Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Proposals to Permit Reducing	)	
Orbital Spacings Between	)	Report No. SPB-196
U.S. Direct Broadcast Satellites	)	

COMMENTS OF NEW SKIES SATELLITES N.V.

New Skies Satellites N.V. ("New Skies") hereby comments on the above-captioned public notice regarding proposals to permit reduced orbital spacings between U.S. Direct Broadcast Satellites ("DBS").[1] The Commission's policies with respect to DBS orbital spacing should promote the availability of competitive choice and innovative offerings for American consumers, and should avoid restrictive mandates that do not accommodate diverse business plans. The current International Telecommunication Union ("ITU") rules and procedures provide a flexible framework that use case-by-case coordination to ensure compatibility with existing DBS systems, promote arrangements that make commercial sense, permit a diversity of business plans, and maximize the opportunity for American consumers to obtain the satellite services they desire. Accordingly, a rulemaking is unnecessary, and could be counterproductive if it were to result in delays for new entrants or in a rigid set of rules that unduly constrain the ability of new entrants to execute their business plans and compete with incumbent operators.

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[1] *International Bureau Seeks Comment on Proposals to Permit Reducing Orbital Spacings Between U.S. Direct Broadcast Satellites*, Public Notice, Report No. SPB-196, DA 03-3903 (rel. Dec. 16, 2003) ("*Public Notice*").

New Skies is a global satellite communications company that provides video, Internet, voice, and data transmission services to customers around the world, including telecommunications carriers, broadcasters, large corporations, Internet service providers ("ISPs"), and government organizations. New Skies has five geostationary communications satellites in orbit, various ground facilities, and one additional spacecraft under construction. New Skies is headquartered in the Hague, Netherlands, and has offices in Washington, D.C., Beijing, Hong Kong, New Delhi, Sao Paolo, Singapore, and Sydney. The Netherlands serves as the licensing administration for the Company. New Skies is exploring plans to operate a satellite system at the 125° W.L. orbital location in the DBS bands. In furtherance of those plans, the Netherlands has made the required ITU network filings, and is in the process of coordinating the proposed satellite system with, among others, the United States.

I. RATHER THAN INITIATE A RULEMAKING, THE COMMISSION SHOULD CONTINUE TO ALLOW ORBITAL SPACING FOR U.S. DBS SERVICES TO BE GOVERNED BY APPLICABLE ITU RULES AND POLICIES

A. Reduced Orbital Spacing is Technically Feasible

While New Skies has not provided a detailed technical analysis at this stage, it is New Skies' opinion that compatibility between DBS systems planning to serve the United States can be achieved with orbital spacing of less than nine degrees. The feasibility and technical constraints that will apply with respect to the new entrants proposing to operate at less than nine degrees from U.S. DBS systems are best addressed and developed during case-by-case coordination between the respective administrations and/or their operators.

B. DBS Orbital Spacing Policy Should Further the Commission's Goals of Consumer Choice and Innovative Services

The Commission has stated repeatedly that its satellite policies are intended to promote the welfare of American consumers, by fostering the availability of satellite-based services to all Americans.[2] Indeed, the Commission has sought to promote competitive choice and innovative offerings for American consumers, in all aspects of telecommunications and media, including multi-channel video programming distribution ("MVPD"). In the context of DBS and direct-to-home ("DTH") service, the Commission has in the past year furthered the goal of greater consumer choice by authorizing non-U.S.-owned and non-U.S.-licensed satellite systems to provide service in the United States.[3] In its consideration of orbital spacing issues, the Commission should maintain this commitment to the entry of new competitors and the development of increased consumer options and innovation.

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[2] *See, e.g., Establishment of Policies and Service Rules for the Non-Geostationary Satellite Orbit, Fixed Satellite Service in the Ka-Band*, Report and Order, 18 FCC Rcd 14708, ¶ 57 (2003) (adopting policies "to provide consumers with yet another option for access to competitive broadband voice and data services, which will benefit the public interest by promoting innovative new services at competitive prices"); *Review of the Commission's Regulations Governing Television Broadcasting; Television Satellite Stations Review of Policies and Rules*, Report and Order, 14 FCC Rcd 12903, ¶ 28 (1999) (stating that various Commission actions "have facilitated the development of alternative technologies such as cable television, direct broadcast satellite service, [and] digital audio radio satellite service . . . to increase the range of choices open to advertisers, viewers and listeners").

