

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matters of)	
)	
Anuvu Licensing Holdings, LLC)	
)	
Application to Modify Its Earth Stations Aboard Aircraft Blanket Authorization to Use 12.5-12.75 GHz Band)	IBFS File No. SES-MFS-20210127-00153 Call Sign E080100
)	
Application for Special Temporary Authority to Use 12.2-12.75 GHz Band for Earth Stations Aboard Aircraft)	IBFS File No. SES-STA-20211130-01850 Call Sign E080100
)	

ORDER AND AUTHORIZATION

Adopted: May 25, 2023

Released: May 25, 2023

By the Chief, Space Bureau:

I. INTRODUCTION

1. By this Order, we grant the modification application of Anuvu Licensing Holdings, LLC (Anuvu)¹ and authorize Anuvu to use Earth Stations Aboard Aircraft (ESAAs)² to communicate with the Geostationary Orbit (GSO) satellite Eutelsat 139 West A in the 12.5-12.75 GHz band in the Fixed Satellite Service (FSS) subject to the conditions set forth below. We find that a limited waiver of the Table of Frequency Allocations in 47 CFR § 2.106 is warranted due to the special circumstances present in this case, in particular, the limited remaining lifespan of the Eutelsat 139 West A satellite and the fact that operations are granted on a non-interference, unprotected basis with respect to operations in the 12.5-12.75 GHz band. Grant of this application will serve the public interest by making efficient use of available spectrum on a satellite, nearing the end of its operational life, by allowing Anuvu short-term use to provide better in-flight connectivity to the U.S. air-travelling public.

¹ Anuvu Licensing Holdings, LLC Application for Authority to Modify its Earth Station Aboard Aircraft Blanket License, IBFS File No. SES-MFS-20210127-00153 (Jan. 27, 2021) (Anuvu Modification Application). Anuvu (formerly known as Global Eagle Telecom Licensing Subsidiary, LLC) is a California-based company that provides satellite connectivity for aviation and maritime customers. To avoid confusion, all references to past filings under the Global Eagle name have been updated to the current corporate entity name, Anuvu Licensing Holdings, LLC.

² Earth Stations Aboard Aircraft (ESAAs) is one of three types of Earth Stations in Motion (ESIMs) which use frequencies allocated to the Fixed Satellite Service (FSS) to communicate with a satellite or satellites while located on moving vehicles. ESAAs are located on aircraft, Earth Stations on Vessels (ESVs) provide service on maritime vessels such as boats, cargo ships, and cruise ships, and Vehicle-Mounted Earth Stations (VMES) serve land-based vehicles. See 47 CFR § 25.103.

2. This license grant is subject to a number of conditions, as described more fully below. We also deny the Petitions to Deny filed by DISH Network Corporation (DISH) and RS Access (RS Access). The grant of this modification renders moot Anuvu's application for Special Temporary Authority (STA) to allow interim operation while the modification application remains pending, and it is dismissed.³

II. BACKGROUND

A. Anuvu Applications and Responsive Petitions

3. On January 27, 2021, Anuvu filed an application to modify its Ku-band Blanket Earth Stations Aboard Aircraft license to add four additional satellite points of communication and add operations in the 12.2-12.75 GHz band.⁴ The application was placed on public notice on April 7, 2021.⁵ On May 7, 2021, DISH and RS Access filed Petitions to Deny in Part in response to the application for modification.⁶ On May 20, 2021, Anuvu filed a Consolidated Opposition to Petitions to Deny in Part, which included an amended narrative requesting waiver⁷ to which DISH and RS Access replied.⁸ Intelsat and Eutelsat submitted comments in support of Anuvu's applications.⁹ Anuvu and RS Access requested "permit but disclose" *ex parte* treatment, which the International Bureau¹⁰ granted.¹¹

4. On November 2, 2021, Anuvu requested that the Bureau issue a partial authorization of

³ See Anuvu Licensing Holdings, LLC Application for Authority for Special Temporary Authority, IBFS File No. SES-STA-20211130-01850 (filed Nov. 30, 2021) (Anuvu STA Request).

⁴ Anuvu Modification Application.

⁵ *Satellite Communications Services Information, Satellite Radio Applications Accepted for Filing*, Report No. SES-02353 (rel. April 7, 2021).

⁶ DISH Petition to Deny in Part (filed May 7, 2021) (DISH Petition) and RS Access Petition to Deny in Part (filed May 7, 2021) (RS Access Petition).

