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

In the Matter of:	)	
	)	
Amendment of the Commission's Space Station Licensing Rules and Policies	)	IB Docket No. 02-34
	)	
2000 Biennial Regulatory Review -- Streamlining and Other Revisions of Part 25 of the Commission's Rules Governing the Licensing of, and Spectrum Usage by, Satellite Network Earth Stations and Space Station	)	IB Docket No. 00-248

To: The Commission

REPLY COMMENTS OF ORBCOMM LLC

ORBCOMM LLC ("ORBCOMM"), by its undersigned counsel, hereby submits its reply comments in the above-captioned proceeding (the "Rulemaking"). As the owner and operator of the ORBCOMM non-voice non-geostationary mobile satellite service ("NVNG MSS") system, ORBCOMM has a vested interest in the outcome of the Rulemaking. As discussed below, ORBCOMM cannot support the proposed shift to a system of 'first-come, first-served' adjudication for satellite applicants.

ORBCOMM applauds the Commission's efforts to update and streamline its satellite licensing Rules and policies. The removal of regulatory impediments to free-market competition in the satellite services sector is undisputedly a worthy policy priority. Not surprisingly, the record developed thus far in the Rulemaking clearly demonstrates broad support for these initiatives. It is equally unremarkable that the principal area of contention among parties to the Rulemaking emanates from the Commission's proposed implementation of a 'first-come, first-served' approach to the adjudication of satellite authorization applications. After carefully

weighing these proposals and the input of the parties to the Rulemaking, ORBCOMM has concluded that the inevitable negative consequences far outweigh any possible benefit that might derive from this drastic proposed alteration of Commission procedures.

The noble motivation to expedite the satellite licensing process and reduce anti-competitive abuses of process cannot be disputed. Unfortunately, the principal underlying assumptions relating to the benefits that purportedly might be derived from the major policy shift proposed in the Rulemaking are fatally flawed.

Let us first assume, *arguendo,* that the highly suspect legal rationale for eliminating the ability to file a competing mutually exclusive application could actually be reconciled with the provisions of Section 309 of the Communications Act of 1934 (as amended) (the "Act") and the long line of inapposite case law emanating from the Supreme Court's decision in *Ashbacker Radio Corp. v. FCC.*[1] This leap of faith still leaves the statutory procedural right of interested third parties, unambiguously afforded by Section 309 of the Act, to petition to deny an application for frequency authorization.

The indisputable statutory right to petition to deny, and the due process rights afforded thereby, are virtually indistinguishable from the procedural rights presently afforded to an applicant filing a so-called 'blocking' application. The only discernable difference between these two approaches is that a mutually exclusive applicant is presently afforded simultaneous and equal adjudication rights for its own authorization proposal. From a timing and procedural efficiency standpoint, it is virtually impossible to imagine that the disposition of petitions to deny under the proposed 'first-come, first-served' approach could be accomplished any more rapidly by the Commission than the disposition of competing mutually exclusive applications.

To the contrary, the possibilities of compromise and accommodation among similarly situated applicants inherent to the existing 'processing round' system, however cumbersome it

---

[1] *Ashbacker Radio Corp. v. FCC,* 326 U.S. 327 (1945).

may or may not be, would *not* be present under the proposed new single applicant processing approach. The *only* possible outcome for a 'first-come, first-served' approach, absent the accompanying adoption of rigid orbit/spectrum allotment planning or some other form of Commission intervention in frequency planning for individual systems (approaches that ORBCOMM views as wholly contrary to the commendable free-market policies long-espoused by the Commission), is a grant or denial of the single application. Moreover, if an application were actually ever granted under this proposed new approach, the next applicant in line for the same range of spectrum would inevitably be subject to the 'first-in-time' protection claim of the incumbent licensee (along with various other anti-competitive behaviors that could be exercised by a monopoly incumbent). Although these prospects may appear attractive to some, at best, ORBCOMM views this as a grim alternative to the existing process.

Of equal or greater concern is the real potential for abuse of the proposed 'first-come, first-served' process by unscrupulous speculators and by incumbents trying to foreclose competitive entry by other operators seeking to utilize spectrum in other frequency bands. It appears clear that it may never be possible to completely eliminate these types of tactics under a processing round system. Regardless, the exclusive nature of the rights that would be obtained through proposed 'first-come, first-served' approach would only serve to up the ante, and thus greatly encourage rather than foreclose egregious anti-competitive behavior. This, in turn, would only lead to more contention, more process, and more administrative delay. ORBCOMM cannot envisage any viable regime of accompanying safeguards that would foreclose such behavior or avoid the inevitable administrative quagmire – the stakes would simply be too high. The best way to limit speculation and anti-competitive abuse is to continue to provide all comers with a measured simultaneous equal footing in the adjudicative process.