[3] *See SES Americom, Inc. and Columbia Communications Corp.*, Order and Authorization, 18 FCC Rcd 16589, ¶ 1 (Int'l Bur. 2003) (explaining that the authorization "will promote fair and increased competition in the provision of satellite service in the United States, . . . which will provide benefits to the public by maximizing consumer choice"); *Digital Broadband Applications Corp.*, Order, 18 FCC Rcd 9455, ¶¶ 1, 16, 18 (Int'l Bur. 2003) (explaining that this action should stimulate competition for DBS and other MVPD services, providing consumers more alternatives and reduced prices).

In addressing orbital spacing for DBS, the Commission should also maintain a flexible approach to technical and operational issues for satellite operators, by avoiding one-size-fits-all mandates and instead providing for solutions that can be tailored to the individual circumstances of satellite providers in this band. In most situations, the best technical solution for satellite operators results not from rules of general applicability, but from the case-by-case coordination between the incumbent operators and new entrants. By permitting DBS providers to coordinate flexible, mutually agreeable technical solutions to spacing and other issues, the Commission will foster arrangements that make commercial sense and maximize the opportunity for American consumers to obtain the services they desire.

This flexible approach, moreover, is consistent with the U.S. commitment to comply with the international regulations of the ITU, a commitment that is particularly critical in the context of Broadcast Satellite Service ("BSS") orbital spacing issues. The FCC has previously recognized that the ITU procedures are sufficient to protect U.S. systems.[4] The flexibility afforded by the case-by-case coordination procedures can be used to foster expansion and innovation by U.S. systems and permit entry of competitive systems. New developments, such as the use of spot beams and the provision of high definition television services, can be taken into account during the case-by-case coordination process.

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[4] *See Policies and Rules for the Direct Broadcast Satellite Service*, Report and Order, 17 FCC Rcd 11331, ¶ 130 (2002) ("*DBS Order*") (stating that the ITU modification process "will identify the U.S. DBS systems that are affected by the proposed Plan modification of another Administration.").

C. ITU Rules and Procedures Effectively Govern DBS Orbital Spacing

The operation of Ku-band DBS systems around the world, including in the United States, is governed by Appendices 30 and 30A of the ITU Radio Regulations.[5] The orbital locations and frequency bands for DBS in the United States and elsewhere were determined through international planning under the auspices of the ITU, resulting in the "BSS Plan." The Commission has previously declined to adopt its own technical rules for DBS, on the basis that the ITU's procedures are sufficient to protect U.S. DBS systems.[6] Significantly, the BSS plan specifies the international coordination procedure as the appropriate means of resolving all DBS interference issues.

As other parties have pointed out, there is no Commission rule that establishes or requires nine-degree spacing for U.S. DBS orbital assignments.[7] Instead, the Commission's rules defer to the ITU's processes for introducing new DBS assignments. Under procedures contained in Appendices 30 and 30A, new DBS satellites can be deployed fewer than nine degrees from current U.S. DBS satellites as long as it is demonstrated that the new satellite's operations can be coordinated with existing facilities. In fact, the Commission itself has recognized that the ITU's rules permit closer spacing, stating that "[s]ervice into the United States from future entrants such as non-U.S. DBS satellites could result in smaller satellite spacing than the current nine-degree separation between U.S. DBS orbital locations."[8]

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5 *See, e.g., DBS Order* ¶¶ 56, 106, 111.

6 *Id.* ¶ 130.

7 *See* Reply Comments of SES Americom, Inc., MB Docket No. 03-172, at 6 (Sep. 26, 2003).

8 *DBS Order* ¶ 129.

U.S. DBS systems are protected by the parameters and priority of their corresponding ITU filings, and the case-by-case coordination activities will ensure that any neighboring U.S. DBS assignments are safeguarded from interference from new, closer-spaced satellites. Coordination is triggered with respect to existing orbital assignments that are identified as "affected" by a proposed modification of the BSS Plan, which, as the Commission has indicated, provides "[t]he United States [with] an opportunity to work with the Administration proposing the Plan modification to ensure protection of U.S. DBS systems."[9] Using the current rules, which rely on the ITU coordination framework, the Commission can ensure that any new entrants that would be accommodated also receive appropriate protection where future modifications to existing DBS systems are sought at the ITU. Importantly, this policy allows the Commission to ensure that new entrants will be able to provide competitive and viable services to U.S. customers. The Commission has consistently stated that the ITU priority system must be followed and respected by all U.S. licensees.[10] The Commission should continue to support the ITU's coordination procedures.[11]

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9 *Id.* ¶ 130.