⁷ Anuvu Licensing Holdings, LLC Consolidated Opposition to Petitions to Deny in Part and Narrative Amendment (filed May 20, 2021) (Anuvu Consolidated Oppositions and Waiver Request); DISH Reply to Anuvu Consolidated Opposition to Petitions to Deny in Part (filed June 2, 2021) (DISH Reply) and the RS Access *ex parte* letter (filed Apr. 18, 2022).

⁸ Given that Anuvu has filed a request for waiver of the Table of Allocations, we need not address Anuvu's original argument that no waiver is needed to grant the modification application. For the same reason, we need not address DISH's argument that Anuvu should have requested a waiver. See DISH Petition at 2-3.

⁹ Letter from Cynthia J. Grady, Assistant General Counsel, Intelsat US, LLC, to Marlene H. Dortch, Secretary, FCC, IBFS File No. SES-MFS-20210127-00153 (July 1, 2021) (Intelsat *ex parte* letter); Letter from Carlos M. Nalda, Counsel for Eutelsat, to Marlene H. Dortch, Secretary, FCC, IBFS File No. SES-MFS-20210127-00153 (June 29, 2021) (Eutelsat *ex parte* letter).

¹⁰ On January 4, 2023, the Commission adopted an Order that established the Space Bureau to handle the policy and licensing matters related to satellite communications and other in-space activities formerly handled by the International Bureau, which the Order eliminated. See *Establishment of the Space Bureau and the Office of International Affairs and Reorganization of the Consumer and Governmental Affairs Bureau and the Office of the Managing Director*, MD Docket No. 23-12, Order, FCC 23-1, paras. 1-2 (adopted Jan. 4, 2023). The Space Bureau officially launched on April 11, 2023. See Press Release, FCC, FCC Space Bureau & Office of International Affairs to Launch Next Week (April 7, 2023), <https://docs.fcc.gov/public/attachments/DOC-392418A1.pdf>. All references in this document to the International Bureau refer to filings made with, or actions taken by, the International Bureau prior to the establishment of the Space Bureau.

¹¹ Letter from Trey Hanbury, Counsel, RS Access, to Marlene H. Dortch, Secretary, FCC, IBFS File No. SES-MFS-20210127-00153 (July 9, 2021) (requesting permit but disclose status). The Bureau granted this request on July 13, 2021. *Satellite Communications Services Information, Satellite Radio Applications Action Taken*, Report No. SPB-02383 (rel. July 14, 2021).

its modification application while deferring the portion relating to the 12.2-12.75 GHz band.¹² On November 12, 2021, the Bureau granted Anuvu's application in part but deferred action on the request to use the 12.2-12.75 GHz band.¹³ On November 30, 2021, Anuvu filed an Application for Special Temporary Authority to operate as requested in the Modification.¹⁴ This application was placed on public notice on March 9, 2022.¹⁵ In response, DISH filed a Petition to Deny,¹⁶ to which Anuvu responded.¹⁷ DISH subsequently filed a reply.¹⁸ RS Access filed an *ex parte* letter on April 18, 2022.¹⁹ On August 1, 2022, Anuvu informed the Commission that it would only be using the Eutelsat 139 West A satellite in the 12.5-12.75 GHz band because the Hispasat 143 West satellite had been removed from service.²⁰ Finally, Anuvu filed a letter supplementing the record on the need for this authorization, the transition plan after the end-of-life of the Eutelsat 139 West A satellite, and the basis for Eutelsat's service offering in the 12 GHz band.²¹

B. Review of GSO ESIMs and the 12.5-12.75 GHz Band

5. Although the Fixed Satellite Service traditionally involves communications between satellites in orbit and earth stations at fixed locations, the growing demand for broadband communications on vessels, land vehicles, and aircraft has resulted in increased use of FSS for mobility applications.²²

¹² Letter from David S. Keir, Counsel for Anuvu, to Marlene H. Dortch, Secretary, FCC, IBFS File No. SES-MFS-20210127-00153 (filed Nov 2, 2021).

¹³ Specifically, the Bureau granted Anuvu's request to communicate with Telesat's Anik-F1R and Anik-F1 in 14.0-14.47 GHz (transmit) and 11.7-12.2 GHz (receive), and Eutelsat 139 West A in 14.0-14.47 GHz (transmit) and 10.95-11.2, 11.45-11.7 GHz (receive). See *Satellite Communications Services Information, Satellite Radio Applications Action Taken*, Report No. SES-02417 (rel. Nov. 17, 2021). Anuvu's original modification and STA applications also sought to allow service using the Hispasat 143 West with an expectation that it would operate through 2022. Anuvu notified the Commission that this satellite has been decommissioned and withdrew its request. See Letter from David S. Keir, Counsel, Anuvu, to Marlene H. Dortch, Secretary, FCC, IBFS File No. SES-MFS-20210127-00153 (Aug. 1, 2022).

