

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
Updates to Parts 2 and 25 Concerning)	IB Docket No. 16-408
Non-Geostationary, Fixed-Satellite)	
Service Systems and Related Matters)	

REPLY COMMENTS OF HUGHES NETWORK SYSTEMS, LLC, INTELSAT CORPORATION, AND WORLDVU SATELLITES LIMITED

Hughes Network Systems, LLC (“Hughes”), Intelsat Corporation (“Intelsat”), and WorldVu Satellites Limited, d/b/a OneWeb (“OneWeb,” and together with Hughes and Intelsat, the “Satellite Operators”) respectfully submit this Reply to the comments filed in response to the Federal Communications Commission’s (“FCC’s”) Further Notice of Proposed Rulemaking (“FNPRM”) in the above-captioned proceeding.¹

In the FNPRM, the Commission proposed to remove the regulatory requirement that non-geostationary (“NGSO”), fixed-satellite service (“FSS”) operators provide continuous coverage to the entire United States.² As the record in this proceeding demonstrates, the domestic coverage requirement ensures that rural consumers in the United States “are not forgotten.”³

¹ *In re Update to Parts 2 and 25 Concerning Non-Geostationary, Fixed-Satellite Service Systems and Related Matters*, Report & Order and Further Notice of Proposed Rulemaking, 32 FCC Rcd 7809 (2017).

² *Id.* at 7834, ¶ 76.

³ See Letter from Governor Bill Walker, State of Alaska, to Marlene H. Dortch, Secretary, Federal Communications Commission, *Re: Update to Parts 2 and 25 Concerning Non-Geostationary, Fixed-Satellite Service Systems and Related Matters*, IB Docket No. 16-408, at 1 (Dec. 20, 2017).

No commenter in this proceeding articulated a compelling rationale justifying elimination of the domestic coverage requirement. Some operators argue in favor of removing the requirement in order to provide “flexibility” for their operational and business plans.⁴ Such flexibility, however, would be granted at the expense of rural consumers desperately in need of innovative, satellite-based broadband solutions and in violation of the Commission’s statutory mandate. In light of the Commission’s current willingness to grant waivers of the domestic coverage requirement where justified,⁵ the record demonstrates that removal of the domestic coverage requirement in the NGSO FSS rules is not in the public interest.

I. THE COMMISSION SHOULD NOT ABANDON THE MILLIONS OF PEOPLE LIVING IN REMOTE AREAS OF THE UNITED STATES

Adequate broadband access at affordable prices is not yet available in many parts of the United States, especially in remote areas like rural Alaska. The Commission has a statutory duty to promote affordable, reliable broadband access in remote areas of the country, and it is clear that Chairman Pai is acutely focused on bridging the digital divide in the United States.⁶ The current

⁴ *In re Update to Parts 2 and 25 Concerning Non-Geostationary, Fixed-Satellite Service Systems and Related Matters*, Comments of The Boeing Company, IB Docket No. 16-408, at 2 (filed Jan. 2, 2018) (“Boeing Comments”); *In re Update to Parts 2 and 25 Concerning Non-Geostationary, Fixed-Satellite Service Systems and Related Matters*, Comments of Space Exploration Technologies Corp., IB Docket No. 16-408, at 1 (filed Jan. 2, 2018) (“SETC Comments”).

⁵ See, e.g., *In re Space Norway AS Petition for a Declaratory Ruling Granting Access to the U.S. Market for the Arctic Satellite Broadband Mission*, Order and Declaratory Ruling, 32 FCC Red 9699, ¶ 20 (2017) (“Space Norway Grant”); *In re O3b Limited Petition for a Declaratory Ruling Granting Access to the U.S. Market for the O3b MEO Satellite System*, Stamp Grant, File Nos. SAT-LOI-20141029-00118 and SAT-AMD-20150115-00004, at ¶ 14 (Jan. 22, 2015) (“O3b Grant”).

⁶ 47 U.S.C. § 151. In their Comments, SES and O3b assert that elimination of the domestic coverage requirement serves the same policy goals as elimination of the global coverage requirement. *In re Update to Parts 2 and 25 Concerning Non-Geostationary, Fixed-Satellite Service Systems and Related Matters*, Comments of SES S.A. and O3b Limited, IB Docket No. 16-408, at 2 (filed Jan. 2, 2018). This comparison is not accurate because the Commission owes

requirement that NGSO FSS operators provide service “on a continuous basis throughout the fifty states, Puerto Rico, and the U.S. Virgin Islands”⁷ advances this mission. Removal of the domestic coverage requirement, just as many NGSO FSS operators plan new systems, would give up a vital tool for boosting rural broadband access at precisely the moment it is needed most.

