

November 29, 2006

Ms. Nancy J. Eskenazi, Esq.
SES AMERICOM, Inc.
4 Research Way
Princeton, NJ 08540

Re: SES AMERICOM, Inc. Petition for Declaratory Ruling To Serve the U.S. Market Using BSS Spectrum from the 105.5° W.L. Orbital Location, File Nos. SAT-PDR-20020425-00071, SAT-AMD-20051116-00219, SAT-AMD-20060120-00006 Call Sign: S2619.

Dear Ms. Eskenazi:

On April 25, 2002, you filed with the Commission, on behalf of SES AMERICOM, Inc., (“SES AMERICOM”) the above-captioned Petition for Declaratory Ruling (“Petition”). This Petition requests that the Commission determine that it is in the public interest for SES AMERICOM to offer satellite capacity to provide direct-to-home services to consumers in the United States from its AMC-14 (USAT-S1) space station, planned for operation at the 105.5° W.L. orbital location, with service links in the 12.2-12.7 GHz Direct Broadcast Satellite Service (“DBS”) band, and feeder links in the 17.3-17.8 GHz fixed-satellite service (“FSS”) band. On December 21, 2005, the Satellite Division sent you a letter pointing out information required by Section 25.114 of the Commission’s rules¹ and missing from the Petition, and requesting you to supply the missing information.² On January 20, 2006, SES AMERICOM filed the above-captioned amendment to its Petition. In its amendment, SES AMERICOM indicates that it would use the AMC-14 space station to provide DBS service to the U.S. from the 105.5° W.L. orbital location.³ For the reasons discussed below, we dismiss the Petition, as amended, without prejudice to re-filing.

Section 25.114(c) of the Commission's rules requires all space station applicants to submit all applicable items of information listed in its subsections.⁴ In the *First Space Station Reform Order*,⁵ the Commission affirmed the policies embodied in this rule by continuing to require applications to be

¹ 47 C.F.R. § 25.114.

² See Letter from Fern J. Jarmulnek, Deputy Chief, Satellite Division, International Bureau, to Nancy J. Eskenazi, SES AMERICOM, Inc., dated December 21, 2005.

³ Amendment to Petition for Declaratory Ruling, File No. SAT-PDR-20020425-00071, IBFS File No. SAT-AMD-20060120-00006 (filed January 20, 2006) at Schedule S, page 1 (“SES Americom Amendment”).

⁴ 47 C.F.R. § 25.114(c).

⁵ Amendment of the Commission's Space Station Licensing Rules and Policies, *First Report and Order and Further Notice of Proposed Rulemaking*, IB Docket No. 02-34, 18 FCC Rcd 10760, 10852 (para. 244) (2003) (*First Space Station Reform Order*); International Bureau To Streamline Satellite And Earth Station Processing, *Public Notice*, Report No. SPB-140, October 28, 1998 (emphasizing the obligation to comply with 47 C.F.R. § 24.114(c) and stating that applications that did not comply would be dismissed).

substantially complete when filed.⁶ As the Commission noted, the procedures and rules it adopted will enable the Commission to establish satellite licensees' operating rights clearly and quickly, and as a result, allow licensees to provide service to the public much sooner than might be possible under our previous licensing procedures.⁷ Finding defective applications acceptable for filing is not consistent with the rules and policies adopted by the Commission in the *First Space Station Reform Order* and only serves to create uncertainty and inefficiencies in the licensing process.

AMC-14 will operate in the Direct Broadcast Satellite service.⁸ SES AMERICOM states in its amendment that it intends to use the 17.3-17.8 GHz frequency band as the feeder-link band for AMC-14.⁹ The feeder-link frequencies for AMC-14 are in a band allocated on a primary basis to the fixed-satellite service in ITU Regions 1, 2, and 3 in the Earth-to-space direction, and to no other satellite service in this direction.¹⁰ The definition of "fixed-satellite service" in Section 25.201 of the Commission's rules includes "feeder links of other space radiocommunication services."¹¹

In Schedule S of its amendment, SES AMERICOM states that it plans to launch and operate AMC-14 with 27 dB of cross-polarization isolation on its feeder-link antenna beams,¹² which are listed in Schedule S of SES AMERICOM's amendment as Beam ID NG1RR and NG1RL. Section 25.210(i) of the Commission's rules requires fixed-satellite service space station antennas to be designed to provide a cross-polarization isolation of 30 dB.¹³ Thus, SES AMERICOM's proposed feeder links do not comply with the Commission's rules. Moreover, SES AMERICOM has not requested a waiver of Section 25.210(i). Sections 25.112(a)(2) and (b)(1) of the Commission's rules state that an application that does not substantially comply with the Commission's rules will be returned to the applicant as unacceptable for filing, unless the application is accompanied by a waiver request with reasons supporting the waiver.¹⁴

Therefore, pursuant to the Commission's rules on delegated authority, 47 C.F.R. § 0.261(a)(4), we find that the Petition as amended, SAT-PDR-20020425-00071, SAT-AMD-20051116-00219, and SAT-AMD-20060120-00006, is defective¹⁵ and dismiss the Petition without prejudice to re-filing.