¹⁴ Anuvu STA Request.

¹⁵ *Satellite Communications Services Information, Satellite Radio Applications Accepted for Filing*, Report No. SES-02477 (rel. March 9, 2022).

¹⁶ DISH Petition to Deny Anuvu STA (filed Dec. 28, 2021).

¹⁷ Anuvu Opposition to DISH Petition (filed Jan. 10, 2022).

¹⁸ DISH Reply to Opposition (filed Jan. 21, 2022). Anuvu also requested permit but disclose status. See Letter from David S. Keir, Counsel for Anuvu, to Marlene H. Dortch, Secretary, FCC, IBFS File No. SES-MFS-20210127-00153 (Mar. 8, 2022). The Bureau granted this request on March 9, 2021. See *Satellite Communications Services Information, Satellite Radio Applications Action Taken*, Report No. SES-02448 (rel. March 9, 2021).

¹⁹ Letter from Trey Hanbury, Counsel, RS Access, to Marlene H. Dortch, Secretary, FCC, IBFS File No. SES-MFS-20210127-00153 (filed Apr. 18, 2022).

²⁰ See Letter from David S. Keir, Counsel, Anuvu, to Marlene H. Dortch, Secretary, FCC, IBFS File No. SES-MFS-20210127-00153 (Aug. 1, 2022) (withdrawing original request to access Hispasat 143 West and, as a result, eliminating the need for access to 12.2-12.5 GHz and leaving only a request for use of 12.5-12.75 GHz).

²¹ See Letter from David S. Keir, Counsel, Anuvu, to Marlene H. Dortch, Secretary, FCC, IBFS File No. SES-MFS-20210127-00153 (Jan. 25, 2023) (Anuvu Supplemental Letter).

²² A detailed account of the regulatory changes that permitted the increased use of FSS for mobility applications has been set forth in a previous proceeding and is not repeated here. 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*, Notice of Proposed Rulemaking, 32 FCC Rcd 4239, 4241-42, paras. 3-6 (2017) (*2017 GSO ESIMs NPRM*). See also SpaceX Services, Inc. Application for Blanket Authorization of Next Generation Ku-Band Earth Stations in Motion et al., Kepler Communications Inc.

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These earth stations in motion, or ESIMs, can enable the provision of very high data rate broadband communications, navigation, situational awareness, and other services to mobile platforms that often cannot be served using other communications technologies.²³ Licensees use ESIMs to deliver broadband to ships, vehicles, trains, and aircraft using the same frequency bands, hardware, satellites, transponder beams, and control stations used to serve earth stations at fixed locations.²⁴

6. In the United States, the 12.2-12.7 GHz band is allocated on a co-primary basis for non-federal use for the Broadcasting Satellite Service (BSS), referred to in U.S. regulations as Direct Broadcast Satellite (DBS), for NGSO FSS (space-to-Earth), and for Fixed Service, referred to in U.S. regulations as Multi-Channel Video and Data Distribution Service (MVDDS).²⁵ The 12.7-12.75 GHz band is allocated on a primary basis for non-Federal use to the Fixed Service (FS), the FSS (Earth-to-space), and the Mobile Service (MS).²⁶ There is no allocation in the 12.5-12.7 GHz band for GSO FSS operations. In the 12.7-12.75 GHz band, there is an allocation for GSO FSS operations but only in the earth-to-space direction, not the space-to-earth direction requested in the modification application.²⁷

Application for Blanket Authorization of Ku-Band Earth Stations on Vessels, DA-22-695 (June 30, 2022) (description of use of 12 GHz for NGSO FSS ESIMs).

²³ *Amendment of Parts 2 and 25 of the Commission's Rules to Facilitate the Use of Earth Stations in Motion Communicating with Non-Geostationary Orbit Space Stations in Frequency Bands Allocated to the Fixed-Satellite Service*, Notice of Proposed Rulemaking, 33 FCC Rcd 11416, para. 2 (2018) (2018 NGSO ESIMs NPRM).

²⁴ *Id.* at 11416-17, para. 2.

