom, Inc., Call Sign E190488, File No. SES-LIC-20190603-00713 (the "SES ESAA Application"), granted Oct. 15, 2019.

<sup>4</sup> SES ESAA Application, Annex 4 at 19-29.

communicate with SES-12 based on information that is already on file with the Commission. Extending that authority to allow HPT to use a fixed earth station on Guam to communicate with the satellite would not substantially expand the limited scope of the market access the Commission has conferred.

Requiring strict adherence with the specifications of Section 25.114 for detailed technical information regarding SES-12 is unnecessary and would be unduly burdensome. HPT is seeking authority for a single earth station on Guam to communicate with SES-12, and the relevant technical characteristics of those transmissions are provided in this application. As discussed above, HPT understands that SES-12 is incapable of serving any of the fifty states given the satellite's orbital location. In these circumstances, requiring HPT to supply a complete description of the SES-12 spacecraft would present a burden that is out of proportion with the narrow extent of the authority sought. Imposing this obligation might also deter space station operators from serving Guam, unduly constraining the availability of needed satellite capacity at that location.

HPT's waiver request is in line with Commission precedent involving applications for limited communications by U.S. earth stations with a foreign-licensed satellite. For example, the Commission has granted authority for earth stations to perform Tracking, Telemetry and Command ("TT&C") and launch and early operations phase ("LEOP") services without requiring a full market access showing under Section 25.137 or full technical data as required by Section 25.114.<sup>5</sup>

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<sup>5</sup> See, e.g., Hawaii Pacific Teleport, L.P., File No. SES-STA-20131030-00914 (Call Sign E030115), granted Nov. 18, 2013 (authorizing earth station to provide TT&C services to the foreign-licensed ASTRA 3A satellite); PanAmSat Licensee Corp., File Nos. SES-

Granting the requested waiver will also serve the public interest in and promote national security. Communications between HPT's E190068 earth station and SES-12 will provide service specifically to the U.S. Army as part of a global network that enhances the combat readiness of military personnel by streaming data, voice and video to and from intelligence units deployed in the Indo-Pacific. Grant of the STA requested herein will serve the public interest by allowing this critical mission to be fulfilled earlier, pending Commission processing of the permanent application.

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STA20090922-01211 (Call Sign E4132) & SES-STA-20090922-01212 (Call Sign E040125), both grant-stamped Oct. 16, 2009 (authorizing earth stations to communicate with the foreign-licensed NSS-12 spacecraft for purposes of providing LEOP services).