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April 4, 2003

ELECTRONICALLY FILED

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: *Ex Parte* Presentation in IB Docket Nos. 02-34 and 00-248

Dear Ms. Dortch:

Pursuant to Section 1.1206 of the Commission's Rules, 47 C.F.R. § 1.1206, this letter provides notice that on April 3, 2003, Mr. Kalpak Gude of PanAmSat Corporation, Mr. John Stern of Loral Space & Communications, Ms. Nancy Eskenazi of SES AMERICOM, Inc. and Ms. Karis Hastings, counsel for SES AMERICOM, Inc., met with Jennifer Manner, Senior Counsel to Commissioner Abernathy, to discuss issues raised in and associated with the pending Notices of Proposed Rulemaking on Space Station Licensing Reform (IB Docket Nos. 02-34 and 00-248). The attached document was provided to Ms. Manner and formed the basis for the discussion.

A copy of this letter is being submitted electronically in each of the above referenced dockets.

Respectfully submitted,

Karis A. Hastings
Counsel for SES AMERICOM, Inc.

cc: Jennifer Manner

Space Station License Reform Proceeding

IB Docket Nos. 02-34 & 00-248

SES AMERICOM
An SES GLOBAL Company

HUGHES
NETWORK SYSTEMS

PanAmSat

LORAL
Space & Communications

Space Station License Reform Proceeding
IB Docket Nos. 02-34 & 00-248

I. PROTECTION OF REPLACEMENT EXPECTANCY IS ESSENTIAL UNDER ANY LICENSING SYSTEM

A. Benefits of Replacement Expectancy

The FCC has long recognized the advantages of providing operators in every radio service with a reliable and predictable renewal expectancy. It has found that this expectancy is especially appropriate with respect to satellites because of the large upfront capital outlays needed to construct and launch satellites; the long lead times needed to plan for construction and launch; and the large installed base of earth stations that are used to communicate with particular satellites and their replacements. The replacement expectancy for satellite licensees best serves the public interest:

1. **Provides for continuity of service for customers**

2. **Encourages investment and innovation by operators**

B. Elements of Replacement Expectancy

The Commission should make clear that the replacement expectancy does not require the new satellite to be technically identical to the spacecraft being replaced. Specifically, provided that any proposal is consistent with the Commission's technical rules and with applicable coordination agreements, the Commission should routinely authorize replacement satellites that:

1. **Employ different power levels, emissions characteristics or signal modulation techniques;**

2. **Alter the spacecraft's coverage area; and/or**

3. **Implement use of "extended" bands (e.g., a licensee operating in the standard Ku-band proposes to use the extended Ku-band)**

II. THE COMMISSION SHOULD NOT IMPLEMENT THE PROPOSED PERFORMANCE BOND

A. Problems with the Performance Bond Proposal

1. The proposed amount of the bond is excessive. Even if the amount were reduced substantially:

2. The bond will penalize licensees for market developments beyond their control

3. The risk of forfeiture will represent a deterrent to innovation and competition and will discriminate against new and smaller entrants

4. Fair application of a bond mechanism will be administratively burdensome

5. Bond forfeitures will result in litigation

6. The risk of forfeiture will encourage companies to apply for authority through other administrations rather than through the FCC

B. Financial Qualifications Standards Should Be Retained and Applied

1. Financial qualifications rules provide a more reliable basis for determining an applicant's ability to construct and launch a satellite system

2. The standards can be refined to lower barriers to new entrants and entrepreneurs. For example, PanAmSat proposed a sliding scale for an applicant's demonstration of ability to cover applicable construction costs.

C. Existing Anti-Trafficking Rules Should Be Retained

1. The FCC acknowledged in the NPRM that existing rules represent an important deterrent to speculation and prevent unjust enrichment

2. **The rules give the FCC broad flexibility to authorize bona fide transactions. As a result, there is no basis for the concern expressed in the NPRM that licensees who have decided not to construct might be discouraged from attempting to sell to more interested parties.**

3. **Cases in which the Commission has been presented with a colorable claim that a transaction violates the anti-trafficking rules have been rare**

III. THE FIRST COME FIRST SERVED PROPOSAL SHOULD BE REJECTED OR AT LEAST SUBSTANTIALLY MODIFIED

A. The Record Demonstrates that a Modified Processing Round Approach Is Superior to FCFS

1. **Processing rounds have led to successful development of a competitive satellite industry – all the incumbent licensees that have been through a processing round support retaining this approach**

2. **Processing round licensing can be expedited and improved by implementing strict deadlines for public notice, applicant negotiations, and Commission decisions**

3. **FCFS as proposed has substantial flaws:**

   – It encourages a "land rush."

   – It would permit an applicant to obtain the most desirable orbital locations, blocking competition.

   – It lacks effective safeguards against speculation and greenmail.

B. If Adopted, FCFS Should Apply Only to Future Applications in Populated Bands (C & Ku)

1. **The dangers posed by FCFS are diminished in the C & Ku bands**

   – A "land rush" is less likely because of the relatively few remaining orbital locations.

   – Existing assignments will prevent a new applicant from concentrating the most desirable orbital locations.

   – Opportunities for speculation and greenmail would still be present, but would be decreased if focused on these two frequency segments.

2. **Modified processing rounds are the best licensing approach for new bands**

   – Applicants can be given the opportunity to reach a consensus agreement on orbital assignments.

   – If no agreement is reached, the Commission staff can assign orbital locations with the objective of achieving a competitive market in the band.

   – Alternatively, a "draft" approach could be used to resolve a round in the event the parties cannot agree. Under a draft approach the first party to apply in a band would be allowed to choose one of the available orbital locations, followed by other applicants in the order they filed applications. When each applicant has selected a location, the first applicant would be allowed to choose a second location, continuing the same process until all available locations have been assigned.