²⁵ See 47 CFR § 2.106, United States Table of Frequency Allocations, non-Federal Table for the band 12.2-12.7 GHz. NGSO FSS (space-to-Earth) operations are allocated pursuant to footnote 5.487A, which provides additional allocations including in Region 2 as follows:

[The 12.2-12.7 GHz frequency band is] allocated to the fixed-satellite service (space-to-Earth) on a primary basis, limited to NGSO systems and subject to application of the provisions of [ITU Radio Regulations] No. 9.12 for coordination with other non-geostationary-satellite systems in the fixed-satellite service. Non-geostationary-satellite systems in the fixed-satellite service cannot claim protection from geostationary-satellite networks in the broadcasting-satellite service operating in accordance with the Radio Regulations, irrespective of the dates of receipt by the [ITU Radiocommunication] Bureau of the complete coordination or notification information, as appropriate, for the non-geostationary-satellite systems in the fixed-satellite service and of the complete coordination or notification information, as appropriate, for the geostationary-satellite networks, and [international footnote] No. 5.43A does not apply. Non-geostationary-satellite systems in the fixed-satellite service in the [12.2-12.7 GHz band] shall be operated in such a way that any unacceptable interference that may occur during their operation shall be rapidly eliminated.

47 CFR § 2.106, n.5.487A. This international footnote has been applied without modification to non-Federal operations, by placing the footnote on the non-Federal Table. See 47 CFR § 2.105(d)(5).

²⁶ 47 CFR § 2.106. The international and domestic allocations are similar for the 12.7-12.75 GHz band in most respects. However, space-to-Earth transmissions are permitted at 12.7-12.75 GHz in ITU Regions 1 and 3 but not in Region 2. 47 CFR § 2.106, International Table.

²⁷ See Letter from David S. Keir, Counsel, Anuvu, to Marlene H. Dortch, Secretary, FCC, IBFS File No. SES-MFS-20210127-00153 (Jan. 25, 2023). Eutelsat's 139 West A satellite is authorized by France and was originally located at the 7° East Longitude orbital location which, consistent with spectrum allocations applicable in ITU Region I, includes extended Ku-band space segment which is allocated in ITU Region I to the Fixed-Satellite Service in the space-to-Earth direction, including capacity in the 12.5-12.75 GHz band. Eutelsat petitioned for U.S. market access through the Permitted List and requested a waiver to use the band on a non-conforming basis that would not conflict with other operations in the band. The Commission expressly waived its rules to allow space-to-earth transmissions in the 12.5-12.75 GHz band on an unprotected, non-interference basis. See Eutelsat S.A. Application for Satellite

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7. In 2021, the Commission initiated a rulemaking proceeding to specifically seek comment on how best to maximize the efficient use of the 12.2-12.7 GHz band spectrum and to determine whether the Commission could add new or expanded terrestrial flexible uses, including mobile, in the 12.2-12.7 GHz band without causing harmful interference to incumbent licensees.²⁸ In a May 18, 2023 Report and Order, the Commission found that it was not in the public interest to add a mobile allocation to permit a two-way terrestrial 5G service in the 12.2-12.7 GHz band, noting that two-way, high-powered terrestrial mobile service in the band would create a significant risk of harmful interference to DBS and NGSO FSS operators.²⁹ In a Further Notice of Proposed Rulemaking, the Commission also sought comment on expanded fixed or unlicensed terrestrial use of the 12.2-12.7 band.³⁰ On May 18, 2023, the Commission also adopted a Notice of Proposed Rulemaking to seek comment on a proposal to repurpose some or all of the 12.7-13.25 GHz band for mobile broadband and other expanded use.³¹

III. DISCUSSION

A. Summary of Waiver Petition and Responsive Arguments

8. On May 20, 2021, Anuvu supplemented its modification application narrative to seek a waiver of the U.S. Table of Frequency Allocations³² to the extent such waivers are required to permit it to

Space Station Authorizations, IBFS File No. SAT-PDR-20191017-00115 (Apr. 8, 2020). Anuvu specifically accepts operation consistent with these limitations.

²⁸ See *Expanding Flexible Use of the 12.2-12.7 GHz Band; Expanding Flexible Use in Mid-Band Spectrum Between 3.7-3.24 GHz; MVDDS 5G Coalition Petition for Rulemaking to Permit MVDDS Use of the 12.2-12.7 GHz Band for Two-Way Mobile Broadband Service*, 36 FCC Rcd 606, 607-614, paras. 3-18 (2021) (2021 12 GHz NPRM) (providing an extensive, heavily-annotated discussion of the history, service rules and current use for allocations in the 12.2-12.7 GHz band).