The Commission must not abandon its duty to facilitate broadband access for rural parts of the United States, relying solely upon the premise that this would make it cheaper or easier for a few NGSO FSS operators to design and build their systems. This would be an arbitrary and capricious agency action that fails to properly account for the public interest and runs counter to record evidence demonstrating that the domestic coverage rule will help bridge the digital divide across the United States.⁸

II. GRANTING WAIVERS ON A CASE-BY-CASE BASIS REMAINS THE OPTIMAL APPROACH TO PERMITTING SPECIALIZED SYSTEM DESIGNS

The Commission can and should continue to grant waivers to specialized systems designed to fill a specific need, such as high-latitude service or maritime service. The Satellite Operators believe this regime allows innovation in the NGSO FSS service without unnecessarily reducing operators’ incentives to reach the rural United States.⁹ Furthermore, this approach is

a statutory duty to people in rural areas of the United States to facilitate reliable, affordable access to communications networks.

⁷ 47 C.F.R. § 25.146(b).

⁸ See *Sorenson Commc’ns Inc. v. FCC*, 755 F.3d 702, 707 (D.C. Cir. 2014) (a federal agency rule is arbitrary and capricious if the agency has “entirely failed to consider an important aspect of the problem [or] offered an explanation for its decision that runs counter to the evidence before the agency”).

⁹ The Satellite Operators agree with Space Norway that the domestic coverage requirement “is not appropriate . . . for any system specifically designed, and intending to operate solely, as a regional system.” *In re Update to Parts 2 and 25 Concerning Non-Geostationary, Fixed-*

consistent with the Commission’s willingness to review—and grant—waivers of the domestic coverage requirement for certain niche systems.¹⁰

On the other hand, for NGSO FSS operators proposing to operate constellations comprising thousands of satellites, waiving the domestic coverage requirement serves no public interest and acts only as a windfall to the operator, to the detriment of people living in rural parts of the United States. Several of these satellite operators argue that the domestic coverage requirement places undue restraints on their ability to design their systems. For example, Space Exploration Technologies Corp. (“SETC”) argues that NGSO FSS operators will not be “free to evolve” in their system designs because of the “artificial constraint” created by the domestic coverage requirement.¹¹ However, as SETC notes, several innovative NGSO FSS systems, with widely varying system designs, have been approved in recent months.¹² Some operators were able to design within the supposed “constraint” of the domestic coverage requirement; others properly sought a waiver where meeting the requirement was not possible because their systems were specially geared toward a specific geographic area. As the Satellite Operators previously stated, operators in the ongoing NGSO FSS processing rounds at the Commission were well

Satellite Service Systems and Related Matters, Comments of Space Norway AS on the Further Notice of Proposed Rulemaking, IB Docket No. 16-408, at 2 (filed Jan. 2, 2018).

¹⁰ See, e.g., Space Norway Grant; O3b Grant.

¹¹ SETC Comments at 3-4.

¹² See, e.g., *In re WorldVu Satellites Ltd. Petition for a Declaratory Ruling Granting Access to the U.S. Market for the OneWeb NGSO FSS System*, Order and Declaratory Ruling, 32 FCC Rcd 5366 (2017); *In re Telesat Canada Petition for a Declaratory Ruling to Grant Access to the U.S. Market for Telesat’s NGSO Constellation*, Order and Declaratory Ruling, 32 FCC Rcd 9663 (2017); Space Norway Grant.

aware of the domestic coverage requirement—and the need to meet it within six years of issuance of approval—when they designed and submitted applications for their systems.

Boeing contends that high latitudes can only be served using a polar or near-polar orbit and that “use of a polar or near-polar orbit . . . involves significant tradeoffs that can impair the provision of broadband services to other regions, particularly the equatorial region.”¹³ This argument is factually incorrect. Serving high latitudes does not necessarily require use of a polar or near-polar orbit, and using a polar or near-polar orbit does not prevent effective service to equatorial regions. There are tradeoffs involved in any design choice made by a satellite operator, but the operator is ultimately responsible for creating the most optimal system design to meet its commercial goals *and* fulfill longstanding Commission rules and policies.

The record in this proceeding fails to establish that the deployment of innovative systems has been stifled by the domestic coverage requirement, nor does it articulate public interest benefits that outweigh the direct benefits to rural consumers to be realized by maintaining the requirement. Therefore, there is no basis in the record to support changing the Commission’s current policy of case-by-case review of appropriate waiver requests of the domestic coverage requirement.

¹³ Boeing Comments at 2.

III. CONCLUSION

For the foregoing reasons, the Commission should maintain the domestic coverage requirement for NGSO FSS operators. The requirement is necessary to ensure high-quality, affordable broadband service is made available across the United States, even in its farthest reaches, consistent with the Commission's statutory purpose and current goals.

Respectfully submitted,

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