For all of the above-stated reasons, ORBCOMM is opposed to adoption of a 'first-come, first-served' adjudication procedure for satellite applicants. By no means, however, should

ORBCOMM's position be interpreted as an endorsement for maintaining the *status quo*. The existing 'processing round' approach could be enhanced if the Commission could place a heightened emphasis on eliminating processing backlogs and other procedural delays that are under its control. Among other things, expanding the International Bureau's roster of legal and technical staff could go a long way towards accomplishing this goal. Of course, ORBCOMM is the first to realize that this is no easy matter to resolve. There is an inherent conflict between speed of action and maintaining the requisite level of due process in any administrative law situation.

Nevertheless, even with its flaws, the current system of adjudicating processing rounds of satellite applicants is by far superior to any other conceivable approach. Accordingly, ORBCOMM must oppose the proposed shift to a 'first-come, first-served' method of adjudicating satellite applications.

Respectfully submitted,

ORBCOMM LLC

/S/

Walter H. Sonnenfeldt
WALTER SONNENFELDT & ASSOCIATES
14732 Jaystone Drive
Silver Spring, Maryland 20905
(301) 384 – 5699

Its Attorney

July 2, 2002

CERTIFICATE OF SERVICE

I, Shannon L. Riley, a secretary in the offices of WALTER SONNENFELDT & ASSOCIATES, hereby certify that on the 2nd day of July, 2002, true and correct copies of the foregoing "Reply Comments of ORBCOMM LLC" were mailed, first-class postage prepaid, to the following:

Mark A. Grannis
Kelly S. McGinn
Harris, Wiltshire & Grannis LLP
1200 Eighteenth Street, N.W.
Suite 1200
Washington, D.C. 20036
Attorneys for Teledesic LLC

Henry Goldberg
Joseph A. Godles
Goldberg, Godles, Wiener & Wright
1229 Nineteenth Street, N.W.
Washington, D.C. 20036
Attorneys for PanAmSat Corporation

Richard DalBello
Executive Director
Satellite Industry Association
225 Reinekers Lane
Suite 600
Alexandria, Virginia 22314

Robert Catania, Esquire
Counsel
Boeing Satellite Systems, Inc.
2260 E. Imperial Highway
El Segundo, California 90245-0902

David A. Nall
Bruce A. Olcott
Squire, Sanders & Dempsey L.L.P.
1201 Pennsylvania Avenue, N.W.
Post Office Box 407
Washington, D.C. 20044-0407
Attorneys for The Boeing Company

David B. Meltzer
Susan H. Crandall
Intelsat Global Service Corporation
2400 International Drive, N.W.
Washington, D.C. 20008

Bert W. Rein
Carl R. Frank
Jennifer D. Hindin
Chin Kyung Yoo
Wiley, Rein & Fielding LLP
1776 K Street, N.W.
Washington, D.C. 20006-2304
Attorneys for Intelsat LLC

Gary M. Epstein
John P. Janka
William S. Carnell
Latham & Watkins
555 Eleventh Street, N.W.
Suite 1000
Washington, D.C. 20004
Attorneys for Hughes Network Systems, Inc., Hughes Communications, Inc., and Hughes Communications Galaxy, Inc.

Phillip L. Spector
Laura B. Sherman
Kira A. Merski
Paul, Weiss, Rifkind, Wahrton & Garrison
1615 L Street, N.W.
Washington, D.C. 20036
Attorneys for SES Americom, Inc.

Scott A. Blank
Senior Vice President – Legal and Corporate
Affairs, General Counsel, and Secretary
Pegasus Development Corporation
225 City Line Avenue
Suite 200
Bala Cynwyd, Pennsylvania 19004

Aileen A. Pisciotta
Randall W. Sifers
Kelley Drye & Warren LLP
1200 19th Street, N.W.
Suite 500
Washington, D.C. 20036
Attorneys for Final Analysis Communication Services, Inc.

Michael F. Altschul
Senior Vice President, General Counsel
Cellular Telecommunications & Internet Association
1250 Connecticut Avenue, N.W.
Suite 800
Washington, D.C. 20036

Gary M. Epstein
John P. Janka
Alex Hoehn-Saric
Latham & Watkins
555 Eleventh Street, N.W.
Suite 1000
Washington, D.C. 20004
Attorneys for Inmarsat Ventures PLC

Paul D. Bush
Vice President, Corporate Development
Telesat Canada
1601 Telesat Court
Ottawa, Ontario K1B 5P4
CANADA

/S/

Shannon L. Riley