²⁹ *Expanding Flexible Use of the 12.2-12.7 GHz Band*, WTB Docket 20-443, Report and Order and Further Notice of Proposed Rulemaking, *Expanding Use of the 12.7-13.25 GHz Band for Mobile Broadband or Other Expanded Use*, GN Docket 22-352, Notice of Proposed Rulemaking and Order, FCC 23-36, para. 11, (May 18, 2023) (12.2 GHz Band Report and Order and FNPRM and 12.7 GHz Band NPRM).

³⁰ *Id.* at paras. 48-56.

³¹ *Id.* at paras. 62. See also, *Expanding Use of the 12.7-13.25 GHz Band for Mobile Broadband or Other Expanded Use*, GN Docket 22-352, Notice of Inquiry and Order, FCC 22-80 (October 28, 2022). The International, Media, Public Safety and Homeland Security, and Wireless Telecommunications Bureaus also announced a temporary, 180-day, freeze, effective as of September 19, 2022, on filing new or modified applications for licenses in the 12.7-12.75 and 12.75-13.25 GHz bands. See *180-Day Freeze On Applications for New Or Modified Authorizations for the 12.7-13.25 GHz Band*, Public Notice, DA 22-974 (IB, PSHSB, MB, and WTB Sept. 19, 2022) (*Freeze Public Notice*). In the *12.7 GHz Band NOI*, the Commission ordered the extension of the temporary freeze pending the outcome of GN Docket No. 22-352. Anuvu filed its application in advance of the *Freeze Public Notice* and is therefore not subject to the freeze.

³² Anuvu Modification Consolidated Opposition to Petitions to Deny in Part, IBFS File No. SES-MFS-20210127-000153 (May 20, 2021) (Attached Amendment Narrative). We dismiss as moot Anuvu's request for a waiver of section 25.202(a)(10), which lists certain frequencies available for use by ESIMs communicating with GSO FSS space stations. Amendment Narrative at 1-2. See also 47 CFR § 25.202(a)(10). While this rule section does not list frequencies in the 12.5-12.75 GHz band, the International Bureau previously determined that the inclusion of a list of frequencies for ESIMs in section 25.202(a)(10) does not limit our ability to authorize ESIM operations in other frequency bands. See *SpaceX Services, Inc.*, Order and Authorization, DA 22-695, 2022 WL 2399683, at paras. 10-12 (IB, 2022). Instead, operations in frequency bands not on the list may be assigned on a case-by-case basis as indicated in paragraph (b) of section 25.202, in conformance with the U.S. Table of Frequency Allocations, section 2.106 of the Commission's rules. See also 47 CFR § 25.202(b). Accordingly, because a waiver of section 25.202(a)(10) is not necessary, we dismiss Anuvu's request for a waiver of this rule as moot. For the same reasons, we reject the arguments that ESIM operations are prohibited in the 12.5-12.75 GHz band. See *DISH Petition* at 2; *RS Access Petition* at 3 n.9. For the reasons discussed herein, we authorize Anuvu's ESIM operations in the 12.5-

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receive satellite signals being transmitted in the United States by Eutelsat 139 West A on a non-interference, unprotected basis.³³ Anuvu asserts that use of the requested spectrum will unlock cost-effective space segment capacity for provision of service that air travelers can rely upon for connectivity while in transit.³⁴ Anuvu argues that such case-by-case operations are also fully consistent with No. 5.492 of the ITU Radio Regulations, which allows non-conforming FSS use in the 12.5-12.75 GHz band on a non-interference, unprotected basis.³⁵ Anuvu notes in its Consolidated Opposition and supplemental letter that available space station capacity is currently limited.³⁶ Anuvu asserts that it uses multiple satellites and frequency bands, and only a fractional portion of its remote terminals would operate simultaneously. Anuvu also observes that the Eutelsat 139 West A satellite operates over the Pacific and provides coverage for only the western United States, thus minimizing the traffic to others in the 12 GHz band.³⁷ Finally, Anuvu argues that the waiver will not negatively impact other licensees or affect the Commission's decision making in the 12 GHz rulemaking because the Eutelsat 139 West A satellite is nearing its end of life and will not result in consumer disruption because the company has always maintained a mix of service providers using different bands in various locations to serve its aircraft customers.³⁸ Anuvu notes that the use of the aging Eutelsat 139 West A satellite is a stopgap measure and that by the time the satellite is deorbited "in a few years, Anuvu expects to have access to replacement and additional expansion capacity to be provided from forthcoming launches of new satellites from Intelsat, Hispasat and Astranis. Eutelsat and Intelsat filed letters of support of Anuvu's use of 12 GHz for downlinking.³⁹ They assert that Anuvu is not seeking long-term protected access to the 12 GHz band, and the authorization would facilitate the efficient use of the 12 GHz band without harming terrestrial fixed stations or Broadcast Satellite Service (BSS) because the earth stations will not be transmitting in the band.

