

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

In the Matter of)
)
Amendment of the Commission's Space) IB Docket No. 02-34
Station Licensing Rules and Policies)

To: The Commission

REPLY COMMENTS OF SES AMERICOM, INC.

SES AMERICOM, Inc. ("SES AMERICOM"), by its attorneys, hereby replies to the comments of other parties in response to the Commission's Further Notice of Proposed Rulemaking ("*Further Notice*") in the above-referenced proceeding.¹ The *Further Notice* seeks comment on the appropriate level of the performance bond to be imposed on satellite licensees. The *Order* adopted an initial bond amount of \$5 million for geostationary systems, but the Commission acknowledged that the record regarding the bond was limited and sought additional input. *Order* at ¶ 168.

The record here overwhelmingly supports a conclusion that the only acceptable amount for a performance bond is zero. SES AMERICOM's own initial comments and petition for reconsideration demonstrate in detail why the multi-million dollar bond adopted by the Commission would have devastating effects on the satellite industry and, more importantly, on satellite users. The bond

¹ Amendment of the Commission's Space Station Licensing Rules and Policies, IB Docket No. 02-34, *First Report and Order* ("*Order*") and *Further Notice of Proposed Rulemaking*, FCC 03-102 (rel. May 19, 2003).

unnecessarily penalizes legitimate risk-taking and chills the development of new orbital locations and markets.²

Virtually the entire satellite industry shares this view. Indeed, a coalition of major satellite industry companies has – in this instance – joined together to urge elimination of the bond requirement. This coalition explains that the bond is harmful, unnecessary, and beyond the Commission’s legal authority.³ Almost every other party to file in the proceeding also objects to the performance bond in some respect. Northrop Grumman argues that the bond should not be imposed on certain pending applications.⁴ The Satellite Industry Association (“SIA”) opposes application of the bond in situations where a replacement applicant seeks access to extended band spectrum or previously unused spectrum within the same band.⁵ Both SIA and Telesat Canada argue that foreign-licensed systems

² Petition for Reconsideration and Comments of SES AMERICOM, Inc., IB Dkt. No. 02-34 (Sept. 26, 2003) (“SES Petition”) at 2-12.

³ See Petition for Reconsideration and Comments of the Boeing Company, Hughes Network Systems, Inc., Iridium Satellite LLC, Lockheed Martin Corporation, Loral Space & Communications Ltd., Mobile Satellite Ventures LP, PanAmSat Corporation, and SES AMERICOM, Inc., IB Dkt. No. 02-34 (Sept. 26, 2003).

⁴ Petition for Partial Reconsideration of Northrop Grumman Space Technology and Mission Systems Corporation, IB Dkt. No. 02-34 (Sept. 26, 2003).

⁵ Petition for Reconsideration and Clarification and Comments of the Satellite Industry Association, IB Dkt. No. 02-34 (Sept. 26, 2003) (“SIA Petition”) at 19-20.

seeking only U.S. market access, not an assignment of spectrum, should not be subject to the bond.⁶

In fact, only one party expresses any affirmative support for a performance bond requirement at all. But the comments of Intelsat LLC (“Intelsat”)⁷ fail to show that the Commission’s bond rules would achieve the objective of deterring speculation “*without deterring legitimate satellite applications.*” *Order* at ¶ 168 (emphasis added). The Commission should heed the strong, nearly-unified voice of the satellite industry and jettison the performance bond.

At the very least, the Commission must abandon any notion of increasing the bond. The *Further Notice* suggested that the Commission was inclined to consider an upward adjustment of the bond amounts adopted in the *Order*. *Further Notice* at ¶ 334. This suggestion received absolutely no support in the record. Even Intelsat, which had at one time advocated a higher bond level, now makes clear that it is not in favor of a bond increase. Intelsat Comments at 4. Accordingly, the Commission should give no further consideration to any increase in the bond levels. Instead, the Commission should grant the pending petitions for

⁶ SIA Petition at 20-25; Comments, or in the Alternative, Petition for Clarification or Reconsideration of Telesat Canada, IB Dkt. No. 02-34 (Sept. 26, 2003).

⁷ Comments of Intelsat LLC, IB Dkt. No. 02-34 (Sept. 26, 2003) (“Intelsat Comments”).

reconsideration and eliminate the bond for the benefit of a strong and entrepreneurial satellite marketplace.⁸

Respectfully submitted,

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⁸ If the Commission decides to maintain the bond, it should modify the bond schedule and amounts as proposed by SES AMERICOM to accommodate legitimate business requirements of satellite operators. See SES Petition at 12-18.