10 *See, e.g., Amendment of the Commission's Space Station Licensing Rules and Policies*, First Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 10760, ¶¶ 93, 96, 295 (2003).

11 The Commission has noted that "[i]n other satellite services, the United States regularly coordinates satellite systems, and we believe that coordination is also appropriate for the DBS service." *Policies and Rules for the Direct Broadcast Satellite Service*, Notice of Proposed Rulemaking, 13 FCC Rcd 6907, ¶ 45 (1998).

D. Initiation of a Rulemaking is Unnecessary and Likely Counterproductive

There is no need for a Commission rulemaking proceeding on the orbital spacing issues raised in the petitions cited in the *Public Notice*. The Commission's continued reliance on the ITU's existing processes for deploying and coordinating new DBS systems in the United States will promote the key policy goals described above.

As indicated above, the case-by-case coordination activities triggered by the ITU procedures will ensure that, even with separations of less than nine degrees, existing U.S. DBS systems are protected from interference, while at the same time permitting new entrants to implement their business plans. Fewer than two years ago, the Commission in the *DBS Order* stated that the ITU Appendices 30 and 30A modification procedures "should provide adequate protection of U.S. DBS systems,"[12] and more generally characterized its current approach to DBS as "achiev[ing] an appropriate balance between flexibility for DBS licensees while preserving opportunities for future entrants and ensuring protection of U.S. DBS systems from interference."[13]

The flexibility of the existing ITU coordination framework will give future DBS entrants the best chance at commercial viability. Non-uniform orbital spacing will enable prospective DBS operators to respond to varying technical considerations, and to engineer their systems creatively and innovatively to meet the needs of their own unique business plans. New entrants will have the flexibility to make trade-offs in their system architectures between different degrees of separation, power levels, coding rates, and receiving antenna sizes. For instance, a DBS entrant six degrees from any existing U.S.

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12 *DBS Order* ¶ 130.

13 *Id.* ¶ 127.

DBS satellite would be able to provide service to today's standard-size DBS receivers, with a diameter of 45 centimeters; a DBS entrant 4.5 degrees from neighboring systems might enjoy certain benefits from such closer spacing, but would have to operate satellites with lower power levels that are likely to require larger receiver antennae.

Accordingly, given that the existing process is flexible enough to accommodate diverse business plans that incorporate varying performance criteria, continued reliance on ITU's bilateral coordination procedures would ultimately lead to more robust competition and consumer choice for multichannel video programming distribution services. In contrast, a Commission rulemaking that resulted in uniform spacing in the U.S. DBS arc would likely impose rigid technical parameters on prospective new entrants. Without sufficient flexibility in their business models and system designs, future entrants would be barred from having a significant competitive impact in the DBS or MVPD marketplace – to the detriment of U.S. consumers.

The relative disadvantage of a uniform, pre-determined spacing rule, compared to case-by-case coordination pursuant to ITU procedures as required, is illustrated by considering the orbital arc between 101° W.L. and 61.5° W.L. At the two extremes of this arc, BSS orbital locations are allotted to the United States. The 101° W.L. and 61.5° W.L. orbital locations are separated by 39.5°, which is not a multiple of nine (nor a multiple of 4.5, for that matter). Consequently, the policy of pre-determining new orbital location assignments based on uniform spacing could not be implemented; inevitably, there would be closer spacing and more burdensome technical constraints for either the system at 101° W.L. or the system at 61.5° W.L. By contrast, individual coordination on a case-by-case basis allows existing operators to agree with new entrants on how best to

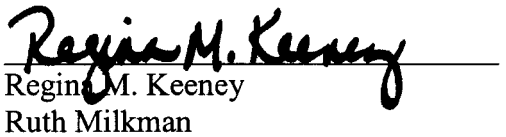
achieve a result that maximizes benefits and minimizes burdens for each party. Because a rulemaking is unnecessary and could be detrimental to both new entrants and existing operators, the Commission should decline to initiate a rulemaking proceeding on these orbital spacing issues.

II. CONCLUSION

For the reasons described above, New Skies urges the Commission to continue to rely on the existing ITU rules and procedures to resolve DBS orbital spacing issues.

Respectfully submitted,

NEW SKIES SATELLITES N.V.



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Certificate of Service

I, Ruth E. Holder, hereby certify that on this 23rd day of January, 2004, I caused a true and correct electronic copy of the foregoing Comments of New Skies Satellites N.V. to be electronically mailed to:

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