9. RS Access and DISH contend that Anuvu has not justified a waiver. RS Access argues that satellite life expectancy is not an extraordinary circumstance which justifies a waiver of the Table of

12.75 GHz band pursuant to the case-by-case process contemplated in 47 CFR § 25.202(b), finding that a limited waiver of the Table of Frequency Allocations in 47 CFR § 2.106 is warranted. *See infra* para. 11.

³³ Anuvu Modification, Amendment Narrative at 1-2.

³⁴ *Id.* at Amendment Narrative at 2.

³⁵ Letter from David S. Keir, Counsel, Anuvu, to Marlene H. Dortch, Secretary, FCC, IBFS File No. SES-MFS-20210127-00153 and SES-STA-20211130-01850 (Apr. 1, 2022).

³⁶ *See* Letter from David S. Keir, Counsel, Anuvu, to Marlene H. Dortch, Secretary, FCC, IBFS File No. SES-MFS-20210127-00153, at 1-2 (Jan. 25, 2023) (Anuvu January 25 *Ex Parte* Letter) ("In order to provide efficient service to its customers, Anuvu has always endeavored to maximize the use of spectrum available to it, including short-term use of available spectrum on satellites nearing the end of life. With no new Ku-band satellites added over North America in the past five years and significant demand for conventional Ku-band space segment, Anuvu must find ways to increase capacity for airlines that are continuing to increase their demand for service. Anuvu has needed to utilize stopgap capacity on multiple satellites to cover its U.S. routes and access to the additional extended Ku-band spectrum at 12.5-12.75 GHz ... will be one of the few remaining ways to meet the demand. Access to this spectrum will serve the public interest by ensuring high quality connectivity for air traveler.") Anuvu further asserted that "12.7-12.75 GHz spectrum is available and operational" on a satellite on which Anuvu has been using conventional Ku-band capacity for almost two years, and because "the availability of additional conventional Ku-band capacity is limited in the near term, access to the 12.7-12.75 GHz spectrum on a satellite which Anuvu is already accessing will help meet immediate capacity needs, but long-term access to this band will not be necessary once additional high-throughput capacity comes online in the coming years." Anuvu January 25 *Ex Parte* Letter at 4.

³⁷ Amendment Narrative at 4.

³⁸ *See* Letter from David S. Keir, Counsel, Anuvu, to Marlene H. Dortch, Secretary, FCC, IBFS File No. SES-MFS-20210127-00153 (Jan. 25, 2023).

³⁹ Eutelsat *ex parte* letter; Intelsat *ex parte* letter.

Allocations.⁴⁰ DISH and RS Access also assert that the bar to ESIM operation in the 12 GHz band is buttressed by sound policy considerations because Anuvu customers will receive DBS and MVDDS interference and consequential service disruption, and that the Commission's flexibility in its pending 12 GHz rulemaking will be compromised and the sharing environment in the band will be unduly complicated and the potential for interference increased.⁴¹

B. Waiver Analysis

10. A waiver is appropriate if both (1) special circumstances warrant a deviation from the general rule, and (2) such deviation better serves the public interest.⁴² Generally, the Commission may waive any rule if there is good cause to do so⁴³ and, in making this determination, may take into account considerations such as hardship, equity, or more effective implementation of overall policy on an individual basis.⁴⁴

11. We find that there are special circumstances that warrant grant of Anuvu's waiver request to receive signals in the 12.5-12.75 GHz band, and that deviation from the Table of Allocations better serves the public interest in this case. First, contrary to RS Access's contentions,⁴⁵ Anuvu persuasively asserts that the availability of additional conventional Ku-band capacity is limited in the near term and that access to spectrum on a satellite which it is already accessing other Ku-band spectrum, will help meet immediate capacity needs.⁴⁶ Further, as previously noted, this satellite has a limited remaining lifespan (estimated to end in mid-2025). Though the life of the satellite cannot be precisely calculated, we reject

⁴⁰ Letter from V. Noah Campbell, CEO, RS Access, to Marlene H. Dortch, Secretary, FCC, IBFS File No. SES-MFS-20210127-00153 and SES-STA-20211130-01850 (Apr. 18, 2022).