⁶ *First Space Station Reform Order*, 18 FCC Rcd at 10852 (para. 244), citing Amendment of the Commission's Space Station Licensing Rules and Policies, *Notice of Proposed Rulemaking*, 17 FCC Rcd at 3875 (para. 84) (2002).

⁷ *First Space Station Reform Order*, 18 FCC Rcd at 10765-66 (para. 4).

⁸ SES Americom Amendment at Form 312, Item 20.

⁹ *Id.* at Schedule S, Item S2.

¹⁰ See 47 C.F.R. § 2.106 at p. 58.

¹¹ 47 C.F.R. § 25.201.

¹² SES Americom Amendment at Schedule S, Item S7(g).

¹³ 47 C.F.R. § 25.210 (i).

¹⁴ 47 C.F.R. §§ 25.112(a)(2) and 25.112(b)(1).

¹⁵ 47 C.F.R. §§ 25.112(a)(2) and 25.112(b)(1). The Satellite Division has dismissed other applications because of similar defects. See, e.g., Letter from Thomas S. Tycz, Chief, Satellite Division, to Brian Park, AfriSpace, Inc., DA 04-1719 (June 16, 2004).

At the same time, we *sua sponte* waive the *DBS Freeze PN*,¹⁶ to the extent necessary, to allow SES AMERICOM to refile its petition¹⁷ to correct the deficiency noted above within 30 days of the date of this letter. In re-filing its petition, consistent with the *DBS Freeze PN*, SES AMERICOM would be precluded from requesting orbit locations or frequency bands not contained in IBFS File Nos. SAT-PDR-20020425-00071, SAT-AMD-20051116-00219, and SAT-AMD-20060120-00006. The Commission stated that a freeze on *new* DBS petitions and applications for use of the 12.2-12.7 GHz band and associated feeder links in the 17.3-17.8 GHz band was necessary “pending Commission consideration of the appropriate processing rules for applications to provide DBS in the United States.”¹⁸ In adopting the freeze, the Commission did not determine to dismiss pending DBS filings and specifically permitted the filing of certain limited amendments to pending DBS filings. SES AMERICOM’s Petition was pending at the time the *DBS Freeze PN* was adopted. SES AMERICOM’s amendment did not change the underlying authority requested by SES AMERICOM and was in fact filed in response to a letter sent by the Division to SES AMERICOM shortly before the *DBS Freeze PN* was instituted.¹⁹ Granting this limited waiver of the *DBS freeze PN* would preserve the status quo at the time the freeze was adopted and would therefore be consistent with its purpose. Further, strict enforcement of the freeze in this instance would not serve the public interest.

Sincerely,

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Chief
Satellite Division

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¹⁶ Direct Broadcast Satellite (DBS) Service Auction Nullified; Commission Sets Forth Refund Procedures for Auction No. 52 Winning Bidders and Adopts a Freeze on All New DBS Applications, FCC No. 05-213, *Public Notice* (rel. Dec. 21, 2005) (*DBS Freeze PN*).

¹⁷ *DBS Freeze PN* (explaining that the freeze does not apply to amendments to pending DBS filings unless the amendment would add frequencies or orbital locations that were not in the original license application).

¹⁸ *DBS Freeze PN* (noting that in *Northpoint Technology, Ltd. v. FCC*, No. 04-1052 (D.C. Cir. June 21, 2005). In its decision, the appellate court vacated and remanded the section of the *DBS Auction Order* that concluded that DBS is not subject to the auction prohibition of the Open-Market Reorganization for the Betterment of International Telecommunications Act, Pub. L. No. 106-180, 114 Stat. 48 § 647 (enacted Mar. 12, 2000), codified at 47 U.S.C. § 765f (ORBIT Act)).

¹⁹ See Letter from Fern J. Jarmulnek, Deputy Chief, Satellite Division, International Bureau, to Nancy J. Eskenazi, SES AMERICOM, Inc., dated December 21, 2005.