⁴¹ *Id.* at 1-2, 4-5. *See also* RS Access Petition at 1-3; RS Access Reply at 5.

⁴² *NetworkIP, LLC v. FCC*, 548 F.3d 116, 125-128 (D.C. Cir. 2008) (citing *Northeast Cellular Telephone Co.*, 897 F.2d 1164, 1166 (1990)).

⁴³ *See* 47 CFR § 1.3.

⁴⁴ *See Northeast Cellular*, 897 F.2d at 1166 (“[A] waiver is appropriate only if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest. The 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.”); *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969) (“The agency’s discretion to proceed in difficult areas through general rules is intimately linked to the existence of a safety valve procedure for consideration of an application for exemption based on special circumstances.”).

⁴⁵ *See* RS Access Reply at 2-3 (“Global Eagle has 1,050 megahertz of ESIM-eligible downlink frequencies freely available to it. Rather than use any of these frequencies, Global Eagle would prefer to use non-ESIM frequencies in the 12.2-12.7 GHz band to satisfy its business objectives Global Eagle is silent as to why it needs these particular frequencies.”).

⁴⁶ *See* Letter from David S. Keir, Counsel, Anuvu, to Marlene H. Dortch, Secretary, FCC, IBFS File No. SES-MFS-20210127-00153 (Apr. 1, 2022) (“Anuvu also once again refuted petitioners’ specious claim that Anuvu has ready access to thousands of megahertz of spectrum that is allocated for potential ESIM use, noting that high demand for Ku-band spectrum for a broad range of uses limits Anuvu’s access only to particular Ku-band spectrum that it is able to lease from space segment providers. Anuvu has contracted for certain Ku-band capacity on E139WA and H143W, including portions of the 12 GHz band, precisely to make cost-effective use of the space segment currently available to it. Anuvu’s ability to make productive use of this spectrum consistent with the operational limitations that apply to it constitute circumstances justifying waiver of the Commission’s rules to the extent such waiver is required.”). *See also* Letter from David S. Keir, Counsel, Anuvu, to Marlene H. Dortch, Secretary, FCC, IBFS File No. SES-MFS-20210127-00153 (Jan. 25, 2023) at 1, 4 (“With no new Ku-band satellites added over North America in the past five years and significant demand for conventional Ku-band space segment, Anuvu must find ways to increase capacity for airlines that are continuing to increase their demand for service. Anuvu has needed to utilize stopgap capacity on multiple satellites to cover its U.S. routes and access to the additional extended Ku-band spectrum at 12.5-12.75 GHz on Eutelsat 139 WA will be one of the few remaining ways to meet the demand. Access to this spectrum will serve the public interest by ensuring high quality connectivity for air travelers.”).

arguments from DISH and RS Access that satellite life expectancy, combined with other factors such as demand and service availability, cannot be an extraordinary circumstance justifying a waiver. In fact, the limited remaining lifespan of Eutelsat 139 West A means that it is unlikely to overlap with the initiation of future changes, if any, adopted by the Commission in the 12.5-12.75 GHz band. To this end, Anuvu is already engaged in transition planning upon the end-of-life of the Eutelsat 139 West A satellite.⁴⁷ Moreover, deviation from the general rule is warranted because there are significant public interest benefits in making efficient use of an in-orbit satellite asset near the end of its useful lifespan for a near-term solution of allowing Anuvu to expand its service capability to better enable it to meet the growing user demands for connectivity to aircraft while on domestic or international flights. Anuvu will only be receiving signals in this band and thus will cause no harm to licensees. Issuing this grant on an unprotected noninterference basis will help ensure that the presence of these ESAs in the 12.5-12.75 GHz band do not materially affect the analysis in the open Commission proceedings covering these frequency bands. Moreover, the Commission recently declined to adopt a mobile allocation to permit a two-way, high-power terrestrial 5G service in the 12.2-12.7 GHz band, as proposed by DISH and RS Access, finding that such service would create a significant risk of harmful interference to DBS and NGSO FSS operators.⁴⁸ Finally, DISH and RS Access assert concerns about service disruption to Anuvu's customers because of the unprotected nature of the grant.⁴⁹ Anuvu customers (e.g., commercial airlines), however, presumably have the ability to change providers if they are not satisfied with the service.

12. Should Anuvu accept this license grant, it will do so subject to the outcome of any future rulemaking, including the pending rulemakings in the 12.2-12.7 GHz band and the 12.7-13.25 GHz band, and subject to the conditions stated below. Anuvu, therefore, assumes the risk of any expenditures made. Grant of this modification is specifically limited to the facts presented in this application and confers no expectation of further FSS GSO ESIM authorizations to operate in the 12.5-12.75 GHz band. Finally, we note that our analysis of this application is limited to the facts and circumstances of this particular application and has no broader applicability beyond it.

IV. CONCLUSION

13. We conclude that waiver should be granted to allow Anuvu's request for ESAA authorizations in the 12.5-12.75 GHz band, as conditioned and set forth herein. These conditions supplement the current conditions that apply to Anuvu's existing license.⁵⁰

V. ORDERING CLAUSES

14. Accordingly, IT IS ORDERED, that the Request for Waiver and the Modification Application filed by Anuvu Licensing Holdings, LLC ARE GRANTED, pursuant to sections 0.51 and 0.261 of the Commission's rules, 47 CFR §§ 0.51 and 0.261, and Sections 4(i), 301, 303(r), 308, and 310 of the Communications Act, as amended, 47 U.S.C. §§ 154(i), 301, 303(r), 308, 309, and 310, subject to the requirements and conditions set forth below, and that Anuvu is authorized to operate Earth Stations Aboard Aircraft to communicate with the Eutelsat 139 West A satellite in the United States, including its territories, and on non-U.S.-registered aircraft operating in U.S. airspace. This waiver terminates when Eutelsat 139 West A discontinues operation but no later than June 1, 2025 based on the limited remaining lifespan of Eutelsat 139 West A. Anuvu is afforded 30 days from the date of release of this order and authorization, as conditioned, to decline it. Failure to respond within this period will constitute formal acceptance of the authorization as conditioned.

⁴⁷ Anuvu Supplemental Letter at 1, 4.

⁴⁸ *12.2 GHz Band Report and Order and FNPRM and 12.7 GHz Band NPRM* at para. 11.

⁴⁹ See DISH Petition at 3; RS Access July 2021 ex parte.

⁵⁰ Anuvu Licensing Holdings, LLC Application for Authority Modify its Earth Station Aboard Aircraft Blanket License, IBFS File No. SES-MFS-20190312-00328 (granted Jan. 22, 2020).

15. IT IS FURTHER ORDERED that Anuvu's application for Special Temporary Authority to use the 12.2-12.75 GHz band for Earth Stations Aboard Aircraft is DISMISSED as moot.

16. IT IS FURTHER ORDERED that Anuvu's use of 12.5-12.75 GHz band is subject to the following requirements and conditions:

- a. This authorization is granted on a secondary, non-interference, unprotected basis for operations in the 12.5-12.75 GHz band in the United States. The ESAA operations of Anuvu must accept any interference received from both current and future services authorized in the band – even if such interference causes undesirable operations – and must not cause harmful interference to any authorized service, whether licensed or not.
- b. This authorization is subject to modification to bring it into conformance with any rules or policies adopted by the Commission in the future, including in WT Docket No. 20-443, *Expanding Flexible Use of the 12.2-12.7 GHz Band* and GN Docket No. 22-352, *Expanding Use of the 12.7-13.25 GHz Band for Mobile Broadband or Other Expanded Use*. Accordingly, any investment made toward operations in the bands authorized in this order by Anuvu assumes the risk that operations may be subject to additional conditions or requirements or even cessation of operation as a result of any future Commission actions.
- c. Anuvu must maintain a U.S. point of contact available 24 hours per day, seven days per week, with the authority and ability to terminate operations authorized herein.
- d. Operations outside the United States must also ensure compliance with the applicable laws, regulations, and licensing procedures of other countries, including, as appropriate regulations concerning operations from national or adjacent airspace, as well as with the conditions of this authorization.
- e. Authority is granted to operate stations by remote control provided that the operator is responsible for ensuring the operations are in accordance with the terms and conditions of the license and pursuant to section 25.271 of the Commission's rules.

17. IT IS FURTHER ORDERED that the Petition to Deny In Part filed by RS Access, LLC and the Petition to Deny In Part filed by DISH Network Corporation ARE DENIED.

18. IT IS FURTHER ORDERED that the request of Anuvu for a waiver of the United States Table of Frequency Allocations, 47 CFR § 2.106 of the Commission's rules regarding the 12.5-12.75 GHz (space-to-Earth) band IS GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

Julie M. Kearney
Chief
Space Bureau